

# **Detroit Public Schools Office of the Auditor General**



## **REVIEW OF EXECUTED CONTRACTS**

**FOR THE PERIOD**

**July 2013 through January 2014**

**REPORT NO: CP-14-123**

**REPORT DATE: September 15, 2014**

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## Background

In March 2012, the Procurement and Logistics department formerly Contract and Procurement, issued a new policy at the request of Michigan Department of Education. The new policy established procedures for how procurements in Detroit Public Schools would be handled going forward. The policy took into account the District's high risk status with the U.S. Department of Education, which among other things required the District to address a number of compliance related matters that had been highlighted in the original 2006 audit conducted by the US DOE.

Under the District's second Emergency Manager, a new Chief of Procurement and Logistics Officer (CPLO) was appointed and given signature authority up to \$1,000,000 for procurement activity. The CPLO made a number of changes to the procurement process including establishing strategic sourcing teams by commodities to assist with the process, drafting new policies and procedures that were reviewed and approved by Michigan Department of Education and implementing a contract file checklist to ensure compliance with those procedures.

In March, 2014 when the CPLO left the District for another position, the current EM directed the Office of Auditor General to review all procurements that occurred under the former CPLO to provide some assurance that the District procurement activity was in compliance with policy and federal requirements.

The relevant procurement policies include:

Procurement Policy 1.01 – Procurement of Supplies, Materials and Equipment (Goods).

Procurement Policy 1.02 – Procurement of Construction and Repair of Additions or Renovations to School Buildings

Procurement Policy 1.03 – Procurement of Services and All Other Things of Value which are not Supplies, Materials, Equipment or Construction and Related Services

Procurement Policy 1.04 – Procurement by the District, as delineated in 1.01, 1.02, 1.03 shall be accomplished only by through, under and otherwise pursuant to one or more contracts to be issued by the CPLO and/or written designee along with the Procurement and Logistics and which contract or contracts shall be issued to, entered into between, the Provider of such goods or services and the District prior to the receipt of the goods or services.

The policy manual states in *Section 1.4 Methods of Contracting* that before DPS can begin to receive goods or services from a supplier, an authorized written agreement with the supplier signed by the Chief of Procurement and Logistics Officer must exist. Furthermore, in accordance with Emergency Order 2011-EMRR 24, "*all contracts and expenditures with a cumulative value over \$1,000,000 have to be approved in writing by the Emergency Manager.*"

This agreement can be in the form of a purchase order or contract. No DPS employee should direct a supplier to initiate work or to provide goods without such a contract and/or purchase order in place and as such will constitute an unauthorized agreement and will result in no payment to initiate work or to provide goods without agreement and will result in no payment to the supplier and possible disciplinary action regarding the employee.

### **Objective & Scope**

The objective of this audit was to determine whether the Emergency Manager signed off on all contracts that required his signature in accordance with Emergency Order 2011-EMRR-24 and the District's procurement policy. Also, to assess the level of compliance with current procurement policies.

The scope of this audit was contracts greater than \$5,000 that were issued beginning July 1, 2013 through January 31, 2014. We identified 143 contracts that met this criteria and we selected a stratified sample of 22 contracts based on the amounts with representation from each category of contract based on dollar amounts. The total value of the 22 contracts reviewed was \$9,195,273

### **Methodology**

We requested a list of all contracts with values greater than \$5,000 that were issued between the periods of our scope. From that list of contracts we segregated the contracts by dollar value in categories. Next, we employed a judgmental sample focusing on a mix of service and goods contracts and contracts of both large and small dollar amounts. The contract files for these selected contracts were obtained from Procurement and Logistics for our review.

We met with the Acting director of P&L to clarify some of the findings and to discuss our concerns related to legal and risk management review of contracts. We also met with the District's Risk Manager about his role in the process and with the Deputy General Counsel about the Legal department's role in reviewing contracts. Our field work was completed September 15, 2014.

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## Executive Summary

The Emergency Manager appropriately signed 3 of the 4 contracts in our sample with a cumulative value of \$1,000,000 or greater in accordance with the Emergency Order 2011-EMRR 24. The one contract that he did not sign, but should have was a \$500,000 amendment to an existing contract that had a total cumulative value of \$2.25 million. Procurement policy specifies purchases that exceed \$1,000,000 require both the signature of the Procurement & Logistics (P&L) Officer and the Emergency Manager, while the Emergency Order says all contracts and expenditures with a cumulative value over \$1,000,000 have to be approved in writing by the Emergency Manager.

Overall, our audit revealed that Procurement and Logistics (P&L) is not fully complying with its own policies and procedures. In some cases the contract files lacked documentation that would support adequate insurance coverage or that conflict of interest issues were addressed. Moreover, the number of contracts that were not executed by the date a service or good was authorized raises concerns about the integrity of the procurement process. Specifically, we found that 17 of 22 contracts or in 77 percent of the files reviewed, contracts were executed (signed) late by the Chief Procurement Logistics Officer (CPLO).

Five of the 17 contracts that were signed late were also signed late by the company representative. In accordance with the District's procurement policy that was approved by the state, suppliers are prohibited from providing goods or services without a valid purchase order or executed contract issued by P&L. In order for a purchase order or contract to be valid, it must be signed by the CPLO and/or the Emergency Manager to be executed. Essentially, 17 contracts with values ranging from \$15,750 to \$3.2 million were signed and executed after the contract start date. Although we did not confirm that work began or goods were delivered for all 17 contracts on the listed contract start date, in some cases it was obvious the work had begun. For example, one contract to renovate a school kitchen was to begin December 2, 2013 and end January 30, 2014 was not signed by the CPLO until January 24, 2013, one week before the work was to be completed.

The impact of executing contracts after the contract date can be significant when federal funds are involved. We found that 10 of the 17 contracts that were executed after the contract date were funded with federal dollars with a value of over \$2.3 million. Another 2 contracts in addition to the 10 were funded with Bond dollars. Federal auditors could require the District to refund the government for this amount if an audit of these contracts was conducted. Moreover, with the District recently exiting its High Risk status, expectations that the District will comply with its policies and procedures are heightened.

We also found that for 9 of the 22 contracts, P&L staff failed to verify the suspension and debarment status prior to the date of the contract. The District has been cited in the past for not

documenting this status prior to issuing contracts funded with federal dollars. Verifying whether a supplier has been suspended or barred by the federal government is akin to obtaining a background check on an employee. Although it is a best practice for all contracts, it is a requirement for federally-funded contracts. Of the 9 contracts, 7 with a total value of \$1,451,003 were funded with federal dollars. The District could be held liable to repay these funds if audited.

The audit further revealed that 9 of the 22 contracts had a conflict of interest issue. Specifically, 7 contracts either had no conflict of interest form in the file or were signed late (i.e., after the contract initiation date) by the CPLO. For the remaining 2 contracts, 1 was not notarized and the other was signed late by the company representative. According to Procurement policy, in order for suppliers to be awarded a contract, the conflict of interest form must be signed and notarized.

We also discussed P&L's contract review process with the Acting Chief Procurement & Logistics Officer and the Deputy General Counsel, who reviews many of the contracts, and the District's Risk Manager. According to the Deputy General Counsel, the Legal Department (Legal) reviews all contracts it receives from P&L, but not all contracts are submitted by P&L for review, which is also true for risk management. We found 2 contracts in our sample that were not signed off by Legal while 5 were signed off late. Similarly, we found 1 contract that was not signed off by Risk Management and 2 contracts signed late. However, the procurement policy is silent concerning which type of contract activity should be reviewed by Legal and Risk Management. The Acting Chief of Procurement & Logistics agreed that additional guidance regarding departmental reviews is needed.

One of the hallmarks of an effective procurement process for public entities is a process that facilitates open and fair competition. One important aspect of fair competition is that all prospective vendors are given equal opportunity to submit proposals during the bidding process. We found that for 5 of the 22 contracts reviewed, the bidding process was less than the minimum required 14 days for goods or services valued at or above \$15,000. Failure to comply with minimum bid requirements may be construed as unfair competition and could expose the District to possible litigation.

As a safeguard control to make sure all contract files are complete, P&L requires that Buyers prepare a Contract File Checklist that is supposed to list all the required documents and steps needed to be included for a given contract, which can vary depending the procurement activity. However, we found three versions of the checklist being used in our sample of 22 contracts that were issued, renewed or modified between July 2013 and January 2014. One of the versions in use does not include an entry for conflict of interest. Consequently, a buyer could mistakenly conclude that the conflict of interest form is not required. Procurement and Logistics management should ensure that only the most current version of the form that includes all required entries is in use. Additionally, some of the listed items on certain contract file checklists were not in the file folder. This could indicate a need for more training for Buyers or the need for supervisory review of their completion of the contract file checklist.

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## AUDIT FINDINGS

### NONCOMPLIANCE WITH PROCEDURES POSES RISKS

The level of noncompliance we identified with procurement policies based on a sample of 22 contracts poses risks to the District that could be costly if an audit of federally-funded contracts was conducted or an accident occurred with a supplier whose insurance has lapsed. The audit also revealed that the EM did not sign off on all contracts with a cumulative value that exceeds \$1 million. Additionally, we noted that 1 of the 3 contracts signed by the EM was signed late as were most of the contracts in our sample. While all contracts in our sample included evidence that an excluded party search was completed, in several cases the searches were after the start date for the contract.

District procurement procedures require that contractor and District representatives sign a notarized conflict of interest statement as a condition of being awarded business by DPS. Our audit found 9 of the 22 contract files reviewed either had no conflict of interest (COI) form, had a COI form that was signed late by the company representative, a COI form not signed by the Company President or Vice President or had a COI that was not notarized. Additionally, some contract files lacked evidence that vendor insurance was obtained or that the insurance covered the full contract period while other files included expired insurance certificates. Some of the non-compliance is attributable to the inconsistent implementation of the contract checklist, which is used by P&L to ensure contract files are complete. We also found that not all contracts are reviewed by the Legal department prior to execution and the contract review performed by Risk Management only confirms that the level of insurance required is appropriate, but not that the supplier has obtained a sufficient amount of insurance.

#### **Not All Contracts Requiring EM Approval Were Signed By EM**

The Emergency Manager did not sign 1 of the 4 contracts in our sample that required his approval. The contract was for taxi services to support services offered to special needs and some homeless students. The contract amendment was for \$500,000, but that amount bought the total cumulative value of the contract to \$2.25 million. Our audit revealed a discrepancy between language in the procurement policy manual and the EMRR-24. This order specifies:

*“That all contracts and expenditures with a cumulative value over \$1,000,000.00 (One Million Dollars) have to be approved in writing by the Emergency Manager.”*

The language included on page 15 of the Procurement Policy Manual states:

*“Purchases that exceed \$1,000,000 require the signature of both the Chief Procurement and Logistics Officer and the CEO/Emergency Manager/General Superintendent.”*

The primary distinction between the two requirements is the Emergency Manager Order refers to all expenditures and contracts with a cumulative value while the policy manual refers to a single purchase that exceeds \$1,000,000.

We believe the discrepancy in language resulted in P&L failing to submit the contract to the Emergency Manager for his approval. Procurement personnel responsible for preparing contract documents for execution may not be aware of the Emergency Order and thus rely on the policy manual for direction on who is required to approve procurements that exceed a certain dollar threshold. By updating the language in the policy manual to reflect the intent of the EM Order and ensuring that staff are aware of the requirement, the District can best avoid any future oversights related to contracts requiring EM approval. The Office of General Counsel discussed this issue with the former CPLO and advised that P&L should be cognizant of the contract's cumulative value to ensure proper execution.

### **Untimely Contract Approval Raises Concern**

Each contract the District enters into for goods and services have terms and conditions relative to the goods or service being procured and include a start and end date. The contract start date represents the effective date work is authorized to start or a good can be ordered. This requires an executed (signed) contract by the appropriate District official, which is the Chief Procurement & Logistics Officer (CPLO) for goods and services valued up to \$1,000,000. In accordance with P&L policy, before DPS can begin to receive goods or services from a supplier, an authorized written agreement with the supplier signed by the CPLO must exist.

Our audit found that 17 of 22, or 77 percent of the contracts in our sample were not signed by the CPLO prior to the authorized date listed on the contract for the service to begin or goods to be ordered. Failing to sign off on these contracts prior to the listed start date indicates that the service or good being procured was not authorized. The untimely approval of contracts raises concern about the potential risks this creates for the District, which is amplified with federally funded contracts. The Acting Chief of Procurement and Logistics agreed that the late signing of contracts exposes the District to medium and high risks. Without a properly executed contract critical provisions such as insurance and performance provisions cannot be enforced in the event of an accident or a vendor's failure to perform agreed upon services.

We noted that contracts were signed between 1 – 130 days late by the CPLO. The average amount of days that contracts were signed late was 30.72. In one case, a contract for kitchen renovations at one school valued at \$999,233 was signed nearly 8 weeks after the project start date and just 1 week before it was scheduled to be completed.

In addition, contracts funded with federal grant dollars could be disallowed if not properly executed prior to the date of initiation. Of the 17 contracts, 10 or 59 percent were funded with federal dollars for a total value of \$2.3 million. An additional 2 contracts were funded with Bond dollars and could also be disallowed by federal auditors. The District has been cited in the past

for not timely executing contracts before goods or services are authorized. If the date of the contract is prior to the date of execution, the auditor can disallow the funds without further investigation. According to the Deputy General Counsel, the Office of General Counsel (OGC) discussed with P&L that contract start dates should equate to the start of performance.

Our review of the 17 contracts noted that 3 of the 17 contracts executed after the contract start date had start dates that were either on a holiday or weekend. Unless an emergency procurement for services was needed, it is unlikely that work actually began on a holiday or weekend for these 3 contracts. We found no valid reason for setting start dates on a holiday or weekend other than it was an oversight. We asked the Acting CPLO about this and he confirmed it was an effort to set the date at the beginning of the year, or period without any consideration of the date being on a weekend or holiday. He agreed that greater attention should be paid to the contract start dates.

### **Departmental Reviews Not Consistent or Always Timely**

Within the sample of 22 contracts, we found 5 contracts that were not timely reviewed by the Legal Department and 2 that were not timely reviewed by Risk Management. Reviewing contracts for “form” and to determine if the level of insurance is adequate, are controls to ensure the District is requesting the appropriate terms and coverage from our suppliers. Doing this after the contract has started does not achieve this goal and limits the value of these reviews.

Additionally, 2 contracts that required a review by Legal were not reviewed and 1 contract that required Risk Management’s review was not reviewed. One of the contracts not reviewed by Legal or Risk Management was for taxi cab services to transport students, this was also the contract that should have been approved by the Emergency Manager, but was not. Although the Legal and Risk Management did not sign off on this contract, the P&L control checklist indicated that both sign offs were required.

After discussing the issue with the Acting Director for Procurement and Logistics (P&L) and the Deputy General Counsel it surfaced that there is no clear guidance on which contract activity is required to be reviewed by the Legal department. For example, when contracts have renewal options and the contract modification is to renew a contract which was originally reviewed by legal, the sign off is not required. However, our review determined that it is not always evident from the face of the contract if a renewal option is being exercised.

Our discussion with Deputy General Counsel identified that not all contracts are sent to legal for review. Moreover, the review performed by legal is for form only meaning that they are verifying that the contract has the right format, but not that the substance of the contract including the scope of work is legally acceptable concerning the District’s interest. Even though the OGC generally sees contracts after they have been bid, OGC will review scope of work to assist P&L in in making sure the expectations can be enforced and relevant departments are aware of what



service is actually being procured. In addition, OGC recommended that the scope of work be submitted to Risk Management prior to bidding to ensure adequate insurance coverage.

Similarly, our discussion with the District's Risk Manager found that Risk Management does not get all contracts to review just those that are submitted. The Risk Manager added that certain members on the P&L team will come to him for input about insurance coverage, etc. More importantly, Risk Management reviews the contracts to determine whether the appropriate level of insurance is being requested and they review specifications for insurance levels and the adequacy of insurance coverage prior to bidding as recommended by General Counsel.

Both departments can only review those contracts that are submitted to them from P&L. Our discussions with the Acting director of P&L surfaced a need for better guidance on which contracts require legal and risk management review.

### **Excluded Party Searches Not Always Timely**

District procurement procedures require that prior to entering into all competitively bid contracts that an excluded party search (i.e., review to determine if supplier has been suspended or debarred by the federal government) is conducted and documented in the contract file. To accomplish this, procurement staff need only go to the federal website and enter the company or individual's name in the database which verifies their status. The purpose is to ensure that the District is not conducting business with companies or individuals that have been debarred or suspended from doing work with the federal government.

Although the procedure is in place for all competitively bid contracts, it is most imperative that the search be conducted for federally funded contracts. Of the 9 contracts that had excluded party searches conducted after the start date of the contract, 7 were federally funded with a total value of \$1.4 million. Under the Single Audit Act, entities receiving federal funds must be audited for compliance with Office of Management & Budget Circular A-133. Any non-compliance with this requirement could result in an audit finding of "questioned costs" which would result in the District repaying those funds from the General Fund.

### **Conflict of Interest Unknown at Start Date for Some Contracts**

The determination of whether a prospective vendor or individual in our sample who contracted with the District to provide goods or services had a conflict of interest was not always known until after the contract was initiated or in one case it was not determined. Specifically, we identified 9 of the 22 or over 40 percent of the contracts in our sample that either (1) did not have a conflict of interest (COI) form in the file (2 contracts), (2) had a COI form signed late by the company representative (5 contracts), had a COI form not properly signed by the Company President or Vice President (1 contract) or had a COI form that was not notarized (1 contract) or dated.

The District's conflict of interest policy requires that as a condition of being awarded business by the Detroit Public Schools that a COI form be notarized and signed by the firm's President or Vice President. For one contract that was not included with the 9 deficient COI forms, we noted that the contract checklist, used to ensure all required documents are included in a contract file, indicated that a COI was not applicable perhaps because it was a contract amendment. However, the procured services were for academic enrichment at the schools and we noted that 2 of the Board members for this entity are former DPS employees. Without a notarized conflict of interest form in the file, the perception that there could be some influence used by former employees to obtain the contract could be a concern.

Moreover, one of the areas of concern for all procurement activity is whether or not it's based on fair and open competition. The COI form verifies this and protects the District by having company executives attest in writing that to the best of their knowledge, no conflict exist. As such, the Procurement & Logistics department should ensure that when the form is required to be documented that it is signed by the appropriate company representative, it is signed prior to the initiation of a contract and it is notarized and documented in the file.

### **Insurance Coverage Lapses Create Risk Exposure for District**

Based on a review of the contract files, 13 of the 22 or 59 percent of the contracts reviewed either had no proof of insurance in the file, expired insurance or insurance that did not cover the full term of the contract. In some cases, the contract was being modified or renewed while some were the original contract. Three contract files had no documented insurance form, while 4 contracts had expired insurance and the remaining 6 did not cover the full length of the contract. Some of the contractors were providing academic services and have direct contact with students. Although District policy ensures that these contractors have had background checks prior to starting work, the District should be equally concerned about its exposure if insurance coverage is not documented or lapses.

We recognize the possibility that some of these contracts may have had active insurance that was not documented in the file, but based on the contract checklist which serves as a control to ensure that contract files are complete with proper documentation, certificates of insurance should have been documented.

Although the files lacked sufficient documentation to prove insurance was intact, the primary concern is a lack of monitoring to ensure that insurance coverage is maintained throughout the duration of the contract. Without an active insurance policy covering supplier's liability, the District is at risk for losses in the event a supplier's action results in a lawsuit against the District.

We spoke to the District's Risk Manager who agreed that there is currently no mechanism in place to monitor and ensure that insurance coverage required by the District remains intact throughout the duration of the contract. Insurance coverage is typically issued for one year and this date oftentimes will not coincide with contract dates. Consequently, insurance coverage for

many contracts will not cover the term of the contract. The issue is ensuring the coverage is renewed on a timely basis to avoid lapses in coverage, but this requires monitoring. The Risk Manager acknowledged that the responsibility for monitoring insurance coverage should be in his department, but he lacks sufficient resources to perform this task without some automated process.

Last year, the Office of the Auditor General initiated an audit of this process, but the audit was postponed as directed by District management. However, the initial audit work prompted actions by Risk Management and P&L to work with an IT contractor to design software that will track insurance coverage ensuring that expiring policies are renewed for the duration of the contract. This was done at no cost to the District, but according to the Risk Manager the software will be loaded for use when the new P&L Director is named. Given the risk facing the District due to lapses in insurance coverage, we believe the software should be loaded now to mitigate any future risk.

### **Control to Ensure File Completeness Not Consistently Implemented**

The contract checklist is a control used by the Procurement and Logistics department to ensure that all required contract activity is completed and properly documented. Our audit revealed that the control is not being consistently implemented. Specifically, we noted more than one version of the form was used for the 22 contracts in our sample all of which were initiated during the 6 month timeframe covering our audit scope.

We identified 3 different versions of the contract checklist in the files of 22 contract files reviewed. Fourteen of the checklists in the files were dated 12/6/2012 while 5 were dated 2/7/2012 and 3 checklist forms had no date and were not the same as the 12/6 or 2/7 versions. The primary difference in the three versions of the checklist form found in our sample is where the conflict of interest entry is included or whether it's included at all.

The checklist dated 12/6/2012 was labeled version 1 while the checklist dated 2/7/2012 was labeled version 2 and the third checklist with no date was labeled version 3. This latter version raises concern because it lacks an entry for conflict of interest. If the contract checklist is needed to ensure that all required activity has been completed and documented in the contract file, then all the required documents should be included or the possibility exist that a required form such as the conflict of interest form may be missed. The department should be using the latest version of the form consistently.

We also noted that a contract for security services in our schools valued at more than \$3.2 million included a contract checklist form that had the box checked for certificate of insurance indicating that the document should be included in the file, but was also marked "N/A" for not applicable. We found no evidence of insurance coverage in the current contract file. Not having verification of insurance coverage for security services in our schools where security personnel have direct contact with the student body is a critical oversight. At the same time, having conflicting

information on the control checklist about whether the document was required for such a critical service indicates a lack of understanding about the contract checklist and its purpose. This contract was signed by both the Emergency Manager and the director of P&L.

In addition, given the turnover of staff members that has occurred in the Procurement and Logistics department since the control was implemented, there may be a need for training on the use and application of the form.

### **Limited Bid Period for Some Contracts**

Five of the 22 contracts reviewed did not comply with the minimum requirement for goods or services to be competitively bid for at least 14 days. The contracts ranged in value from \$29,106 to \$558,700. One contract had not been competitively bid since 2009, which preceded the current Procurement Policy, but the 14 day requirement was included in the prior procurement policy as well. Failure to meet the minimum requirement for bidding exposes the District to the risk of litigation from potential bidders who may not have had an opportunity to bid due to the limited timeframe bids were accepted. Of the 5 contracts, 4 were bid for five days or less and the remaining contract was bid for 11 days. Limiting the bid period to 5 days or less could be construed as an effort to direct contract awards to certain firms.

In those cases where a good or service is needed on an emergency basis or where only a single provider can meet the needs of the District, the procurement policy has a process for these types of awards. The District, through its Procurement and Logistics department, should take necessary actions to ensure that all contracts over \$15,000 that are required to be competitively bid are in fact open for bid for the minimum 14 day period. When this is not possible, the emergency or sole source purchase option should be considered.

### **Recommendations**

To ensure that contracts are fully vetted and executed prior to contract start date, we recommend that the Acting Director of Procurement & Logistics:

- Update the procurement policy manual to require that all contracts & expenditures with a cumulative value greater than \$1,000,000 be approved in writing by the Emergency Manager,
- Review the current process for preparing contracts and require that final contract start dates be established once all required documents i.e., certificate of insurance, excluded party verifications and signed and notarized conflict of interest forms are received and the contract is executed,
- Require that all procurement personnel responsible for preparing contracts are trained periodically and fully aware of the requirements to execute a contract,
- Ensure that contracts for goods and services \$15,000 and over are bid for a minimum of 14 days in accordance with procurement policy,

- Update and use the latest version of the contract control checklist to ensure all critical steps are included and staff are trained on the use of the control form.

To ensure that contracts are consistently vetted by Legal and Risk Management,

- Work with General Counsel and the Risk Manager to identify what type of procurement activity requires review by their respective departments and incorporate into policy.

To ensure that insurance coverage is maintained throughout the duration of a contract term, we recommend that the

- Office of Risk Management working with the P&L implement the insurance software and begin tracking and monitoring contractors' insurance coverage.

## **Conclusion**

Over the last few years, the District made significant changes to enhance its procurement process; adding controls to ensure contract files are complete and accurate. The changes culminated into a new Procurement Policy that was approved by the Michigan Department of Education. With new policies and procedures under new leadership, the process was designed for cost effectiveness and to enhance accountability. Upon review, however, the controls are not being implemented as designed resulting in an unacceptable level of noncompliance that exposes the District to the risk of loss in the event of an accident and/or poor performance by suppliers without recourse of restitution if contractual terms are not met to the District's satisfaction. Furthermore, the District runs the risk of losing funding for contracts funded with federal dollars due to noncompliance.

Ultimately, when it comes to controls that authorize funding, confirm the lack of conflicts, or verify insurance the timing of an action is the determining factor of whether or not that control will be effective. These actions must occur prior to the execution of a contract, which should be the final step before work can begin or a good is ordered. Ensuring that staff responsible for preparing procurement documents are trained and aware of the importance of adhering to controls to ensure the district's interest is protected is critically important. However, P&L management is responsible for ensuring that staff members are fully aware and trained on the procedures that include controls to ensure accountability at the same time they also must adhere to the policies that guide their operations. If the existing process cannot be complied with due to limited resources then the process should be revised to allow for compliance.

With the recent actions to remove the District from high risk status, the need to ensure compliance with effective procurement procedures designed for added control is of the utmost importance. Addressing the noted non-compliance raised in this audit report will help demonstrate the District's commitment to strong internal controls within the procurement process.

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Our review was performed in accordance with U.S. Government Accountability Office, Government Auditing Standards, and Institute of Internal Auditors, International Standards for the Professional Practice of Internal Auditing, except as it relates to an external peer review.


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



Odell W. Bailey, CIA  
Auditor General

# **MANAGEMENT'S COMMENT**

# MEMORANDUM

**TO:** Odell Bailey, Auditor General  
**FROM:** Arnold Joseph, Acting Chief Procurement and Logistics Officer   
**DATE:** October 14, 2014  
**SUBJECT:** Review of Executed Contracts-July 2013-Jan 2014- Report NO: CP-14-123- September 15-2014

In review of the documents by Office of Auditor General there is an immediate need to reintroduce the communication of the current Purchasing Policy and Procedures. I believe that many of the areas cited in the investigation have a purchasing policy written to address and if not we can update to execute accordingly if a process change has occurred. **For example: new enhancements or process improvement with PeopleSoft 9.2 upgrade.**

In reviewing the investigation some key practices were not followed according to policy:

1. **Not all contracts requiring Emergency Manager approval were signed by Emergency Manager**
2. **Untimely Contract Approval/ Departmental reviews not consistent or always timely**
3. **Excluded Party Searches note always timely**
4. **Conflict of Interest Unknown at Start Date for Some Contracts**
5. **Insurance Coverage lapse Create Risk Exposure for District**
6. **Control to Ensure File Completeness not consistently Implemented i.e. ( Check list)**
7. **Limited Bid Period for some contracts**

The following is the initial action plan Procurement and Logistics will be taking based on the September 15, 2014 audit report recommendations along with the Acting Chief Procurement & Logistics Officer taking this opportunity to improve the overall procurement process protocol within the department as well as outside:

1. **Not all contracts requiring Emergency Manager approval were signed by Emergency Manager**

**Plan of Action:** Effective immediately after P&L staff meeting on 10/8/14- P&L has started to send all contracts & expenditures with a cumulative value greater than \$1,000,000 to the Emergency Manager for approval. Following EMRR-24 order

We are using the EMRR-24 order as stated:

“That all contracts and expenditures with a cumulative value over \$1,000,000(one million dollars) have to be approved in writing by the Emergency Manager”

A formal update will made to Purchasing Policy manual as part additional changes under review i.e. Bidding threshold levels for MDE approval- Target December –after external audit completion

**This will adhere to Point 1 in the Recommendations section**

2. **Untimely Contract Approval/ Departmental reviews not consistent or always timely.**

**Plan of Action:** This is an area I will need to refocus the team to ensure we are working more proactively versus reactive. This will be established by working with key stakeholder's i.e. Facilities /Operations, Academics, Transportation, Security, IT on establishing project/contract timelines to ensure information requested is provided on a timely basis in accordance to start of the contract. **Attached is sample project timeline.**

In addition, I am working to provide a 3 month rolling report of contracts up for renewal or scheduled for expiration. This will assist in execution review process on key projects/ contract requiring Legal / Risk management review. This report will be maintained on a spread sheet until we can transition to PeopleSoft



# MEMORANDUM

regular reporting- a project request is in with IT team for this query development. Plan is to provide to Chief Financial & Administrative Officer on the start of each Month.

The department is currently reviewing all the documents on the check list to ensure there is consistency and accurate information. In addition, formal training will be developed to ensure there is a clear understanding of the use and purpose of the documents required for compliance i.e. Certificate of insurance, conflict of interest, excluded party search. This audit document has already been used as training tool to emphasize the need to refocus on the details in the preparation of the red review folders.

P&L will also need the assistance of the Chief Financial & Administrative Officer and Office of Auditor General to enforce with the senior management members the start of projects without official contract or letter documentation (letter to proceed) is a violation of the Procurement Policy and a significant risk to the District as outlined in this report.

**This will adhere to Point 2 in the Recommendations section**

- 3. Require that all procurement personnel responsible for preparing contracts are trained periodically and fully aware of requirements to execute a contract.**

**Plan of action:**

A training program on the Procurement Policy and Procedures is in the process of being developed. I want it to be very comprehensive and documented so as we have new people entering the department there is a training protocol for them to review and understand. It also provides a guideline to reference for those in the department as well as an opportunity to communicate outside of the department on procurement policy and procedures.

I am also interested in developing a cross functional training/ review session so there is clear expectation of the requirements requested from Legal and Risk Management Department. This should also clarify from the audit report the use of the contract approval form and specific timing of its use. I also want the Department to be verse on the requirements from Legal and Risk Management areas that will assist P&L in working in a more timely and effective manner. This will impact section 2 recommendation timely completion of contracts. I also see this session to assist in type of procurement activity required by either the Legal or Risk Management department and develop a supporting policy as outlined in the audit report.

In addition, I would like to incorporate Internal Audit as part of the training process to assist in consistency and provide an internal check and balance. This will ensure we have a consistent process and we are aligned with the checkpoints that we have documented and are adhering to them.

**Target to Complete by December 15 th**

**This will adhere to Point 3 in the Recommendations section**

# MEMORANDUM

- 4. Ensure Contracts for goods and services \$15,000 and over are bid in for minimum of 14 days in accordance to Policy.**

**Plan of Action:**

This is an area we will need to review as part of P&L review of raising the bidding threshold. However, until that change P&L will need to adhere to our policy and if an exception utilize the emergency or sole source provision.

**This will adhere to Point 4 in the Recommendations section**

- 5. Update contract control Checklist and ensure all critical steps are included and staff are trained on the use of the control form.**

**Plan of Action:** Effective immediately after P&L staff meeting on 10/8/14- P&L ensured that only one standard checklist would be used and placed on the share drive as standard template with an effective date.

**Any updates will be communicated to the entire department with the reason for the change and new effective date of revision will be on the bottom of the document.** This process will also be included in the department training outlined above.

**This will adhere to Point 5 in the Recommendations section**

- 6. Work with General Counsel and Risk Manager for consistent vetting of Contracts.**

**Plan of Action:**

**Outlined under Point 3 recommendation training**

**This will adhere to Point 6 in the Recommendations section**

- 7. Office of Risk Management work with P&L to rollout insurance software and begin tracking and monitoring contractor insurance coverage.**

**Plan of Action:**

I will start an initial discussion with Risk Management by November 15<sup>th</sup> given current external audit review period to lay out a plan on how we want to manage process within both departments along with the requirements of the software and time line. **Target to have a plan in place by Feb 2<sup>nd</sup>**

**This will adhere to Point 7 in the Recommendations section**

**Please advise if there are any additional questions or information requested**

**Thank You**

**Attachment**

**cc: William Aldridge**