

UNION TOWNSHIP SCHOOL DISTRICT
PUBLIC SCHOOL CONTRACTS LAW COMPLIANCE REVIEW
OFAC CASE #INV-127-12

CORRECTIVE ACTION PLAN

Should the Township of Union Board of Education require the services of a Construction Manager ("CM") in the future, the formal bid process shall include the verification of CM firm qualifications [Department of Property Management and Construction ("DPMC") and School Construction Corporation ("SCC")] to verify that the CM firm is qualified and in good standing prior to the contract award. Affidavits of qualification will no longer be accepted at face value.

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

UNION TOWNSHIP SCHOOL DISTRICT
PUBLIC SCHOOL CONTRACTS LAW COMPLIANCE REVIEW
OFAC CASE #INV-127-12

REPORT OF EXAMINATION
DECEMBER 2012

**UNION TOWNSHIP SCHOOL DISTRICT
PUBLIC SCHOOL CONTRACTS LAW COMPLIANCE REVIEW**

EXECUTIVE SUMMARY

The Department of Education, Office of Fiscal Accountability and Compliance (OFAC), conducted a review of the bid process utilized by the Union Township Board of Education (board) to award a contract for construction management services for the project titled Central-Five-Jefferson Demolition, Construction and Renovation in the Union Township School District (district). The review was initiated following notification by the New Jersey School Development Authority (SDA) that the documents submitted by the district indicated that a construction management services contract was awarded to a construction firm that had not been approved by the Department of Property Management and Construction (DPMC).

An OFAC investigator reviewed the bid documents, responses, bid summaries, invoices, purchase orders and payments issued to Legacy Construction Management, Inc. (LCM). As a result of the review, the investigator confirmed that although a document submitted by LCM indicated compliance with the prequalification requirement, no such prequalification existed. Prequalification is a requirement of the Public School Contracts Law (PSCL), N.J.S.A. 18A:18A-27.1 and, the SDA grant agreement. The investigator also noted that the district initially failed to publish a notice of the contract award as required by N.J.S.A. 18A:18A-5.

Subsequent to the SDA notification that prequalification was required; the district terminated the contract with LCM. The district hired an individual as a district employee to serve as a Clerk of the Works to manage the construction project. On July 5, 2012, in order to comply with statutory requirements, the district published a notice in its official newspaper of record announcing the award to LCM.

Although the district took action to remedy the PSCL deficiencies, the award of the contract to an entity that lacks prequalification constitutes material noncompliance with the PSCL. In accordance with N.J.A.C. 6A:26-14.1, the material noncompliance issue will result in a recovery of the state aid portion of the LCM project payments that totaled \$132,000.00 in FY 2012 and \$12,000.00 in FY 2013. The percentage of the state aid recovery for payments issued in FY 2012 is 26.25% of \$132,000.00 or \$34,650.00. The percentage of the state aid recovery for payments issued in FY 2013 is 26.66% of \$12,000.00 or \$3,200.00. The total amount of the recovery is \$37,850.00. The basis for the OFAC determinations is detailed in the remainder of this report.

ALLEGATION, INVESTIGATION, CONCLUSION and RECOMENDATION

The OFAC conducted a review of the bid process utilized by the district to award a contract for construction management services for the project titled Central-Five-Jefferson Demolition, Construction and Renovation. The project was partially funded by the SDA. As such, the district was bound by the provisions of grant documents that included district compliance with the provisions of the PSCL, N.J.S.A. 18A:18A-1 et seq.

The OFAC review was initiated following notification by the SDA that its review of documents required to be submitted by the district indicated that a construction management services contract was awarded to a construction firm that had not been prequalified by the DPMC. Based upon the identified deficiency, following established protocol, the SDA forwarded the matter to the OFAC for review. A review of the bidding process conducted by an OFAC investigator confirmed certain deficiencies in the contracting process.

The district awarded a contract to a construction management firm that lacked the required DPMC prequalification as required under provisions of the Public School Contracts Law, N.J.S.A. 18A:18A-27.1.

During 2011, while embarking on a school construction project, the board posted a notice on the district's website seeking proposals from construction management firms to oversee the various phases of the Central-Five-Jefferson Demolition, Construction and Renovation project. The website notice indicated that the solicitation of Requests for Proposals (RFP) would be awarded using the fair and open process for professional service contracts following the provisions of N.J.S.A. 19:44A-20.4 et seq., the New Jersey Local Unit Pay to Play law (LAW).

Five proposals were received and opened on June 1, 2011. The proposals ranged in price from a low bid of \$300,000.00 to the highest bid of \$432,000.00. The lowest bid was submitted by LCM. On June 21, 2011, the board approved a resolution awarding a contract to LCM in the amount of \$300,000.00. Upon execution of a contract and notice to proceed, LCM began providing the requested services.

As the project proceeded, the district submitted various documents to the SDA as required by the grant agreement. Upon review of the document titled, Design Phase Checklist, the district indicated that it had solicited RFPs from construction management firms using a Fair and Open Process to award a professional service contract. The district acknowledged that LCM does not qualify as a registered architect or licensed engineering firm. Such a qualification is necessary to be deemed a professional service exempt from advertising for competitive bidding. Upon further inquiry, the SDA determined that LCM was not prequalified by the DPMC or SDA as required by statute and the SDA grant agreement.

The SDA notified the OFAC and district that the award appears to be contrary to the provisions of PSCL. The SDA requested the OFAC conduct a review of the bidding process. Following notice from

the SDA of the potential violation, the district terminated the contract with LCM.¹ The district also published a notice of the LCM contract award in the Union County Local Source newspaper to comply with the noticing requirement of N.J.S.A. 18A:18A-5. The district has hired an individual as a district employee to manage the remainder of the construction project.

Prior to the termination of the contract, the district had issued 14 payments to LCM totaling \$144,000.00. Thirteen of the payments, totaling \$132,000.00 were issued during FY 2012. One payment for \$12,000.00 was issued in FY 2013.

Conclusion:

Following a comprehensive review of the solicitation and award of contract for construction management services for the project, the investigator has reached the following conclusions.

1. The SDA grant agreement requires compliance with the PSCL. The PSCL requires that for goods and services that exceed the established bid threshold, contracts may only be awarded to the lowest responsible bidder after advertising for bids (N.J.S.A. 18A:18A-4).
2. Although the district received a document from LCM indicating that it was qualified to perform the requested services, the district failed to confirm that LCM had obtained the required prequalification from the DPMC as required by N.J.S.A. 18A:18A-27.1. The SDA grant agreement also required SDA prequalification.
3. The district declared in a May 10, 2011, resolution that it is subject to the provisions of N.J.S.A. 19:44A-20.4 et seq., the New Jersey Local Unit Pay-to-Play (LAW). Based upon that presumption, the district utilized the provisions of the LAW to solicit proposals for construction management as a professional service. Adhering to other provisions of the LAW, the district published the RFP on the district website rather than in the district's official newspaper. Such action is contrary to the applicable provisions of the PSCL. Although N.J.A.C. 6A:23A-6.3 prohibits school districts from awarding contracts in excess of \$17,500.00 to business entities that have made reportable contributions to a board member during the preceding one-year period or during the contract term, the regulation does not authorize a school district to substitute the contract award requirements of the LAW for the requirements of the PSCL.
4. Registered architects and licensed engineering firms are exempt from the bidding requirement of the PSCL, since they qualify as professional services when performing the duties specific to each profession. However, the district has acknowledged that LCM is not a registered architect or licensed engineering firm. As such the district may not award a contract to LCM as a professional service.

¹ After termination of the contract, LCM applied for and was granted DPMC and SDA authorization to enter into contracts that do not exceed, in the aggregate, more than one million dollars in value. The authorization was effective starting on September 21, 2012.

5. Construction management services do not qualify as a professional services exemption under the provisions of N.J.S.A. 18A:18A-5a(1) since such services do not meet the definition of a professional service as defined in N.J.S.A. 18A:18A-2h.

Recommendation:

The district must submit a Corrective Action Plan to the OFAC indicating the measures it will implement to ensure future compliance with the PSCL. Additionally, the district is required to refund to the State an amount equal to the state aid funded portion of the payments issued to LCM.

In accordance with N.J.A.C. 6A:26-14.1, the material noncompliance issue will result in a recovery of the state aid funded portion² of the LCM project payments that totaled \$132,000.00 in FY 2012 and \$12,000.00 in FY 2013. The percentage of the state aid recovery for FY 2012 is 26.25% of \$132,000.00 or \$34,650.00. The percentage of the state aid recovery for FY 2013 is 26.66% of \$12,000.00 or \$3,200.00. The total amount of state aid identified for recovery is ~~\$37,850.00~~.

Submitted by:

Approved by:

Thomas C. Martin, Manager
Investigations Unit

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

Investigator

Karl T. Feltes

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² The percentage of FY 2012 state aid was based on funding allocations as reported on exhibit C1 of the district's 2012 CAFR. The percentage of FY 2013 state aid was based on funding allocations as reported in the approved 2013 budget.

Vieira, Manny

From: Feltes, Karl [karl.feltes@doe.state.nj.us]
Sent: Friday, January 18, 2013 11:50 AM
To: Vieira, Manny
Subject: Recovery Calculation
Attachments: DOC.PDF

Here is the corrected calculation that should be used. I have attached the support documents. I apologize for the error.

UNION TOWNSHIP SCHOOL DISTRICT
LEGACY CONSTRUCTION MANAGEMENT PAYMENTS

Date	Amount	Check Number	
8/16/2011	\$ 5,000.00	197	
9/20/2011	\$ 3,500.00	205	
10/18/2011	\$ 12,000.00	214	
11/15/2011	\$ 12,000.00	1002	
12/20/2011	\$ 12,000.00	1008	
1/17/2012	\$ 3,500.00	1013	
1/17/2012	\$ 12,000.00	1013	
2/14/2012	\$ 12,000.00	1018	
3/20/2012	\$ 12,000.00	1024	
4/24/2012	\$ 12,000.00	1029	
5/15/2012	\$ 12,000.00	1034	
6/19/2012	\$ 12,000.00	1040	
6/29/2012	\$ 12,000.00	1046	
	\$ 132,000.00		2011/2012
8/21/2012	\$ 12,000.00	1052	
9/18/2012	\$ 12,000.00	1061	VOIDED
	\$ 12,000.00		2012/2013
2012	\$ 36,295.00		
2013	\$ 2,982.00		
State Recovery =	\$39,277.00		

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