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August 19, 2014

Members of the Missouri State Board of Education  
and  
Dr. Chris L. Nicastro, Commissioner  
Department of Elementary and Secondary Education  
Jefferson City, Missouri

This letter relates to our review of the procurement process used by the Department of Elementary and Secondary Education (DESE) to award the contract for a study of options to address chronic under-performance in struggling school districts (School District Governance Reform) to The Mind Trust via the Cities For Education Entrepreneurship Trust (CEE-Trust), on August 8, 2013. To avoid a conflict of interest, the State Auditor has recused himself from the report pertaining to this contract and has directed me to oversee procedures performed by the State Auditor's professional audit staff.

The objectives of our review were to determine if the DESE:

1. Utilized effective procurement processes to ensure the contract was awarded in a fair and unbiased manner.
2. Eliminated potential conflicts of interest between funding entities and potential contractors.
3. Maintained sufficient documentation to support the decisions of the bid evaluation committee.

Our review determined (1) the DESE did not ensure personnel selected to evaluate bids received for this contract were independent and free of bias, (2) the DESE accepted grant monies to fund the study from a foundation affiliated with CEE-Trust, a potential conflict of interest that raises questions regarding the independence and objectivity of the report's findings, and (3) documentation prepared by the bid evaluation committee does not adequately support the significant variances in subjective points awarded to each bid, and the difference in subjective points awarded by the DESE was not reasonable when compared to other contracts awarded. We did not attempt to determine the need for the contract or to evaluate the reasonableness of the resulting recommendations made by CEE-Trust at the study's conclusion.

**Methodology**

The methodology to accomplish our objectives included (1) reviewing and evaluating the bids and bid evaluation documents related to the contract for a study of the options to address chronic under-performance in struggling school districts, (2) reviewing bid proposals, evaluation documents, and other pertinent documents prepared by the DESE and the Office of Administration (OA) relating to other DESE

contracts, (3) obtaining an understanding of applicable legal provisions, and (4) reviewing the publication *State and Local Government Procurement: A Practical Guide* issued by the National Association of State Procurement Officials (NASPO) as criteria for bidding and procurement best practices.

## **Background**

From April through May 2013, DESE personnel held discussions with two Kansas City area foundations and CEE-Trust regarding the impact of potential legislation on the Kansas City Public Schools and other unaccredited school districts in the state. This legislation, Senate Bill 125, was passed and signed into law, effective August 28, 2013.

Personnel from the foundations, CEE-Trust, and the DESE met to discuss CEE-Trust conducting a study of state options for school district governance reform. DESE personnel indicated they were unaware of other vendors who had the national exposure and experience, or had performed similar work, in developing recommendations related to alternative governance structures for a school district. DESE personnel began drafting a Memorandum of Understanding (MOU) requiring the CEE-Trust to conduct a study that would be externally funded by the two foundations at a cost of \$375,000. DESE personnel stated it was the original intent of the two foundations to pay CEE-Trust directly for the cost of the study, with the DESE not being involved in funding the study or handling the funding for the study. In late May 2013, the DESE contacted CEE-Trust to determine if CEE-Trust was a single/sole source vendor for the services to be provided. However, the DESE and CEE-Trust determined that CEE-Trust would not be eligible to be a single/sole source vendor. In June 2013, the State Board of Education received a report regarding the draft MOU, but raised concerns that the DESE was proposing to move forward with a group that was not identified through the typical procurement process.

Section 34.040, RSMo, and the OA's procurement policy requires bids be obtained for purchases over \$3,000. In addition, pursuant to Section 34.100, RSMo, the OA may delegate procurement authority to state agencies. On June 27, 2013, the DESE requested special delegation of authority from the OA for procurement of the School District Governance Reform plan, and was granted such authority by the OA on July 9, 2013. As a result, the DESE was responsible for advertising, soliciting competitive bids, selecting contractors, and executing binding contracts for services to be performed. Section 34.040, RSMo, required the DESE to solicit competitive bids, evaluate bids in accordance with established evaluation criteria identified in the bid solicitation document, and select the contractor based upon the lowest and best bid available at the time of selection.

The DESE advertised for and received bids from four vendors in July 2013, and awarded the contract on August 8, 2013, to The Mind Trust via CEE-Trust with a total cost of \$385,000. The contract cost was solely funded by grants the DESE received from the two foundations in the amount of \$192,500 each. Contrary to the initial intent of the foundations to pay CEE-Trust directly, the foundations instead provided the grant monies to the DESE, and the DESE then made the contract payments to The Mind Trust.

## **Results, Conclusions, and Recommendations**

### **Independence and Conflict of Interest**

The DESE did not ensure the independence of bid evaluation committee members. Also, the DESE accepted grant monies to fund the study from a foundation that is a member of the contract vendor, a potential conflict of interest, and raises questions regarding the independence and objectivity of the report's findings.

The CEE-Trust may have benefited from favorable treatment during the evaluation process because DESE employees had been working with the firm for several months before competitive proposals were

solicited. Two of four DESE employees comprising the bid evaluation committee had prior knowledge of and were involved in discussions with the CEE-Trust and helped draft the MOU. This prior relationship with the firm may have impaired the evaluators' ability to act impartially when evaluating the bids. According to Chapter 7 of the NASPO publication (best practices) *State and Local Government Procurement: A Practical Guide*, the independence of the evaluation committee is essential to its fairness.

In addition, the DESE did not take action to eliminate potential conflicts of interest before accepting grant monies to fund the study. One of the foundations contributing \$192,500 to fund the study is a member of CEE-Trust, and began working with CEE-Trust as early as December 2012, on a project regarding a comprehensive analysis of unaccredited school districts. According to the organization's website, CEE-Trust works with a growing network of city-based non-profits and foundations that are leading efforts to dramatically improve public education in their cities. CEE-Trust currently has 35 members and affiliates working in cities across the United States. While representatives of the foundations were not included on the bid evaluation committee, foundation representatives were involved in the initial discussions with CEE-Trust and in drafting the MOU.

CEE-Trust bid documents mentioned three fee-for-service consulting projects CEE-Trust was currently engaged in. Two of these projects related to CEE-Trust providing advice to two foundations in support of education reform and these foundations were identified as CEE-Trust members. However, CEE-Trust did not disclose in the bid that one of the foundations partially funding the study was also a member. Accepting grant monies for direct expenses of a contract from entities that are associated with the contract vendor is a potential conflict of interest, and any findings resulting from the study may not be deemed independent and objective.

We recommend the DESE ensure future evaluation committees evaluate vendor proposals in a fair and impartial manner. In addition, the DESE should ensure potential conflicts of interest are eliminated before accepting funds from entities affiliated with a contractor.

### **Evaluation of Subjective Points**

The DESE did not ensure documentation prepared by the evaluation committee was sufficient to support the subjective points awarded to each bidder. In addition, the difference in subjective points awarded by the DESE was not reasonable when compared to other contracts awarded.

The DESE awarded the contract to the vendor that scored the highest based on the evaluation criteria. The evaluators used both objective analysis and subjective judgment in conducting a comparative assessment of the bids received. The evaluation criteria consisted of an objective analysis based on cost (45 maximum points), subjective judgment criteria based on experience, reliability, and expertise of personnel (45 maximum points), and method of performance (10 maximum points), for a total maximum score of 100 points. According to the bid solicitation, the subjective evaluation of experience, reliability, and expertise of personnel would consider information regarding the bidder's organization, experience in past performances related to the requirements of the bid, and qualifications of personnel. For method of performance, the subjective evaluation would consider the bidder's proposed methodology for conducting the study. The bids received and the points awarded for the School District Governance Reform plan are as follows:

	Bid Amount	Cost Points	Experience, Reliability, Expertise	Method of Performance	Total Assigned Points
CEE-Trust	\$385,000	15	45	10	70
Bid #2	\$124,700	45	20	4	69
Bid #3	\$196,872	29	15	3	47
Bid #4	\$224,976	25	5	0	30

The low cost bidder appears to have more experience and professional expertise, but received only 24 total subjective points while CEE-Trust, the highest cost bidder, received the maximum total of 55 subjective points.

	Experience, Reliability, Expertise	Subjective Points Assigned	Method of Performance	Subjective Points Assigned	Total Subjective Point Assigned
CEE-Trust	<ul style="list-style-type: none"> <li>* Launched in June 2010 as an initiative of the Mind Trust founded in 2006</li> <li>* Currently engaged in 3 consulting projects</li> <li>* 3 professionals with a combined total of 35.5 years of experience</li> </ul>	45	<ul style="list-style-type: none"> <li>* 3 professionals to manage subcontractors</li> <li>* Cannot determine economic impact to Missouri, but will have local subcontractors</li> </ul>	10	55
Bid #2	<ul style="list-style-type: none"> <li>* Founded in 1979</li> <li>* Currently engaged in district projects in 7 states</li> <li>* 8 professionals with a combined total of 257 years of experience</li> </ul>	20	<ul style="list-style-type: none"> <li>* 8 professionals to manage 19 employees</li> <li>* Economic impact to Missouri is that improving student outcomes would improve economy in the state</li> </ul>	4	24
	Assigned Point Difference	<u>25</u>	Assigned Point Difference	<u>6</u>	
			Total Assigned Point Difference	<u>31</u>	
			Percentage Difference (31) of Total Subjective Points Possible (55)		<u>56%</u>

The allocation of total points between the objective analysis and subjective judgment criteria appeared comparable to other service type contracts we reviewed that had been awarded by the DESE, as well as other contracts awarded by the OA on behalf of the DESE. However, the subjective point difference between these two bids represents 56 percent of total subjective points, which does not appear reasonable when considering other DESE contracts. For example, we reviewed 9 contracts awarded by OA on behalf of DESE from May through September, 2013, and noted the subjective point percentage difference for the 2 highest evaluated bidders for each of these contracts ranged from 4 to 17 percent.

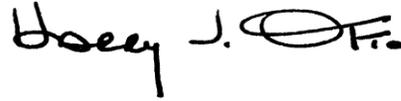
While the evaluation committee provided comments regarding the subjective points awarded for each bid, the comments provided for the low cost bid do not appear adequate to substantiate the significant point differences when compared to the CEE-Trust bid. In addition, the comments provided for the CEE-Trust bid do not appear sufficient to support maximum points awarded for both subjective evaluation categories.

The NASPO best practices state it is critical that the written record of each key step in the procurement be sufficient to demonstrate that decision. The NASPO best practices further state the procurement officer needs to look at the documentation in the file from the view of competing bidders, the public, the press,

and auditors and ask whether it tells a reasonable story about the process, particularly about the basis for award.

We recommend the DESE ensure adequate documentation is prepared by the evaluation committee to support the points awarded to bidders.

Sincerely,

A handwritten signature in black ink that reads "Harry J. Otto". The signature is written in a cursive style with a large, stylized "H" and "O".

Harry J. Otto, CPA  
Deputy State Auditor

CC: Honorable Jeremiah W. (Jay) Nixon, Governor

Douglas E. Nelson, Commissioner  
Office of Administration