

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

FREEHOLD REGIONAL HIGH SCHOOL DISTRICT
LEGAL EXPENSE REVIEW
OFAC CASE #INV-058-13

REPORT OF EXAMINATION
SEPTEMBER 2013

FREEHOLD REGIONAL HIGH SCHOOL DISTRICT LEGAL EXPENSE REVIEW

EXECUTIVE SUMMARY

On June 25, 2013, the Office of the State Comptroller (OSC) issued a report titled, "*An Analysis of Legal Fees Paid by New Jersey Local Governments.*" The OSC analyzed the procurement of legal services and the payment of legal fees by five local government units. As a result of the analysis the OSC identified a series of failures to incorporate best practices to achieve greater transparency and cost savings in dealings with school district attorneys.

Based upon the information contained in the OSC report, the Office of Fiscal Accountability and Compliance (OFAC) conducted a review of the contracting for and the payment for legal services provided to the Freehold Regional School District (district). The purpose of the review was to ensure the current process is compliant with educational statute, code and best practices as recommended by the OSC.

The OFAC investigator interviewed the school business administrator and reviewed contracts, board minutes, advertising notices, board policy, and invoices for legal services. The period under review included July 1, 2012 through June 30, 2013. The OFAC also reviewed invoicing for July that had not yet been approved by the business office.

The review confirmed the district has modified board policy and procedures resulting in enhanced monitoring of legal expenses. Invoices are more detailed and the current law firm does not apply a percentage based administrative fee. However, the review also identified deficiencies involving issues of noncompliance with statute and code.

The OFAC review confirmed the district prepared inappropriately worded resolutions awarding the contracts for legal services and did not issue an appropriately worded public notice subsequent to the award. Those deficiencies are not deemed to be material. The OFAC recommends modifications/clarifications to the legal services contracts and the submitted invoices to provide additional clarity and ensure full compliance with the intent of the accountability regulations in N.J.A.C. 6A:23-5.1 et seq.

As a result of the review, the district is directed to submit a corrective action plan to the OFAC indicating the measures it will initiate to correct the deficiencies and implement the recommended best practices. The information obtained during the review of this matter that serves as the basis for the OFAC findings, as well as additional suggestions to improve transparency and cost effectiveness, are detailed in the remainder of this report.

INVESTIGATION, CONCLUSIONS, RECOMMENDATIONS

INVESTIGATION

On June 25, 2013, the Office of the State Comptroller (OSC) issued a report titled, *"An Analysis of Legal Fees Paid by New Jersey Local Governments."* The OSC analyzed the procurement of legal services and the payment of legal fees by five local government units. As a result of the analysis the OSC identified a series of failures to incorporate best practices to achieve greater transparency and cost savings in their dealings with their attorneys.

The OSC report was based upon a review of district expenditures for legal services during the time period of July 1, 2010 through June 30, 2011. The OSC report identified bills submitted during the time period under review that were non-descriptive and block-billed. The report indicated the total cost for legal services exceeded the agreed upon cap and included the application of an administrative fee based on a percentage of the total attorney hours billed. The OSC also noted that the district did not comply with the requirements of the Public School Contracts Law (PSCL) since it failed to cite supporting reasons in the resolution authorizing the contract award.

Based upon the information contained in the OSC report, the OFAC conducted a review of contracting for and the payment of legal expenses by the district. The purpose of the review was to ensure the current process is compliant with educational statute, code and best practices as recommended by the OSC.

In order to conduct the review, the OFAC investigator interviewed the school business administrator and reviewed contracts, board minutes, advertising notices, board policy, and invoices for legal services for the time period of July 1, 2012 through June 30, 2013.¹ The review by the OFAC was structured to determine if the district complied with statute and code during the contracting process.

Contracting for legal services falls under the professional services exemption to the PSCL, N.J.S.A. 18A:18A-5a1, and need not be bid. However, the New Jersey Administrative Code, N.J.A.C. 6A:23A-5.2a5, requires school districts to utilize a deliberative and efficient process that ensures the district receives the highest quality services at a fair and competitive price or through a shared services agreement.

Whenever a district utilizes competitive contracting to acquire legal services, the district is required to publish a notice of the availability of the request for proposal (RFP) documentation in the district's official newspaper at least 20 days prior to the proposal submission date. Additionally, if a district awards a contract by utilizing the professional

¹ The OFAC also examined the July 2013 invoicing that had not yet been reviewed and approved by the business office. The review confirmed the district continues to refine and improve the legal services invoicing process.

services exemption or competitive contracting, the district must announce the award by publishing a notice in its official newspaper. The notice shall include, but not be limited to, the nature, duration, and the dollar amount of the contract. It shall also include the name of the vendor and a statement that the resolution and contract are on file and available for public inspection in the office of the secretary of the board of education.

In order to determine compliance with the PSCL requirements, the OFAC reviewed pertinent board resolutions and newspaper notices. The review confirmed during August 2011, the district used the competitive contracting requirements, N.J.S.A. 18A:18A-4.1h, to acquire legal services when it advertised in the New Jersey Law Journal requesting the submission of a RFP from interested firms. Advertising in the Law Journal failed to comply with the statutory requirement that the notice must be placed in the official newspaper.

Subsequent to the August 2011 RFP, contracts were awarded as a professional service for the 2012, 2013 and most recently the 2014, school years. Each award was authorized by a board resolution followed by the issuance of a public notice. However, both the board resolution and the public notice were deficient. The resolution failed to state the supporting reason for the award. Failure to state the supporting reason precludes an individual from determining if the award was made based on the professional services exemption or an alternative process. The public notice was deficient because it did not include the total dollar amount of the contract award.

The OFAC also examined the legal services contracts in effect for the 2013 and 2014 school years. The three page agreements specify the fee for preparation, attendance and post-meeting follow-up for board meetings, the hourly rate for performing legal services and, the compensation for reasonable and necessary disbursements. Reasonable and necessary disbursements are identified but not limited to, mileage, postage, and photocopying associated with legal services. The contract specifies that compensation for reasonable and necessary disbursements will be billed at an hourly rate.

When questioned, the business administrator stated that compensation for reasonable and necessary disbursements is at cost and photocopying associated with legal services is billed at the hourly rate. A review of the submitted invoices was conducted by the OFAC and did not reveal any material irregularities. However, since the contract did not include a fee schedule and the invoices submitted by the firm do not specify quantities; the business office or superintendent's designee would be unable to verify the accuracy of the charges.

Itemization and verification requirements are detailed in N.J.S.A. 18A:19-1 et seq. Specifically, N.J.S.A. 18:19-2, Requirements for payment of claims; audit of claims in general, reads in part, *"No claim against a school district shall be paid unless it is fully itemized and verified, approved by the board or a person designated by the board."*

CONCLUSIONS

The OFAC confirmed the following district improvements to the process of acquiring legal services:

The use of improved billing invoice descriptions to eliminate non-descriptive and block-billed invoices.

Closely monitoring the total cost for legal services to ensure the costs do not exceeded the agreed budgeted funds without submission to and approval by the board.

The current law firm does not charge an administrative fee based on a percentage of the total amount billed by attorneys as was the practice with the former firm.

The OFAC confirmed the following deficiencies in the process utilized by the district to acquire legal services:

The memorializing board resolutions, approved at the January 7, 2013 and the May 13, 2013 board meetings, did not state supporting reasons for the award.

The May 31, 2012 and June 1, 2013 public notices, announcing the award of the district legal services contracts, failed to include the total dollar amount of the contract as required by N.J.S.A. 18A:18A-5a(1).

The executed contract did not include a fee schedule listing the hourly rates for professionals and support staff, mileage rate, whether travel is calculated from the law firm office to the destination, etc.² As such, the legal services contracts lack sufficient specificity to establish and verify the cost associated with compensation for reasonable and necessary disbursements.

Although the firm's invoices were compiled utilizing standard legal billing software and the amount of detail was typical of legal invoices submitted in support of billings for school districts, the OFAC recommends additional detail to ensure compliance with N.J.S.A. 18A:19-2.

² The invoice must include specific information; i.e. 5/13/13, travel from Moorestown, NJ to Englishtown, NJ for board meeting. Round trip, 90 miles at .565 = \$50.85; NJ TPKE tolls \$6.50, parking \$9.00.

RECOMMENDATIONS

The district shall prepare a corrective action plan indicating the measures it will implement to ensure compliance with the applicable provisions of the PSCL, N.J.S.A. 18A:18A-1 et seq., and the Administrative Code, N.J.A.C. 6A:23A-5.2.

The OFAC will forward a copy of this report to the Office of the State Comptroller for informational purposes. A copy will also be forwarded to the Office of the Executive County Superintendent of Schools for compliance monitoring.

Submitted by:


Thomas C. Martin, Manager
Investigations Unit

Approved by:

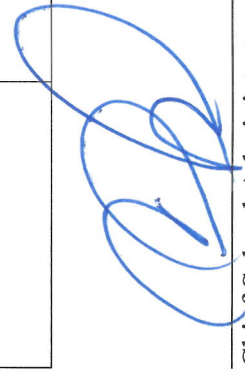

Robert J. Cicchino, Director
Office of Fiscal Accountability and Compliance

Investigator
Karl T. Feltes

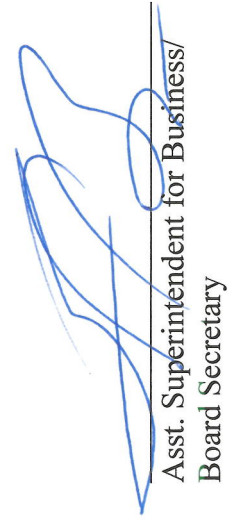
**NEW JERSEY DEPARTMENT OF EDUCATION
OFFICE OF FISCAL ACCOUNTABILITY AND COMPLIANCE
CORRECTIVE ACTION PLAN**

School District Name: Freehold Regional High School District **County:** Monmouth
Type of Examination: Legal Expense Review – OFAC Case #INV-058-13
Date of Board Meeting: October 21, 2013
Contact Person: Sean Boyce, Assistant Superintendent for Business/Board Secretary
Telephone Number: (732) 792-7300 **Fax Number:** (732) 446-5192

RECOMMENDATION NUMBER	CORRECTIVE ACTION	METHOD OF IMPLEMENTATION	INDIVIDUAL RESPONSIBLE FOR IMPLEMENTATION	COMPLETION DATE OF IMPLEMENTATION
1	Board resolutions for legal services will state the supporting reasons for the award in accordance with N.J.S.A. 18A:184-1 and N.J.A.C. 6A:23A-5.2.	Proposed board resolutions for legal services will be reviewed for compliance with the applicable provisions of Statute and Administrative Code.	Assistant Superintendent for Business/Board Secretary	Immediate
	Public notices announcing the award of the district legal services contracts will comply with the provisions of N.J.S.A. 18A:184-5a(1).	Request clarification from the N.J. Department of Education of N.J.S.A. 18A:184-5a(1) notice requirements for professional service contracts without definitive annual amounts. Implement in accordance with guidance received.	Assistant Superintendent for Business/Board Secretary	Immediate and On-Going
	Contracts for legal services will identify hourly rates for professional and support staff, as well as specific rates for reimbursement of reasonable and necessary expenses.	Revise legal services contract to include hourly rates for professional and support staff, as well as specific rates for reimbursement of reasonable and necessary expenses.	Assistant Superintendent for Business/Board Secretary	Immediate
	Legal service invoices will include sufficient detail in accordance with N.J.S.A. 18A:19-2.	Revise legal service invoice protocol to ensure sufficient detail in accordance with N.J.S.A 18A:19-2.	Assistant Superintendent for Business/Board Secretary	Immediate



 Chief School Administrator



 Asst. Superintendent for Business/
 Board Secretary

10/21/13 10.21.13
 Date Date