

STATE OF DELAWARE

OFFICE OF AUDITOR OF ACCOUNTS

RED CLAY CONSOLIDATED SCHOOL DISTRICT

SOLE SOURCE PROCUREMENT

SPECIAL INVESTIGATION

FIELDWORK END DATE: MARCH 24, 2010

R. THOMAS WAGNER, JR., CFE, CGFM, CICA AUDITOR OF ACCOUNTS

Townsend Building, Suite 1

401 Federal Street

Dover, DE 19901

Telephone: 302-739-4241

Facsimile: 302-739-2723

<http://auditor.delaware.gov>



State of Delaware
Office of Auditor of Accounts
R. Thomas Wagner, Jr. – CFE, CGFM, CICA
At a Glance

Working Hard to Protect YOUR Tax Dollars

Why We Did This Review

The Office of Auditor of Accounts (AOA) received the following allegation regarding the Red Clay Consolidated School District:

The Red Clay School District approved two “sole source” contracts for Education Consultants to provide training and instruction in the areas of curriculum and professional development at a cost of \$266,059.24. This is not the first fiscal year the District has hired these two consultants on “sole source” contracts. One consultant was paid \$15,900.04 in 15 months for travel. The complainant asks AOA to determine if these contracts are in fact “sole source” and if the travel expenditures are valid costs.

Background

The Red Clay Consolidated School District was formed on July 1, 1981. Red Clay is the second largest public school district in the state and serves more than 15,000 students.

For further information on this release, please contact:

Christopher Cooper
(302) 857-3935

TITLE OF REPORT: Red Clay Consolidated School District, Sole Source Procurement

What We Found:

- AOA reviewed the RFP file for these contracts, which were in effect for FY09 and FY10, and determined they do not meet the requirements for sole source procurement. Although the District had completed and submitted documentation in an effort to support the sole source designation, this documentation did not contain all the information needed to prove sole source in accordance with Title 29, Chapter 69, State Procurement, Subchapter VI, Professional Services §6985 Sole Source Procurement. The District did not provide sufficient evidence that a thorough search was performed for the existence of qualified consultants outside of the listing of “Distinguished Educators” maintained by the Department of Education.
- Travel expenditures were paid in accordance with the contract and were properly supported.

What We Recommend

The District should consider all qualified individuals when in need of consulting services. In doing so, the District may find that their particular needs may be adequately filled by another vendor with cost savings for the District. If the District determines the contract will be sole source based on the research performed, the District should adequately document the determination in accordance with Title 29, Chapter 69, Subsection 6985(b).

Please read the complete report for a full list of findings/recommendations and to review the Red Clay Consolidated School District’s response to our findings.

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AUDIT AUTHORITY

Title 29, Del. C. c. 29 authorizes the Auditor of Accounts to file written reports containing:

1. Whether all expenditures have been for the purpose authorized in the appropriations;
2. Whether all receipts have been accounted for and paid into the State Treasury as required by law;
3. All illegal and unbusinesslike practices;
4. Recommendations for greater simplicity, accuracy, efficiency, and economy; and
5. Such data, information, and recommendations as the Auditor of Accounts may deem advisable and necessary.

ALLEGATION AND BACKGROUND

ALLEGATION

The Office of Auditor of Accounts (AOA) received the following allegation regarding Red Clay Consolidated School District:

The Red Clay School District approved two “sole source” contracts for Education Consultants to provide training and instruction in the areas of curriculum and professional development at a cost of \$266,059.24. This is not the first fiscal year the District has hired these two consultants on “sole source” contracts. One consultant was paid \$15,900.04 in 15 months for travel. The complainant asks AOA to determine if these contracts are in fact “sole source” and if the travel expenditures are valid costs.

BACKGROUND

The Red Clay Consolidated School District was formed on July 1, 1981. It is one of four districts created when the New Castle County School District was reorganized.

Red Clay includes northwestern sections of the City of Wilmington and its suburbs to the Pennsylvania state line, from the Brandywine Creek to the Pike Creek Valley area, and along the Christiana River back to the city line.

Red Clay is the second largest public school district in the state. The District serves more than 15,000 students in 14 elementary schools, six middle schools, five high schools, four special education schools, and three charter schools.

Of the more than 1,700 employees, about 1,060 are teachers. The District operates on a budget of more than \$156 million. About one-third of that amount is derived from local property taxes. The remainder comes from state and federal funds.

OBJECTIVES, SCOPE, & METHODOLOGY

OBJECTIVES

The objectives of this investigation were:

- To determine whether the Red Clay Consolidated School District followed the applicable laws regarding “sole source” procurement.
- To determine whether travel expenses paid to the consultants were proper and within the terms of the contract.
- To determine whether other districts hired consultants to provide training and instruction in the areas of curriculum and professional development.
- To determine whether Federal or State funds were used and if so, whether use of these funds were for allowable expenditures.

SCOPE

The scope of the investigation included:

- The Request for Proposal (RFP) process to obtain the two consultants.
- Review of 100% of payments made to the two consultants during the period July 1, 2008 through November 30, 2009.

The investigation was performed in accordance with the President’s Council on Integrity and Efficiency, *Quality Standards for Investigations*.

METHODOLOGY

The investigation approach included:

- *Interviews and inquiry.*
- *Inspection and confirmation of documentation.*
- *Examination of supporting records and source documentation.*
- *Observation.*

The conclusion of the allegation(s) is defined as follows:

Substantiated:	The allegation has been verified by competent evidence.
Partially Substantiated:	A portion of the allegation has been verified by competent evidence; however, competent evidence to verify the entire allegation could not be provided by the agency or obtained by AOA.
Unsubstantiated:	Competent evidence was found to dispute the allegation.
Unable to conclude:	Competent evidence to verify the allegation could not be provided by the agency or obtained by AOA.

CONCLUSIONS

Allegation

The AOA received the following allegation regarding the Red Clay Consolidated School District:

- The Red Clay School District approved two “sole source” contracts for Education Consultants to provide training and instruction in the areas of curriculum and professional development at a cost of \$266,059.24. This is not the first fiscal year the District has hired these two consultants on “sole source” contracts. One consultant was paid \$15,900.04 in 15 months for travel. The complainant asks AOA to determine if these contracts are in fact “sole source” and if the travel expenditures are valid costs.

Results of Testing

- AOA reviewed the RFP file for these contracts, which were in effect for FY09 and FY10, and determined they do not meet the requirements for sole source procurement. Although the District had completed and submitted documentation in an effort to support the sole source designation, this documentation did not contain all the information needed to prove sole source in accordance with Title 29, Chapter 69, State Procurement, Subchapter VI, Professional Services §6985 Sole Source Procurement. The District did not provide sufficient evidence that a thorough search was performed for the existence of qualified consultants outside of the listing of “Distinguished Educators” maintained by the Department of Education. See the *Findings and Recommendations* section of this report for further details.
- Travel expenditures were paid in accordance with the contract and were properly supported. The consultant in question lives in Wisconsin and was reimbursed \$6,023.60 in FY10 and \$11,094.54 in FY09.
- Although other districts have hired consultants, the specific purposes and duties of the consultants vary by contract. Therefore, AOA cannot directly compare the costs of these consultants to the two contracts in question. By not utilizing the competitive bidding process, it is uncertain whether the School District obtained the best price.
- Federal funds were used for the payment of the consultants. These funds were properly used to obtain consulting services to help improve school academic performance, in accordance with the Consolidated Grant.

Conclusion

Partially Substantiated.

FINDINGS AND RECOMMENDATIONS

Finding #1: Sole Source Procurement

Criteria

Title 29, Chapter 69, State Procurement, Subchapter VI. Professional Services, Subsection 6985. *Sole source procurement* states:

“(a) A contract may be awarded for professional service without competition if the agency head, prior to the procurement, determines in writing that there is only 1 source for the required professional service. Sole source procurement shall not be used unless there is sufficient evidence that there is only 1 source for the required professional service and that no other type of professional service will satisfy the requirements of the agency. The agency shall examine cost or pricing data prior to an award under this section. Sole source procurement shall be avoided, except when no reasonable alternative sources exist. A written determination by the agency on the basis for the sole source procurement shall be included in the contract file.

(b) An agency seeking a sole source procurement shall prepare written documentation citing the existence of a sole source condition. The document shall include the specific efforts made to determine the availability of any other source and an explanation of the procurement need. The agency may, for confirmation, submit this documentation to the Section for review and comment prior to the intended date of award.

(c) The agency shall negotiate with the single supplier, to the extent practicable, a contract advantageous to the agency. The agency shall enter into a formal contract stating the terms and conditions of the procurement.”

The Delaware Department of Education (DOE) utilizes the “Delaware Accountability Ratings” system, ratings based on standardized testing scores to assess the schools' academic programs. Schools who are rated as under *improvement*, *corrective action*, or *restructuring* are required by Title I to consult with “outside experts” regarding school improvement plans. For the schools’ reference, DOE maintains a listing of Distinguished Educators, individuals with specific areas of expertise who are available to enter into contractual agreements. Schools are not required to hire consultants from this listing.

Condition

Red Clay Consolidated School District has two Title I schools rated as under improvement, which requires them to consult with an “outside expert” to develop adequate improvement plans. To comply with this requirement, the District referred to the listing of Distinguished Educators maintained by the DOE, and selected the only two consultants on this listing designated as Distinguished Educators for “strategies for improvement based upon comprehensive analysis of current academic status.” The District contracted with these two individuals, treating them as sole source contracts.

Although the schools are required to consult with an “outside expert,” that “outside expert” is not required to be on the listing of Distinguished Educators maintained by DOE. DOE’s intention was not to make these vendors the exclusive providers of services, but merely to be a starting point for determining vendors that could be included in the normal bidding process. The District’s written documentation citing the existence of a sole source condition did not include a description of the “specific efforts made to determine the availability of any other source and an explanation of the procurement need.”

FINDINGS AND RECOMMENDATIONS

Cause

The District incorrectly determined this was a sole source contract situation based on the fact that the two consultants were listed on DOE's listing of Distinguished Educators.

Effect

Since other qualified individuals may exist outside of the Distinguished Educators listing and an open bidding process was not used, the District may be paying more than needed to obtain these services. The District did not comply with Delaware procurement laws.

Recommendation

The District should consider all qualified individuals when in need of consulting services. In doing so, the District may find that their particular needs may be adequately filled by another vendor with cost savings for the District. If the District determines the contract will be sole source based on the research performed, the District should adequately document the determination in accordance with Title 29, Chapter 69, Subsection 6985(b). Otherwise, contracts for these services should be subjected to the normal bidding practices.

Auditee Response

The District believes it acted within the proper scope of Title 29 in issuing the sole source contract with Dr. Linda Poole and Mr. Lew Miller. In addition to their unique qualifications as provided in the sole source procurement documentation regarding their specific educational careers as Directors of Curriculum and Instruction in the State of Delaware, the district coordinated with the State Department of Education and the process of identification of distinguished educators for compliance with federal law. Section 1117, (4) (A), School Support and Recognition, states the following for using a qualified vendor:

“(4) STATEWIDE SYSTEM-

(A) In order to achieve the purpose described in paragraph (1), the statewide system shall include, at a minimum, the following approaches:

(i) Establishing school support teams in accordance with subparagraph (C) for assignment to, and working in, schools in the State that are described in paragraph (2).

(ii) Providing such support as the State educational agency determines necessary and available in order to ensure the effectiveness of such teams.

(iii) Designating and using distinguished teachers and principals who are chosen from schools served under this part that have been especially successful in improving academic achievement.

(iv) Devising additional approaches to providing the assistance described in paragraph (1), such as providing assistance through institutions of higher education and educational service agencies or other local consortia, and private providers of scientifically based technical assistance.”

In assisting districts, the Delaware Department of Education used a comprehensive and rigorous process for identifying distinguished educators to work across the state. Only 14 of the original 40 applicants were selected for the list. Additionally, while many completed the process, only Dr. Poole and Mr. Miller were identified under School Improvement and the specific area of focus under the contract. In fact, the Department of Education has contracted with these two individuals to provide statewide training in

FINDINGS AND RECOMMENDATIONS

curriculum and instruction. Through considerable notification, this was a process open to all individuals and vendors.

To District believes the use of an alternative vendor outside the process of identification or collaboration with the Department of Education would have been a violation of the federal requirements and not within the spirit of funding under Title I. While the District agrees there may be an educational firm or firms capable of performing school improvement work on a national level, none would be knowledgeable about the specific standards and requirements in the state of Delaware and the cost of developing this knowledge would be exorbitant. Minimizing cost was a significant factor and going outside the process of identification would have increased the cost for procurement rather than lowering it.

The District believes the findings are incorrect and do not recognize the information provided by the District and the Department of Education. The District has continued to be in contact with the Department of Education over the issue and have an understanding the District acted in an appropriate manner with the contracts.

Auditor's Comment

Throughout the course of the investigation, AOA communicated with DOE regarding the intended use of the listing of Distinguished Educators. DOE agreed and stated, in writing, that the contracted experts required by Title I are not required to be on the listing of Distinguished Educators maintained by DOE and the **intention was not to make these vendors the exclusive providers** of services, but merely a starting point for determining vendors that could be included in the normal bidding process. Therefore, for the reasons stated in our recommendation, the District should consider all qualified vendors, including qualified vendors that are not included on the listing of Distinguished Educators, when in need of consulting services.

DISTRIBUTION OF REPORT

Copies of this report have been distributed to the following public officials:

The Honorable Jack A. Markell, Governor, State of Delaware
The Honorable Russell T. Larson, Controller General, Office of the Controller General
The Honorable Joseph R. Biden, III, Attorney General, Office of the Attorney General
The Honorable Ann Visalli, Director, Office of Management and Budget
The Honorable Thomas J. Cook, Secretary, Department of Finance
Ms. Valerie Watson, Acting Director, Division of Accounting, Department of Finance
Ms. Dawn Haw-Young, Manager of Financial Reporting and Internal Control, Division of Accounting,
Department of Finance
The Honorable Velda Jones-Potter, Treasurer, Office of the State Treasurer
The Honorable Lillian Lowery, Secretary, Department of Education
Ms. Karen Field Rogers, Associate Secretary, Department of Education

Officials of Audited Entity

Mr. James Buckley, President, Red Clay Consolidated School District Board of Education
Dr. Mervin B. Daugherty, Superintendent, Red Clay Consolidated School District