

# **Detroit Public Schools**

## **Office of the Auditor General**



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### **REVIEW OF DPS PROCUREMENTS**

### **WITH**

### **FEDERAL GRANT DOLLARS**

**REPORT NO: 2011-008**

**(Includes recommendations)**

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REPORT DATE: May 24, 2011

Revised Report Date: July 29, 2011

As part of its monitoring role over federal grant dollars, the Michigan Department of Education (MDE) requested that the DPS Office of the Auditor General audit several large DPS procurements with federal grant dollars that occurred between August 2009 and the present.

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## **OBJECTIVE, SCOPE & METHODOLOGY**

The objectives of the audit were to (1) determine whether the selected procurements met federal, state, high risk and District procurement policies, (2) Describe the process used to procure items under the selected contracts, and (3) Determine what deliverables were associated with the contracts for each selected vendor, (4) document the payment status for each contract and the process used for payment, and (5) Determine whether transactions were arms length and whether any conflict or appearance of conflict existed that was not disclosed for selected DPS employees and contractors.

The scope of the audit is July, 2009 (beginning with the consolidated application) to the present for all contracts for Houghton, Mifflin, Harcourt, Catapult, B.E.L.L. Foundation, Ombudsman On-line and Global Partners Schools (GPS) initiated in the consolidated application for the 2009-2010 School Year to the present. Contracts for the latter two vendors had not been approved at the time of our audit and therefore were not included in this effort.

We identified the applicable criteria from federal, state and District procurement regulations as well as the high risk standards to compare to the audit conditions we found to ensure procurement actions by the District were consistent with these requirements.

We requested all contracts and contract modifications for the stated vendors from the Contract and Procurement Department for the period beginning July, 2009; the time of the Consolidated Application was prepared and submitted. We reviewed each contract and contract modification to (1) review the scope of work and terms and conditions, (2) assess compliance with procurement requirements and (3) identify deliverables for each contract.

We also did a purchase order query to identify any payments to these vendors to assess the current payment status. The audit team also used the purchase order information to request selected invoices to select samples to verify service delivery.

Through the review of inventory records and shipping documents, we verified the delivery of Story-town reading materials and Bridges Strategic Intervention program materials. We also contacted 10 schools to verify the Catapult Learning Academy Summer School Program was held during the summer of 2009/2010 term.

We obtained sign in sheets and other documentation to verify DPS staff and students who participated in training workshops and attended the summer school program, respectively.

For the B.E.L.L. Foundation contract, we identified the 17 schools where the summer and after school programs were operated. We received samples of attendance sign in sheets from 14 of the 17 schools to verify student attendance to these programs

We interviewed key members of the academic team, the former director of State and Federal Grants, General Counsel, the director of Procurement, and representatives for the selected vendors to obtain information related to the procurements in question. We also surveyed selected high schools on their use of the electronic platform for Learning Village and verified services and materials delivered to selected Detroit Public Schools to assess whether services and materials had been delivered.

We reviewed federal, state and local policies related to procurement and conflict of interest and conducted attribute testing for the contracting process and contractual language. We documented the payment status of each contract and contract modification. In addition, we reviewed disclosure forms on file for conflict of interest for selected individuals and conducted direct inquiry of these individuals concerning any interest or conflict they may have with the selected vendors. We completed our fieldwork on May 18, 2011.

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## **BACKGROUND**

The District entered into contracts with Houghton Mifflin and Harcourt, Catapult, and B.E.L.L. to obtain educational materials and services to address the needs of DPS students. The contracts were procured with federal grant Title 1 ARRA funds. Most of the funding was associated with the Houghton, Mifflin, Harcourt contracts for an interactive, web-based instructional platform called Learning Village that provides access to student performance data, resources aligned to standards-based curriculum and collaboration among educators across the District. Used as an actual platform, Learning Village allows instructors and students to access from home or school and to target areas of need.

In addition to the electronic platform which is available to all DPS, professional development for teachers and principals is a key component of Learning Village. The contract provides for a perpetual license that requires no additional fees going forward. The rollout of Learning Village began in the fall semester of 2009 with additional modules continuing to be presented.

The contracts with Catapult and B.E.L.L. were targeted to accelerate learning, extended day and enrichment programs for summer school as well as an after school program. The Accelerated Learning and Extended Day Programs allowed students who are behind to catch up and recover credits while the enrichment program was designed to provide cultural enrichment for the students through field trips and exposure to arts and noted speakers.

In total we identified 11 contracts for \$50,615,358.26 and 7 contract modifications for additional \$15,994,040.76 for a total of \$66,609,399.02 that were issued to the selected vendors during the scope of our audit.

All of the contract activity for these vendors was paid out of the District's Fund 18 which is for Title 1A American Recovery Restitution Act (ARRA) activity. Two contracts with Ombudsman on-line and GPS had not been approved at the time of our audit.

In March 2009, Governor Jennifer Granholm appointed Robert Bobb as the Emergency Financial Manager (EFM) for Detroit Public Schools to a one-year term. The EFM assumed the duties and responsibilities of the General Superintendent and focused his efforts on addressing both the financial deficit and the academic achievement of students attending DPS.

In October of 2009, mid-way through his term, the governor extended the EFM's term by one year to March 2011. During this timeframe, the District had three directors and one interim director of Contract and Procurement with the most recent appointment occurring in late 2010.

According to the director, the 2006 contract and procurement policy was being used during this timeframe even though Contract and Procurement had drafted a procurement policy in 2008, it was not adopted and efforts to update those policies were underway but had not been completed when much of the questioned procurement activity occurred. As a result, the audit team asked the current director of Procurement which policies guided procurement activities during the scope of our audit and he suggested we use the 2006 Policy and Procedure Manual.

The Emergency Financial Manager hired an academic auditor in May, 2009 who brought in several academic personnel to lead the Department of Curriculum. The responsibility for developing a Five-year Academic Plan was charged to the Academic Auditor and her staff.

The District operated at a frantic pace under the leadership of the EFM in efforts to achieve stated goals within the first year. At the same time, the District had many long-standing operational issues in key departments including procurement, accounts payable and finance. For example since December 2008, the District has been placed in high risk status by the State of Michigan for audit findings related to federal grant dollars. The status imposed several conditions on the District and requires ongoing monitoring by an independent accounting firm.

During this same period, the District was going through a downsizing process resulting from declining student enrollment and a significant budget deficit.

Under the EFM, much effort was made to institute new procedures and processes; however, many problems persisted and the District operations continued within this framework.

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## **EFFORTS TO ADDRESS ACADEMIC DEFICIENCIES**

The Emergency Financial Manager through his academic team developed a Five-year Academic Plan that established aggressive academic goals including a plan to achieve a 98 percent graduation rate and 100 percent pass rate for the Michigan Educational Assessment Program, (MEAP) the Michigan Merit Examination (MME) and Adequate Yearly Progress (AYP) by 2015.

In the fall 2009, MEAP test results found 62 percent of students in grades 3-8 were proficient in reading, while 69 percent were proficient in Math. Similarly, results for District students in the 11<sup>th</sup> grade for the Michigan Merit Examination from spring 2009 found only 16 percent of the students to be advanced and proficient in mathematics while 34 percent were advanced and proficient in reading.

Under the federal Act, No Child Left Behind, Annual Yearly Progress (AYP) is a benchmark based on MEAP and MME test results to determine if schools are making acceptable progress. For the 2008-09 School Year, only 31 percent of Detroit Public Schools achieved AYP.

Subsequent results from the National Assessment of Educational Progress, which is considered the gold standard for technical quality and rigor, and provides a gauge of how students are doing compared to the national average for similar school districts found Detroit fourth and Eighth graders far behind both state and national averages. District students scored a 3 percent average in fourth grade mathematics compared to state and national averages of 35 and 29 percent respectively. Eight graders from DPS scored 4 percent compared to state and national averages of 31 and 23 percent, respectively.

Finally, the graduation rate for 2008-2009 found that 56 percent of students attending DPS graduated in a four-year timeframe. Each of these indicators provided the impetus for the Fiver-Year Academic Plan developed under the EFM for DPS.

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## JUSTIFICATION FOR CONTRACTS

The justification for entering into the selected contracts was to help execute the Five-year Academic Plan which is targeted at deficiencies in the existing curriculum coupled with programs to strengthen math and reading skills. The Academic Department provided the following specific objectives with anticipated impact within the Five-year plan that are addressed by contracts with each of the three vendors.

### Houghton Mifflin Harcourt (HMH)

The following objectives/activities and anticipated impact from the Five-Year Academic Plan are being met under the HMH contracts and modifications, according to the DPS academic representative responsible for core academic programs.

- Review existing materials for core courses. Address gaps that exist between Michigan Grade level content expectations and the NAEP frameworks by identifying supplemental intervention texts and materials – no. 7 p 26
  - *ANTICIPATED IMPACT*
  - *Resources, materials professional development and formative assessments will be aligned to high standards and rigorous curriculum*
  - *Student achievement as measured by MEAP and MME and NAEP will increase*
- Expand upon existing libraries or build classroom libraries with a variety of appropriate multicultural literature for students. No 9 p 27
  - *ANTICIPATED IMPACT*
  - *Students will be able to use more trade books in each classroom*
- Develop an assessment system that measures student progress toward the standards we adopt. No 10 p.27
  - *ANTICIPATED IMPACT*
  - *Benchmark and formative assessments will be developed as diagnostic tools to accelerate student achievement*
  - *Teacher decision making and instructional practice will improve*
- Adopt a district-wide philosophy and comprehensive plan for intervention and acceleration for literacy, mathematics and science. No 11 p 28
  - *ANTICIPATED IMPACT*
  - *A management information system will support instruction*
  - *Each school will implement a plan based on the district's systemic plan for literacy, mathematics and science.*

- Increase students' opportunities to develop literacy, mathematics and science skills in classrooms with abundant materials. No 12 p 28
  - *ANTICIPATED IMPACT*
  - *Classrooms and schools will reflect an emphasis on literacy. Additional materials to support literacy will be available to teachers and students.*

**Catapult, LLC / B.E.L.L. Foundation**

The following objective/activity and anticipated impact from the five-year academic plan was provided by the academic office for the contracts with Catapult and B.E.L.L. No. 17 p.28

- Provide after-school opportunities for learning and free summer school for eligible students
  - *ANTICIPATED IMPACT*
  - *Increased time for students to master standards and improve overall student achievement. Opportunity for high school students to make up credits and continue on path to graduation with their peers, thus improving graduation rate and decreasing dropout rate.*

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**CONTRACT STATUS FOR SELECTED VENDORS**

We identified 11 contracts in total including 2 purchase orders: 6 contracts for Catapult, 1 for the Bell Foundation and 4 for Houghton, Mifflin Harcourt and 7 contract modifications. In total the contracts and purchase orders exceeded \$66 million. Table 1.1 below, provides an overview of each contract and modifications by vendor and amount. Most of the payments to these contractors have been paid with approximately ten percent remaining to be paid.

**Table 1.1: CONTRACT AMOUNTS BY VENDOR**

| <b>Vendor</b>                   | <b>Contract #s</b>  | <b>Amount(s)</b>  | <b>Modification Amounts</b>                          | <b>Total Contract and Modification</b>  | <b>Purpose</b>  |
|---------------------------------|---|---|--|---|---|
| Houghton<br>Mifflin<br>Harcourt | 10-0198-2;<br>10-0679-2<br>10-0752-2<br>11-1264                           | \$39,959,825.00<br>\$ 1,895,300.00<br>\$ 469,983.36<br>\$ 44,198.00                               | \$10,000,000   | \$49,959,825.00<br>\$ 1,895,300.00<br>\$ 469,983.36<br>\$ <u>44,198.00</u><br>\$52,369,306.36                                 | Managed Instruction & Professional Development/ Supplemental textbooks                                  |
| Catapult                        | 9-0760-2<br>10-0168-2<br>10-0670-2<br>11-0093-2<br>11-0002-2<br>11-0651-C | \$2,151,182.05<br>\$ 69,963.87<br>\$2,663,548.62<br>\$ 85,828.00<br>\$ 39,941.36<br>\$ 815,829.00 | \$2,114,266.89<br><br>\$ 57,551.87<br>\$1,337,000.00 | \$4,265,448.94<br>\$ 69,963.87<br>\$2,721,100.49<br>\$1,422,828.00<br>\$ 39,941.36<br>\$ <u>815,829.00</u><br>\$ 9,335,111.66 | Title 1 Services for Non-DPS Schools/Accelerated Learning Summer Program/Staff Professional Development |
| B.E.L.L.                        | 10-0796-2   | \$2,419,759.00  | \$2,485,222.00                                       | \$4,904,981.00  | Accelerated Learning Summer Program / Extended Day Program  |

**Contract Payment Status**

We documented approximately \$66.6 million in contract activity to the selected vendors. As of April 29, 2011, most of this amount has been paid. The District still owes a total of \$6,095,697 based on our audit work. Most of this amount \$3,598,508 is owed to Catapult or one of its subsidiaries. The District still owes \$1,878,967 to B.E.L.L. and \$618,222 to Houghton Mifflin Harcourt (HMH).



Services under the B.E.L.L. contract were concluding this month, while HMH still has two representatives on site delivering services. Services under the Catapult contracts have also been completed. However, the District is planning on exercising a renewal option in the contracts with B.E.L.L. Foundation and Catapult for the 2011 Summer School program.

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### **Contract Deliverables**

Each of the contracts reviewed included a list of deliverables. In most cases, the deliverables were a mix of materials and services. The following summarizes of these deliverables by contract:

The audited contracts and modifications for the selected vendors included both materials and services in the form of textbook materials, a computer platform and licenses, professional development, training, field trips and pre and post testing assessments.

To provide some assurance that materials and services that have been paid for were actually delivered as stated, we selected samples from each vendor from the invoices submitted by the vendors and paid by the District. Although we were not able to physically verify materials we did reach a reasonable level of assurance for specific line items.

### **Houghton, Mifflin & Harcourt**

For the vendor receiving the largest contract amount, Houghton, Mifflin, and Harcourt, we were able to verify shipments of Story-town reading materials to the schools and materials at the warehouse. According to the academic representative responsible for this contract, projected enrollment was used to determine the amount of materials to order and an additional 10 percent of materials were ordered to ensure an adequate supply.

We verified that shipments were sent to the schools and approximately 20,000 Story-town reading materials remain in the warehouse as of the time of this audit. We obtained listings of Story-town reading materials that were sent to each of the schools. The District encountered some delivery problems when there was no one of authority to sign off on the deliveries at some of the schools. This resulted in shipments being re-routed to the warehouse. Representatives from HMH were sent to the District's warehouse to help inventory the materials and distribute to the schools. We also confirmed that the Bridges reading materials were at the warehouse and were about to be delivered at the time of our inquiry.

In addition, we obtained sign-in sheets for the learning village professional development supporting that the training was provided to 4,430 participants.

We also contacted 10 high schools to ascertain how they were using the learning village platform. We found that each of the high schools was using the platform to varying degree. Some of the high school representatives we spoke with felt that they needed more training because most of the focus was on elementary and middle school initiatives.

### **B.E.L.L. Foundation**

The District entered into one contract with B.E.L.L. Foundation for \$2.4 million in June, 2010 to operate a six week academic program for no more than 5,000 students in Kindergarten to eighth grade at 17 schools. In November, 2010 the contract was modified to provide an after school academic program through May 30, 2011. The contract modification increased the contract to \$4.9 million.

We received daily attendance records for 14 of the 17 schools for various days during the summer and the after school programs. We also received daily attendance sheets for DPS teachers and B.E.L.L. tutors. While the data received was not sufficient to determine whether the targeted number of students (5,000) actually received services, we were able to verify student attendance for a sample of students at each of the schools.

We also determined the disposition of laptop computers that were purchased for non-DPS instructors and that those computers remain the property of DPS.

### **Catapult**

Much of the contract activity for this vendor was for Non-DPS. Each of the 13 schools receiving services was faith-based organizations. We documented 1194 instructional services to 598 students attending the 13 schools. We also noted assessment data for reading and math showed significant improvement for these students between the pre- and post test. For example, all grades improved for reading from .04 percent for sixth graders to 22.6 percent for first graders. For math, 10<sup>th</sup> graders actually went down from an average pre-test of 51.8 percent to 49.2 percent. However, all other grades improved from a low of 4.5 percent for 11<sup>th</sup> graders to 25.1 percent for 2<sup>nd</sup> graders.

## AUDIT FINDINGS

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### **SOME REQUIREMENTS NOT MET FOR LARGE PROCUREMENTS**

Although the procurement of services and materials under the selected contracts did not violate any state or high risk standards we found that the procurements failed to comply with certain federal and local procurement requirements. Under the administration of the Emergency Financial Manager (EFM), some procurement practices were executed that were not formalized in the District's 2006 Procurement Policy, which may account for some of the non-compliance. For example, we identified a signed delegation of authority for the director of Procurement that exceeded the amount referenced in the 2006 Procurement Policy.

The failure to comply with specific federal and local procurement requirements has several potential adverse effects for the District including:

- Increasing the District's risks of overpaying for goods and services,
- limiting competition for selected procurements,
- Reducing the level of assurance that bid decisions were not biased, and
- Reducing the level of protection for the District's in the event disagreement arises over procured goods and services.

The District employed competitive procurement procedures to select all of the contracts. For example, all requests for proposals were listed on Demand-star, an independent service used by the District to announce and display the status of its competitive procurement activities including RFPs, RFQs, etc.

### **COMPETITIVE BIDDING PROCESS**

In accordance with both high risk and local procurement policy, the District competitively bid each of the audited procurement transactions that exceeded \$25,000. However we noted some exceptions in the procedures used to procure services and goods under the selected contracts.

Our audit test work revealed that not all bids for these procurements met the District's minimum timeframe of 14 days to allow bids to be received. Specifically, in 4 out of 10 bid packages reviewed, the release and proposal due dates were less than the District's required 14 day minimum.

**TABLE 1.2: Number of Days between Release and Proposal Dates**

| Vendor                     | Bid Package # | Days Opened |
|----------------------------|---------------|-------------|
| Catapult Learning West LLC | 10-0168-2     | 12          |
| Houghton Mifflin Harcourt  | 10-0752-2     | 9           |
| Catapult Learning          | 11-0002-2     | 8           |
| Houghton Mifflin Harcourt  | 10-0198-2     | 7           |

Two bid packages for Catapult, 10-0168-2 and 11-0002-2, allotted 12 and 8 days, respectively for vendors to respond to the RFP. Similarly, two bid packages for Houghton Mifflin, Harcourt (10-0752-1 and 10-0198-2) were opened for 9 and 7 days, respectively.

**Confidentiality Agreement / Conflict of Interest Statement**

As part of the competitive bidding process, District procurement policy requires that members who sit on the evaluation team for a competitively bid procurement must sign a confidentiality Agreement and a Conflict of Interest form. Of the 10 bid packages reviewed, we found no documentation of the agreement or conflict of interest form for 4 of the 10 packages.

However, in a separate test to verify whether selected DPS employees and contractors completed the required disclosure forms under the District’s Conflict of Interest Policy, which will be discussed later in the report, we found that 3 of the 4 members on the evaluation team did have these forms on file as well as the conflict of interest provision in their personal service contracts.

The agreement is important to protect interest of the bidders as confidential information concerning their firms may be revealed during this process and the signed agreement offers some assurance that the information will not be revealed.

**Price and Cost Considerations**

Federal procurements standard CFR 34.80(d) (3) (IV) states that awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered. And, CFR 34.80.36(f) (1) states grantees and sub grantees must perform a cost or price analysis with all procurements including contract modifications.

Similarly, District Procurement Policy (1.03.04) requires that Request for Proposals include a cost or price analysis for all bids submitted. However, we found that for 1 of the 10 RFPs reviewed included no price or cost data was documented in the file. This contract was awarded to Catapult Learning West (11-0651-C) in the amount of \$815,829. The representative for Contract and Procurement told us that it was an Invitation to Bid and thus price would not be scored, however, the bid information posted on Demand Star indicated that it was an RFP, which would require the bid price be considered. The file data did not support that this was not a RFP so we took an audit exception based on the documentation that was available.

On the day this report was due, the representative for Contract and Procurement provided some cost data for the Catapult contract, but it conflicted with what they had stated earlier and did not provide sufficient evidence without further verification that cost was considered for this RFP. The director of Contract and Procurement attributed the finding to poor or inconsistent documentation, but agreed that the documentation was unclear and did not support that the procurement was an invitation to bid.

## **CONTRACT LANGUAGE**

Federal regulation CFR 34.80.36 requires that certain provisions related to (1) remedies for breach of contract, sanctions, and penalties, (2) termination for cause and convenience, (3) supplemental provisions for contracts using American Recovery & Reinvestment Act funds, (4) reporting requirements, (5) access to records, books, documents and papers, and (6) record retention be included in the procurement contracts of grantees and its sub-grantees when federal grant dollars are used.

### **Purchase Agreement**

#### **Excludes Required Language**

We reviewed the language in the 11 contracts and 7 contract modifications and found exceptions in 6 of the contracts. The largest contract with Houghton Mifflin and Harcourt for \$39,959,825 had exceptions in each of the seven areas reviewed. This is due to the contract being in the form of a purchase agreement.

We spoke to the District attorney responsible for reviewing the contract and she stated that the vendor and user department requested that a purchase agreement be used versus the District's standard contract. As such, much of the standard language was not included. The attorney stated that the District's standard contract does not work well when software licenses are involved. This contract for managed instruction does involve software licenses. However,

according to this attorney, the District does not have a policy on when to use a purchase agreement versus the standard contract.

### **Key Language Removed**

Our review of the remaining 5 contracts that lacked key language found that the language was removed, but we could not discern the reason the language was taken out. We were told that some vendors will negotiate that certain provisions be removed, but we found no evidence that this was done for any particular reason.

The number of exceptions for contract language not meeting federal requirements ranged from 1 to 6 or 8 to 50 percent. Only 1 contract excluded the required copyright language, while 6 contracts excluded language that gives access to contractor records to federal agencies and the US Comptroller General of the United States that oversees the Government Accountability Office (GAO). The GAO is charged with assessing whether federal dollars are used as intended and whether programs using federal dollars are having the desired outcome. Therefore, it is important that such language be included in all contracts involving federal grant dollars.

Ultimately, the failure to include standard contract language exposes the District to non compliance with federal regulations, but more importantly can result in a higher level of risk for the District.

### **Contract / Purchase Order Agreement**

We identified one contract with Catapult Learning LLC where the contract amount differed from the purchase order amount. The contract included a line item for professional development for a not-to-exceed amount of \$150,000, but the purchase order amount was \$178,549, which was subsequently paid. This violates federal regulation CFR 80.36(2), but also raises concerns about the lack of controls in place to ensure that contract amounts are not exceeded. In 3 of the 14 contracts and/or contract modifications reviewed the purchase order language did not agree with the contract.

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## CONFLICT OF INTEREST

Based on a combination of disclosure forms, letter of engagement contract provisions, and direct inquiry we found no evidence that a conflict of interest existed real or perceived for any of the 15 individuals listed including the EFM, Academic Auditor and selected administrators and key members of the academic team.

The audit team reviewed disclosure forms that are required to be completed by the District for all employees and contractors. Beginning with March 2009, each of the selected employees/contractors who began work for DPS that year completed the required form.

In addition, Article 13 in the letter of engagement which was signed by each of the selected members with the exception of one person who signed a contractor agreement includes a conflict of interest provision. The contractor agreement also includes a conflict of interest provision.

The direct inquiry made to the 15 selected individuals included the following questions:

- 1) Have you are any family members, partners, associates ever had an ongoing ownership interest, connection or any influence with the following companies:
  - a. Houghton Mifflin Harcourt?
  - b. Catapult Learning?
  - c. B.E.L.L. Foundation?
  - d. Global Learning Solutions?
  - e. Ombudsman Educational Services?
  
- 2) *Please describe any current or past relationship you have with either the vendors providing services, materials under these contracts, or board of directors position(s) of the listed companies.*
  
- 3) *Have you ever received a gift greater than \$100 from any of the companies, vendors, or any other party in connection to the listed companies?*
  
- 4) *Have you or any family members, partners, associates, ever held an office or had a fiduciary relationship (regardless of monetary investment, including holding office in a not-for-profit corporation) with the listed companies?*
  
- 5) *Have you completed a Detroit Public Schools; Financial Disclosure Statement and Disclosure Report for January 2009 – March 2010? Have you completed an electronic Disclosure Statement and Report that was due April 15, 2011 to DPS Human Resources?*

Four individuals responded yes to question number 2. The Academic Auditor stated that from February 2006 to March 2009 she was appointed and served as Superintendent in Residency for Harcourt School Publishers and described her duties as working with school superintendents, principals and literacy coaches of grades K-12 in 12 districts throughout the country to develop district-wide coherent and comprehensive strategies for dramatic improvement in student achievement outcomes and overall school improvement. She resigned her position with Harcourt because she accepted the position with DPS and has no official or advisory role with this vendor.

She provided verbal disclosure to with the DPS/EM prior to assuming duties with DPS in May 2009. In addition, on the DPS Financial Disclosure Statement, she wrote in under other sources of income: not applicable as non-employee of DPS on the advice of her attorney. DPS Human Resources is responsible for reviewing completed forms and investigating any anomalies. According to the attorney for Human Resources, the Conflict Of Interest Review Committee did discuss the verbiage at the time and decided that no further action was necessary. According to her response to the direct inquiry questions, she does not have a conflict of interest related to the selected vendors.

Three other individuals, all members of the academic team, responded yes to question 2. One of the academic team members responsible for core and non-core academics was a former Chief of Teaching and Learning in Washington DC and former Chief of Curriculum and Professional Development in Cleveland, Ohio. In these roles she had professional communications with Houghton Mifflin Harcourt, but only became familiar with the other vendors while working at DPS. She also stated that she had no ownership interest or conflict of interest with any of the selected vendors.

The third individual responding yes to question number 2 stated that he knew some of the consultants working for these vendors through professional superintendent organizations because they are nationally known educators in the field. On his DPS Disclosure Statement he identified Cleveland Municipal School District as another source of income he receives as a school board trainer/facilitator.

The final member of the academic team that responded yes to question number 2 was the former superintendent for Camden School District. Prior to its merger, Harcourt was one of the vendors who had a contract with the Camden School District for books and other instructional supplies.



Two individuals did not complete the District's Financial Disclosure Statement forms. One individual who worked closely with the academic team resigned in January 2011 and the other who is currently serving as an Executive Director of Schools has not completed the forms. Both individuals responded to the direct inquiry stating that they did not have any interest or conflicts with the selected vendors. In addition, Article XIII of their letter of engagement or independent contractor agreement addresses Conflict of Interest. Neither individual participated in the contracting process nor did they approve a contract or invoice for payment.

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## **CONCLUSION**

The contracting process used for the large procurements in question violated some federal and local procurement requirements. Most of the non compliance can be attributed to either a failure to enforce District policy or a lack of District policy addressing the issue. For example, there is no District Policy that states when the use of a purchase agreement is acceptable and therefore, when the issue comes up there is nothing prohibiting this from occurring.

The failure to use District contracts that included language that ensures compliance with federal and state requirements for federal grant procurements may be attributable to lack of knowledge in Contract and Procurement and the failure on the part of State and Federal Grants to provide this input. Better communication between the two DPS departments could help address this issue going forward.

Undoubtedly, the fast-paced environment under the EFM impacted decisions to move quickly sometimes at the expense of compliance. This audit revealed some key areas that are not addressed by policy. At the same time, the delivery of some of the materials was compounded by a lack of inventory procedures at the warehouse and schools.

The allegations that certain employees or contractors may have had undue influence in the procurement of services and materials from a favored vendor were not confirmed in this audit. Furthermore, the perception of a conflict of interest was largely due to a key member of the academic team working for one of the vendors just prior to joining DPS. However, this individual was not involved in the contracting process and there was no evidence of any undue pressure placed on those who were involved to award to any given vendor.

At the same time, going forward the District should take precautionary steps to ensure that all procurement requirements are met for all procurements, but particularly when involving federal grant dollars for large procurements. This is particularly true given the District's high risk status.

Addressing the noted weaknesses will require that departments take a more proactive approach on compliance to protect the District and the students it serves from the potential loss of funding.

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## RECOMMENDATION(S)

To ensure that all potential vendors are allotted a fair opportunity to bid, we recommend the director of procurement enforce existing procedures designed to:

***Ensure that the time allotted to prospective vendors to submit bids for all competitively procured goods and services is a minimum of 14 days. Whenever possible, the process should be open for 30 calendar days, but never less than the minimum number of 14 days.***

To ensure compliance with this procedure, we further recommend that the director of procurement establish procedures for

- ***emergency procurements procedures, and***
- ***procedures that detail when it is permissible to use the next vendor if or when the vendor winning the bid is disqualified, terminated or is not performing with contract requirements***

To limit the possibility that a real or perceived conflict exists, we recommend that the director of procurement:

***Prepare a procurement checklist that includes all required documentation including conflict of interest statements and disclosure forms to be completed by all evaluation team members. The procurement process should not be carried out until these requirements are met. If a member refuses to comply then their evaluation should be excluded from the evaluation process.***

To ensure procurement actions are consistent with procurement policy and procedures: we recommend the director of purchasing:

***Establish and document in the Policy and Procedure Manual the criterion that determines the competitive process to be employed for a particular procurement. For example, when is it permissible to use an Invitation to Bid process versus a Request for Proposal process.***

***Moreover, if a good or service is to be procured under a particular procurement approach such as an Invitation to Bid process, this should be clearly evident in the advertisement and should follow applicable procedures.***

To ensure compliance with federal and state regulations, we recommend that the director of purchasing:

***Require that all contracted activities with federal grant funds use standard DPS contracts. Any modification of contracts should only be made at the recommendation of the director of contract and procurement and with the approval of DPS General Counsel.***

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## **OTHER MATTERS**

In addition to these weaknesses identified in the audit report, we observed other areas of concern that need to be addressed and are making the following recommendations.

**Finding: lack of record retention and inconsistent file documentation for Competitively-bid procurements;**

**Condition:** We observed that files containing vendor submissions were not neatly organized and the file content were not consistent; some required information was not included in some files, but was in others. Also, some critical file information was maintained in another location without any reference in the file for full disclosure.

**Recommendation:**

***The director of procurement should develop a checklist for all required documentation and include in every procurement file to help ensure consistency in file contents. In addition, the District's/department's record retention policy should be followed and copies of the policy are distributed to appropriate staff members. Also, if any file contents are maintained outside of the file, a reference should be included noting where such materials are being maintained.***

**Finding:** no documentation of cost in vendor proposals for evaluating a proposal;

**Condition:** Both Federal and District policy require that cost or pricing be a key consideration for procurement proposal consideration. This is required for procurements with federal dollars, but is also required by local policy for all procurements.

**Recommendation**

*The director of Procurement should ensure that cost related to competitively bid goods and/or services be clearly documented for each proposal. Where such information is missing, clearly state in the file that cost or pricing information was not provided.*

**Finding:** Lack of contract administration process for federal grant funded activities to ensure terms, conditions, and specifications of their contracts are being fulfilled.

**Condition:**

CFR 80:36 (b) (2) requires that grantees and sub-grantees maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions and specifications of their contracts or purchase orders. In addition, DPS Executive Order 2011-31, effective November 30, 2010, delegates the responsibility of contract administration to school administrators, project managers and compliance administrators for grant reporting, management and expenditures.

The audit identified an instance where the purchase order amount for professional development exceeded the amount stated in the proposal by nearly \$30,000. Given that the contract amount was not exceeded, the only way to ensure that the component costs of a grant-funded contract are not exceeded is to have someone from State and Federal Grants tracking the expenditure activity to ensure the amounts incurred do not exceed their intended cost.

**Recommendation:**

*The director of procurement should work with the director of state and federal grants to identify resources that can provide contract administration services for federally-funded contracts including monitoring and verification of service delivery, execution of contract in accordance with terms and conditions, and an assessment of vendor performance.*

*Once resources have been identified and assigned to these activities documentation should be maintained to support that contract administration is occurring for federally-funded procurement activities*

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## **MANAGEMENT RESPONSE**

- Contract and Procurement did not provide a response but verbally agreed with the audit findings and recommendations included in the report.
- State and Federal Response provided by the Executive Director of State and Federal Programs.

# Detroit Public Schools MEMORANDUM

## **Response to Final Report and Recommendations – Audit of DPS Procurement Procedures With Federal Grant Dollars – Report No. 2011-008**

In response to the Office of the Auditor General’s findings and recommendation as it relates to internal controls over the procedures for grant funded procurement activities, the Department of State and Federal Programs submits its response to the recommendation.

**Finding:** Lack of contract administration process for federal grant funded activities to ensure terms, conditions and specifications of their contracts are being fulfilled.

### **Condition**

CFR 80:36 (b) (2) requires that grantees and sub-grantees maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions and specifications of their contracts or purchase order. In addition, DPS Executive Order 2011-31, effective November 30, 2010, delegates the responsibility of contract administration to school administrators, project managers and compliance administrators for grant reporting, management and expenditures.

The audit identified an instance where the purchase order amount for professional development exceeded the amount stated in the proposal by nearly \$30,000. Given that the contract amount was not exceeded, the only way to ensure that the component costs of a grant-funded contract are not exceeded is to have someone from State and Federal Grants tracking the expenditure activity to ensure the amounts incurred do not exceed their intended cost.

### **Recommendation**

The director of procurement should work with the director of state and federal grants to identify resources that can provide contract administration services for federally-funded contracts including monitoring and verification of service delivery, execution of contract in accordance with terms and conditions, and assessment of vendor performance.

MDE Procurement Audit

Once resources have been identified and assigned to these activities, documentation should be maintained to support that contract administration is occurring for federally funded procurement activities.

### **Department of State and Federal Programs Response**

In accordance with DPS Executive Order 2011-31, *Allowable Use of Funds/Cost Principles*, effective March 1, 2010, “All costs charged to federal education funds must be consistent with applicable federal laws, regulations and guidance.” The Department of State and Federal Programs (DSFP) is charged with monitoring grant funds to assure expenditures are compliant with federal regulations. Requests for consideration of grant funds, to support departmental initiatives are submitted to the grants department, via PeopleSoft, for compliance review and evaluation. If the request is deemed an allowable use of grant resources, the requisition is approved and routed via PeopleSoft, to Contracting and Procurement for purchase order/contract consideration.

The department requesting the contractual services, working in collaboration with Contracting and Procurement, bears the responsibility for providing contract administration services, including monitoring and verification of service delivery, execution of contract in accordance with terms and conditions, and an assessment of vendor performance.

The department requesting to use grant funds for contracted services, must complete the Request to Use Contracted Service Form, (See Attachment). This form is completed by the requesting department and approved by the Assistant Superintendent, provides specific details of the scope of services the vendor will provide. The requesting department is held accountable for verification of the delivery and execution of services in accordance with the terms and conditions of the contract. If it is determined that services are not being executed in accordance with the terms and conditions of the contract, the Office of Contracting and Procurement should be informed and so that corrective actions can be initiated.

### **Department of State and Federal programs Corrective Action**

Prior to approving grant funded requisitions for contracted services, the Department of State and Federal Programs will ensure that the requisition amount does not exceed the amount approved in the grant application nor the approved amount in the proposal or contract. Additionally, grant funded programs will be monitored to ensure that they are being implemented with fidelity.

Our audit was performed in accordance with U.S. Government Accountability Office Government Auditing Standards and Standards of the Institute of Internal Auditors.

This report is intended solely for management and should not be used for any other purpose. This restriction is not intended to limit the distribution of the report which is a matter of public record.

*Odell W. Bailey*

Odell W. Bailey, CIA  
DPS Auditor General