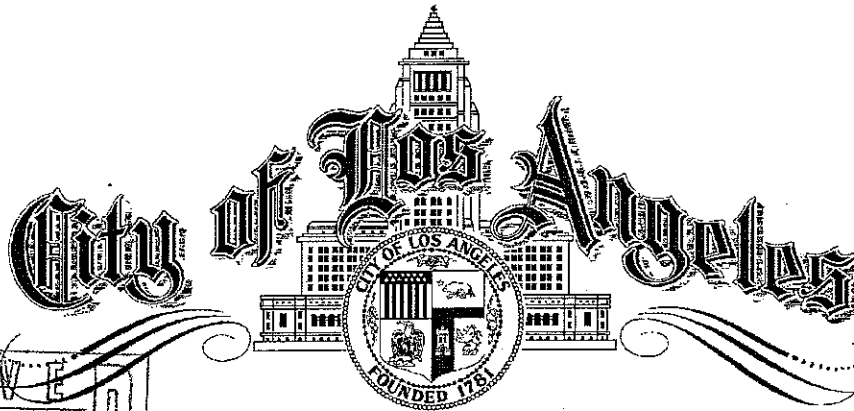
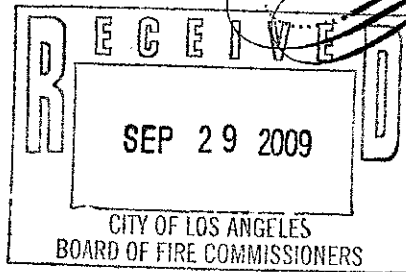


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BFC 09-116  
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**CARMEN A. TRUTANICH**  
City Attorney

September 29, 2009

The Honorable Board of Police Commissioners  
Los Angeles Police Department  
150 North Los Angeles Street  
Los Angeles, California 90012

The Honorable Board of Fire Commissioners  
Los Angeles Fire Department  
200 North Main Street, Room 1800  
Los Angeles, California 90012

Re: Learning for Life and Exploring Program for LAFD and LAPD

Honorable Members:

Some time ago, the City received a written complaint from Lambda Legal Defense and Education Fund (Lambda Legal) alleging that a City contractor, Learning for Life (LFL), was violating the City's ordinance regarding non-discrimination. Specifically, Lambda Legal alleged that LFL administers programs for the Los Angeles Police Department (LAPD) and the Los Angeles Fire Department (LAFD) and that LFL is closely related to the Boy Scouts of America (Boy Scouts). It is well known that the Boy Scouts discriminate based on sexual orientation.

The City Council designated the Department of Public Works, Bureau of Contract Administration (BCA) as the administrative agency responsible for monitoring and enforcing the Non-discrimination, Equal Employment Opportunity and Affirmative Action Program (Los Angeles Administrative Code Section 10.8 et seq). BCA has reviewed the complaint and, with the assistance of the City Attorney's Office, has made the following determinations.

I. LFL's Exploring Program

LFL is a District of Columbia non-profit corporation with over 300 local offices. LFL offers youth development programs to schools and organizations throughout the country. One of LFL's programs is called "Exploring." Exploring is a worksite-based, career-orientated program designed to assist youth 14 to 20 years old in selecting and achieving careers.

For many years, LAFD and LAPD have entered into one-page memoranda of understanding (MOUs) with LFL to enable those City departments to use the LFL Exploring program. The MOUs indicate that LFL operates and maintains the Exploring program and provides support to the departments, including written material and year-round training. LFL requires program participants to pay LFL an annual membership fee and an annual fee for liability insurance. We understand that LFL personnel may go onsite to Exploring group locations, called "posts," and participate in activities. LFL also hosts events for Exploring participants and may assist with Exploring-related fundraising efforts. LFL personnel also may provide training to department employees on issues involving children and parents.

The MOUs require the departments to attract adults to participate as Advisors to youth participants in the Exploring program. The departments are also obligated to provide facilities for Exploring posts to meet.

Although the departments entered into the MOUs with LFL, LFL itself does not administer the Exploring program. Instead, LFL subcontracts with the Los Angeles Area Council, Boy Scouts of America (LA Scouts) to administer the programs for both departments.<sup>1</sup> The current contract between LFL and the LA Scouts is entitled "Intellectual Property License Agreement" and has an effective date of October 31, 2008. Section 1 of the contract licenses LFL's Exploring program to the LA Scouts. Section 2(a) of the contract obligates the LA Scouts to provide the "...personnel, facilities, equipment and supplies necessary to deliver the Exploring Program on behalf of LFL to organizations within Council's [LA Scout's] geographic region."

II. LAPD and LAFD Do Not Have Proper Contractual Arrangements with LFL

The Los Angeles Administrative Code (LAAC), Section 10.8.1, defines "Contract", "Contractor" and "Subcontractor" as follows:

**"Contract"** means any agreement...for the performance of any work or service, the provisions of any materials or supplies, or the rendition of any service to the City of Los Angeles or the public, which is let, awarded or

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<sup>1</sup> The LA Scouts is a California non-profit corporation.

entered into with, or on behalf, of the City of Los Angeles or any awarding authority thereof.”

“**Contractor**” means any person, firm, corporation, partnership, or any combination thereof, who submits a bid or proposal or enters into a contract with any awarding authority of the City of Los Angeles.”

“**Subcontractor**” means any person, firm or corporation or partnership, or any combination thereof who enters into a contract with a contractor to perform or provide a portion or part of any contract with the City.”

LAAC Section 10.2 provides that every contract involving consideration reasonably valued at more than \$1,000 must be in writing, approved by the applicable awarding authority and approved by the City Attorney as to form.

In recent years, we understand that LFL and City employees at 25 LAPD stations and 19 LAFD stations have entered into more than 40 MOUs. The City Attorney's Office and BCA have determined that these MOUs did not meet the City's contractual requirements as provided in the LAAC.

First, the arrangement between LFL and the City departments qualifies as a contractual relationship, even though the City's contracting procedures were not followed. Second, although the City does not pay LFL to administer these youth programs, the MOUs likely have a collective value in excess of \$1,000 and, thus, under City law should have taken the form of written contracts, approved by the City Board or officer authorized to bind the City and approved as to form by the City Attorney. BCA estimates that in excess of 1,000 youth and adults participate in the Exploring programs each year. LFL's contract with LA Scouts obligates the LA Scouts to collect from each participant an annual membership fee of \$10 and an annual fee of \$20 for liability insurance agreement. The aggregate value of those fees alone well exceeds \$1,000.

Accordingly, if LAPD and LAFD desire to continue to contract out the administration of their youth development programs, whether with LFL or another entity, then the departments should follow proper procurement procedures consistent with City law.

### III. LFL and the LA Scouts Must Comply with the City's Non-Discrimination Law

The City's law on non-discrimination applies to all City contracts, regardless of the value of the contract. LAAC Sections 10.8.2 and 10.8.1.1. The City's broad non-discrimination law makes clear that any entity or person entering into a contract or subcontract with the City must not discriminate in their employment practices against an employee or applicant for employment based on race, religion, national origin, ancestry,

sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition. Moreover, every contractor must include a like provision in all subcontracts for work to be performed under the contract with the City.

LFL, as the contractor, and LA Scouts, as the subcontractor, are both obligated to comply with the City's non-discrimination law.

A. LFL's Compliance with the City's Non-Discrimination Law

LFL asserts that its employment policy complies with the City's law regarding non-discrimination. Although LFL's policy appears to prohibit discrimination on the basis of sexual orientation, LFL's policy is not completely consistent with the City's law.

LFL provided BCA and our office with copies of documents reflecting LFL's policy on non-discrimination. LFL provided us with two documents that each contain non-discrimination language, one entitled "Position Statement" and the other entitled "Adult Leader Guide." The language in these documents states that "[c]olor, race, religion, gender, sexual orientation, ethnic background, economic status or citizenship is not criteria for participation [in LFL programs]." However, the documents leave out a number of classes that are protected by the City law: age, disability, marital status, domestic partner status and medical condition.

LFL also included a non-discrimination policy in its "Application for Certification as a LFL Executive." The policy states that "[a]pplicants for certification are considered without regard to race, color, religion, sex, sexual orientation, national origin, age, marital or veteran status, or the presence of health problem or handicap that is unrelated to the person's ability to perform the job assigned." This statement of LFL's policy on non-discrimination is more robust than what appears in LFL's Position Statement and Adult Leader Guide, but it is still an imperfect match to the City's law.

If LAFD or LAPD desire to continue to contract out the administration of their youth development programs and seek to award a contract to LFL, then LFL should revise its non-discrimination policy to adhere to the City's law.

B. LA Scouts' Compliance with the City's Non-Discrimination Law

It appears that the LA Scouts does not have a non-discrimination policy. Before we address the LA Scouts lack of a non-discrimination policy, we discuss LFL's assertion that the LA Scouts position on discrimination is irrelevant for purposes of BCA and the City Attorney's analysis.

LFL makes this assertion on the basis that its agreement with the LA Scouts requires the LA Scouts to administer the Exploring program in compliance with LFL's non-discrimination policy.<sup>2</sup> Indeed, that provision appears in LFL's most recent contractual arrangement with the LA Scouts.

LFL's claim that the LA Scouts comply with the City's non-discrimination law because the LA Scouts employees who work on the Exploring program are treated as LFL employees is problematic for two reasons. First, for many years BCA has interpreted and implemented the City's non-discrimination law to apply to a contractor's and subcontractor's entire workforce. Therefore, BCA does not agree that the City's non-discrimination law applies only to a segregated workforce (those working on the City job). Second, even if the City's non-discrimination law could be interpreted to apply only to those working on the City job, it appears impractical if not impossible to do so – the LA Scouts would have to: 1) have a policy articulating that its employees working on LFL's Exploring program are protected by LFL's employment policies and practices, including LFL's non-discrimination policy, and 2) show that the LA Scouts insulates each and every LA Scout employee who interacts with the Exploring program from the LA Scouts' employment policies and practices (from the time he or she was first considered for hiring by the LA Scouts to the time he or she leaves the LA Scouts' employment). Accordingly, as expressly required by the LAAC, BCA and the City Attorney believe that the LA Scouts should have its own policy of non-discrimination that is consistent with the City's law.

LFL provided us with what it contends is the LA Scouts' policy on non-discrimination. The document is entitled "Sexual Advocacy or Behavior: Zero Tolerance Statement." The document provides the following:

"The Los Angeles Area Council for Boy Scouts of America has adopted a policy of zero tolerance for inappropriate sexual advocacy or behavior of any kind within its Boy Scout Program. The Boy Scout program does not provide sex education or counseling. Scouts should look to their parents or guardians, religious leaders and health care providers for guidance in this area."

This LA Scouts document falls well short of a policy of non-discrimination and does not comply with the City's law. If LAFD or LAPD desire to continue to contract out the administration of their youth development programs and the LA Scouts desire to be a contractor or subcontractor, then the LA Scouts should adopt a non-discrimination policy that adheres to the City's law on non-discrimination.

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<sup>2</sup> As mentioned above, LFL's non-discrimination policy includes sexual orientation but leaves out a number of other classes protected by the City's non-discrimination law.

The Honorable Board of Police Commissioners  
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If you have any questions regarding this matter, please contact John Reamer, Inspector of Public Works at (213) 847-2688, Valerie Flores at (213) 978-8149 or David Michaelson, Chief Assistant City Attorney, at (213) 978-7178.

Sincerely,

CARMEN A. TRUTANICH, City Attorney

By   
VALERIE L. FLORES  
Assistant City Attorney

DM:lee

cc: John Reamer, Inspector of Public Works, Bureau of Contract Administration  
William Bratton, Chief, Los Angeles Police Department  
Millage Peaks, Chief, Los Angeles Fire Department  
Carlos De La Guerra, Assistant City Attorney  
Janet Jackson, Deputy City Attorney