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BOARD OF EDUCATION

RESOLUTION

**ACCEPTANCE OF OFAC REPORT ISSUED IN CASE #INV-029-16
REGARDING ELIZABETH PUBLIC SCHOOL – PUBLIC SCHOOL CONTRACTS
COMPLIANCE REVIEW AND ADOPTION OF
DISTRICT CORRECTIVE ACTION PLAN**

WHEREAS, on or about October 6, 2016, the State of New Jersey Department of Education Office of Fiscal Accountability and Compliance (“OFAC”) issued a report in Case #INV-029-16 of its findings and recommendations related to its review of the District’s Public School Contracts Compliance 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 Education 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;

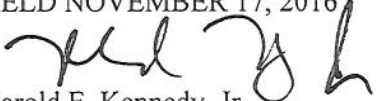
NOW, THEREFORE, BE IT RESOLVED, that the Elizabeth Board of Education acknowledges receipt of the OFAC report issued regarding the Elizabeth Public School – Public School Contracts Compliance Review (Case #INV-029-16).

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 October 20, 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 BOARD OF EDUCATION MEETING
HELD NOVEMBER 17, 2016


Harold E. Kennedy, Jr.
School Business Administrator/Board Secretary
Elizabeth, New Jersey

**NEW JERSEY DEPARTMENT OF EDUCATION
OFFICE OF FISCAL ACCOUNTABILITY AND COMPLIANCE
CORRECTIVE ACTION PLAN**

CASE #INV-029-16

SCHOOL DISTRICT NAME Elizabeth Public Schools COUNTY Union

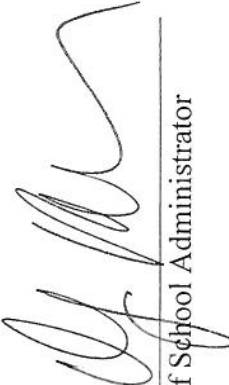
TYPE OF EXAMINATION Public Schools Contracts Compliance Review

DATE OF BOARD MEETING October 20, 2016

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

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

RECOMMENDATION NUMBER	CORRECTIVE ACTION	METHOD OF IMPLEMENTATION	INDIVIDUAL RESPONSIBLE FOR IMPLEMENTATION	COMPLETION DATE OF IMPLEMENTATION
The District is directed to submit a Corrective Action Plan indicating the measure it will implement to ensure future compliance with Public Services Contract Law.	<ul style="list-style-type: none"> At the July 21, 2016 meeting the Board adopted newly developed Policy and Regulation 3161 Emergency Purchases and Contracts for awarding contracts for emergent needs pursuant to the provisions of N.J.S.A. 18A:18A-7 et seq. and N.J.A.C. 5:34-6.A et seq. 	<ul style="list-style-type: none"> Board resolution. In consultation with Special Counsel, the Board Bylaws/ Policies Committee recommended New policy and regulation for 1st and 2nd reading and adoption. 	School Business Administrator/ Board Secretary School Business Administrator/ Board Secretary	July 21, 2016 July 21, 2016


Chief School Administrator

11/17/2016
Date


Board Secretary/Business Administrator

11/17/2016
Date



State of New Jersey

DEPARTMENT OF EDUCATION

PO Box 500

TRENTON, NJ 08625-0500

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

KIMBERLEY HARRINGTON
Acting Commissioner

October 6, 2016

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

Dear Ms. Hugelmeyer:

SUBJECT: Elizabeth Public Schools - Public School Contracts Compliance Review
OFAC Case #INV-029-16

The Department of Education, Office of Fiscal Accountability and Compliance (OFAC), has completed an investigation of the process utilized by the Elizabeth Public Schools (District) to acquire services requiring the solicitation of quotes and/or public bids.

Based upon the information developed during the review, the District is directed to develop a Corrective Action Plan identifying the measures that it will implement to ensure future compliance with the PSCL. Additionally, the District is directed to refund the state funded portion of those expenditures totaling \$62,212.57. The Division of Finance will be notified of this finding and will determine the timing of the recovery.

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, the findings of the OFAC investigation shall be posted on the District's web site. Should you have any questions, please contact Thomas C. Martin, Manager, Investigations Unit, at (609) 633-9615.

Sincerely,


Robert J. Cicchino, Director

Office of Fiscal Accountability and Compliance

RJC 1: Frangella Elizabeth Report Closing Letter.docx

Attachments

c: Robert Bumpus

Juan Torres

Michael Yaple

Harold Kennedy

Thomas C. Martin

Stephen Eells

www.nj.gov/education

STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION
OFFICE OF FISCAL ACCOUNTABILITY AND COMPLIANCE
INVESTIGATIONS UNIT

ELIZABETH PUBLIC SCHOOLS
PUBLIC SCHOOL CONTRACTS LAW COMPLIANCE REVIEW
OFAC CASE #INV-029-16

REPORT OF EXAMINATION
OCTOBER 2016

EXECUTIVE SUMMARY

The New Jersey Department of Education, Office of Fiscal Accountability and Compliance (OFAC) received a complaint referral from the Union County Prosecutor's Office (Prosecutor) concerning the process utilized by the Elizabeth Public Schools (District) to acquire services requiring the solicitation of quotes and/or public bids. During an audit conducted by the accounting firm of Lerch, Vinci, & Higgins, LLP, it was noted that contracts were awarded to Trujillo Construction in a manner that was not compliant with provisions of the Public School Contracts Law (PSCL). Subsequently, the District referred the matter to the Prosecutor. Concerns were also expressed that some of the awards to Trujillo Construction may have involved conflicts of interest with members of the Elizabeth Board of Education.

The OFAC initiated an investigation to determine the validity of the information received and if the District complied with applicable provisions of the educational statute and code. The OFAC investigators interviewed individuals thought to have knowledge of the incident and also reviewed board minutes, purchase orders, requisitions, claims list, auditor's report, School Ethics Commission Personal Disclosure Statements, District Policies, and other pertinent District documents.

As a result of the investigation, the OFAC determined the awarding of contracts to Trujillo Construction without requests for proposals is contrary to the provisions of the PSCL.

Based upon the information developed during the review, the District is directed to develop a Corrective Action Plan identifying the measures that it will implement to ensure future compliance with the PSCL. Additionally, the District is directed to refund the state funded portion of those expenditures totaling \$62,212.57. The Division of Finance will be notified of this finding and will determine the timing of the recovery.

The remainder of this report contains the investigative summary, conclusion and recommendation.

INVESTIGATIVE SUMMARY

The New Jersey Department of Education, Office of Fiscal Accountability and Compliance (OFAC) received a complaint referral from the Union County Prosecutor's Office (Prosecutor) concerning the process utilized by the Elizabeth Public Schools (District) to acquire services requiring the solicitation of quotes and/or public bids. During an audit conducted by the accounting firm of Lerch, Vinci, & Higgins, LLP, (LV&H) it was noted that contracts were awarded to Trujillo Construction in a manner that was not compliant with provisions of the Public School Contracts Law (PSCL). Subsequently, the District referred the matter to the Prosecutor. Concerns were also expressed that some of the awards to Trujillo Construction may have involved conflicts of interest with members of the Elizabeth Board of Education (Board).

The Board engaged the accounting firm of LV&H to conduct a forensic audit. At the March 17, 2016, Board meeting, Mr. Lerch, released a synopsis of the audit report and apprised the Board members of the following: *"the District has a vendor who gets paid approximately \$80,000.00 a year and was paid approximately \$400,000.00 over the last five years. The vendor was not publically bid, the vendor was not quoted, and the vendor is routinely called in to do work in the District."* Mr. Lerch identified the vendor as Trujillo Construction. Mr. Lerch further stated *"payments (to the vendor) were sent to 732 Spring Street, which is also the home address of a Board member."* On the recommendation of LV&H, the District notified the Union County Prosecutor's Office of its findings. Subsequent to its review of documents forwarded by the Board, the Prosecutor's Office referred the matter to the OFAC.

The OFAC initiated an investigation to determine the validity of the information received and if the District complied with applicable provisions of the educational statute and code. The OFAC investigators interviewed District personnel and reviewed board minutes, purchase orders, requisitions, claims list, forensic auditor's report, School Ethics Commission Personal Disclosure Statements, District Policies, and other pertinent District documents.

The OFAC's review of the documentation for the fiscal years 2011-2016, concerning Trujillo Construction, revealed that out of 70 purchase orders, 13 were above 15 percent of the bid threshold which required two competitive quotes. None of those 13 purchase orders had any record of the required quotation solicitations of at least two competitive quotations. Consequently, no such record was included with the voucher used to pay the vendor in the pertinent financial records, concerning the award of purchases contracts or agreements, as required by N.J.S.A. 18A:18A-37a. Furthermore, the failure to record the required information prohibits a determination that at least two competitive quotations were attempted.

N.J.S.A. 18A:18A-37 provides in relevant part that:

"All contracts enumerated in this section shall be awarded as follows:

a. For all contracts that in the aggregate are less than the bid threshold but 15 percent or more of that amount . . . the purchasing agent shall award the contract after soliciting at least two competitive quotations, if practicable. The award shall be made to a vendor whose response is most advantageous, price and other factors considered. The purchasing agent shall retain the

record of the quotation solicitation and shall include a copy of the record with the voucher used to pay the vendor". (Emphasis added)

A determination of ethical misconduct by a Board member can only be rendered by the School Ethics Commission (SEC). Any person may file a complaint petition with the SEC alleging that a school official has violated the School Ethics Act (Act), N.J.S.A. 18A:12-24 et seq. The Act defines "school officials" as board members, charter school trustees, administrators and employees and officers of the New Jersey School Boards Association. A copy of a complaint form, the School Ethics Act and its implementing regulations are available at <http://www.nj.gov/education/legal/>, or you may contact (609) 984-6941 to have this information mailed to you. An original and two copies of the complaint may be sent to: School Ethics Commission, New Jersey State Department of Education, PO Box 500, Trenton, NJ 08625-500.

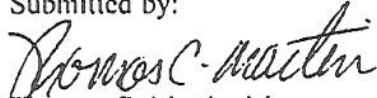
CONCLUSION

The review of the purchase orders revealed that the complete documentation required by N.J.S.A. 18A:18A-37 did not exist in the pertinent financial records of the district or could not be provided by the business office.

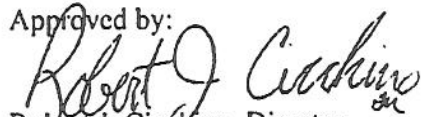
RECOMMENDATIONS

The District is directed to develop a Corrective Action Plan identifying the measures that it will implement to ensure future compliance with the PSCL. Additionally, the District is directed to refund the State funded portion of those expenditures totaling \$62,212.57. The Department of Education, Division of Finance will be notified of this finding and will determine the timing of the recovery.

Submitted by:


Thomas C. Martin, Manager
Investigations Unit

Approved by:


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

Investigators

Timothy Boney
Francesco Frangella