BOARD OF EDUCATION

RESOLUTION

ACCEPTANCE OF OFAC REPORT ISSUED IN CASE #INV-018-15
REGARDING ELIZABETH PUBLIC SCHOOL – CONTRACTS REVIEW
AND ADOPTION OF DISTRICT CORRECTIVE ACTION PLAN

WHEREAS, on or about October 9, 2015, the State of New Jersey Department of Education Office of Fiscal Accountability and Compliance ("OFAC") issued a report in Case #INV-018-15 of its findings and recommendations related to its review of the District's Contracts Review; and,

WHEREAS, the District has prepared a Corrective Action Plan for adoption by the Board of Education to enact the recommended practices set forth in the OFAC report; and,

WHEREAS, the Board of Educations is required by regulation (N.J.A.C. 6A:23A-5.6) to publicly review and discuss (1) the findings and recommendations contained in the OFAC report at a public meeting of the Board of Education, and (2) the Corrective Action Plan to be adopted by the Board of Education;

NOW, THEREFORE, BE IT RESOLVED, that the Elizabeth Board of Education acknowledges receipt of the OFAC report issued regarding the Elizabeth Public School – Contracts Review (Case #INV-018-15).

BE IT FURTHER RESOLVED that the Elizabeth Board of Education adopts the Corrective Action Plan to address the recommendations and findings that were made in the OFAC report for implementation by District personnel, as set forth in the Corrective Action Plan.

BE IT FURTHER RESOLVED that a copy of the OFAC report and Corrective Action Plan shall be posted on the District’s website with the agenda and meeting minutes for the September 22, 2016 meeting.

BE IT FURTHER RESOLVED that a copy of the Corrective Action Plan and this resolution shall be forwarded to OFAC immediately in accordance with N.J.A.C. 6A:23A-5.6(c).

TRUE COPY APPROVED AND ADOPTED AT
THE ELIZABETH BOARD OF EDUCATION MEETING
HELD ON September 22, 2016

[Signature]
Harold E. Kennedy, Jr.
School Business Administrator/Board Secretary

Elizabeth, New Jersey
September 22, 2016
NEW JERSEY DEPARTMENT OF EDUCATION  
OFFICE OF FISCAL ACCOUNTABILITY AND COMPLIANCE  
CORRECTIVE ACTION PLAN

CASE #INV-018-15

SCHOOL DISTRICT NAME Elizabeth Public Schools  
COUNTY Union

TYPE OF EXAMINATION Contracts Review

DATE OF BOARD MEETING September 22, 2016

CONTACT PERSON Harold E. Kennedy, Jr., School Business Administrator/Board Secretary

TELEPHONE NUMBER (908) 436-5112  
FAX NUMBER (908) 436-5158

<table>
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<tr>
<th>RECOMMENDATION NUMBER</th>
<th>CORRECTIVE ACTION</th>
<th>METHOD OF IMPLEMENTATION</th>
<th>INDIVIDUAL RESPONSIBLE FOR IMPLEMENTATION</th>
<th>COMPLETION DATE OF IMPLEMENTATION</th>
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<td>The Board is directed to submit a Corrective Action Plan indicating the measures it will take to comply with the applicable provisions of the Public Services Contract Law, specifically, N.J.A.C. 18A:18A-5.</td>
<td>• At the January 7, 2016 Organization meeting of the Board all professional service contracts were awarded by vote with the approval of the full majority of the Board. • Board Policy 3327 will be modified to remove the contradicting language enumerated in N.J.S.A. 18A:18A-5.</td>
<td>• Board resolutions.</td>
<td>School Business Administrator/Board Secretary</td>
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<td>January 7, 2016</td>
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Chief School Administrator  
9/27/2016  
Date

Board Secretary/Business Administrator  
9/27/2016  
Date

i:\capworksheet.doc
October 9, 2015

Ms. Olga Hugelmeyer, Superintendent
Elizabeth Public Schools
500 North Broad Street
Elizabeth, New Jersey 07027

Dear Ms. Hugelmeyer:

SUBJECT: Elizabeth Public School – Contracts Review – OFAC Case #INV-018-15

The Department of Education, Office of Fiscal Accountability and Compliance (OFAC), has completed a limited scope review of the process utilized by the Elizabeth Public Schools (District) to award contracts for insurance and auditing services. The examination disclosed issues of noncompliance with provisions of the Public School Contracts Law, N.J.S.A. 18A:18A-5. The issues of noncompliance are detailed in the attached report of examination. Please provide a copy of the report to each board member.

Utilizing the process outlined in the attached “Procedures for LEA/Agency Response, Corrective Action Plan and Appeal Process,” the Elizabeth Board of Education is required, pursuant to N.J.A.C. 6A:23A-5.6, to publicly review and discuss the findings in this report at a public board meeting no later than 30 days after receipt of the report. Within 30 days of the public meeting, the board must adopt a resolution certifying that the findings were discussed in a public meeting, and approving a corrective action plan which addresses the issues raised in the undisputed findings and/or an appeal of any findings in dispute. A copy of the resolution and the approved corrective action plan and/or appeal must be sent to this office within 10 days of adoption by the board. Please direct your response to my attention.

Also, pursuant to N.J.A.C. 6A:23A-5.6(c), you must post the findings of the report and the board’s corrective action plan on your District’s website. Should you have any questions, please contact Mr. Thomas C. Martin, Manager, Investigations Unit, at (609) 633-9615.

Sincerely,

Robert J. Cicchino, Director
Office of Fiscal Accountability and Compliance

RJCH\Wfhve\Elizabeth\2015\Issues\PSCL and Legal\PSCL Contract Renewals.final.docx

Attachments

c: Robert Bumpus    Roger Jinks
       Patricia Morgan  Thomas C. Martin
       Michael Yaple    Karl Feltes
       David Saenz      Stephen Eells

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REPORT OF EXAMINATION – OCTOBER 2015
ELIZABETH PUBLIC SCHOOLS – CONTRACT COMPLIANCE REVIEW

The Department of Education, Office of Fiscal Accountability and Compliance (OFAC) conducted a limited scope examination of the procedures utilized by the Elizabeth Public Schools (District) Board of Education (Board) to award a contract for auditing services, and a contract for insurance and health benefit consulting. The examination was initiated following receipt of a letter expressing concern that the awards were issued contrary to the requirements of the Public School Contracts Law (PSCL), specifically N.J.S.A. 18A:18A-5. A provision of N.J.S.A. 18A:18A-5 states in part, “Any contract, the amount of which exceeds the bid threshold, shall be negotiated and awarded by the board of education at a public meeting...”

A. The Failed Vote

The information provided to the OFAC, and subsequently confirmed during the procedural review, indicates the Board failed to comply with the specific requirements of the PSCL when it renewed its contract with Mendonca & Partners (providers of auditing services) and with ICA Risk Management Consultants (an insurance and health benefit consultant).

Although the dollar value of each contract exceeded the District’s established bid threshold of $36,000.00, both contracts qualified as exceptions to the requirements for advertising.1 However, use of the exceptions still requires the Board to negotiate and award a contract by resolution at a public meeting.

During the January 14, 2015, Board meeting, the motions to approve the award of the contracts to Mendonca & Partners and ICA Risk Management Consultants resulted in a “tie”.2 More specifically, four board members voted in the affirmative, four members voted in the negative, and one member abstained due to a conflict of interest. As a result, and because the motion could not carry without a majority vote, i.e., with five of the nine present Board members voting in the affirmative, the motion to approve the contracts failed.

Despite the failure of the motion to approve the award of the contracts to Mendonca & Partners and ICA Risk Management Consultants, contracts were still awarded to both entities based on the language of Board Policy 3327. Board Policy 3327, which was revised/modified on December 11, 2014, by the previous Board, states, in pertinent part:

“Recognizing the necessity for the Board of Education to receive continuing professional services, in the event the Board is unable to agree upon the appointment of a successor, any existing contract for professional services shall be automatically renewed for one year, as long as it complies with the payment requirements and restrictions set forth in N.J.S.A. 18A:19-1.”

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2Board Bylaw file code 9325.3 recognizes Roberts Rules of Order, newly revised. Board Bylaw File Code 9325.4 deems an abstention as neither an affirmative nor a negative vote.

B. The Revision/Modification to Board Policy 3327

On November 4, 2014, new members were elected to serve on the Board, with reorganization to occur in January, 2015. The revision/modification to Board Policy 3327 had a first reading on November 20, 2014 (post election), and was formally revised after a second reading on December 11, 2014 (also post election, but prior to reorganization). In light of the fact that the revision to Board Policy 3327 was initiated after a new Board had been elected, but prior to reorganization of the new Board, the OFAC finds this revision, and the Board’s reliance thereon, problematic.

Although it is outside the purview of the OFAC to render a determination on the legality of the revision to Policy 3327, the OFAC finds the timing of this substantive revision to be questionable. In addition to contradicting the language enumerated in N.J.S.A. 18A:18A-5, the outgoing Board’s actions had the force and effect of binding future Boards.

CONCLUSION


RECOMMENDATION

The Board is directed to submit a Corrective Action Plan indicating the measures it will take to comply with the applicable provisions of the PSCL, specifically N.J.S.A. 18A:18A-5. In the event that the Board fails to remedy the issue of noncompliance, the District will be subject to the provisions of N.J.A.C. 6A:23A-5.4, i.e., the withholding of State funds. The amount of funds withheld shall equal the amount of the contract awarded in violation of the PSCL.

Additionally, the Board Member Code of Ethics\(^1\) requires Board members to “uphold and enforce all laws, State Board rules and regulations ... Desired changes should be brought about only through legal and ethical procedures.”

The complainant in this matter, or any aggrieved party, possessing sufficient evidence to support a claim that the Board’s aforementioned revision to Policy 3327 was implemented to circumvent the requirements of the PSCL and/or to bind future Boards, may file a complaint with the School Ethics Commission.

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\(^1\)Bylaw File Code 9271
Submitted by:

Thomas C. Martin, Manager
Investigations Unit

Investigator:
Karl T. Feltes

Approved by:

Robert J. Cicchino
Director
Office of Fiscal Accountability and Compliance