

Citizens' Oversight Projects (COPs) Committee

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CitizensOversight.org



March 3, 2009

Governing Board
Southwestern College District
900 Otay Lakes Road,
Chula Vista, CA 91910
(619) 421-6700

Dear Board Members:

This letter relates to Memorandum of Understanding (MOU) No. M4039.09 with Blackwater Lodge and Training Center, Inc. (apparently now known as Xe, Inc, pronounced “Zee”, but referred to here as “Blackwater”) to establish an agreement to use privately owned facilities in the Otay Mesa Area (7685 Siempre Viva Road, San Diego, CA 92154) and to allow for-profit Blackwater to use school meeting rooms.

Our citizens oversight group has reviewed this agreement, object to specific provisions and to the procedures used in adopting it, and request that this be revisited and the agreement revoked. Before reviewing our specific concerns, let me state that we support training of public-service security officers using public facilities and with public review. We don't want Police officers with guns they don't know how to use, for example.

Our rationale for this request is as follows:

1. Blackwater is well known nationally and internationally, but their reputation is far from spotless. In fact, they were the only company to be ejected from Iraq after several brutal and ruthless events where innocent civilians were killed. The FBI investigation confirmed Blackwater-trained and deployed contractors were responsible for the September 16, 2007 Nisour Square massacre, where 17 innocent civilians were killed. Blackwater is emblematic of the Bush administration who used questionable techniques, such as pre-emptive invasion, torture, and extraordinary rendition. Regardless of your position on these issues, forming a contract with Blackwater places your college squarely in the midst of these debates, and implies that you approve of the actions of Blackwater.

Forming a relationship with a company is much like hiring personnel. As a public institution, it is your duty to make judgments of a firm's credibility, trustworthiness, and sound reputation. It is frequently the case that public institutions will avoid or terminate contracts with companies with tarnished reputations anywhere in the world. For example, Purdue University terminated its contract with Russell Athletic over worker's rights in their Honduras plants. Similarly, the actions of Blackwater in other parts of the world cannot be ignored.

2. Our community has had bitter experience with Blackwater in their recent proposals in San Diego County. I personally worked to help residents resist both the proposed 824-acre training camp in Potrero and the 61,000 square foot facility in Otay Mesa. Although the details of these experiences could fill several volumes, the fact is that neither one was supported by the community. In Potrero, members of the community planning group who initially voted for the project were recalled by a margin of 2:1 (up to 70 percent against) and replaced by members who opposed the project. Blackwater pulled that project on March 7, 2008 just prior to the vote against their project days later. When the community was able to weigh in, they soundly defeated it on both environmental and community character grounds.
3. The Otay Mesa proposal was not brought forth to the community, and Blackwater actively subverted public review. They did this by a) using pseudonyms “Southwest Law Enforcement” (which was just two guys in a Huntington Beach residence), “Raven Development,” “SAFCHILD Development,” and several others b) changing the description on the electronic version of the permits (the paper copy said “Install Shooting Range” but the computer record said “Install Modular Training Unit.”), and c) splitting up their project into small permits to avoid normal processing as a more significant project. They applied for various permits for air ducting, electrical and walls, but did not disclose the full scope of their project, and they built a ship simulator and “kill house” within the facility without permit. When the director of the Development Services Department (DSD) discovered the full scope of the project, he ruled that it should have additional review and should not be approved with only ministerial (i.e. rubber stamp) processing. Blackwater could have embraced the need for public review of a warfare training facility only blocks from a sensitive border area. Instead they decided to thwart the desire for such scrutiny and filed suit in Federal Court to force the city to approve their occupancy permit.

We object to the SWC agreement with Blackwater in a facility of this nature which was not put before the public for traditional review.

4. As a private organization, Blackwater is not subject to oversight by the public regarding activities allowed in their facility. Blackwater has frequently stated that their sole purpose is to train Navy personnel per their contract, which was to commence on June 2, 2008. We have recently learned that they are now offering their mercenary-style training to anyone who will pay their tuition. We, as members of the public, have no power of oversight.

Since Southwestern College is an open, public institution, agreements with private organizations who are not necessarily operating in the public's best interest, particularly when they have been formed and installed until a dark cloud of impropriety, are certainly out of line.

5. Blackwater claims that the agreement is “at no cost to the District.” However in provision D2 of the MOU, it states that the district will reimburse Blackwater “...for the use of personnel required to operate the range.” There is apparently no limit to what Blackwater can charge for such personnel. So the document is contradictory and misleading. It is not “at no cost” but instead may be substantial cost, and it is completely left open for Blackwater to set their revenue stream. This provision also stands in conflict with provision G-10, which states “This Agreement is neither a fiscal nor a funds obligation document.” Certainly, the words “will reimburse” implies that there is some obligation to do so.

The Termination clause states that “Full credit shall be allowed for each party's expenses and all noncancelable obligations properly incurred up to the effective date of termination.” What other obligations can there be, as implied by this sentence?

Therefore, the agreement has been inappropriately processed.

6. The MOU provides that Blackwater will have use of conference rooms at the college. We know that conference rooms already exist in their Otay Mesa facility and Blackwater could easily build more conference rooms in their 61,000 square foot facility, if needed. Therefore, Blackwater probably wants to use rooms on campus to give the impression that they are part of Southwestern College and that their programs are approved, endorsed, sponsored, or even underwritten by the district. Since none of these are the case, it is highly improper to provide such conference rooms to such a for-profit organization. In addition, there is no definition in the MOU regarding how those conference rooms are to be used, nor how often. Is Blackwater planning to set up a recruiting station for their private mercenary army on campus, much like the Army, Air Force or Marines? This entire concept is highly irregular and improper, and therefore must not be part of any such agreement.

When combined with the four-month termination delay, it appears that Blackwater could continue to operate on campus for an additional four months even if the agreement is terminated and the shooting ranges no longer used.

7. The agreement states that a nondisclosure agreement is to be signed as part of the agreement. As part of our duty to provide oversight to a public institution, we object to any NDA. All agreements and information passing to the public institution must be available for public review. (The NDA was not part of the agenda packet and we have asked to review the NDA, but have not had an opportunity to do so as of this writing.)
8. We object to the “Gag Order”, as described in provision G-8, “The District further agrees that no press release or statement shall be made by the District regarding this Memorandum of Understanding without the prior approval of [Blackwater].” This is just one more example of the culture of secrecy of Blackwater, intending to “fly under the radar” and avoid public scrutiny of the agreement. Such a gag order is highly objectionable, and serves to make Southwestern College, a public institution, subservient to Blackwater and only able to say what Blackwater approves. As a result, the MOU was not fully and adequately noticed to the public such that it could be reviewed prior to approval.
9. We object to the fact that law enforcement trainees would be taken to a facility of a firm that is also interested in recruiting for their own private army, literally mercenaries deployed internationally under the banner of Greystone, Ltd. Xe, Inc., U.S. Training Company, and any number of pseudonyms in a “guns-for-hire” scenario. Any training facility used by the college should be devoid of any such marketing by private firms. Even if you believe that such mercenary deployment is appropriate, it is inappropriate to give one firm an advantage in hiring trainees.
10. The MOU in section E states that “The DISTRICT shall require all faculty and students to sign a standard release or waiver, a copy of which is provided as Exhibit "A" to this Agreement.” However, “Exhibit A” was not included in the agenda packet for public review. (We have asked to

review the exhibit, but have not had an opportunity to do so as of this writing.) Students are not normally asked to waive their rights.

11. The process for procuring facilities for use by the college is normally an open bidding process where multiple firms are allowed to bid on the opportunity to use the conference rooms and promote their firms on campus. The MOU is hardly a gift to the college as Blackwater demands payment for use of their shooting range (for support personnel) yet, the college does not have the ability to charge Blackwater for support personnel for the use of the college conference rooms.
12. Provision G-10 makes a statement that nothing of value is being transferred: “Any endeavor or transfer of anything of value involving reimbursement or contribution of funds between the parties to this Agreement will be handled in accordance with applicable laws, regulations, and procedures including those for government procurement and printing.” However, it is clear that the rest of the agreement does in fact transfer the use of the shooting range and conference rooms, which are both valuable services, as well as direct compensation to Blackwater. Therefore, this agreement does not meet normal government procurement procedures.
13. Finally, the arbitration clause states that “governed by and construed in accordance with the laws of the State of North Carolina.” However, the addresses of both entities are in California, so we wonder why Southwestern College District agrees to use North Carolina laws (and probably results in expensive venue requirements should any lawsuits be filed.) Furthermore, this arbitration clause implies that far more is at stake than a “outreach effort” by Blackwater to benefit the College.

Therefore, we request that the Southwestern College Board of Trustees revoke this agreement with Blackwater. If additional shooting range facilities are needed, perhaps working with San Diego City College and their similar program to provide the shooting range desired in a scenario without the secrecy, bad reputation, and community objection that will be the case with Blackwater.

Sincerely,



Raymond Lutz
Coordinator, Citizens' Oversight Projects Committee.
Former Candidate, 77th State Assembly District

This letter has been endorsed by the following organizations:

- Activist San Diego
- American Friends Service Committee – San Diego
- Citizens Against Private Armies (CAPA)
- Peace Resource Center of San Diego
- San Diego Veterans For Peace
- Stop Blackwater Working Group of the San Diego Coalition for Peace and Justice