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June 2, 2016

Dr. Daniel S. Papp
President
Kennesaw State University
Kennesaw, Georgia 30144
sent via e-mail

RE: Special Review – Randy Shelton

Dear Dr. Papp:

In late November 2015, the University System Office (USO) received the first of several allegations of improprieties against Assistant Vice President for Auxiliary Services and Programs Randall Shelton regarding the operations of Kennesaw State University's (KSU) Auxiliary Services and Programs (ASaP). A special review was subsequently initiated by the Office of Internal Audit and Compliance with the assistance of the University System of Georgia (USG) Office of Legal Affairs. The review conducted to date confirms numerous policy violations by Mr. Shelton. It was also perceived that Mr. Shelton was not always forthcoming or accurate in the information he provided as part of the special review. His actions constituting policy violations include, but are not limited to, the following:

A. Mr. Shelton performed consulting work for a current KSU vendor while his department had the direct responsibility for evaluating the performance of this vendor.
B. Mr. Shelton violated the agreed upon terms of the KSU Dining Services Request for Proposal (RFP) process by having private and prohibited communications about the RFP with a representative from one of the companies competing for the dining contract. Mr. Shelton also agreed to change the terms of the dining contract without prior notice to or approval from KSU Legal or KSU Purchasing. The changes resulted in a different schedule for payment of the KSU signing bonus and added an annual donation to the department he supervises, i.e. KSU Auxiliary Services.
C. Other ethics and conflict-of-interest issues as explained below.

There were other performance issues noted regarding Mr. Shelton. Some of these issues were the sole responsibility of Mr. Shelton while others were decisions that Mr. Shelton made in coordination with others in KSU's senior management. Additionally, some issues were identified during the course of this review which were beyond the scope of this report and are areas for further review by KSU or the USO.

A. <u>Consulting for Current KSU Vendor</u>

On January 19, 2016, an anonymous complaint was received on the USG Ethics and Compliance Reporting Hotline (USG Hotline) regarding Mr. Shelton consulting for a current KSU vendor.[1] The complaint provided as follows:

> *In 2012 there was a very successful and profitable restaurant on campus called the Hoot. Mr. Shelton made the sole decision to change it to a franchise called WOW Wingery, the new franchise made KSU make 60k in physical improvements. Then continued to lose 300k over the next 2 years and had paid out 70k in franchise fees on top of that. Mr. Sheltons company Leab Enterprises was hired as a consultant by WOW Wingery upon opening this franchise, and continued to collect a monthly check even as it lost money … and fought to keep it open even after complaints from the culinary department and his internal accountants.*

The franchise referenced in the complaint is WOW Wingery which is part of a restaurant portfolio of Ballard Brands which also includes PJ's Coffee and a wholesale brand called New Orleans Roast Coffee.

The allegations from the USG Hotline referenced above were largely corroborated. This review revealed that Mr. Shelton's involvement with Ballard Brands did violate USG policies related to conflicts of interest and outside activities.

1. <u>PJ's Coffee</u>

Mr. Shelton provided a consulting agreement, signed by him but not by Ballard Brands, that indicated that his consulting was to begin May 20, 2013 and conclude May 19, 2014 and that Ballard Brands would pay him $2,200 per month. At the time Mr. Shelton began consulting for Ballard Brands, this company already had a presence on KSU's campus by way of a PJ's Coffee which opened at KSU in 2010. Also, according to interviews, coffee from Ballard Brands was used in the KSU Commons. As Mr. Shelton's department was directly responsible for monitoring the performance of retail food outlets at KSU and as KSU carried the risk of any financial losses from retail food outlets, Mr. Shelton's consulting for Ballard Brands while PJ's Coffee was on campus constituted an impermissible conflict of interest in violation of USG policy. Although Mr. Shelton's supervisor, Maria Britt, indicated that she verbally approved his consulting with Ballard Brands (because PJ's Coffee would not be on campus much longer), such a direct conflict could not be cured.

2. <u>WOW Wingery</u>

Mr. Shelton's conflict deepened when WOW Wingery was brought back to KSU. When questioned about his consulting work, Mr. Shelton stated that after Sodexo (KSU's dining vendor at that time) made the decision to re-open WOW Wingery in August 2013, he decided that his continued consulting would

[1] At the same time, the USO also received allegations against other KSU employees that are not the subject of this report.

constitute a conflict of interest so he stopped consulting for Ballard Brands in October 2013. His supervisor, Ms. Britt, largely corroborated his account. However, Mr. Shelton's contention that he ceased consulting for Ballard Brands when Sodexo decided to bring WOW Wingery to campus is not accurate for two reasons.

First, the decision to bring WOW Wingery back to KSU was made on April 16, 2013, which was prior to the May 2013 beginning of his consulting agreement, as evidenced by a contemporaneous e-mail message from Mr. Shelton to Mr. Coltek. Mr. Shelton did provide additional drafts of the consulting agreements which included start dates prior to May of 2013. This would indicate that Mr. Shelton's decision to bring WOW Wingery to KSU was occurring contemporaneously with consulting negotiations between Mr. Shelton and Ballard Brands. Therefore, when he agreed to consult for Ballard Brands, he already knew that its WOW Wingery would be at KSU (in addition to PJ's Coffee).

Second, Mr. Shelton's contention that it was Sodexo's decision to bring WOW Wingery to KSU is similarly not accurate. The General Manager for Sodexo during the time period in question was interviewed about the decision, and he stated that Mr. Shelton made the decision to bring WOW Wingery to KSU and that he (the General Manager) was opposed to the decision. The General Manager went on to state that he did not think it was advisable for KSU to bring WOW Wingery back to KSU as WOW Wingery would likely not be able to make a profit due to an already thin profit margin for the location, the fact that it was primarily a late night eating option and the addition of a more costly product line coupled with high franchise fees. Other culinary employees were also against bringing back WOW Wingery due to the lack of brand recognition, cost to remodel the location, and the fact that WOW Wingery had already been tried at KSU and was not profitable.

3. <u>Travel</u>

During his interview, Mr. Shelton was asked for details about his consulting work. He stated that he did not use KSU resources, worked only at night and on weekends, did not perform any work for Ballard away from KSU and never took leave time to complete work for Ballard Brands. Mr. Shelton was then shown a two-page report that Mr. Shelton prepared for Ballard regarding "recommended follow-up action items from the NACUFS Conference in Minneapolis." KSU paid for the travel for this trip and Mr. Shelton did not take annual leave. In response, he explained that he helped Ballard Brands with its booth at the conference and brought potential customers to the booth and introduced them to Ballard team members. Mr. Shelton stated that he spent 80% of his time representing KSU at that conference and only 20% of his time representing Ballard. Mr. Shelton did not, however, pro-rate his paid hours for KSU or the expenses paid by KSU.

Mr. Shelton was also asked about the NACAS conference which took place in October 2013 in Anaheim, California. In an e-mail dated October 15, 2013 to Ballard Brands, Mr. Shelton wrote as follows:

I was following up on September and October consulting payments. I have attached the invoices again. The payments were set up on auto pay and came fine through August, but stopped with September payment.

I am trying to get everything paid for attending the NACAS conference in a week to represent Ballard Brands.

Please advise as to when payments will be sent so I can finalize travel plans.

Mr. Shelton sent the above consulting-related e-mail from his KSU e-mail address and account during KSU work hours and over the signature for his personal business, Leab Enterprises. Additionally, at the time Mr. Shelton wrote to Ballard Brands regarding his representation of Ballard Brands at the upcoming NACAS Conference, KSU had already paid for the airline ticket for Mr. Shelton to travel to the conference, according to a KSU financial official. Mr. Shelton stated that he did not end up representing Ballard at the conference and that he ended the consulting arrangement prior to the conference. Mr. Shelton did not have any supporting documentation regarding the consulting arrangement ending in October 2013.

Mr. Shelton's consulting activity as described above violated USG policies, which require employees to make every reasonable effort to avoid even the appearance of a conflict of interest. Mr. Shelton's consulting under these circumstances gave not only the appearance of a conflict but was, in fact, an actual conflict. While Mr. Shelton partly followed USG policy by having the consulting approved by his supervisor, supervisory approval did not cure the conflict. Moreover, the approval was not in writing as required by USG policy which did, in fact, lead to issues during this review about what exactly was approved and when it was approved.[2] For additional information, please see the following USG Policies: BOR 8.2.13.2 Appearance of Conflicts of Interest; BOR 8.2.15 Outside Activities; BOR 8.2.15.1 Occupational; and BOR 8.2.20 University System of Georgia Ethics Policy.

B. Violations of KSU RFP Process & Procedures

On November 19, 2015, another anonymous report was received on the USG Hotline alleging, among other things, that Mr. Shelton manipulated the KSU Dining Services RFP by privately meeting with one of the companies competing for the Dining Services contract. The complainant alleged that Mr. Shelton had private dinners with the representative of one of the companies and generated private telephone calls, e-mails, and text messages to this representative during the RFP process. These allegations were also largely corroborated and led to the discovery of other violations as well.

1. Contacts with Bidders

[2] It should also be noted that Mr. Shelton's seeming lack of candor when questioned about his consulting appeared to violate the USG Ethics Policy which requires employees to be honest, fair, impartial and unbiased in dealings with and on behalf of the USG.

According to the RFP Schedule of Events, the RFP was released on November 24, 2014, and the Notice of Award was to be made on April 6, 2015. On September 25, 2014, Mr. Shelton signed the Evaluation Committee Member Participation Form. This form, among other things, strictly prohibited any contact with suppliers participating in the RFP. There was an exception if the member's job required contact with a supplier pursuant to an existing contract. Even under these circumstances, however, the member was not to discuss details of the current RFP process. The form goes on to state that any contact by a supplier should be reported to the member's supervisor and the Issuing Officer.

During an interview, Mr. Shelton was asked if he had ever had any communications during the restricted time period with any companies competing for the dining contract. Mr. Shelton stated that he had not. Mr. Shelton was then shown an e-mail that documented a contact on February 16, 2015 from one of the companies competing for the contract and the concluding statement that the company representative would "[t]ell you about my issue Wednesday night." Mr. Shelton stated that he did have a follow-up phone conversation with the company representative and that he did not report that contact to anyone. Mr. Shelton added that he felt that contact was an exception to the rule because the company representative was having problems getting information from KSU's Issuing Officer, Tommie Goodgames. It should be noted that Ms. Goodgames did not find that the circumstances constituted an exception. Mr. Shelton then stated that he did recall one other instance when he met with this same representative in his office to discuss whether a theft issue connected to her company would affect the RFP process. Mr. Shelton then stated that he had other contacts during the restricted time period with the representatives of all of the companies but that it was always at the direction of Ms. Goodgames.

In a follow-up e-mail, Ms. Goodgames was asked about whether she directed Mr. Shelton to contact representatives of the companies competing for the dining contract during the restricted time period. She stated as follows:

> *There were no occasions I requested Mr. Shelton to follow-up with bidders by telephone conversations or meetings during the restricted time period. Instead of sending me an email…Mr. Shelton did call me on one occasion because Victoria Condron with Chartwells called him with a question about Sodexo. I instructed him to have Victoria contact me; not him.*
>
> *Because of the project and the number of RFP committee members, protecting the integrity of the RFP process was very important. RFP committee members including Mr. Shelton were reminded more than once not to communicate with any supplier during the restrictive time period. If a supplier reached out to them they were instructed to have the supplier contact me/the Issuing Officer.*

Mr. Shelton's prohibited contact with a company competing for the KSU Dining Contract was not only a violation of the RFP process but was a violation of the USG Ethics Policy which requires employees to comply with all applicable laws, rules, regulation and professional standards. For additional information, please reference BOR 8.2.20 University System of Georgia Ethics Policy.

2. Contractual Provisions

During the review, Mr. Shelton was also asked about a provision in the KSU Dining Services contract with Compass Group (Chartwells Division) that provided for an annual donation to KSU Auxiliary Services in the amount of $30,304. Mr. Shelton was asked about this donation because a donation to KSU Auxiliaries was not part of the RFP cost worksheet and was not in the original or any subsequent proposals by Chartwells. Additionally, KSU Legal was not aware of the change in the contract nor was Tommie Goodgames aware of this change prior to the receipt of a phone call from Mr. Shelton after the fact. Mr. Shelton stated that prior to Chartwells signing the contract, he was contacted by Chartwells regarding the difficulty of making the $3 million signing bonus within 10 days of signing the contract. Without prior notice to Tommie Goodgames or KSU Legal, Mr. Shelton agreed to alter the terms for the signing bonus so that $1.5 million could be paid within ten days of signing and $1.5 million could be paid by July 1, 2016. Mr. Shelton also directed that the time value of money in the change in terms was to be made up by Chartwells by way of an annual donation to KSU Auxiliary Services in the amount of $30,304.

According to both KSU Legal and Ms. Goodgames, Mr. Shelton was not authorized to negotiate the terms of the contract without coordination by KSU Legal and KSU Procurement and Contracting. Associate General Counsel Andrew Newton stated that, at a minimum, he would have expected any changes by Mr. Shelton to have come back through his office to be incorporated into the "latest redlined version." Mr. Shelton's actions in changing the terms of the contract without prior notice to KSU Legal or KSU Procurement and Contracting were unauthorized and not consistent with a transparent process. USG policy requires employees to make every reasonable effort to avoid even the appearance of a conflict of interest. Mr. Shelton's changing of the terms to directly benefit his department without input from KSU Legal or KSU Procurement and Contracting constituted an impermissible conflict of interest in violation of USG policy. For additional information, please reference BOR 8.2.13.2 Appearance of Conflicts of Interest.

C. Other Ethics and Conflict-of-Interest Issues

1. Conflict of Interest – KSU Vendor Representation

Interviews conducted as part of this Special Review raise the possibility that Gary Coltek was a representative for and had a financial interest in a particular product that was used at the KSU dining hall beginning in approximately January 2015. Mr. Shelton was questioned about this product and how it was brought to KSU. Mr. Shelton stated that it was a product that Mr. Coltek and Sodexo wanted to use at KSU. This statement was not accurate. It was not Sodexo that wanted this product to be used at KSU but rather Mr. Shelton, Mr. Coltek and representatives from the company selling the product.

Mr. Shelton denied that he was a representative for this product or that he or KSU stood to benefit financially from the sale of this product. Mr. Shelton also denied that he had ever refused to consider a competing product or that he had claimed to be a representative for the product. Mr. Shelton was then shown an e-mail he had sent to a representative of a competitor of this product in which he stated that he could not consider the competitor's product because he "work[s] with and represent[s]" another product.

Mr. Shelton also communicated with others in such a way as to make them think he was a representative of this same company. In one instance he took an employee from another company to lunch, provided them with a sample of this product and asked for the contact information for their purchasing representative. In another instance, Mr. Shelton met with the representative of a different company in an attempt to create sales for this product and received a follow-up e-mail from this business representative in which he referred to Mr. Shelton as a representative of the product. Mr. Shelton's refusal to even consider a competing product based upon his statement that he is a representative for a different company gives the appearance of a conflict of interest in violation of USG policy. As previously noted, USG policy requires employees to make every reasonable effort to avoid even the appearance of a conflict of interest. While it is certainly acceptable to provide a reference for a product that is serving the institution well, it is not permissible to refuse to consider competing products based upon what would reasonably appear to be a personal business relationship. For additional information, reference BOR 8.2.13.2 Appearance of Conflicts of Interests.

2. **Conflict of Interest – Coffee 42**

Beginning as early as June 20, 2013, KSU began efforts to partner with a local real estate investor in an effort to advance KSU. Mr. Shelton was given a role to play in furthering these efforts as outlined in an e-mail to him. Without notice to or the approval of his supervisor, Mr. Shelton worked to further his own personal interests with this same real-estate investor and sought to obtain an investment from this investor in a business venture unrelated to KSU called Coffee 42. USG policy requires employees to perform their duties to foster a culture of excellence, to avoid the appearance of a conflict of interest and to secure in writing approval to participate in outside business activity. In accordance with USG policy, Mr. Shelton should have sought approval for this outside activity and should have disclosed his efforts to work a side deal with the aforementioned real estate investor and business owner. Mr. Shelton's actions in this regard were a conflict of interest in violation of USG policy. For further information, reference BOR 8.2.13.2 Appearance of Conflicts of Interest and BOR 8.2.15 Outside Activities.

3. **Use of a Vendors Box Truck to Move Personal Belongings:**

On Friday, November 14, 2013, Mr. Shelton authorized his direct report, Gary Coltek, to use a vendor's truck to move personal belongings. The truck belonged to Sodexo, which was the contracted vendor for KSU Dining Services. As both Mr. Shelton and Mr. Coltek were involved in the day-to-day operations of this vendor and were responsible for the performance of the contract with Sodexo, the request for and use of this truck was inappropriate. USG employees are required to avoid even the appearance of a conflict of interest. Moreover, USG employees are prohibited from knowingly accepting transportation, gifts or anything of value from any vendor. Permission to use the truck may have been genuine on the part of the vendor and not coerced. The relationship, however, between KSU and the vendor made the request improper and the use of the truck an impermissible acceptance of a gratuity and gave the appearance of a conflict of interest in violation of USG Policies. For additional information, please reference, BOR 8.2.13 Gratuities; BOR 8.2.13.2 Appearance of Conflicts of Interest, and BOR 8.2.20 University System of Georgia Ethics Policy.

It should be further noted that the approval for the use of this truck came just over a year following a KSU Legal investigation that found KSU vendors were being used for personal gain. Mr. Shelton was given specific follow-up instructions as part of the recommendations from that report and should have more carefully considered his supervisory role prior to authorizing the use of the vendor's truck.

4. Violation of Ethics Policy – Advancement of Friends and Family

Mr. Shelton should not have used his position and authority to improperly advance the interests of family members in violation of the USG Ethics Policy. Mr. Shelton should have been sensitive to the issues regarding nepotism and conflicts of interest as they were addressed in previous reports dealing directly with KSU ASaP. In fact, in 2012 Mr. Shelton was directed to complete a review of certain reporting relationships in KSU ASaP regarding the hiring of friends and family members by KSU and its vendors. Since the time of that report and the directed review by Mr. Shelton, a KSU ASaP employee's daughter's boyfriend was hired by KSU and Mr. Shelton apparently sought to have two of his family members hired by current KSU vendors. One was subsequently hired. The other was offered employment but was not accepted at the request of Mr. Shelton.

Mr. Shelton should not have sought to advance the interests of a relative with a current vendor whose performance he monitors. Mr. Shelton's actions violated the USG Ethics Policy which prohibits USG employee from using their position to improperly advance the interests of a friend or family. His actions also created the appearance of a conflict of interest. For further reference, see BOR 8.2.20 University System of Georgia Ethics Policy, BOR 8.2.13.2 Appearance of Conflicts of Interest.

Recommendations:

Appropriate administrative action should be taken in regard to Randy Shelton consistent with the findings of this report. Mr. Shelton should be afforded the opportunity to provide any additional relevant information regarding these matters. Please note that additional issues pertaining to the management of auxiliary services came to our attention during the course of this engagement. We will review these issues through our ongoing special review of auxiliary services being conducted by this office.

Please let me know if you should have any questions or concerns.

Sincerely,

John M. Fuchko, III
Vice Chancellor for Internal Audit & Compliance /
Chief Audit Officer

cc: Henry M. Huckaby, Chancellor
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