

DEPARTMENT OF EDUCATION
AND
BOARD OF ELEMENTARY AND SECONDARY EDUCATION
STATE OF LOUISIANA



INVESTIGATIVE AUDIT
ISSUED MAY 18, 2022

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LOUISIANA LEGISLATIVE AUDITOR
MICHAEL J. "MIKE" WAGUESPACK

May 18, 2022

**DR. CADE BRUMLEY, SUPERINTENDENT
LOUISIANA DEPARTMENT OF EDUCATION
AND
JAMES GARVEY, PRESIDENT,
AND MEMBERS
BOARD OF ELEMENTARY AND SECONDARY EDUCATION
Baton Rouge, Louisiana**

We are providing this report for your information and use. This investigative audit was performed in accordance with Louisiana Revised Statutes 24:513, *et seq.* to determine the validity of complaints we received.

The procedures we performed primarily consisted of making inquiries and examining selected financial records and other documents and do not constitute an examination or review in accordance with generally accepted auditing or attestation standards. Consequently, we provide no opinion, attestation, or other form of assurance with respect to the information upon which our work was based.

The accompanying report presents our findings and recommendations, as well as management's response. This is a public report. A copy of this report was submitted to the Governor, the Attorney General, and other public officials as required by state law.

Respectfully submitted,

A handwritten signature in blue ink, appearing to be "Mike Waguespack", written over a circular stamp or mark.

Michael J. "Mike" Waguespack, CPA
Legislative Auditor

MJW/aa

DOE BESE

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EXECUTIVE SUMMARY

Louisiana Department of Education Issued Payments to Contractors on Two Contracts Without First Obtaining BESE Approval

From May 21, 2021 to November 9, 2021, the Louisiana Department of Education (DOE) paid \$486,050 on two emergency contracts without first obtaining the Louisiana Board of Elementary and Secondary Education's (BESE's) approval. The Louisiana Administrative Code requires that professional and consulting services contracts recommended by the Superintendent of Education at, or above, a certain amount (currently \$50,000) be approved by BESE. By paying contractors for professional and consulting services prior to obtaining BESE's approval, DOE may have violated a provision of the Louisiana Administrative Code.

BACKGROUND AND METHODOLOGY

The Louisiana Department of Education (DOE) is a component unit of the state of Louisiana created within the executive branch of state government. DOE is responsible for overseeing Louisiana's public-school system for grades Pre-Kindergarten through 12.

The Louisiana State Board of Elementary and Secondary Education (BESE) is the administrative body for all Louisiana public elementary and secondary schools; it also performs certain administrative functions for the state's non-public elementary and secondary schools. BESE adopts regulations and enacts policies governing the operations of the schools under its jurisdiction, and exercises budgetary oversight of their educational programs and services. BESE is composed of 11 members, eight of whom are elected by voters in their respective BESE districts, and three of whom are appointed by the governor from the state at large with consent of the Senate. Members serve four-year terms concurrent with the term of the governor.

BESE is authorized to enter into contracts and agreements recommended by the superintendent of education with public and private agencies in the exercise of its supervision and control over the public schools under its jurisdiction pursuant to Louisiana Revised Statute (La. R.S.) 17:6(A)(12) and (13). According to the Louisiana Administrative Code, entities under BESE's jurisdiction shall negotiate all contracts for professional/consulting services in accordance with all applicable federal and state laws, all applicable federal and state rules and regulations, and BESE policy. The state superintendent may negotiate and approve contracts for professional/consulting services in an amount determined by BESE (currently, up to, but not including, \$50,000) and shall issue a report to BESE on all contracts approved. As such, professional/consulting services contracts recommended by the state superintendent in the amount of \$50,000 or more, require BESE approval.

Governor John Bel Edwards issued *Proclamation Number 25 JBE 2020*, declaring a statewide public health emergency in response to the threat posed by COVID-19 on March 11, 2020. *Proclamation Number 25 JBE 2020* suspended the Louisiana Procurement Code (La. R.S. 39:1551, *et seq.*) and all corresponding rules and regulations for the purpose of the procurement of any goods or services necessary to respond to the emergency. *Proclamation Number 25 JBE 2020* was effective through April 9, 2020, and extended in subsequent proclamations for additional 30-day periods, including *Proclamation Number 94 JBE 2021* (effective May 26, 2021 to June 23, 2021) until March 16, 2022. These subsequent proclamations also suspended the Louisiana Procurement Code in regard to emergency contracts, cooperative endeavor agreements, and emergency amendments to existing contracts.

In November 2021, several media outlets reported that DOE entered into two separate "no-bid" contracts with Invicta Consulting, LLC between September and October 2021. According to these media reports, one contract was approved by BESE in October 2021; however, the second contract was in effect for nearly two months before then-BESE President Sandy Holloway was made aware of the contract. On November 11, 2021, Ms. Holloway requested, in writing, that the Louisiana Legislative Auditor (LLA) audit all DOE emergency

contracts, issued under *Proclamation Number 94 JBE 2021*. On the same day, State Superintendent of Education Dr. Cade Brumley also requested, in writing, that LLA expand the scope of its current, routine audit to include examination of procedures relative to the issuance and execution of services authorized under *Proclamation Number 94 JBE 2021*.

The procedures performed during this audit included:

- (1) interviewing DOE and BESE employees and officials;
- (2) interviewing other persons, as appropriate;
- (3) examining selected DOE and BESE documents and records;
- (4) gathering and examining external parties' documents and records; and
- (5) reviewing applicable state laws and regulations.

FINDING AND RECOMMENDATIONS

Louisiana Department of Education Issued Payments to Contractors on Two Contracts Without First Obtaining BESE Approval

From May 21, 2021 to November 9, 2021, the Louisiana Department of Education (DOE) paid \$486,050 on two emergency contracts without first obtaining the Louisiana Board of Elementary and Secondary Education's (BESE's) approval. The Louisiana Administrative Code requires that professional and consulting services contracts recommended by the Superintendent of Education at, or above, a certain amount (currently \$50,000) be approved by BESE. By paying contractors for professional and consulting services prior to obtaining BESE's approval, DOE may have violated a provision of the Louisiana Administrative Code.¹

BESE is authorized to enter into contracts and agreements that have been recommended by the Superintendent with public and private agencies in the exercise of its supervision and control over the public schools under its jurisdiction pursuant to Louisiana Revised Statute (La. R.S.) 17:6(A)(12) and (13). According to the Louisiana Administrative Code, entities under BESE's jurisdiction shall negotiate all contracts for professional/consulting services in accordance with BESE policy and all applicable federal and state laws, rules and regulations. The Superintendent may negotiate and approve contracts for professional/consulting services in an amount determined by BESE (currently up to, but not including, \$50,000) and shall issue a report to the BESE on all contracts he approves. All professional/consulting services contracts recommended by the Superintendent for \$50,000 and above require BESE approval.

The Louisiana Procurement Code² does not require a competitive process for professional service contracts, but does require one for consulting services costing \$75,000 or more. La. R.S. 39:1621 requires consulting service contracts equal to or in excess of \$75,000 be awarded through a request for proposals or reverse auction process under the rules and regulations issued by the Office of State Procurement (OSP). DOE personnel informed us these contracts are drafted, then signed by the contractor and the Superintendent and/or the Assistant Superintendent or Chief of Staff. The contract is considered executed once signed and uploaded to OSP's contracts system for OSP review and approval.

DOE personnel further informed us that OSP's review and approval process can take anywhere from four to eight weeks, depending on whether corrections or additional information is needed. After the contract is approved by OSP, a purchase order is generated, which allows DOE to make contract payments. The contract is typically presented to BESE for approval at its next scheduled meeting. According to DOE personnel, this process is utilized to ensure that all required state laws, policies and procedures have been followed prior to obtaining BESE's approval. DOE personnel further informed us that this has been a longstanding practice that was utilized by prior administrations.

On March 11, 2020, Governor John Bel Edwards issued *Proclamation Number 25 JBE 2020*, declaring a statewide public health emergency in response to the threat posed by COVID-19. *Proclamation Number 25 JBE 2020* suspended the Louisiana Procurement Code (La. R.S. 39:1551, *et seq.*) and all corresponding rules and regulations for the purpose of the procurement of any goods or services necessary to respond to the emergency. *Proclamation Number 25 JBE 2020* was effective through April 9, 2020, and extended in subsequent proclamations for additional 30-day periods, until March 16, 2022. Although *Proclamation Number 25 JBE 2020* suspended the requirements of the Louisiana Procurement Code, it does not appear to have suspended BESE's authority under La. R.S. 17(6)(A) or the Louisiana Administrative Code, which requires BESE approval for all DOE professional/consulting services contracts equal to or greater than \$50,000.

We reviewed all of DOE's emergency contracts awarded during Governor Edwards' proclamations (March 2020 through October 2021) to determine if professional service and consulting contracts and amendments for \$50,000 or greater were approved by BESE prior to contract payments being made. DOE provided a total of 62 contracts and contract amendments, including 21 contracts that exceeded \$50,000; 21 contracts less than \$50,000; and 20 amendments to contracts. During our review, we found that DOE issued payments totaling \$486,050 to two different contractors for contracts (one professional services contract and one consulting services contract) that were not approved by BESE before contract payments were made.^A Details of these contracts are set forth below.

Payments Issued Prior to BESE Approval of Contract

Postlethwaite & Netterville (P&N)

DOE entered into an emergency contract with P&N to provide professional services related to the administration of the Louisiana Emergency Assistance to Non-Public Schools Program to provide services or assistance to eligible nonpublic schools to address the impact that COVID-19 had, and continues to have, on non-public schools, students and teachers in the state of Louisiana. The contract period began on February 1, 2021, and ended on December 31, 2021, with a contract maximum of \$1,950,000. A P&N representative signed the contract on April 10, 2021, and DOE's Superintendent and Assistant Superintendent both signed the contract on April 28, 2021.

From April 19, 2021 to April 30, 2021, P&N submitted two invoices to DOE, totaling \$426,050, for services performed from February 1, 2021 to April 15, 2021. Both invoices were paid by DOE on May 21, 2021; however, BESE minutes show BESE did not approve the contract until June 16, 2021.

Invicta Consulting, LLC (Invicta)

In September 2021, DOE entered into a consulting services contract with Invicta, on an emergency basis, to design, implement, and manage a comprehensive review process for Academic Recovery and Acceleration Plans submitted by school districts. The contract

^A We also found that DOE issued payments totaling \$203,100 to contractors for seven social services contracts/contract amendments in excess of \$50,000 without first obtaining BESE approval; however, the Louisiana Administrative Code does not appear to require BESE approval for social services contracts.

period began on September 13, 2021, and ended on December 31, 2021, with a contract maximum of \$120,000.^B Invicta's representative signed the contract on September 15, 2021, and DOE's Superintendent and Chief of Staff signed on September 17, 2021 and October 26, 2021, respectively. Records show that Invicta submitted an invoice to DOE on October 28, 2021, indicating that the first four deliverables under the contract had been completed. As such, under the terms of the contract, DOE issued the first installment payment of \$60,000 to Invicta on November 9, 2021. To date, BESE has not approved this contract.

DOE's Executive Counsel told us the Superintendent did not need BESE's approval to enter into emergency contracts as a result of Governor Edwards' proclamations. The Executive Counsel provided us with her written opinion, which stated, in part that, "... Governor John Bel Edwards's Gubernatorial COVID-19 Emergency Proclamation authorized the State Superintendent of Education to enter into contracts for goods and services without strict compliance with the procurement laws, rules, and regulations, when such contracts are necessary to respond to the COVID-19 emergency. Therefore, LDOE entering into COVID-19 related emergency contracts for services necessary to respond to the COVID-19 emergency without prior approval from BESE is lawful and proper." Additionally, the Executive Counsel stated that DOE was transparent with BESE in the handling of emergency contracts since the beginning of the Governor's proclamation, and at no point was DOE informed by BESE that the emergency contracts were not being handled correctly.

In addition, DOE personnel told us they followed the same process (for periods of non-emergency) for awarding contracts during the emergency period and that additional steps were taken to accommodate the Governor's emergency proclamation. While under the emergency proclamation, DOE required its Program Office to submit a contract summary to BESE during its board meetings, listing the emergency contract(s) approved by DOE under the proclamation. The contract summaries allowed DOE to report emergency contracts to BESE and move swiftly to provide services and payments on an emergency basis.

Recommendations

We recommend that DOE work with BESE to develop written policies and procedures to ensure that DOE obtains BESE's approval, when required by the Louisiana Administrative Code, prior to the issuance of payments to contractors. These policies and procedures should address periods of non-emergency and periods of emergency during when the Louisiana Procurement Code has been suspended. Further, these policies and procedures should clearly define the circumstances under which BESE's approval is necessary and when contracts are binding and payments can be made to contractors.

^B The contract provided for two \$60,000 installments, invoiced according to the following: October 31, 2021, contingent upon completion of deliverables 1, 2, 3, and 4; and, December 31, 2021, contingent upon completion of deliverables 5, 6, 7, and 8.

LEGAL PROVISIONS

¹ **Louisiana Administrative Code 28:1103(C)** provides, “Contracts for Professional Services 1. Entities under the jurisdiction of the board shall negotiate all contracts for professional/consulting services in accordance with all applicable federal and state laws and in accordance with all applicable federal and state rules and regulations and board policy. 2. The state superintendent may negotiate and approve contracts for professional/consulting services in an amount determined by the board and shall issue a report to the board on all contracts approved. 3. The state superintendent shall recommend to the board for approval all contracts for professional/consulting services negotiated by the RSD in accordance with board policy.”

² **La. R.S. 39:1617** provides that, “Contracts for professional services may be awarded without the necessity of competitive bidding or competitive negotiation.”

La. R.S. 39:1621 provides, “A. Contracts for consulting services which have a total maximum amount of compensation less than seventy-five thousand dollars for a twelve-month period may be awarded without the necessity of competitive bidding or competitive negotiation. B. Contracts for consulting services which have a total maximum amount of compensation of seventy-five thousand dollars or more for a twelve-month period shall be awarded through a request for proposal or reverse auction process under rules and regulations issued by the office of state procurement. Service requirements shall not be artificially divided so as to exempt contracts from the request for proposal process. C. (1) All contracts for consulting services which have a total maximum amount of compensation of two hundred twenty-five thousand dollars or more may be entered into with the assistance of a procurement support team as provided herein, and in accordance with guidelines promulgated and published by the office of state procurement. (2) For each such consulting contract the office of state procurement may establish a procurement support team which shall include one or more representatives from each of the following:

- (a) The office of state procurement.
- (b) The using agency initiating the contract.
- (c) The office of the attorney general.
- (d) The legislative fiscal office.

(3) Participation of the procurement support team must include, at a minimum, assistance in development or review of the request for proposals, evaluation of responses received to the request for proposals, and formulation of recommendations to be submitted to the state chief procurement officer concerning the final contract.”

APPENDIX A

Department of Education's Response



LOUISIANA DEPARTMENT OF EDUCATION
OFFICE OF THE STATE SUPERINTENDENT

Michael J. Waguespack, CPA
1600 North 3rd St.
P.O. Box 94397
Baton Rouge, La. 70804-9397

Dear Mr. Waguespack,

Please accept this as the Louisiana Department of Education's (LDOE) response to the Louisiana Legislative Auditor's (LLA) draft audit report regarding LDOE's COVID-19 related emergency contracts.

I would like to start by thanking you and your team's steadfast commitment to increasing governmental transparency and upholding the highest ethical standards. Your team conducted itself with immense professionalism, integrity, and dedication throughout the entirety of this process.

On November 11, 2021, I formally requested your office expand its routine agency audit to include a review of LDOE's utilization of Governor John Bel Edwards's COVID Emergency Proclamation related to emergency contracting. Later, then BESE President Sandy Holloway, requested an additional inquiry.

Recently, your office concluded its review and provided me with the draft audit report. I would like to take this opportunity to respond to a few key points.

First, I'm pleased that your investigation found no evidence of misappropriation of funds at LDOE. You and your team shared this information with me during our recent in-person exit interview. This was a paramount finding as such nefarious activities would not be tolerated at my agency and would have prompted me to take swift action against those involved. I'm thankful to have the record clear on this. It's good for the honor and character of LDOE and its employees.

Next, as we discussed in our exit meeting, LLA found that LDOE's standard practice of issuing payments on COVID-19 related emergency contracts in excess of \$50,000, without first obtaining BESE approval, was formulated and implemented prior to my administration. We continued this established practice throughout the pandemic while always disclosing these emergency contracts at subsequent Board meetings. In fact, for nearly two years, not a single member of the State Board questioned this standard practice or asked LDOE to alter its standard practice.

Finally, in regards to your audit's sole finding, we both agree and disagree. We agree that LDOE issued payments on two COVID-19 related emergency contracts in 2021 in excess of \$50,000 without first obtaining Board approval. This was never in question. We disagree, however, that this action may have violated the Louisiana Administrative Code. The core purpose of the Governor's Emergency Proclamation was to remove barriers that prevented the procurement of any good or services necessary to respond to the COVID-19 emergency. Our actions fell directly in line with that intent. Further, the Louisiana Office of

State Procurement (OSP), whose duty is to ensure that state contracts are conducted legally and ethically across agencies, processed these contracts without delay under the Governor's Proclamation. If OSP had any concerns, they would have flagged them at the time - as they always do.

LDOE will implement all recommendations made by LLA to bolster its internal controls. Further, I believe it would be appropriate for LDOE and BESE to develop formal, codified procedures for contracting during future emergency proclamations. This will remove any gray area as the administration and Board move forward. I will always go above and beyond to honor the public dollar as evidenced by my long history of sound fiscal management.

Thank you again for your thoroughness and shared commitment to fiscal responsibility.

Sincerely,

A handwritten signature in black ink that reads "Brent Carl Brumley". The signature is written in a cursive, flowing style.

Dr. Cade Brumley

State Superintendent of Education

APPENDIX B

Board of Elementary and Secondary Education's Response



STATE BOARD of ELEMENTARY and SECONDARY EDUCATION

P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064 · PHONE: 225-342-5840 · FAX: 225-342-5843

May 11, 2022

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1st BESE District

Kira Orange Jones
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Sandy Holloway
3rd BESE District

Michael Melerine
4th BESE District

Ashley Ellis
5th BESE District

Ronnie Morris
6th BESE District

Holly Boffy
7th BESE District

Preston Castille
8th BESE District

Belinda Davis
Member-at-Large

Thomas Roque
Member-at-Large

Doris Voitier
Member-at-Large

Mr. Michael Waguespack
Legislative Auditor
1600 North 3rd Street
Baton Rouge, LA 70802-9397

Dear Mr. Waguespack,

As the current President of the Board of Elementary and Secondary Education (BESE), please accept this as the response to the Louisiana Legislative Auditor's (LLA's) draft audit report regarding COVID-19 related Louisiana Department of Education (LDE) emergency contracts.

As you know, in November 2021, out of an abundance of caution, the then President of BESE, Ms. Sandy Holloway, requested that your office conduct a review of the emergency contracts that were procured, issued, and approved by the LDE under the auspices of the Governor's Proclamation 94, for FY2021. I would like to thank you for your immediate attention to this request, as well as your thorough review of the aforementioned matters.

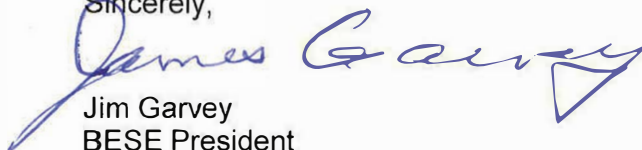
The report is very informative, and the recommendations contained in the report will assist BESE and the LDE to further improve upon internal fiscal practices.

In particular, and as more specifically recommended in your report, I will diligently work with the BESE Executive Director, Ms. Shan Davis, to have BESE consider and approve the following:

1. Written policies and procedures, when required by the *Louisiana Administrative Code*, which will ensure a clear process for the LDE to obtain BESE approval, prior to the issuance of payments to contractors;
2. Written policies and procedures, which address a clear process for the LDE to obtain such approvals, during periods of non-emergency and periods of emergency during which the Louisiana Procurement Code has been suspended; and
3. Written policies and procedures that will clearly define the circumstances under which BESE's approval is necessary and which clearly define when contracts are binding and when payments can be made to contractors.

Thank you again for your prompt and comprehensive response.

Sincerely,


Jim Garvey
BESE President

Shan N. Davis
Executive Director

Cade Brumley
State Superintendent