



**CALIFORNIA DEPARTMENT
OF EDUCATION**

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TOM TORLAKSON
STATE SUPERINTENDENT OF
PUBLIC INSTRUCTION

April 5, 2018

COPY

Hand Delivered via Courier Service

Joseph Manarang, Executive Director
Community Child Care Council of Santa Clara County
150 River Oaks Parkway, Suite F1
San Jose, CA 95131-1948

Dear Mr. Manarang:

Notice of Proposed Action: No Offer of Continued Funding Effective July 1, 2018

Authorized representatives of Community Child Care Council of Santa Clara County (4Cs) signed annual CAPP, C2AP, C3AP, CCTR, CFCC, and CRRP contracts (the contracts) to operate child care and development programs for the California Department of Education (CDE), the last year being this current year, Fiscal Year (FY) 2017-2018. By entering into these contracts, 4Cs executives, officers and employees agreed to comply with the standards for program quality and fiscal accountability set forth in the *California Education Code (EC)*, the *California Code of Regulations*, Title 5 (5 CCR), the Funding Terms and Conditions and Program Requirements (Funding Terms) that accompany the contract, as well as all of the documents incorporated into the signed contracts.

After a review of the report issued April 5, 2018 by the California State Auditor's Office (CSA), and pursuant to the discretionary authority set forth in *EC* section 8261(a)(2) and (3), and Title 5 CCR Section 18303, the Early Education and Support Division of the California Department of Education (EESD) has decided not to offer 4Cs continued funding for child care and development programs for the FY 2018-2019. The reasons supporting the decision are set forth below, and are further detailed in the pertinent sections of CSA's report, a copy of which is attached to this Notice of Proposed Action. Information on how to respond to this action is listed in the final section entitled Appeal Process.

Historical Background

4Cs has provided subsidized child development services through contracts with CDE for many years. In FY 2013-2014, EESD conducted a Contract Monitoring Review, Alternative Payment Monitoring Review and Center-Based Monitoring Review of 4Cs subsidized child care programs and found a number of problems. Among these

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problems found were that the error rate for the Alternative Payment Program was excessive at 13% and for the Center-based Monitoring Review, the Key Dimension VII Teaching and Learning component did not meet requirements. Technical assistance was provided to 4Cs following these reviews and extensive training was conducted with staff. In May of 2014, 4Cs was revisited and was determined to be in compliance.

In 2015, another review was conducted and found that 4Cs error rate was within appropriate limits.

During July of 2016, 4Cs California State Preschool Program (CSPP) was cited by the Community Care Licensing Division of the California Department of Social Services with a Type A deficiency violation. The citation was for a violation of a child's personal rights when a staff member was cited for picking a child up, carrying the child outside and dropping the child to the ground where the child sustained injuries. Two weeks later, 4Cs was cited for a second Type A violation for another CSPP site (Northside). This citation was also for violation of a child's personal rights, citing 4Cs after finding that a child was bitten by another child, causing injuries, and that the staff did not prevent and stop the incident in time.

In or about February, 2017, 4Cs received another Type A Deficiency Licensing citation which found that 4Cs outdoor play space did not have Fire Marshall clearance. The citation also found that 4Cs did not adequately supervise children in the facility and did not adequately address children's aggression towards one another.

EESD learned of these licensing violations and, in March of 2017, EESD representatives conducted unannounced onsite visits to the three CSPP programs operated by 4Cs. During these visits, EESD representatives found a number of violations of health and safety requirements. Subsequently, EESD staff informed 4Cs that it was planning to take an action with respect to its CSPP contract. On or about March 30, 2017, 4Cs chose to relinquish its CSPP contract at the end of FY 2016-2017. The result was that after FY 2016-2017, 4Cs would no longer administer direct center-based services for children, but would retain their APP and CalWORKs (C2AP and C3AP) contracts, their CRRP contract, as well as their CFCC and CCTR contracts, which contracts in this instance served to place children into family child care homes within the community.

At about the same time, in March of 2017, the EESD asked the CDE Audits and Investigations Unit to begin a limited scope audit of 4Cs as permitted by EC Section 8448. The results of that audit are not yet complete.

Subsequently, on or about July 19, 2017, the CSA informed the CDE that the California Legislature had requested, and the Joint Legislative Audit Committee had approved, an

audit request regarding the expenditures, internal controls and external oversight of the use of public funds related to the child care contracts held by the 4Cs with CDE. On April 5, 2018, CSA released a final audit report, detailing its findings. A copy of that report is attached. Given the recent history of 4Cs actions with respect to its contracts and the findings made in that report concerning 4Cs activities, the EESD is exercising its discretion and choosing not to renew 4Cs contracts for FY 2018-2019, pursuant to 5 CCR Section 18303.

Legal Standard for Non-Renewal of Contract

Pursuant to *EC* Section 8261, the Superintendent shall adopt regulations that, among other things, provide for a contract monitoring system to ensure that agencies expend funds received pursuant to this chapter in accordance with the provisions of their contracts and specify adequate standards of contract performance. As set forth in the Title 5 regulations, 5 CCR Section 18010(b), contractors have no vested right from year to year to a subsequent contract with CDE. Pursuant to Section 18010(c), contracts that are not on conditional status, but have experienced fiscal or programmatic noncompliance with the provisions of 5 CCR or the *EC*, shall receive an administrative review in accordance with 5 CCR 18303, and determine whether they will receive an offer for continued funding. Pursuant to Section 18303, if the recommendation is not to offer continued funding, the contractor shall be notified in writing of the reasons for the proposed change in contract status for the subsequent fiscal year. The contractor shall be notified no later than April 7 of the proposed change in contract status.

Summary of Noncompliance and Basis for Non-Renewal

The specific reasons for the non-renewal of 4Cs contracts are set forth in this Notice of Proposed Action, and more greatly detailed in the CSA report attached hereto and incorporated herein.

These incidents of noncompliance include the following:

- State law requires that child care agencies give families notice of any change in service prior to the effective date of the action. Pursuant to 5 CCR Sections 18094, 18095, 18118, and 18119, as well as the Funding Terms, agencies must complete Notices of Action, which must be served on families before services are approved or denied, as well as a minimum of 14 days before any changes are actually made to the terms of the family's service agreement. Such changes may include, but are not limited to, decreasing child care hours, increasing family fees or terminating service. Pursuant to the Code of the Civil Procedure Section 1013(a) and the Funding Terms, when the Notice of Action is mailed to a family, an extra five days must be added to the minimum of 14 days to allow for the mailing time. The reason for the notice period prior to the effective date of the action is to give the family sufficient time to appeal the action and time to seek

assistance in doing so. Failure of an agency to serve the notice on a timely basis could be the basis for reversal of an action during an appeal. State law further prohibits agencies from committing fraud and commission of fraud by a child care agency is, in and of itself, a serious enough offense to warrant immediate termination pursuant to *EC* section 8406.7(a)(1).

As detailed in the CSA report, 4Cs was found to have repeatedly "backdated" the dates on hundreds of Notices of Action, including many of which were to terminate a family's child care services. By backdating the dates on these Notices of Action, 4Cs deprived families of the full fourteen-day notice period required by law (as well likely as any additional five days if the notices of action were mailed). As a result of the backdating of these Notices of Action, many families receiving the notices did not have the requisite period of time they should have to appeal the actions of 4Cs, possibly depriving them altogether of their right of appeal. The act of affirmatively inputting the date of a Notice of Action to be earlier than the actual date the letter is created, gives the appearance that the Notice of Action was provided earlier than it actually was, and could constitute egregious instances of fraud. At minimum, such actions violate state law requirements which require that, at minimum, a Notice of Action must be served 14 days' notice prior to the effective date of the action. In any event, 4Cs conceded to CSA investigators that their employees participated in this backdating activity.

- State law pursuant to *EC* Section 8221.5 and 5 *CCR* Sections 18221, 18224(a)(4), and 18065, as well as the Funding Terms, require that child care agencies must have policies in place to ensure that child care providers are paid on a timely basis. CSA investigators reviewed 60 instances of provider payments from FYs 2014-2015, 2015-16 and 2016-17, and found that five of the 60 payments were significantly late beyond 4Cs payment policies, resulting in \$7,905.00 of late payments of anywhere from 13 to 16 days to those five providers. Late payments, particularly in such large amounts, create a serious hardship for families who provide child care for a living as those families are unable to timely pay their bills, resulting in serious disruption to their lives. Late payments also jeopardize the continuity of child care for families who depend on such care, as providers may have to discontinue their services in favor of a job with a more dependable schedule of payments.
- State law pursuant to 5 *CCR* Section 18033, as well as the Funding Terms, requires that funds be used only to cover actual costs that are reasonable and necessary to the performance of the contract at issue. 5 *CCR* Section 18034 lists

many of the costs that are deemed reimbursable. 5 CCR Section 18035 prohibits child care agencies from spending funds for particular non-reimbursable purposes, and subsection (l) of this Section specifically prohibits spending funds on the costs of legal services for prosecution of any claims against the State.

According to the CSA report, 4Cs wrongfully used \$6,859.00 of state money for legal services pertaining to defending charges filed by the National Labor Relations Board against its private preschool, Orchard Early Learning Center; a cost which was not shown to be related as reasonable and necessary to any of their EESD contracts, as well as a specifically designated non-reimbursable cost. The report further found that 4Cs spent \$325.00 of state funds to pay for restaurant meals served to board members at meetings; costs which were determined not to be legally reimbursable as authorized travel expenses.

- State law pursuant to 5 CCR Section 18067, as well as the Funding Terms, requires that child care agencies keep all records for a minimum of five years and that all claims for reimbursement shall not be paid unless there are documents to support the claims. The child care agency specifically has the burden of supporting any and all claims for reimbursement to ensure that costs are reasonable and necessary and related to the contracts.

4Cs failed to maintain the majority of documents necessary to its support many of its administrative costs. Of the 69 cost transactions that were reviewed by CSA investigators, 56 of the 69 or 81 percent were missing at least one key document or contained a discrepancy in documentation. Of the 69 transactions, 22 were determined not to be appropriate costs at all for reimbursement. For eight of the 69 purchases, there was no documentation at all to support the administrative cost claimed. EESD needs to be able to trust that agencies have appropriate documentation to support how agencies spend money provided to them to ensure that funds are not being misused to reimburse for inappropriate or unreasonable costs. For an agency to fail to maintain sufficient documentation for approximately 80% of administrative cost transactions reviewed, demonstrates a serious lack of compliance with the law and the Funding Terms of the EESD contracts. Moreover, because of a lack of adequate documentation, it is quite possible that 4Cs received reimbursement for costs for which they are not entitled.

Proposed Action

The CDE finds these facts, when considered together, constitute evidence of fiscal mismanagement and noncompliance with California law and regulations and the Funding Terms of the contracts. On this basis, the CDE has decided not to renew 4Cs CAPP, C2AP, C3AP, CCTR, CFCC and CRRP contracts for FY 2018-2019.

Appeal Process

If you disagree with this proposed action, you may appeal the action by filing a response on behalf of 4Cs with the EESD at the address listed below, in accordance with the following requirements of 5 CCR Section 18303(c).

1. The EESD must receive a response within 10 calendar days of your receipt of this Notice of Proposed Action.
2. You must include any written materials in support of the agency's position.
3. You must state whether a representative of intends to make an oral presentation.

If you decide to appeal this action, both the proposed action and your response will be reviewed by the Department's Administrative Review Panel (ARP) that will convene pursuant to the 5 CCR Section 18303(d). If you do not request an oral presentation, the panel will review the written materials and issue a final decision. If you request an oral presentation, you will be contacted within 14 calendar days from the EESD's receipt of your response to schedule an appearance before the ARP. At the oral presentation, you or your representative will have an opportunity to explain any material submitted in your response. You may present any information or arguments that are relevant to the proposed action. The ARP may also set reasonable limits on the scope of your presentation. At the request of the agency, the oral presentation to the ARP may be in person at the EESD office in Sacramento or by conference call. Within 7 days after the presentation, the ARP will issue and mail to you a decision upholding, modifying, or reversing the proposed action.

If you intend to appeal, please mail or deliver eight copies of your response and supporting materials to:

**Janine Weglin, Manager
Appeals Unit
Early Education and Support Division
California Department of Education
1430 N Street, Suite 3410
Sacramento, California 95814-5901**

The EESD must receive your appeal and all supporting documentation no later than 5 p.m. on the tenth calendar day following your receipt of this notice. If the due date falls on a Saturday, Sunday, or a holiday, your appeal must be received no later than the next business day. Do not mail your appeal to the CDE's post office box address or to any other person or office within the CDE, other than the address listed above.

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If you have questions related to the appeal process, please contact Janine Weglin,
Manager, Appeals Unit, by phone at 916-323-2211.

Sincerely,

A handwritten signature in cursive script that reads "Lisa Velarde".

Lisa Velarde, Administrator
Field Services Office
Early Education and Support Division

MGB:to

Enclosures: California State Auditor Fact Sheet Report 2017-116
California State Auditor Community Child Care Council of
Santa Clara County Summary of Report
California State Auditor Report 2017-116 Community
Child Care Council of Santa Clara County