

August 14, 2024
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Via Electronic Mail

Patrick Tutwiler
Secretary of Education
Mass. Executive Office of Education
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Boston, MA 02108
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**Re: Department of Early Education and Care (EEC)
Procurement for Educational Consulting Services for Strategic Planning**

Dear Secretary Tutwiler:

On October 27, 2020, the Office of the Inspector General (OIG) received a complaint through its hotline citing concerns regarding a contract between the Massachusetts Department of Early Education and Care (EEC) and an educational consulting firm (consulting firm) for strategic planning services.¹ The complaint alleged that the bid process was not competitive and that the EEC commissioner at the time, Samantha Aigner-Treworgy (Aigner-Treworgy or the commissioner), steered the procurement in favor of the consulting firm, with whom Aigner-Treworgy worked in her previous role as chief of early learning for the city of Chicago.

The OIG investigated the circumstances of the procurement and found that Aigner-Treworgy indeed violated 801 CMR 21.06, Competitive Procurement Standards, which states that “[a]ll acquisitions of Commodities or Services, or both, must be competitively procured unless the acquisition qualifies as an exception under 801 CMR 21.05.” The OIG’s findings demonstrate that EEC’s process for procuring strategic planning services through a request for proposals (RFP) was not competitive.

Specifically, the OIG found that (1) EEC did not advertise its strategic planning RFP for a commercially reasonable period of time; (2) the parties engaged in exclusive communications outside of the formal RFP process; (3) EEC employees involved in procuring the services had no training or experience in conducting procurements; and (4) EEC’s procurement of the strategic planning services contract was not fair and competitive.

Based on its investigative findings, the OIG recommends that the Executive Office of Education (EOE) (1) establish procurement policies and procedures for its executive branch departments to supplement Operational Services Division (OSD) policies,² including policies that (a) establish minimum RFP response times and (b) limit communication between department

¹ EEC is one of three departments making up the Massachusetts Executive Office of Education.

² Upon the OIG’s request for EEC procurement policies, EOE reported on June 24, 2021, that EEC did not have policies independent of those set by OSD.

employees and prospective vendors; and (2) implement controls to ensure that departments adhere to those policies and procedures, including controls providing for EOE procurement oversight during departmental leadership changes. The OIG also recommends that EEC implement these EOE policies and controls.

Background

Aigner-Treworgy assumed her position as EEC commissioner on August 29, 2019. She had previously worked as chief of early learning for the city of Chicago, in which capacity she had built a professional relationship with the owner of the Chicago-based consulting firm.

On September 16, 2019, EEC initiated an RFP for a strategic planning contract in the Commonwealth's procurement system, COMMBUYS. The deadline for proposals was September 23, 2019, a window of seven calendar days. On September 20, the consulting firm submitted a proposal on COMMBUYS. Following a one-day extension of the deadline, a second vendor submitted a timely proposal on September 24, 2019.

Three individuals – Aigner-Treworgy, the commissioner's liaison, and a third EEC employee – made up EEC's strategic sourcing services team (SSST), which was responsible for scoring the proposals and awarding the contract.

EEC's SSST evaluated the two proposals on September 27, 2019, based on a rubric with a total possible score of 30 points. Aigner-Treworgy gave the second vendor a score of 18 points, with the other two SSST members scoring that submission at 24 points and 26 points. Aigner-Treworgy gave the consulting firm a score of 26, while the other SSST members each gave 28 points. Later that day, EEC's contracts manager emailed the consulting firm. The email announced that EEC had awarded the contract to the firm and provided the requisite documentation.

EEC and the consulting firm signed the contract for strategic planning services on September 30, 2019, at an agreed-upon price of \$149,714.20.

- On January 21, 2020, the parties amended the contract for an additional \$431,935.80, bringing the total contract price to \$581,650.
- On March 16, 2020, the parties amended the contract again for an additional \$400,000, bringing the total to \$981,650.
- On June 25, 2020, both parties signed an extension to the contract for an additional \$499,620.
- On March 22, 2021, the parties amended the contract again for an additional \$100,000.

As of May 16, 2022, EEC had paid the consulting firm a total of \$2,112,987.51 for strategic planning services rendered between 2019 and 2022.³

³ Although the March 22, 2021, contract amendment was the last that EEC provided under the OIG's document request, the OIG used bank records to calculate the \$2,112,987.51 total amount paid to the consulting firm.

Findings

Finding 1: EEC did not advertise its strategic planning RFP for a commercially reasonable period of time.

While policies laid out by OSD – which sets the standards for procurements on behalf of the executive departments and secretariats of the Commonwealth – do not establish a minimum duration for which bids must be open, OSD policies do state that bids should be open “for a commercially reasonable period of time sufficient to allow multiple Bidders to prepare and submit quality responses.”⁴ EEC’s RFP for strategic planning services was open for a little more than 5.5 business days. The bidding period opened on COMMBUYS at 4:18 p.m. on Monday, September 16, 2019, and closed at 12:00 p.m. on Tuesday, September 24, 2019. The original deadline was Monday, September 23, 2019. Aigner-Treworgy approved a one-day extension of the bidding period after the second vendor, which had previously contracted with EEC, requested more time. A third vendor that had previously contracted with EEC emailed EEC’s contracts manager on September 24, the day of the extended deadline, stating that they were interested in responding to the RFP but that the turnaround time was too short to develop a “thoughtful proposal.” The third vendor further questioned whether EEC expected to receive “qualified proposals” in a four-to-five business day timeframe. The commissioner’s liaison responded, at the direction of Aigner-Treworgy, that the quick turnaround time was to “balance the new Commissioner’s priorities to get this process underway as quickly as possible”⁵ and indicated that vendors could expect a longer lead time in the future. EEC did not extend the deadline again, and the third potential bidder did not submit a proposal.

Multiple witnesses interviewed by the OIG stated that under Aigner-Treworgy’s predecessor, EEC would advertise RFPs for a minimum of 10 to 15 days and up to 30 days in some cases; however, EEC had no set rules regarding turnaround times to ensure they were compliant with OSD’s “commercially reasonable” guidelines. Given that two vendors asked for extensions, with one of those vendors suggesting that the turnaround time was too short to prepare a thoughtful response, the OIG concludes that the period of time the strategic planning RFP was open for bids was not commercially reasonable.

Finding 2: EEC’s SSST and the consulting firm had extensive, exclusive communication outside of the formal Q&A process prior to EEC awarding the contract.

OSD policies state that “communication between the SSST and Bidders outside of the formal Q&A process is not appropriate.”⁶ In an interview with the OIG, Aigner-Treworgy identified EEC’s contracts manager as the procurement “point person” for the department. In a separate interview, the manager confirmed that she was the contact person responsible for handling questions related to logistics during the procurement process. As the only EEC employee with access to COMMBUYS, the contracts manager told the OIG that employees should not be

⁴ OPERATIONAL SERVICES DIVISION, *CONDUCTING BEST VALUE PROCUREMENTS*, at 34 (September 2018).

⁵ This is not a basis for an emergency procurement to justify a departure from the standards.

⁶ OPERATIONAL SERVICES DIVISION, *CONDUCTING BEST VALUE PROCUREMENTS*, at 34 (September 2018).

communicating with individual vendors during the bid process and that all communication should be conducted through COMMBUYS. However, various documents that the OIG reviewed – including Microsoft Outlook calendar invites and phone records – suggest that communication between the consulting firm and multiple employees at EEC, two of whom served on the SSST, took place outside of the formal Q&A process, after the RFP was issued, and prior to EEC awarding the strategic planning contract during the so-called “quiet” period.

While the nature of some of these conversations is unknown, the OIG reviewed an email that the consulting firm’s owner sent to Aigner-Treworgy on July 17, 2019 – prior to the posting of the bids and prior to Aigner-Treworgy’s swearing-in as commissioner – that referenced an attached outline for a “potential engagement on the early phase of strategic planning for MA.” The email further stated that the owner could be “flexible on scope and price and happy to land inside the constraints you may find when you get to your new role.”⁷ The consulting firm’s owner sent this email to Aigner-Treworgy’s personal email address, and Aigner-Treworgy forwarded it to the commissioner’s liaison, both of whom were later members of the SSST. Aigner-Treworgy replied to the owner to “identify some weeks to block off your time this fall.”

Between July 17, 2019, and August 29, 2019, multiple email communications and Outlook calendar entries indicate ongoing conversations between Aigner-Treworgy, her liaison, and the consulting firm’s owner regarding work the firm planned to perform for EEC in the fall. An August 5, 2019, email from the liaison to Aigner-Treworgy and the owner read, “Sorry for having to jump off the call. It was great chatting about the plans for the next few months.” The liaison’s email further asked for the consulting firm’s tax ID to “start our process on the contract side of things.” This was well before the RFP was initiated on September 16, 2019.

Additionally, on September 20, 2019, the day that the consulting firm submitted its proposal but prior to EEC’s award of the contract, the liaison, at the request of Aigner-Treworgy, sent the owner an invitation via Microsoft Outlook to a meeting entitled “Strategic Action Planning Meeting with Commissioner.” The invitation included an attached PowerPoint presentation called “EEC Leadership Meeting” with a section labeled “Strategic Action Planning” that mentioned “strategic consultant support.” A footnote on each PowerPoint page read, “Proprietary and Confidential.” The invitation included approximately 20 employees of the Commonwealth and the consulting firm’s owner, who was the only non-Commonwealth invitee.

Given the exclusive communication between the consulting firm and EEC employees who served on the SSST – communication that took place outside of the formal Q&A process, after the RFP was issued, and prior to EEC awarding the contract – the OIG concludes that EEC violated OSD procurement policies regarding communication between awarding authorities and bidders in a manner that demonstrates favoritism.

⁷ Neither the consulting firm nor Aigner-Treworgy could locate this attachment upon request by the OIG.

Finding 3: EEC lacked a chief procurement officer, and none of the employees on the SSST had training or prior experience conducting a procurement for EEC.

OSD policies state, “Pursuant to Executive Order 533, each Secretariat and each Executive Branch Department must designate a Department CPO [chief procurement officer] who serves as the head of procurement and sourcing within the agency. The CPO is the individual with primary responsibility for ensuring that department procurement practices comply with OSD requirements.”⁸ As an EOE executive branch department, EEC was required to designate a CPO who would have been responsible for ensuring that EEC’s procurement process for strategic planning services complied with OSD policies. Yet, the OIG investigation found no evidence that EEC had a designated CPO, nor did the procurement demonstrate that any such policies were followed.

OSD policies also state that an SSST should include representatives who have an interest or expertise in either the commodity or service that is being procured, including “experts and end users of the product and/or service to be purchased and associated policies/regulations; members with procurement expertise, including legal and technical representatives and Supplier Diversity Program Coordinators; and members who are skilled in finance and accounting.”⁹ Aigner-Treworgy selected two individuals, including her liaison, to serve on the SSST with her without the appearance of any such background. Furthermore, both informed the OIG that they had not previously been involved in procurements. Aigner-Treworgy, who was new to her role, had no experience with Commonwealth or EEC procurements. When the OIG asked Aigner-Treworgy if she understood EEC’s procurement process, she responded that she did not. None of the three members of the SSST were legal or technical representatives, nor did they have finance or accounting skills. The OIG further found that EEC had not trained any of the SSST members on the procurement process either before or after they had participated in the strategic planning procurement.

Given that the individuals Aigner-Treworgy selected to serve on the SSST lacked procurement, finance, accounting, legal, and technical expertise, the OIG concludes that EEC did not follow OSD guidelines regarding the selection of the SSST members.

Finding 4: The EEC’s procurement of the strategic planning services contract was not fair and competitive.

Based upon the RFP’s short response time, improper communications during the RFP’s quiet period, and the SSST members’ lack of procurement experience, the OIG concluded that EEC’s procurement of the strategic planning services contract with the consulting firm violated 801 CMR 21.06, Competitive Procurement Standards. Aigner-Treworgy conducted the

⁸ OPERATIONAL SERVICES DIVISION, *CONDUCTING BEST VALUE PROCUREMENTS*, at 11 (September 2018). Executive Order 533, concerning the “efficiency and effectiveness of Executive Department procurements,” was issued in 2011 and may be referenced at <https://www.mass.gov/executive-orders/no-533-enhancing-the-efficiency-and-effectiveness-of-executive-department-procurements-and-establishing-a-municipal-procurement-program>.

⁹ *Id.* at 28.

procurement process with the clear preconceived intent of selecting the consulting firm as the vendor. Witnesses involved in the procurement process stated that the commissioner had a “clear vision” as to which vendor she planned to award the contract, and the OIG’s findings support the allegations that the selection was predetermined.

Recommendations

Based on the findings outlined above, the OIG recommends that:

1. EOE establish procurement policies and procedures for each of its departments to supplement existing OSD guidelines, including but not limited to policies and procedures that:
 - Anticipate all deliverables to minimize the need for subsequent contract amendments and extensions that were not part of the original procurement;¹⁰
 - Ensure that the required department CPOs are appointed and trained and understand their responsibility to make certain that procurement practices comply with OSD requirements;
 - Outline the purpose of the SSST and participation on the SSST by emphasizing the importance of fair and open competition and conflict of interest avoidance, and ensure that SSSTs are comprised of experts and end users of the product or service being procured, as well as individuals with procurement experience and individuals skilled in finance and accounting;
 - Establish a minimum response time for RFPs and other bid processes to allow for thoughtful and competitive responses;
 - Clearly explain and train personnel on the limited bases for emergency procurements and what such procurements may entail;
 - Recognize and train personnel that communication between department employees and external vendors or prospective bidders must follow the requirements of the open and quiet periods, and designate a department employee who is not a member of the SSST to be the single point of contact for any such logistical communication;
 - Require that department employees sign and return an acknowledgment form stating they have read and understand these policies prior to serving as a member of an SSST; and
 - Require contract amendments to be justified in writing, approved in advance, and limited to the maximum value of the contract. Amendments increasing the contract’s value by more than 20% should require further oversight.

¹⁰ The parties’ original contract under the 2019 procurement for strategic planning services was in the amount of \$149,714.20. Through subsequent amendments and extensions to that contract, EEC ultimately paid the consulting firm over \$2.1 million. While the OIG recognizes that several of the amendments and extensions occurred at the height of the COVID-19 pandemic, its focus is on the protection of public dollars and assets.

2. EOE implement controls to ensure that EOE departments adhere to those procurement policies and procedures, including controls providing for EOE procurement oversight during departmental leadership changes; and
3. EEC take its own steps to adopt policies and procedures in furtherance of these recommendations.

Next Steps

Within 30 days of receiving this letter, please notify this office in writing of your plans to implement the recommendations herein and detail any steps taken thus far.

If you have any questions, please contact me or George Xenakis, the director of the OIG's Audit, Oversight and Investigations Division, at 617-722-8853 or at George.Xenakis@mass.gov.

Thank you for your immediate attention to this matter.

Sincerely,



Jeffrey S. Shapiro, Esq., CIG
Inspector General

cc (via email):

Kate Donaghey, Undersecretary and Chief of Staff, EOE
Amy Kershaw, Commissioner, EEC
Paul Belsito, Chair, EEC Board
Gary Lambert, Assistant Secretary for Operational Services, OSD
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