



State of New Jersey

DEPARTMENT OF EDUCATION
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Governor

KIM GUADAGNO
Lt. Governor

DAVID C. HESPE
Commissioner

January 26, 2015

Mr. Steven Rodas, Board President
West New York Board of Education
6028 Broadway Avenue
West New York, NJ 07093

Dear Mr. Rodas:

SUBJECT: Public School Contracts Compliance Review — Insurance Brokerage — OFAC Case #INV-105-14

The Office of Fiscal Accountability and Compliance (OFAC) completed a limited scope review of the process and methodology utilized by the West New York School District's Board of Education (Board) to award a contract for insurance broker services for the West New York School District (District). The OFAC has identified a material issue of noncompliance with the Public School Contracts Law, N.J.S.A. 18A:18A-1 et seq. Please provide a copy of the attached report to each Board member.

In accordance with the provisions of N.J.A.C. 6A:23A-5.6, the Board is required to publicly review and discuss the findings in this report at a public Board meeting no later than 30 days after receipt of the report. Within 30 days of the public meeting, the Board must adopt a resolution certifying the findings were discussed at its public meeting and approve a corrective action plan (CAP) to address the issues raised in the findings or submit an appeal of any findings in dispute. A copy of the resolution or notice of intent to appeal must be sent to this office within 10 days of adoption by the board. Direct your response to my attention.

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

Sincerely,

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

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Attachment

cc: Robert Bumpus
Patricia Morgan
Michael Yaple
Thomas C. Martin
Monica Tone
John Fauta
Karl T. Feltes
Stephen Eells

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

WEST NEW YORK SCHOOL DISTRICT
PUBLIC SCHOOL CONTRACTS COMPLIANCE REVIEW
INSURANCE BROKER CONTRACT AWARD
OFAC CASE #INV-105-14

REPORT OF EXAMINATION
JANUARY 2015

**WEST NEW YORK SCHOOL DISTRICT
PUBLIC SCHOOL CONTRACTS COMPLIANCE REVIEW
INSURANCE BROKER CONTRACT AWARD**

EXECUTIVE SUMMARY

During August 2014, the Department of Education, Office of Fiscal Accountability and Compliance (OFAC) received information concerning potential issues of noncompliance with educational statute and code by the West New York Public School District (District). The concerns expressed involved alleged noncompliance with the Public School Contracts Law (PSCL), N.J.S.A. 18A:18A-1 et seq. pertaining to the acquisition of insurance brokerage services.

The OFAC initiated an investigation to ensure the solicitation and award of contracts for insurance brokerage services were conducted in compliance with applicable statute and code. The OFAC investigation included reviews of the District's Request for Proposal (RFP), Affidavit of Publication of the RFP, the awarded vendor's Response to the RFP, selected e-mails, the contract between the successful vendor and the District, West New York Board of Education (Board) minutes, and video recordings of Board meetings when the insurance broker matter was discussed. Interviews were also conducted with the Superintendent and the Business Administrator.

Based on the review conducted, the OFAC has determined the solicitation and award of contract for the insurance broker was issued contrary to provisions of the PSCL. Specifically, the Board's resolution awarded the contract under the PSCL exemption for professional services, N.J.S.A. 18A:18A-5a(1). However, insurance, including the purchase of insurance coverage and consultant services, do not qualify as professional services. Instead, N.J.S.A. 18A:18A-5a(10) authorizes a board of education to award a contract for insurance, including the purchase of insurance coverage and consultant services, in excess of the bid threshold provided the award is issued in accordance with the provisions of the Extraordinary Unspecifiable Services (EUS) exemption of the PSCL.

PSCL noncompliance generally requires a recovery of the State aid portion of the amount expended for the broker services provided as a result of the deficient award. However, since the amount paid during the time period under review was below the dollar threshold requiring bidding applicable to the District's Qualified Purchasing Agent, a recovery is not requested.

The District is advised that continued or future violations of the PSCL may subject the District to the State aid recovery provision. General background information and the basis for the OFAC determination that District action was noncompliant with the PSCL is detailed in the remainder of this report.

INVESTIGATIVE SUMMARY

Background

The District sought to engage the services of an insurance broker to manage the District's insurance needs. The March 12, 2014, executive session meeting minutes indicate that, "the Board agreed to issue *RFQ's* for Insurance Broker of Record for the period June 2014 to December 31, 2014" (emphasis added).

The April 9, 2014, Board meeting minutes included a Consent Resolution titled, **Competitive Contracting for Insurance Services** (emphasis added). The memorializing resolution indicated the Board was in need of professional services and referenced N.J.S.A. 18A:18A-4.1 as allowing the use of competitive contracting in lieu of public bidding but, requires the Board to pass a resolution authorizing its use. The resolution continued, "*NOW THEREFORE, BE IT RESOLVED, that this Board authorizes the School Business Administrator/Board Secretary to advertise for professional services for the 2014-2015 school year for the following services: General Liability & Health Insurance Broker.*"

On April 17, 2014, the District placed a notice in the Jersey Journal indicating it would receive sealed Requests for Proposal (RFP) for a General Liability Insurance Broker/Health Insurance Broker. The notice advised interested parties that, "*Copies of the standardized submission requirements are on file and available from the office of the business administrator.*" The bid closing date and time was May 7, 2014, at 3:00 p.m.

By the May 7, 2014, 3:00 p.m. bid opening, the District received proposals from Acrisure, Alamo Insurance Group, Inc., and Brown & Brown Insurance. A District provided bid summary noted that each firm submitted a proposal that indicated the brokerage firm agreed to be compensated the standard commission paid directly by the insurance companies. Since the commission is added to the premium charge billed to the District, such wording precludes the District from evaluating the financial impact of the brokerage proposals.

The June 11, 2014, Work Session/Business Meeting included a consent resolution titled, "Health Insurance Services." The resolution indicated the District was in need of insurance broker services, and had publicly solicited *Requests for Qualifications* for health insurance pursuant to N.J.S.A. 19:44a-20.5, and the open and fair process. The authorizing resolution continued, "*the Board has deemed Brown & Brown to qualify. Brown & Brown is appointed broker for its employee benefit plans for the 2014-2015 school year*" (Consent Resolution 5.2, June 11, 2014). During the same Board meeting, Brown & Brown was appointed as the Broker for all commercial insurance needs for the 2014-2015 school year.

Based on the Board's action appointing Brown & Brown as its Broker of Record, the District executed an agreement titled, "*General Liability and Health Benefits Insurance Broker Agreement,*" dated June 11, 2014. The agreement was signed by then Board President, Vilma Reyes, and Business Administrator Kevin Franchetta on behalf of the District. Public Entity Division Manager Matthew A. Struck signed on behalf of Brown & Brown. *The OFAC notes that Section 3, Page*

Two, of the June 11, 2014 agreement, which was prepared on District letterhead, indicates an invalid term for the agreement (July 1, 2014 through June 30, 2014).

The Board's next meeting occurred on June 25, 2014. The Work Session/Business Meeting Agenda included action to rescind the award to Brown & Brown. The Agenda included Motion B1, titled, "A motion to Rescind Appointment – Insurance Brokerage & Health Insurance Services," and B2, "A Motion to Issue an RFP for Insurance Brokerage & Health Insurance Services." The B1 motion to rescind the appointment of Brown & Brown passed, but the B2 motion to issue an RFP for Insurance Broker Services was defeated.

According to information provided by the District, Board members who were not present when the vote for the insurance broker was taken at the June 11, 2014, Board meeting requested a new vote. Based on the request, motion B3 titled, "Insurance Brokerage & Health Insurance Services," was proposed. The members present approved motion B3 that included a consent resolution appointing Alamo Insurance Group Inc., as the Broker for all commercial insurance needs and for employee health benefit plans for the 2014-2015 school year (emphasis added).

On July 19, 2014, the District placed a notice in its official newspaper, the Jersey Journal, indicating that the Alamo Insurance Group was named as the General Liability Insurance Broker and Health Insurance Broker for the District on June 25, 2014, with a term of July 1, 2014 through June 30, 2015. The award was made utilizing the Professional Services exemption to the Public School Contracts Law, N.J.S.A. 18A:18A-5a(1). The amount of the award was listed as, "Percentage of Premium at no cost to the Board."

Investigation

Information relayed to the OFAC included concerns over alleged interference by outsiders into the broker selection process. The OFAC lacks jurisdiction to issue determinations involving ethics violations. Such matters are under the purview of the School Ethics Commission (SEC). The OFAC has been informed that a complaint addressing the alleged interference has been presented to the SEC for review. As such, the SEC will issue the determination regarding any possible violations of the School Ethics Act. The OFAC did review the methodology utilized by the District to request and award a contract for insurance brokerage services to determine if the process was compliant with the requirements of the PSCL.

An understanding of the statutory provisions applicable to the acquisition of insurance brokerage services is necessary to understand the requirements of the PSCL in this particular matter. N.J.S.A. 18A:18A-5a(10) authorizes a Board to award a contract for insurance, including the purchase of insurance coverage and consultant services, in excess of the bid threshold¹ provided the award is issued in accordance with the provisions of the Extraordinary Unspecifiable Services (EUS) exemption of the PSCL.

¹ The District Business Administrator is a Qualified Purchasing Agent approved by the Board to acquire goods and services valued up to \$36,000.00 based on competitive quotations.

The provisions of the EUS exemption of the PSCL are contained within the statute (N.J.S.A. 18A:18A-5a(2)) and are further defined in provisions of N.J.A.C. 5:34-2.1 et seq., the Local Public and Public School Contracts Laws Administrative Code. Specifically, N.J.A.C. 5:34-2.2(c) reads:

The services must be of such a qualitative nature that the performance of the services cannot be reasonably described by written specifications. However, services previously bid or generally characterized as being of a continuous ongoing nature shall be subject to the presumption that such services may not be classified as an EUS, unless the contracting unit can demonstrate in writing its inability to prepare written specifications describing the qualitative nature of the performance of the services required. If written specifications can be prepared describing the qualitative nature of the performance of the services, then they shall be so written, but notwithstanding that the other criteria of the definition have been met. Contracting unit officials might also consider the use of competitive contracting pursuant to . . . N.J.S.A. 18A:18A-4.1(k).

Requirements related to the implementation of the EUS exemption are also defined in N.J.A.C. 5:34-2.3(b). The regulation reads, in pertinent part:

Before the governing body awards a contract under the EUS provisions which exceeds the bid threshold . . . , a designated administrative official of the contracting unit must file a certificate with the governing body clearly describing the nature of the work to be done, stating that it is not reasonably possible to draft specifications, describing the informal solicitation of quotations, and describing in detail why the contract meets the provisions of the statute and these rules. A mere recitation of the language of the statute shall not be sufficient for this purpose

In the event that a school district utilizes the EUS exemption of the PSCL, a board of education is required, pursuant to N.J.S.A. 18A:18A-5a(2), to “...state supporting reasons for its actions in the resolution awarded the contract for [EUS], and shall forthwith cause to be printed...a brief notice of the award of such contract.”

When interviewed by the OFAC Investigator, the Business Administrator/Board Secretary stated the District intended to use Competitive Contracting as the basis for selecting its insurance broker. However, based on direction given by then board counsel, an award based on the Professional Services exemption in N.J.S.A. 18A:18A-5a(1) was instead utilized. Three firms responded to the District’s public notice in the Jersey Journal. Representatives from the three firms were interviewed by the Board. After the interview, those Board members present at that meeting voted to award a contract to Brown & Brown. The memorializing resolution indicated the award was approved utilizing the Professional Services exemption to the PSCL.

Following the award and execution of the agreement to Brown & Brown, Board members who were not present for the vote challenged the award. In response to Board member questions, Board counsel advised that since the start date for the contract was in the future, the award could be rescinded. Thereafter, a motion to rescind the award to Brown & Brown was approved. A subsequent motion to award the brokerage contract to Alamo Insurance as a professional service, N.J.S.A. 18A:18A-5 et. seq., was approved with a contract term of July 1, 2014 to December 31, 2014.²

Conclusion

Based on the review conducted, the OFAC has determined the solicitation and award of contract for health insurance broker was not in conformance with the provisions of the PSCL. Although the Board initially indicated the intent to use Competitive Contracting, it, thereafter, sought RFPs for a General Liability Insurance Broker/Health Insurance Broker. An authorizing resolution then incorrectly indicated that the District publicly solicited an RFQ, and awarded the contract under the PSCL exemption for Professional Services, N.J.S.A. 18A:18A-5a(1).

As defined under N.J.S.A. 18A:18A-5a(1) of the PSCL, Insurance Brokerage Services do not qualify as a Professional Service. Instead, N.J.S.A. 18A:18A-5a(10) authorizes a board of education to award a contract for insurance, including the purchase of insurance coverage and consultant services, in excess of the bid threshold provided the award is issued in accordance with the provisions of the EUS exemption of the PSCL.

Recommendation

The Board must develop and submit to the OFAC a corrective action plan CAP that will identify the measures the Board will take to ensure compliance with the applicable provisions of PSCL when awarding insurance broker services contracts.

Submitted by:



Thomas C. Martin, Manager
Investigations Unit

Approved by:



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

Investigator

Karl T. Feltes

² At the October board meeting, the Board voted to approve notifying Alamo Insurance of its intent to cancel the contract under the 60 day cancellation notice provision in the contract.