

STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION

NEWARK INTERNAL AUDIT UNIT

REVIEW REPORT

REVIEW OF UNEXECUTED DISTRICT CONTRACT WITH PROACT SEARCH, LLC.

JANUARY 2010

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EXECUTIVE SUMMARY

At the request of the Assistant Commissioner of Finance and the Essex County Executive Superintendent of Schools, the Newark Internal Audit Unit has completed a review of the Newark Public Schools unexecuted contract with PROACT SEARCH, LLC. (Hereinafter referred to as PROACT).

PROACT, an executive search firm, was selected by the Newark Public Schools through a competitive contracting process to conduct nationwide searches for the purpose of filling executive level and professional positions.

Auditors reviewed all available documentation related to the districts unexecuted contract with PROACT, including invoices, purchase orders, bid files, proposals, resolutions and contract. Interviews were conducted with district personnel.

The Internal Audit Unit has completed its review and noted the following deficiencies:

- PROACT performed services prior to the district issuing a purchase order (confirming order).
- PROACT performed services prior to receiving an executed contract. A contract with PROACT has not been executed.
- PROACT performed services outside the scope of the resolution and unexecuted contract.
- Several billing irregularities were noted.

The remainder of this report details the review.

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BACKGROUND

The Newark Public Schools wished to obtain a qualified executive search firm to conduct a nationwide search for the purpose of filling executive level and professional positions. On February 11, 2009, the district sought and subsequently obtained New Jersey Department of Community Affairs approval on February 25, 2009 to obtain the vendor through the competitive contracting process in accordance with N.J.S.A. 18A:18A-4.1. In accordance with the competitive contracting process, the district issued a request for proposals (RFP) for an executive recruiting firm. Responses to the Executive Search RFP were to be submitted by March 31, 2009. Two proposals were received. The proposals were evaluated by a committee of district personnel and PROACT was the recommended vendor. On April 29, 2009 PROACT was awarded the contract through the execution of resolution #7539 (Attachment A). The resolution authorized a contract to conduct searches to fill nine (9) specifically identified positions at a total estimated cost of \$135,000.

PROACT was used to conduct searches for fourteen (14) district positions. Of the ten positions filled to date with PROACT's services, four were filled by current (at that time) district employees. PROACT was paid for filling one of these four positions with an employee who never worked in the position. The employee left the district effective August 7, 2009.

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DETAILED FINDINGS:

I. PROACT performed and billed for services prior to the district issuing a purchase order (Confirming Order).

As defined by Title 18A:18A-2(v), the "Purchasing Agent/Business Administrator or Business Manager of a Board of Education is assigned the authority, responsibility and accountability for the purchasing activity of a board of education". In fact, a "purchase order is a document issued by the Purchasing Agent authorizing a purchase transaction to a vendor to provide goods or services to the board of education".

Conversely, a "confirming order" bypasses the purchase order process because goods or services are received without, or prior to, issuing a purchase order with the proper authorization by the district's "Purchasing Agent/Business Administrator". Confirming orders, by their very nature, are a violation of New Jersey State Statutes and Newark Public School policy.

Proposals for the executive search contract were opened on March 31, 2009. On April 11, 2009, eleven days later, PROACT issued the district an invoice for services rendered in the amount of \$121,511.89 (Attachment B). This bill was issued 18 days before PROACT was awarded a contract by resolution on April 29, 2009. Purchase order #09-0018699 (Attachment C), which authorized PROACT to perform services under the resolution/contract was not issued until June 24, 2009, more than two months after PROACT had billed the district. The purchase order was for the exact amount of the invoice received from PROACT. PROACT provided services prior to being authorized by the issuance of a purchase order. This transaction was an unauthorized transaction (confirming order) and a violation of State statute and district policy. In addition, auditors are aware of at least two additional invoices issued by PROACT totaling \$76,265 for which no purchase order has been issued. These invoices have not been submitted to accounts payable for payment.

The Executive Search RFP clearly warned vendors that the district was not liable for work done without a purchase order. "This contract is not funded in itself. Funding will be provided by the issuance of a purchase order. No legal liability on the part of The District for any payment may arise until the contract is funded by the issuance of a purchase order".

District policy requires that confirming orders not be processed or paid unless written authorization from the "Deputy Superintendent or School Business Administrator/Chief Financial Officer is obtained". The PROACT invoice was processed and paid without the required authorization.

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The Department of Education Prescribed GAAP for New Jersey School Districts Technical Systems Manual requires that a purchase order be executed prior to authorizing the purchase of goods or services. Failure to execute purchase orders prior to services being rendered can result in the district losing budgetary control by incurring expenses above the budgeted amount without constraint.

Recommendation:

The auditors recommend that the district comply with State statute and district policy and properly issue purchase orders prior to services being rendered. In addition, the district should comply with existing policy and require written approval by the Business Administrator prior to payment of any confirming order. The district policy on payment of confirming orders (page 14 of purchasing manual) should be updated to require the written approval of the Chief Academic Officer or Business Administrator. Accounts Payable should not process invoices dated prior to the purchase order date without written authorization from management. In accordance with the terms of the RFP, the district should consider withholding payment when services are performed without the authorization of a purchase order.

2. A contract with PROACT has not been executed.

A contract between the Newark Public Schools and PROACT was drafted but only signed by the President of PROACT (Attachment D). To date, the contract has not been signed by an appropriate representative of the Newark Public Schools and remains unexecuted. Sound business practices as well State regulations require that contracts be executed. N.J.S.A. 18A:18A-40 requires that "all contracts for the provision or performance of goods or services shall be in writing". In addition, the RFP states that "The vendor, to whom the contract is awarded, shall be required to enter into a written agreement with the district".

Recommendation:

In the future, vendors should not commence work until a contract is executed. It is recommended at a minimum that the contract contain a detailed explanation of the services to be provided, hourly or unit rate, a maximum dollar amount payable under the contract, and identify expense(s) that are reimbursable and at what rate. Clearly detailing what expenses, if any, are reimbursable should help to eliminate any potential billing disputes. No payments should have been made to this vendor prior to the execution of a contract.

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3. **PROACT performed services outside the scope of resolution and unexecuted contract.**

Resolution #7539, which is incorporated into the contract, authorizes PROACT to provide executive search services specifically for the following nine positions:

- Chief Academic Officer (1)
- Ombudsman (1)
- Director Arts (1)
- General Counsel (1)
- Director HRS (1)
- Assistant Superintendents (4)

Per the un-signed contract these nine positions would be filled at a total cost of \$135,000 (\$15,000 X 9). The contract indicates that "under no circumstances will the total amount of funds authorized to the agreement be exceeded".

The district requested and PROACT provided executive search services for at least five additional positions not authorized under the resolution or contract:

- Assistant Business Administrator
- Director of Guidance
- Principals (2)
- Director of Student Services

PROACT invoiced the district \$36,750 for the Assistant Business Administrator and Director of Guidance (Attachment E), \$39,515 for the two principal positions (Attachment F), and an "additional charge" of \$15,000 which is believed to be for the Director of Student Services. These additional services totaling \$91,265 were not authorized. The \$15,000 was included in the \$121,511.89 invoiced and paid by the district. See finding #4.

In addition, these additional services were outside the scope of the original RFP and are a violation of competitive contracting regulations N.J.S.A. 18A:18A-4.5 which states "that under no circumstances shall the provisions of a proposal be subject to negotiation by the board of education".

Recommendation:

District personnel should not request vendors to perform any services outside the scope of their contract unless a properly executed change order or contract amendment is executed prior to the additional services being performed.

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4. **Several billing irregularities were noted.**

As noted in finding #1, PROACT submitted an invoice to the district dated April 11, 2009 totaling \$121,511.89 (Attachment B). The invoice was paid on June 30, 2009 without adjustment. The following irregularities were noted:

- The invoice included a charge for \$15,000 for "additional fees" and no other description was noted. The billing may have been for the unauthorized work done on the search for the Director of Student Services. However, the fee was billed 100% before work was performed.
- PROACT billed the district \$16,511.89 for reimbursable expenses. The resolution and unsigned contract do not authorize any expense reimbursement. The contract is capped at \$135,000 (\$15,000 X 9 positions).
- District did not require the vendor to submit supporting documentation for reimbursable expenses prior to payment.
- On April 11, PROACT invoiced the district 2/3 of the contract amount (\$135,000 x 2/3 = \$90,000) for the nine positions. Per their proposal 1/3 was to be paid upon signature of contract and 1/3 upon submission of candidate books. Since the contract was not signed and candidate books not submitted, nothing should have been billed on this date.

The receiving report authorizing payment on this invoice was signed by a Administrative Secretary. There was no indication in the supporting documentation sent to Accounts Payable that the invoice was reviewed and complied with the terms of the contract and approved for payment by the contract administrator.

Recommendation:

The district should comply with N.J.S.A. 18A:19-2 which requires that no demand for payment be paid unless it is "fully itemized and verified". The description "additional fees" is not adequate itemization as even district employees who paid the invoice were not certain what it was for. In addition, reimbursable expenses should not be paid unless adequate supporting documentation is provided by the vendor. The district should request PROACT provide documentation to support the \$16,511.89 in expenses that have already been reimbursed. The contract administrator should ensure that all invoices submitted for payment are in accordance with the terms of the contract before authorizing payment. Receiving reports should be signed by an individual familiar with contract terms and vendor performance and should state that the invoice complies with the terms of the contract before Accounts Payable processes the invoice for payment.

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5. **The district awarded the contract prior to PROACT obtaining the required "State of New Jersey Business Registration Certificate".**

New Jersey Regulations (Public Law 2001, Chapter 134) requires that all contractors and subcontractors providing goods/services to State agencies and authorities to provide the contracting agency or authority with proof of registration with the Department of Treasury. The regulation prohibits awarding a contract until after the contractor provides proof of a valid business registration certificate. PROACT's NJ Business Registration was effective May 13, 2009. The district awarded the contract on April 29th, prior to issuance of the certificate.

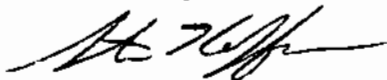
Recommendation:

The district should comply with New Jersey regulations and not award contracts until the vendor submits proof of a valid business registration certificate.

Conclusion:

Had the district executed the contract, which had already been signed by PROACT, total payments for the nine authorized searches would have been capped at \$135,000 (\$15,000 x 9). Accordingly, auditors recommend that total payments for the nine searches identified in the resolution not exceed \$135,000. In addition, auditors recommend that the district make no additional payments for PROACT's search services for the five positions outside the scope of the work authorized by resolution #7539. Any action taken should be done in consultation with the district's legal counsel.

Submitted by:



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NJ Department of Education