



Office of the Auditor General

Investigative Audit Report

Michigan Department of Education's Assessment of Digital Literacy Pilot Project Grant and Contract Awarding Processes

August 2019

State of Michigan Auditor General
Doug A. Ringler, CPA, CIA

The auditor general shall conduct post audits of financial transactions and accounts of the state and of all branches, departments, offices, boards, commissions, agencies, authorities and institutions of the state established by this constitution or by law, and performance post audits thereof.

The auditor general may make investigations pertinent to the conduct of audits.

Article IV, Section 53 of the Michigan Constitution



OAG

Office of the Auditor General

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Doug A. Ringler, CPA, CIA
Auditor General

August 23, 2019

Dr. Michael Rice
Superintendent of Public Instruction
Michigan Department of Education
John A. Hannah Building
Lansing, Michigan

Dear Dr. Rice:

Consistent with our standard practices upon completing an investigative audit, we are issuing our investigative audit report on the Michigan Department of Education's Assessment of Digital Literacy Pilot Project Grant and Contract Awarding Processes.

Copies of this report are being forwarded to various relevant entities and legislative committees. Also, the report may be viewed on our public Web site at audgen.michigan.gov.

Sincerely,

Doug Ringler
Auditor General

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EXECUTIVE SUMMARY AND
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EXECUTIVE SUMMARY

BACKGROUND

The Legislature appropriated \$250,000 in Section 104e, Public Act 143 of 2017 to the Michigan Department of Education (MDE) for the implementation of an assessment of digital literacy preparation pilot project for pupils enrolled in grades K to 8. Section 104e required that MDE allocate the funding to a local school district that has a partnership with a third party experienced in the assessment of digital literacy and the preparation of digital literacy skills.

The Office of the Auditor General's (OAG's) Fraud Investigative Services Team investigated MDE's process for awarding the Section 104e grant to a district and the district's ensuing contract award to a third-party vendor (Vendor A) after receiving allegations of conflicts of interest and potential improprieties.

INVESTIGATION CONCLUSIONS

1. We did not identify any MDE employees involved in the administration of this grant who had a conflict of interest with the district or Vendor A. However, we did identify a conflict of interest between a district employee, who was the de facto Section 104e contract manager, and Vendor A.
2. MDE did not sufficiently address irregularities with the development of the district's request for proposal (RFP), other conflicts of interest, and the district's process to score the vendors' bids.

The circumstances illustrated in this report demonstrate opportunities for MDE to improve its grants management procedures in order to better ensure fair and objective third-party vendor selection processes and identify potentially less-than-arm's-length transactions that may sully public perception regarding the appropriate use of State funding. Although several circumstances in this report resulted in Vendor A having an unfair advantage in the district's competitive selection process, our scope did not include and we did not conclude on the vendor's capacity to successfully carry out its contractual responsibilities.

MDE RESPONSE

MDE indicated that it agreed with the investigation conclusions and will clarify the responsibilities and procedures of the MDE Grants Coordination Unit and program office staff administering grants.

BACKGROUND FOR OAG INVESTIGATION, INVESTIGATION ACTIVITIES, AND INVESTIGATION CONCLUSIONS

BACKGROUND

MDE issued its RFP for the Section 104e grant on March 16, 2018 and received no applications by the initial March 30, 2018 closing date. MDE then extended the application period to April 19, 2018 and received one application from a local school district. MDE awarded the grant to this district on May 2, 2018. The district, with assistance from its partnering intermediate school district (ISD), then issued an RFP to select a third-party vendor partner on May 23, 2018. The district selected the winning vendor (Vendor A) on June 21, 2018.

In fall 2018, we received allegations that a conflict of interest existed between an MDE employee, a district employee, and Vendor A that inappropriately influenced MDE's grant award to the district and the district's contract award to Vendor A.

We initiated a limited scope, investigative audit in January 2019 of the grant and contract awarding processes.

INVESTIGATION ACTIVITIES

Our investigation activities consisted primarily of inquiries and the examination of selected procurement related records and other documentation. This report does not constitute an audit or attestation engagement conducted in accordance with generally accepted government auditing standards.

We reviewed MDE's RFP and the district's related grant application and ensuing RFP and corresponding vendor bids, along with documentation supporting MDE's and Vendor A's creation and review of the same, as applicable. We reviewed correspondence between MDE employees; the district and its partnering ISD employees involved in the MDE grant and district contract awards; and other individuals within and outside of MDE involved with the development of the Section 104e legislation and the resulting grant and contract awards. We interviewed MDE and district employees involved in the creation of their respective RFPs and the review and evaluation of the grant applications and bid proposals received in response to the RFPs.

INVESTIGATION CONCLUSIONS

- 1. We did not identify any MDE employees involved in the administration of this grant who had a conflict of interest with the district or Vendor A. However, we did identify a conflict of interest between the district's de facto Section 104e contract manager and Vendor A (see part 2.c.).**

Although we identified an MDE employee who served on Vendor A's board of advisors, this individual was not involved with and did not appear to have any influence over

MDE's grant award to the district or the district's subsequent contract with Vendor A.

2. MDE did not sufficiently address irregularities with the development of the district's RFP, other conflicts of interest, and the district's process to score the vendors' bids.

As part of its RFP, MDE required grant applicants to include a detailed plan in their project plan narratives to develop and execute an RFP to select a qualified third-party vendor partner through a competitive bid process, rather than requiring local school districts applying for the grant to have an existing partnership with a qualifying vendor, as required by Section 104e. The vendor needed to possess the capacity to provide an assessment of digital literacy skills, curriculum resources for students, and professional learning for educators and to have experience serving school districts in Michigan and other states.

MDE's internal policy, Development of Grant Criteria and Rubrics, states that program offices are to ". . . follow the legislation exactly when developing grant criteria and rubrics." MDE informed us that it allows program office staff to add criteria and that it follows up with legislative staff to better determine the intent of legislation when it is unclear to MDE. MDE's internal e-mail communications demonstrated that MDE sought such clarification to determine if the Legislature intended to designate this grant funding to a particular school district and learned that it did not. MDE informed us that it made the change to require a competitive vendor selection process so that multiple vendors could compete for the grant.

Prior to submitting a grant application, the district and its partnering ISD advised MDE that they had an existing partnership with a vendor and requested MDE's permission to use this vendor in the project and omit the creation of the RFP portion of its application. MDE advised that there were at least four possible vendors that may be interested in the contract and that, in order to provide a fair and open process, the district must include the RFP portion in its application and select a vendor through a competitive solicitation process.

MDE consulted with and advised the district regarding the preparation of its grant application and played an active role in its vendor selection process. Given this involvement, MDE knew or should have known of, and taken action to address, the following circumstances that undermined the fairness and openness of the district's vendor selection process:

a. Vendor A and the ISD played a significant role in helping the district develop its grant application,

including developing the scoring criteria that the district included in its RFP and used in its vendor selection process (see part 2.b.). Vendor A prevailed during the district's bidding process.

After closing its bidding process but before evaluating the two bids that it received in response to the RFP, the district perceived "political sensitivity" related to its impending vendor selection. In response, the district and the ISD disclosed to MDE that the ISD had an existing long-term business and financial relationship with one of the two vendor bidders (Vendor A) that included the ISD getting a percentage of the vendor's revenue. They also disclosed that Vendor A had been involved in the initial grant discussions with the district and the ISD and had helped develop the district's initial grant proposal and RFP. As mentioned previously, the district had originally planned to name Vendor A as its third-party vendor in its grant application because it originally believed that Section 104e required an existing partnership.

To mitigate the conflicts of interest, the district and the ISD proposed removing the ISD's representative from the bid scoring and vendor selection process and waiving any payments that Vendor A would owe the ISD for revenue associated with the pilot project, if it were to win the contract. MDE advised the district and the ISD that it was agreeable to these proposals.

While these proposals appeared to address the conflict of interest between the ISD and Vendor A, MDE did not acknowledge or address the conflict of interest created by Vendor A's and the ISD's participation in developing the scoring criteria included in the district's grant application and subsequent RFP.

According to the National Institute of Governmental Purchasing (NIGP), under no circumstances should a vendor be allowed to write the criteria for an RFP that it will be bidding on. In addition, individuals should disqualify themselves from procurement transactions when there is a conflict of interest or the appearance of a conflict of interest, such as having a bias toward a particular vendor in the procurement.

- b. The district, the ISD, and Vendor A modified 1 of the criterion defined in Section 104e and MDE's RFP and added 2 other criteria not required in**

Section 104e or MDE's RFP. These modified and added criteria ultimately benefited Vendor A.

The modified and added criteria accounted for 35% of the available points in the district's proposed bid scoring rubric and required that the bidding vendors:

- Have experience with "similar projects" in Michigan. The district's scoring rubric did not give credit for relevant experience working in other states. Section 104e and MDE's RFP required having experience specifically in the assessment of digital literacy and the preparation of digital literacy skills and demonstrable experience serving districts in Michigan and other states. Vendor A's experience was primarily in Michigan.
- Support other Michigan educational initiatives, such as Mozilla Backpack, which was not required in the Section 104e or MDE's RFP criteria. Vendor A used Mozilla Backpack.
- Contribute materials produced during the project to Michigan's Open Educational Resource (OER) initiative, which was not required in the Section 104e or MDE's RFP criteria. This benefited Vendor A because it did not have existing proprietary digital literacy assessment and preparation product materials that it licensed or sold to its customers; however, it planned to develop these items with its contract revenues.

While one or more of these criteria may have been valuable to a Statewide rollout of a digital literacy assessment and preparation program, the need for them in the pilot project was dubious, as evidenced by their absence from Section 104e and MDE's RFP.

MDE accepted the district's proposed scoring criteria when it approved the district's application, as is, for the grant award. MDE advised us that it believed the modified and added criteria were consistent with other MDE initiatives and would not advantage one vendor over another.

c. The district's de facto Section 104e contract manager served on Vendor A's board of advisors.

The contract manager helped develop the district's grant application and RFP, scored the third-party vendors' bids, and recommended the winning bidder for approval to the district's Board of Education.

The contract manager informed us that because Vendor A's board of advisors did not have policy-making or oversight responsibilities, receive any form of compensation or ownership interest, and rarely met, he did not believe that he had a conflict of interest. Therefore, he did not consider disclosing his relationship with Vendor A to MDE or recusing himself from the vendor selection process. MDE informed us that it was not aware of the conflict during the vendor selection process.

According to NIGP, individuals should disqualify themselves from procurement transactions when there is a conflict of interest or the appearance of a conflict of interest, such as having a bias toward a particular vendor in the procurement.

d. The district did not use a Statewide advisory committee in the vendor selection process as detailed in its grant application.

The district's grant application detailed a vendor selection process that included a Statewide advisory committee formed by the district and its partnering ISD to refine the RFP, review bid submissions, and select the third-party vendor. However, when 2 (50%) of the 4 advisory committee members (excluding the district's contract manager) did not score the bid submissions, as requested, the district did not follow up with them or attempt to identify other individuals to score the bids. This left only the district's contract manager, MDE's grant manager, and one other individual to provide a Statewide perspective on the quality of the two bids.



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