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Janitorial Mess

Portland State University awarded a sole-source contract to a troubled company.



ILLUSTRATION: chrisdanger.com

Portland State University signed a \$1.5 million no-bid contract earlier this year with a company for janitorial work in its dorms.

But WW has learned the company, Diversified Abilities Inc., has \$34,000 in state tax liens and \$341,000 in federal liens for failing to pay employee withholding taxes.

Diversified, headquartered in Happy Valley, is what's known as a "qualified rehabilitation facility." There are 21 such firms in Oregon that employ disabled workers.

QRFs often compete against each other for work, although Diversified was the only company bidding for the dorm contract. Portland State did not seek other bids.

Portland State spokesman Scott Gallagher says university officials awarded the contract without seeking bids because of an existing relationship with Diversified and because the contract was relatively small. "We did not know about the tax liens," he says.

"The **Oregon Department of Administrative Service** certifies QRFs and monitors them," Gallagher adds. "We don't do any back checks."

Darvin Pierce, the state employee whose job is to keep an eye on QRFs, says the state primarily ensures compliance with laws defining who can work for a QRF and that workers' time is tracked accurately. Pierce says he was unaware Diversified owes hundreds of thousands in back taxes.

"That's news to me," he tells *WW*.

After awarding the \$1.5 million, three-year contract in February 2013, PSU inked another \$273,000 janitorial contract with Diversified in May.

Diversified's owner, Ann Toth, says the company employs nearly 100 people. Most do janitorial or landscaping work for public agencies, earning \$11 to \$13 an hour.

Toth says she often works seven days a week helping to support workers with multiple challenges. "If we don't employ these people, who else will?" Toth says.

She acknowledges the company has had financial problems since its founding in 2005.

"We've been struggling as hard as we can struggle to make this thing work," Toth says.

Records filed with the state show Diversified has five federal tax liens and two state tax liens outstanding stretching back to 2005.

The liens came about because Diversified took money out of employees' paychecks to pay their income taxes but then failed to pay those taxes.

"Withholding payments are trust funds, and it's very important for employers and to us that employers remit those payments timely," says Oregon Department of Revenue spokesman Derrick Gasparini. "We file liens as soon as the employers are delinquent." (Gasparini has no specific knowledge about Diversified.)

Toth acknowledges the liens and blames a variety of factors: bidding too low on contracts, slow payments from Portland State, and paying what she claims are overly generous employee benefits. (Gallagher says Toth's invoices have been incorrect, delaying payment, but PSU honors its contract.)

"We've done far more good than bad," Toth says. "Some things happened, and some mistakes were made, and in the end I will pay the price. I am liable for those withholding taxes."

Toth and her husband, David, who she says runs the landscaping portion of their business, have paid themselves well, even though records show their nonprofit has consistently lost money.

In 2008, for instance, the company, which is registered as a 501(c)(3) nonprofit organization, had gross revenues of \$1.053 million. Ann Toth paid herself a salary of \$101,000 and her husband \$77,000. For comparison, the Toths paid themselves the same amount that the state's largest QRF, Portland Habilitation Center, with revenues of \$27 million, pays its CEO: \$178,000.

In 2011, after years of losses, the Toths cut their salaries to \$49,000 and \$44,000, respectively.

Some Diversified employees have complained about how they are paid.

One employee, Tom Jewell, filed six complaints with the state Bureau of Labor and Industries in March. Jewell alleged Diversified paid employees late, paid them less than they were owed, and bounced checks.

BOLI sent warning letters to Diversified. Two other employees filed suit against Diversified in Multnomah County Circuit Court this year for unpaid wages. The case settled before trial.

Toth says terms of the settlement preclude her from discussing the lawsuit, and she says the BOLI complaints are without merit. "I've done nothing wrong," she says.

Diversified and Portland Habilitation Center are currently competing for a much larger PSU contract, for janitorial services at 23 university buildings that are not dorms and two parking garages.

That contract, expected to be worth more than \$2 million annually, is set to be awarded July 3.

Gallagher says university officials will keep a sharper eye on Diversified in the future.

"Going forward, we will look more closely and monitor them," he says.

