

**MEMORANDUM**

To: Dr. Michael Erwin, Chair  
DeKalb County Board of Education

From: Nelson Mullins

Date: December 14, 2018

Re: Purchasing/Procurement Assessment

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**I. INTRODUCTION**

The DeKalb County Board of Education asked Nelson Mullins to coordinate with the Superintendent to conduct an assessment of how the District's purchasing department, and its key staff, provides support to internal clients regarding procurement processes. As part of the assessment, we were also asked to review how District staff interact with vendors and potential vendors. The primary objective of the procurement assessment was to perform a high level review and analysis of the District's procurement function and its support to internal clients, to determine whether the District employs procurement practices that are in compliance with policy and best practices, to determine whether procurement practices are undertaken with ethics and transparency in mind and to make recommendations as appropriate. Accordingly, we reviewed three key areas, primarily viewed through the lens of internal clients:

- Level and extent of support provided by the purchasing department in connection with procurement processes;
- Standard procurement operations related to procurement practices in various internal departments, and knowledge of best practices and applicable procurement policies; and
- Interaction with potential vendors and vendors

As part of this assessment, we interviewed a sampling of District employees that regularly engages in purchasing and procurement, and interviewed key employees in the purchasing department and in the office of legal affairs who provide support and assistance to internal divisions related to procurement processes.

This summary report describes (1) the facts regarding the purchasing process as it stands today (2) general findings that emerged when reviewing information in total; and (3) recommendations for next steps and best practices.

This summary report intentionally does not identify by name the sources of information to avoid even the appearance of retaliation and to ensure candor of employees in future assessments. Some names appear however as they are central to the processes described herein. Given the potential for even unintentional retaliation, the highest level of discretion should be exercised when sharing this information.

## II. FACTS

### Purchasing Overview

The District's procurement function is housed in the purchasing department of the Finance Division. The District does not have a separate "procurement department" or Chief Procurement, or similarly designated officer. The Finance division oversees most purchases of goods and services in the District; and it is the purchasing department's responsibility to ensure that procurement in the District is conducted efficiently and effectively to ensure the most prudent use of District resources.

The procurement functions are managed by Carla Smith, Purchasing Manager III. Smith reports directly to Dr. Michael Bell, the District's Chief Financial Officer. Smith has worked in the finance department for six (6) years, and with the District for 19 years. Prior to working in purchasing, Smith worked in Internal Audits as Assistant Director of Internal Audits and as an Internal Auditor. She has also worked as a Budget Analyst. As Purchasing Manager, the positions organizationally reporting to Smith are three specialists, a procurement specialist II, a registration specialist, a product buyer, a P card auditor, a procurement specialist, a procurement clerk, and a an employee that works with employee travel (part time). Attorney Cadesha West, Office of Legal Affairs, provides legal support for purchasing. West is entering her second year in this function.

The District's procurement function within the finance division functions as a decentralized purchasing department. Purchasing has not hosted or held any training for District employees related to procurement policies and processes. Similarly, the District has not had a "how to do business with the District" meeting (for potential vendors) in at least five (5) years. Notwithstanding, in 2018, attorney West began training employees, in a limited capacity, regarding the use of a contract repository system that the District started using in 2018. Similarly, the District's procurement related policies have not been reviewed and updated in several years.

In 2018, the District purchased a contract management system (doc express) – and West has delivered training to principals and some division chiefs on using the system to facilitate contract review. This system was implemented to address the problem of contracts not being executed and returned to the purchasing department. In addition, division chiefs were signing contracts on behalf of the District as Green's designee without authority.

The District's procurement policies are found in the D (Fiscal Management) section of board policies. Policies and regulations, respectively, DJE (last updated 12/5/2015), DJE-

R(1) (last updated 12/7/2015), DJE-E(1) (last updated 3/21/12) and DJEG (last updated 11/10/2003) guide purchasing and procurement processes.

District policy DJE requires the following with respect to competitive selection:

A. Competitive Selection of Vendors for Capital Projects

1. Purchases or contracts with a total estimated cost of \$5,000.00 or less shall be made at the discretion of the District.
2. Purchases or contracts with a total estimated costs of \$5,000.01 to \$99,999.00 shall be made on the basis of at least two written quotations and selected based on objective criteria of performance and ability to execute.
3. Purchases or contracts with a total estimated cost of \$100,000.00 or mote shall be awarded through a written competitive sealed bid process to the lowest responsible, responsive bidder or through a competitive request for proposal process where the offer deemed to be most advantageous to the District may be selected. The decision whether not use a competitive sealed bid or a competitive request for proposal shall be made by the Superintendent or his\her designee, based on sound business judgment and the best interest of the District.
4. Contracts for professional services, as defined above, shall be awarded in the manner best suited to allowing a full assessment of professional abilities and other relevant criteria, while also ensuring an open and fair selection process that engenders public confidence. Competitive bidding seldom will be the best method for selecting professional services.
5. Proof of appropriate insurance shall be required for all bids or proposals with a total estimated cost of \$100,000.00 or more. Payment, performance, and bid bonds in the amount of 5% of the bid or proposal shall be required for all construction contracts of \$100,000.00 or more.
6. Bidder on capital projects of \$50,000.00 or more are required to provide a list of subcontractors whose contracts will exceed five percent of the general contract. Bid requests must not be divided into smaller units in order to circumvent this policy.
7. To the extent applicable, all capital project solicitations shall meet the requirements of Chapter 91 of Title 36 of the Georgia Code, the Georgia Department of Education Rules and Regulations applicable to construction projects, and any other applicable state or federal law.

8. Prior to issuing a request for proposal on a capital project, the Superintendent or his/her designee shall obtain a letter from legal counsel stating that the proposal has been reviewed and meets the criteria required by O.C.G.A. §§ 36-91-20 and 36-91-21.

#### B. Competitive Selection of Vendors for Non-Capital Projects

1. Purchases or contracts with a total estimated cost of \$5,000.00 or less shall be made at the discretion of the District.

2. Purchases or contracts with a total estimated cost of \$5,000.01 to \$99,999.99 shall be made on the basis of at least two written quotations and selected based on objective criteria of performance and ability to execute.

3. Purchases or contracts with a total estimated cost of \$100,000.00 or more shall be awarded through a written competitive sealed bid process to the lowest responsible, responsive bidder, or through a competitive request for proposal process where the offer deemed to be the most advantageous to the District may be selected. The decision whether to use a competitive sealed bid or a competitive request for proposal shall be made by the Superintendent or his/her designee, based on sound business judgment and the best interest of the District.

4. Contracts for professional services, as defined above, shall be awarded in the manner best suited to allowing a full assessment of professional abilities and other relevant criteria, while also ensuring an open and fair selection process that engenders public confidence. Competitive bidding seldom will be the best method for selecting professional services.

#### C. Exceptions to Competitive Selection

1. All exceptions to competitive selection must be properly documented in the project file.

2. These exceptions allow staff to select vendors without employing the competitive selection methods described above. Unless otherwise stated, however, approval at the appropriate level of authority is still required.

3. Use of the competitive selection measures described above is not required when:

a. The purchase or contract is necessitated by an emergency, defined as any situation resulting in imminent danger to the public health or safety or the loss of an essential

governmental service. Only the Superintendent or his\her designee is authorized to declare an emergency. Emergency purchases shall be made using whatever process will enable the purchase to be made at the least cost to the District under the circumstances. Emergency purchases of \$25,000.00 or more require prior approval by the Superintendent and timely notification to all Board members. Any contract or purchase awarded in an emergency situation shall be ratified by the Board as soon as practicable but not later than the Board's next regular meeting, and the name of the emergency shall be described in the Board minutes.

b. The required goods or services are available from only one source, provided a reasonably diligent search has been made for other vendors or other appropriate information has been obtained to determine a vendor's sole source status. Written documentation of such determination shall be maintained in the project files. For capital improvement projects, specified equipment and materials of a proprietary nature will be identified and submitted to the State DOE Receiving State Capital Outlay Funds 160-5-4-.16(7).

c. The purchase is made through contracts formally solicited and obtained by the State of Georgia, the federal government, or some other governmental agency. The Purchasing Department shall be authorized to make purchases through inter-governmental and educational cooperative, alliances, and consortiums to achieve cost savings and administrative efficiencies based on economics of scale.

d. The expenditures is for personal employment services rendered by full-time or part-time employees who are under the control of the Board and are paid wages for their service. Employment of personnel is handled by the Department of Human Resources.

e. The expenditure is for special education services or other student services required by state or federal law.

f. The purchase is for instructional materials or programs selected in accordance with Board Policy IFA or selected by qualified professional personnel, based on sound pedagogical judgment and the best interest of the District, and acting at the direction of the Superintendent or his\her designee. The types of instructional materials and programs covered by this exception include:

(1) Instructional programs and textbooks;

(2) Supplemental materials needed for instruction in the school such as films, slides, video tapes, CDs, DVDs, educational kits, posters, displays, games, computer software, software licenses, subscriptions, newspapers, periodicals, library books, reference

materials, or other instructional material purchased from the publisher, distributor, or agent.

(3) Test, test preparation, and test scoring services of a standardized examination purchased from the publisher or licensed agent;

(4) Membership in various educational or related organizations, agencies or services providing direct benefits to the System;

(5) Instructional material listed on the K-12 Curriculum Supplemental Materials Catalog;

(6) Professional training programs for staff, the selection of which is left to the professional judgment of the administrator responsible for the professional development of the personnel attending or participating; and

(7) Mandated testing, instructional programs, and instructional materials approved by the Georgia Department of Education (GDOE). A copy of the GDOE approval shall be submitted with the request to purchase these materials\items.

g. The purchase is a continuation of an existing purchase agreement, bid, request for proposal, time and material contract, rental, lease, or purchase order duly authorized by the Board or its agent.

h. The expenditure is for maintenance services from the original vendor or an authorized agent of the original vendor and these services cannot be competitively bid.

i. The expenditure is for additional orders of like equipment, materials, supplies, services rentals, or leases previously approved, provided the additional order is at the same or a lower price or the original contract included an automatic price adjustment based on the Consumer Price Index or the Producer Price Index for commodities or services.

j. The contract is for services to be provided by a government agenda.

k. The expenditures is for Workers Compensation and Risk Management insurance claims made under existing legal policy or contract requirements.

The Purchasing Department has a manual on the District's internal share site accessible by employees that serves as a guide for the procurement of non-construction materials, supplies, equipment and services. The District's current procurement policies are also found online. At the outset, the policies listed in the policy manual are outdated. The

outdated manual was still on the share site as recent as October 26, 2018. The date on the manual on the website is July 2011 and is signed by the former Chief Financial Officer Marcus T. Turk. Further, the manual still includes the following [outdated] policies:

Purchasing DJE 8/31/2010  
Purchasing DJE-R 9/11/2000  
Purchase Orders and Contracts DJE-R 11/10/2003  
Professional Personnel Ethics GBU 8/31/2010

Because the manual is outdated, language and guidance included is generally not accurate and/or consistent with current policy and practice. For example, according to the manual, "Purchases of items totaling \$5,000 or less shall be made at the least cost to the District." According to current policy however, "Purchases or contracts with a total estimated cost of \$5,000 or less shall be made at the discretion of the district. Similarly, according to the manual, "Purchases or contracts with a total estimated cost of \$5,000.01 to \$25,000.00 shall be made on the basis of at least two written quotations. However, according to current DBOE policy DJE, "Purchases or contracts with a total estimated costs of \$5,000.01 to \$99,000.00 shall be made on the basis of at least two written quotations and selected based on objective criteria of performance and ability to execute." This is policy for both capital and non-capital projects. The handbook still includes language requiring three quotations for purchases or contracts with a total estimated cost of \$25,000.01 to \$49,999.99. However, DJE does not include such requirement or language. Likewise, the handbook still includes a requirement for purchases or contracts with a total estimated cost of \$50,000 or more shall be awarded through a written sealed, competitive bid process to the lowest responsible, responsive bidder, or through a competitive request. Again, this language and requirement is inconsistent with current DBOE policy which requires that purchases of \$100,000 or more shall be awarded through a written competitive sealed bid process. Because of the outdated information, other processes described in the manual are also inaccurate. Further, the Policy manual also contains an appendix with outdated Board policies.

In addition to the above policies, Board Policy DFK offers some guidance regarding gifts and bequests, particularly relevant to procurement, is guidance related to monetary gifts for special projects (i.e. by school foundations, booster clubs, etc.) Specifically, Policy DFK (last revise 7/20/2009) provides in pertinent part:

All monetary gifts for special projects must be approved by the Superintendent. All monetary gifts to be used for special projects must be transferred to the School System and the School System must be the entity that enters into any written agreement with contractors to perform work for the proposed construction/improvement project. The School System, with use of the gifted

funds, will be responsible for obtaining any services needed for the project and for securing qualified contractors for the project pursuant to Board Policy DJE and applicable state law regarding public entity bidding. Notwithstanding any other language in this policy, all monetary gifts for special projects that exceed \$5,000.00 must be presented to the Board for formal acceptance and approval.

The individual and/or organization wishing to make a monetary gift to the School System for a special project must work in conjunction with the school or director affiliated with the facility to which the proposed construction or improvement will be made and must adhere to the following approval procedure:

The principal/director must provide the appropriate district administrator with a detailed memorandum regarding the proposed project that must include the following information:

- General description of proposed construction work to include exact location and size;
- Sources of funding and amount of funding to be gifted;
- Any obtained estimates for the proposed construction work (including any consultant services);
- Any plans or specifications created for the proposed construction work;
- Understood scope of work to be undertaken for the proposed construction work;
- Proposed time frame for construction and known impact of the proposed construction on the school and students;
- A copy of any agreement or contract entered into by any person or organization responsible for the monetary gift and any consultant firm providing services for or related to the proposed construction work;

The district administrator will review the memorandum and any supporting documents or plans and determine accuracy, completeness, and the feasibility of the proposed construction/improvement project. The district administrator will communicate to the principal/director as to whether any additional information is



needed and as to any concerns regarding the intended construction/improvement project and funding.

Several employees were interviewed regarding the support received from the purchasing department related to procurement of goods and services, and their specific departmental practices related to procurement. The general theme of those interviews revealed the following:

- Different divisions, and even different employees in those divisions, have adopted their own practices and best practices;
- There are no consistent procurement practices being followed regarding how policy is implemented;
- District staff, entities that could potentially do business with the District and parent volunteer organizations are in need of guidance and training regarding procurement policies, rules and expectations;
- There is no consistent consideration of ethics and fiscal responsibility related to the procurement process;
- There are opportunities for impropriety built in the procurement process and policies, particularly related to the purchase of academic materials and services where, as shown above, most purchases are excepted from the competitive selection processes and
- Board Policies related to procurement are in need of updating.

### III. Findings

The assessment revealed that while the procurement division (the decentralized division and the functions in the various operational divisions) is functioning, due to inadequate and nonexistent training and education, lack of consistency and lack of emphasis on standardized processes, and lack of procurement best practices, there is a potential for both negligent and potential misappropriation of public funds and risk of liability exposure to the District. The current District culture is one in which ethics and integrity in procurement has not been emphasized. Similarly, compliance with policies and practices has not been emphasized as a priority. Various employees that manage procurement throughout the District have adopted systems that seem to work best for them. And while some of these methods may be efficient and effective, they are not standard protocol throughout the District and therefore the most effective practices may represent an anomaly. Finally, because the District has not engaged with the public and surrounding community regarding doing business with the District, there has been no communication from the District flowing the business community to foster public confidence in the integrity

of the District's procurement process. Further, contract files reviewed evidenced that improvements are needed for documenting the procurement method used, cost analysis and justifications for contractor selections. In addition, the overall management of contracts, including oversight on contract terms, contract deliverables, and payments needs to be strengthened.

Of persons interviewed, there was a 100% consensus that procurement guidance and training was needed and better understanding and explanation of procurement functions, availability of support and processes. West and Smith also agreed that training and best practices are needed and are a near goal in the future. Interviews also revealed that some internal divisions viewed IT and Operations as the "gold standard" of examples of how procurement should be done in the District.

Interviews also revealed that there is no guidance or best practices that have emanated from procurement regarding meeting with vendors and potential vendors. Accordingly, divisions have established their own rules regarding meetings with potential vendors. Related, there is no consistent disclosure of whether potential vendors selected through the procurement process – noncompetitive – have any prior relationship, including business or personal, with District employees.

The assessment also revealed that divisions have established their own best practices and attention to integrity and ethics in procurement, unrelated to any guidance or emphasis from the purchasing department – which 100% of interviewees acknowledged had never been addressed for them by purchasing. The common thread in all these departments was the requirement for additional monitoring and rules connected to most of their procurements: IT (e-rate); Nutrition Services (USDA regulations and audits) and Operations (Georgia law and other State Department for Education rules). This is in stark contrast to Academics, Curriculum and Instruction (and its various components) which is primarily internally driven and not subjected to any significant internal or external monitoring or audit functions – which is supported by procurement policy exclusions. Finally, with respect to academics and curriculum, because of the nature of good and services procured in these areas, and the exceptions from DJE of these types of goods and services from procurement processes, there is potential for misuse and abuse of processes, which could not fully be gleaned or determined from this assessment.

Likewise, the District has no rules, guidance or direction on how employees should interact with potential vendors in general, and to avoid the appearance of impropriety. For example, it is widely known that certain types of vendors host conferences and fairs, and often will pay for District employees to attend those conferences and/or pay staff to be involved in those conferences and trade events. After those events, those potential vendors will reach out to staff for lunches, meetings and other interactions which may not

be extended to or open to other potential vendors. This assessment did not glean specific data regarding staff interactions with vendors which might appear to be inappropriate.

Finally, during the process of conducting the assessment, we received notice of a matter which highlighted the need for training and guidance to community and parent/booster organizations regarding their requirements to adhere to the District's procurement policies, and the need for the development of expectations and rules for those organizations in transacting business with or purportedly on behalf of the District. In this instance, it was discovered that an elementary school foundation entered into an agreement for professional services without following any of the rules set forth above for procurement, and entered an agreement which is only commercial beneficial for the provider of the professional services. As a result, this led to undue administrative time for District staff trying to research and resolve the errors committed and determine the best way to move forward in a manner which complies with District procurement policies, as possible.

#### **IV. Recommendations**

Below are specific, actionable recommendations based on key themes that emerged as a result of the assessment. Most, if not all, would have no budgetary impact, but will require commitment and attention. It is recommended that the District work to ensure greater transparency and accountability within its procurement governance structure by developing clearly documented policies and procedures within the procurement process, training and accountability and ensuring that all employees have access to and a basic understanding of the procurement processes. The Superintendent and appropriate finance staff must lead and set the ethical tone for procurement by stressing the importance of training and adherence to rules and regulations. It is further recommended that the finance department establish guidelines for contracting and procurement files to include a requirement for consistent information, particularly which identifies and demonstrates how processes and costs were determined, how vendors were selected and disclosure of any relationship or interaction with key employees which could cause the selection process to be questioned. The following best practices should also be considered:

##### *Best Practices*

Best practices are essential for an efficient and accountable procurement function within the District, and should be implemented along the following criteria:

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**ATTORNEY/CLIENT AND WORK PRODUCT PRIVILEGED**

- Transparency — comprehensive and clear procurement policies and procedures;
- Accountability — clear lines of procurement responsibility, authority, and oversight;
- Integrity — public confidence earned by avoiding any conflicts of interest, maintaining impartiality, avoiding preferential treatment for any group or individual, and dealing fairly and in good faith with all parties;
- Competition — specifications that do not favor a single source and solicitations that are widely publicized to benefit from the efficiencies of the market;
- Training - as discussed above, all persons interviewed indicated that they lacked training on the District policies and expectations surrounding procurement, and had some lack of understanding of the procurement laws, rules, and internal policies and procedures. While purchasing consistently provides guidance on updates and changes to rules related to p-cards and rules that apply to bookkeepers, this is not done from a top down perspective related to procurement. Thus, it then becomes an individual employee's responsibility working within the procurement processes to unilaterally understand the importance of adhering to the procurement rules. Failing to do so exposes the district to greater risk of errors and noncompliance and could erode public confidence in the process;
- Consistent File Maintenance - the lack of uniformity reduces operational efficiency and increases the risk that required contract documents are incomplete or lost. In addition, since only individual staff members may know the status and location of contracts and files, this institutional knowledge can be lost over the course of normal employee turnover and present issues when questions arise regarding procurements years later.
- Sole Source Procurement - noncompetitive sole source procurement is a sensitive topic, and while sole source procurement is not categorically bad and may sometimes be the appropriate method under certain circumstances, a regular default to this system in obtaining goods and services, without any best practices, can expose the District to lack of public trust and potential protests.
- Best practices include:

- Provide a standard template for a written justification of selections, particularly those that are excluded from the competitive selection process, which is used consistently;
- Documented research conducted to verify the potential vendor as the only known source;
- A description of the marketplace, including distributors, dealers, resellers, etc.;
- Centralize review and approval of sole source requests;
- Publish sole source requests for public notice on the District's website to allow potential suppliers to view and indicate interest in bidding on the proposed sole source procurement, in which case competitive process should be considered
- Maintain a listing of all sole sources purchases and contracts
- Ethics and compliance –
  - Establish a well-defined code of ethics for procurement that clearly defines acceptable and unacceptable actions and actions, and identify a single central resource available to all employees for guidance on ethics questions and incidents;
  - Include ethics procurement principals in yearly ethics training for all employees and get signed affidavits of disclosure;
  - Consider a vendor code of ethics and collect affidavits as part of the process affirming observation from all suppliers performing work for or responding to solicitations from the District;
  - Avoid the appearance of conflicts of interest in procurement;
  - Avoid any private or professional activity that would create a conflict of interest or the appearance of impropriety;
  - Avoid engaging in personal business with any vendor representative or similar person;
  - Avoid all potential for nepotism;
  - In instances where individuals procuring items have intentionally violated procurement requirements, seek appropriate remedies, including disciplinary action, to ensure there is an understanding that fraud, waste, and abuse will not be tolerated;
  - Expand individual organizational knowledge and competence through both formal and informal learning – formal can come in the form of organized training, and informal learning can come from experience and greater communication and information sharing with stakeholders;

- Create clear and consistent process to be followed by every end user so that that is a clear audit and evaluation trail; and
- Periodic review of policies, manuals and controls to ensure they reflect regulatory and operational change.

## **V. Next Steps**

It is recommended that counsel work with purchasing and the Office of Legal Affairs for the following most immediate deliverables:

- Policy review, updates, edits and submission for Board Approval
- Policy review specifically related to the exceptions from noncompetitive processes to determine whether those policies are consistent with best practices today and similar school districts
- Development of training and best practices
- Review, update and edit of forms used throughout District
- Development of additional standard forms and templates as needed
- Format for contract/procurement files
- Development of a procurement code of ethics
- Schedule in immediate future sessions regarding how to do business with the District