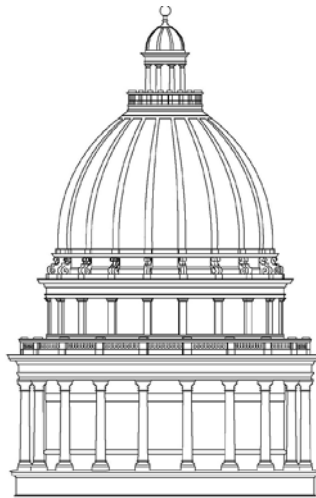


REPORT TO THE  
**UTAH LEGISLATURE**

Number 2014-05



**A Review of Allegations Concerning the  
Math Textbook Procurement**

June 2014

Office of the  
LEGISLATIVE AUDITOR GENERAL  
State of Utah





STATE OF UTAH

# Office of the Legislative Auditor General

315 HOUSE BUILDING • PO BOX 145315 • SALT LAKE CITY, UT 84114-5315  
(801) 538-1033 • FAX (801) 538-1063

## Audit Subcommittee of the Legislative Management Committee

President Wayne L. Niederhauser, Co-Chair • Speaker Rebecca D. Lockhart, Co-Chair  
Senator Gene Davis • Representative Jennifer M. Seelig

JOHN M. SCHAFF, CIA  
AUDITOR GENERAL

June 24, 2014

TO: THE UTAH STATE LEGISLATURE

Transmitted herewith is our report, **A Review of Allegations Concerning the Math Textbook Procurement** (Report #2014-05). A digest is found on the blue pages located at the front of the report. The objectives and scope of the audit are explained in the Introduction.

We will be happy to meet with appropriate legislative committees, individual legislators, and other state officials to discuss any item contained in the report in order to facilitate the implementation of the recommendations.

Sincerely,

A handwritten signature in black ink that reads "John M. Schaff".

John M. Schaff, CIA  
Auditor General

JMS/lm



# Digest of a Review of Allegations Concerning the Math Textbook Procurement

Based on our review, the Utah Division of Purchasing and General Services (UDP or Purchasing) and the Utah Office of the Attorney General (AG) properly followed policies and procedures in responding to math textbook procurement process allegations. Our review confirms their findings that these allegations do not appear to have merit, and there is no credible evidence of wrongdoing. We also believe amendments made to procurement statute by the 2014 Utah State Legislature may help prevent similar protests and improve the procurement process in the future.

---

**UDP and the AG properly followed policies and procedures in this procurement protest.**

---

## Chapter II State Agencies Appear to Have Appropriately Reviewed Allegations

**Division of Purchasing Followed Procurement Statute.** UDP followed all requirements set forth in *Utah Code* for the procurement protest process. In doing so, UDP appropriately involved USOE and the AG in the protest process and investigation of allegations.

**Attorney General Concluded Evidence Did Not Support the Money Offer Allegation.** The AG appears to have thoroughly investigated the allegation of a money offer and concluded there was insufficient evidence to file criminal charges. The AG fulfilled its professional responsibilities in investigating this supposed wrongdoing and maintaining the required separation of attorneys representing different parties in this matter. Based on their investigation, the AG concluded that:

---

**The AG thoroughly investigated the allegation and concluded there was insufficient evidence for criminal charges.**

---

- The alleged money offer was never truly made
- If made, the alleged money offer would not have influenced the procurement process because of the timing of the offer

---

**The protestor did not take the next step in the statutory process, which would have been appealing the decision.**

---

---

**Procurement statute now requires an explanation for scoring by evaluation committees.**

---

**Protestor Chose Not to Appeal The Procurement Decision.**

UDP fulfilled all of its responsibilities related to the math textbook protest when it issued a formal decision in December 2012, stating there was no “apparent basis to rule in favor of continuing to delay the process of the award.” The protestor chose not to appeal, finalizing UDP’s decision and ending the need for further government action. Given the details of the procurement and the protest, we believe it is unlikely an appeals panel would have overturned the protest decision.

**Our Review Found Insufficient Evidence to Support the Allegations.** We concur with the conclusions of UDP and the AG that the allegations were either not supported by evidence or did not violate the *Utah Code*. The allegations were correctly dismissed at the conclusion of the protest process. The details of each allegation are provided in Chapter II.

**Recent Legislation Should Improve the Procurement Process.**

Updates to procurement statute may improve the transparency of future procurements and prevent future confusion similar to what the protestor may have experienced during this math textbook RFP. We do not believe, however, that these changes would have influenced the outcome of the math textbook procurement or the related protest.

# REPORT TO THE UTAH LEGISLATURE

Report No. 2014-05

## **A Review of Allegations Concerning the Math Textbook Procurement**

June 2014

Audit Performed By:

Audit Manager	Darin Underwood
Audit Supervisor	Leah Blevins
Audit Staff	Christopher McClelland





# Table of Contents

Digest ..... i

Chapter I

Introduction..... 1

    2012 Legislation Funded New Math Textbooks..... 1

    Allegations Were Raised Regarding Textbook Procurement Process..... 2

    Audit Scope and Objectives ..... 3

Chapter II

State Agencies Appear to Have Appropriately Reviewed Allegations ..... 5

    Division of Purchasing Followed Procurement Statute ..... 5

    Attorney General Concluded Evidence  
    Did Not Support the Money Offer Allegation..... 7

    Protestor Chose Not to Appeal The Procurement Decision ..... 11

    Our Review Found Insufficient Evidence to Support the Allegations..... 12

    Recent Legislation Should Improve The Procurement Process ..... 30

Appendix ..... 33

Agency Responses ..... 37

**This Page Left Blank Intentionally**

# Chapter I

## Introduction

Based on our review, the Utah Division of Purchasing and General Services (UDP or Purchasing) and the Utah Office of the Attorney General (AG) properly followed policies and procedures in responding to math textbook procurement process allegations. Our review confirms their findings that these allegations do not appear to have merit, and there is no credible evidence of wrongdoing. We also believe amendments made to procurement statute by the 2014 Utah State Legislature may help prevent similar protests and improve the procurement process in the future.

### 2012 Legislation Funded New Math Textbooks

During the 2012 General Session, the Legislature passed SB217, appropriating \$600,000 for the creation of new math textbooks for seventh- and eighth-grade students. The bill tasked the Utah State Office of Education (USOE) to select a math content developer to write new textbooks consistent with Utah's Common Core standards and create an adaptive performance assessment program to measure the effectiveness of the new textbooks. These textbooks were intended to be low cost, highly interactive, and available both in print and electronic formats.

The bill and resulting request for proposals (RFP) required the math content developer be a Utah institution of higher education. The RFP, released April 16, 2012, listed criteria the evaluation committee used to assess proposals. These criteria covered the following areas:

- Demonstrated ability to create, assess, and/or publish quality textbooks
- Qualification and expertise of staff proposed for this project
- Proposed timeline for completion
- Total cost

---

**UDP and the AG properly followed policies and procedures in this procurement protest.**

---

---

**The 2012 Legislature appropriated \$600,000 for the creation of math textbooks.**

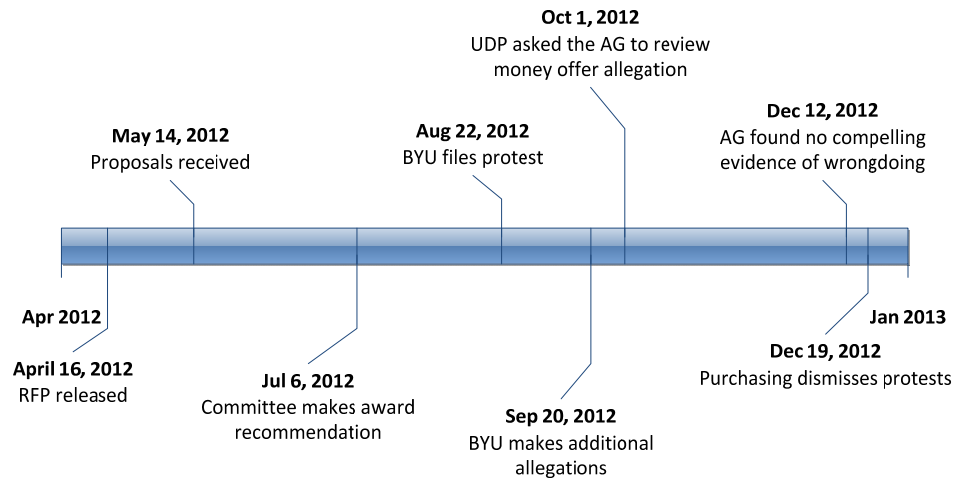
---

Professors from the University of Utah (U of U) and Brigham Young University (BYU) submitted bids to develop these materials. Upon reviewing the proposals on May 29, 2012, the evaluation committee gave higher scores to the U of U team and recommended they be awarded the contract.

## Allegations Were Raised Regarding Textbook Procurement Process

The BYU team submitted a formal protest in August 2012, listing 18 allegations related to perceived irregularities in the procurement process for the math textbooks. They submitted four additional allegations a month later, for a total of 22 allegations. Figure 1.1 shows a timeline of the math textbook procurement, including the protest process.

**Figure 1.1 The Math Textbook Procurement and Resolution of the Related Protests Spanned Eight Months. SB217 was signed into law on March 23, 2012.**



Source: Auditor analysis of USOE and Purchasing data.

The BYU team leveled allegations against the proposal evaluation committee, UDP, and members of the U of U team. The 22 allegations covered many issues, including perceived conflicts of interest, anticompetitive practices, biased scoring of proposals, and other actions taken that violated state procurement statute. The supposed conflicts of interest centered on professional relationships between members of the evaluation team and the U of U team. The primary anticompetitive practice allegation dealt with a supposed

**22 allegations were raised in a protest against the awarding of the contract.**

**The protestor alleged conflicts of interest, biased scoring of proposals, and anticompetitive practices.**

money offer made by a U of U team member to an evaluation committee member. Some allegations were complaints on the differences in scores for different sections of the proposals.

Additional information about the procurement process and specific details of this procurement may have cleared up some misunderstandings on the part of the BYU protestor and prevented this protest and the associated investigations. Many of the allegations contained in the protests appear to have resulted from misunderstandings about these two areas. The specific allegations will be discussed in more detail in Chapter II.

## **Audit Scope and Objectives**

The objectives of the audit include the following:

- Assess the procedure followed by the Division of Purchasing to determine whether all accusations leveled were appropriately examined
- Assess the role that the AG played in the investigation of allegations
- Identify any credible evidence of wrongdoing in conjunction with the procurement of the math textbooks

It should be noted that some of the 22 concerns expressed were allegations that scores awarded to either proposal were biased or unfair. Because scoring and the evaluation of proposals is meant to be, at least in part, a subjective process, most of the total points possible during evaluation scoring are tied to non-cost-based criteria. This criteria was assessed by the evaluation team. It is not our role as auditors to question the decisions the experts have made during the proposal evaluation process. In fact, the United States District Court for the District of Utah recently found that the “RFP process grants the State substantial discretion in selecting a contractor.” Explanations for points assigned can be helpful to vendors for future proposals but cannot effectively be scrutinized after the fact because points awarded are based on the opinions of evaluators. In addition, maintaining the confidentiality of the reviewer scores lends to the integrity of the system.

We also reviewed recent legislation that modifies the procurement process and related procedures and noted how the modifications could affect similar situations in the future.

## **Chapter II**

# **State Agencies Appear to Have Appropriately Reviewed Allegations**

State agencies appear to have appropriately reviewed all allegations regarding the math textbook procurement in accordance with the *Utah Code*. In their respective roles, the Division of Purchasing (UDP or Purchasing) and the Utah State Office of Education (USOE) provided their evidence and supporting documentation for each allegation submitted by the protestor. The Utah Office of the Attorney General (AG) contributed to the investigation of the allegation of an inappropriate money offer. Our independent review found insufficient evidence to support any of the allegations, including conflicts of interest, biased scoring, and anticompetitive behavior. We do believe there were a few areas where better explanation could have been offered by Purchasing and USOE to alleviate some of the allegations. When the protestors chose not to appeal the Purchasing decision, they bypassed the normal process to mitigate their concerns. Recent revisions to the *Utah Code* may prevent similar protests and improve the procurement process in general.

UDP and the AG play important roles in government contracting and purchasing. UDP handles protests and complaints related to the awarding of contracts at the state level. The AG represents the state in legal matters and investigates and prosecutes individuals and organizations that violate Utah laws, including those related to government purchasing.

### **Division of Purchasing Followed Procurement Statute**

UDP followed all requirements set forth in *Utah Code* for the procurement protest process. In doing so, UDP appropriately involved USOE and the AG in the protest process and investigation of allegations.

---

The protest officer issued a formal decision despite not being required to do so.

---

---

UDP sent the allegations of an inappropriate money offer to the AG, in fulfillment of *Utah Code* provisions.

---

---

USOE staff participated in the response because they were most involved in the procurement process.

---

## Purchasing Responded to Allegations

The protest officer and other individuals at UDP reviewed all allegation responses and used that information as they independently evaluated the allegations.<sup>1</sup> USOE and their purchasing agent offered their explanations and responses to the protest, which UDP reviewed, analyzed, and ruled upon. *Utah Code* requires the protest officer<sup>2</sup> to consider timely procurement protests. Although not required to do so by *Utah Code*, the protest officer issued a formal decision stating the action taken on the protest and reasons for the action taken. In analyzing the allegations and soliciting input from USOE, UDP fulfilled its responsibility established in *Utah Code* to “consider” the formal protest.

During the review process, UDP determined that one of the allegations needed to be referred to the AG. The protest contained an allegation that a member of the University of Utah (U of U) team offered an evaluation committee member money to serve on an education task force. *Utah Code* requires UDP to transmit a notice of the relevant facts (related to anticompetitive practices) to the attorney general. UDP fulfilled this requirement by sending information on the alleged money offer to the AG. Although not required to do so, UDP informed the protestor that UDP had sent the alleged money offer information to the AG. The protest officer issued a written decision in December 2012, dismissing the protest based on the review of allegations and the completion of the AG investigation of the alleged money offer.

## Utah State Office of Education Provided Clarification on the Allegations

At the request of UDP, USOE personnel who served on the evaluation committee responded to all allegations.<sup>3</sup> A USOE purchasing agent also responded to the allegations. An assistant attorney general (AAG), representing USOE at the time, reviewed these responses before they were given to UDP. Though not specifically dictated by *Utah Code*, involving USOE and related individuals appears to have been an economical means of evaluating

---

<sup>1</sup> These responses are detailed in blue in the section starting on page 13.

<sup>2</sup> The Director of Purchasing serves as the protest officer in this instance because USOE procurement falls under UDP.

<sup>3</sup> These responses are detailed in red in the section starting on page 13.



the protest allegations because these parties were involved in the initial procurement process.

More specifically, UDP follows the policy of sending a protest to the agency conducting the procurement (USOE in this case). The conducting agency is the most logical initial responder to questions regarding the process, conflicts of interest, and RFP criteria. For example, the protestor claimed members of the evaluation committee were connected professionally to RFP applicants. Evaluation committee members were given the opportunity to comment on the allegations and provide evidence refuting the allegations. The protest officer needed their input to make an informed decision on the protest.

### **Attorney General Concluded Evidence Did Not Support the Money Offer Allegation**

The AG appears to have thoroughly investigated the allegation of a money offer<sup>4</sup> and concluded there was insufficient evidence to file criminal charges. The AG fulfilled its professional responsibilities in investigating this supposed wrongdoing and maintaining the required separation of attorneys representing different parties in this matter. Based on their investigation, the AG concluded that:

- The alleged money offer was never truly made<sup>5</sup>
- If made, the alleged money offer would not have influenced the procurement process because of the timing of the offer

At the same time as the RFP in question, the Office of the Commissioner of Higher Education (OCHE) formed a task force to investigate the best way to assess the college readiness of Utah students. OCHE staff asked a member of the U of U math textbook proposal team to chair this task force. Later, this individual, as part of the duties as chairperson, invited a member of the math textbook proposal evaluation committee, among others, to participate on the OCHE task force for \$300 a day. This invitation and the alleged

---

<sup>4</sup> The first of the 22 allegations made.

<sup>5</sup> Had the money offer been made, it would constitute a felony.

money offer occurred nine days after the RFP evaluation committee assigned scores to submitted proposals.

### **AG Determined that Evidence Did Not Support the Allegation**

The AG investigated the alleged money offer and determined that evidence did not support criminal charges. The evidence indicated that a member of the U of U math textbook procurement team (the “offeror”) did not unlawfully offer money to a member of the proposal evaluation committee (the “offeree”). The AG’s report also concluded that the offeror knew the offeree could not accept money for participation. In addition, the timing of the offer precluded any influence on the outcome of the textbook procurement process; further, it appears the offeree did not receive compensation for participating on the task force.

At the request of the Office of the Legislative Auditor General (LAG), a legislative attorney who has experience in criminal investigations reviewed evidence gathered as part of the A.G.’s investigation to make an independent determination regarding whether the conclusion reached by the A.G.’s office was correct. This attorney stated

Based on the information you provided me, I agree with the Office of the Attorney General that there is not sufficient evidence to support criminal charges based on an allegation that money was unlawfully offered to a member of the RFP evaluation committee in order to influence the member’s score. I also agree that the evidence indicates that the alleged offer did not influence the score awarded.<sup>6</sup>

The knowledge and intent of the offeror and offeree at the time of the alleged money offer rebut the allegation of anticompetitive behavior. The offeror knew that the offeree would be unable to accept the money due to the offeree’s position at USOE—the actual offer was a boiler plate invitation sent to potential task force members. It further stated that the money offer was contingent on the ability of invitees to “accept such an [offer] given [their] professional roles.” The offeree was aware of his or her ineligibility as they had served on task forces and committees without compensation as part of their professional

<sup>6</sup> For the complete memorandum, see Appendix A.

---

**The timing of the offer to sit on the committee could not have influenced the procurement decision.**

---

---

**The offeror and offeree both knew the offeree could not accept money to sit on the task force.**

---

responsibilities. In addition, it was not the offeror’s idea to invite the offeree to serve—an individual from OCHE suggested that the offeree should serve on the task force.

The timeline of events was also an important factor in the AG’s decision to dismiss the accusations. Figure 2.1 displays the specific dates for these events and other dates that were considered during the AG’s investigation.

**Figure 2.1 The Sequence of Events of the Alleged Money Offer Provide Strong Evidence Against Wrongdoing.** The timing of the offer made it difficult to influence the procurement process because the offer occurred on June 7<sup>th</sup>, nine days after the committee scored the proposals (May 29<sup>th</sup>).



Source: Auditor compilation of USOE and Purchasing data.

Members of the textbook evaluation committee assigned ranking scores to proposals nine days before the offeror asked the offeree to sit on the college readiness task force. Vendors submitted clarifications to their proposals<sup>7</sup> for the math textbook procurement during the second half of June, after the alleged money offer took place. The clarifications contained additional information for each of the vendors’ initial proposals. The offeree increased one score on the evaluation of the U of U proposal after reviewing the new information. Had the

<sup>7</sup> Procurement units can statutorily conduct discussions with offerors and request clarifications. When requesting these meetings and information, offerors must be given fair and equal treatment.

---

**Scores were changed because of supplemental information submitted by vendors.**

---

---

**The invitation was a boilerplate email with the money offer. It clearly acknowledged that some invitees may not have been able to accept the honorarium.**

---

score not been changed, the U of U would still have been awarded the contract.

The score change that occurred after reviewing the additional information submitted does not indicate favoritism or bias towards the U of U proposal—the score change appears to be consistent with the supplemental information. Other evaluation committee members made similar score changes. The college readiness task force met for the first time on July 6<sup>th</sup>. Financial records for the task force indicates the offeree did not receive compensation for participation.

In summary, at face value and based on a subset of the available evidence, it could appear that the U of U team member broke the law and offered money to the evaluation committee member. Additional context provided in the form of email communications and financial information indicates that the alleged money offer was not truly made—both the offeror and offeree acknowledged that the offeree was ineligible to receive the money. The offeree also stated there was no expectation of receiving money and did not connect the two situations until the protest was made. In addition, the timing of the offer negated its ability to truly affect the math textbook procurement process.

### **Assistant Attorneys General Appear To Have Followed Professional Standards**

We found no evidence that assistant attorneys general (AAG) shared sensitive information that would have jeopardized their ability to represent their clients. An individual associated with the Brigham Young University (BYU) team accused AAGs of wrongdoing during the protest process. Specifically, the individual accused attorneys on opposite sides of a conflict wall of inappropriately meeting and sharing sensitive information. We found no evidence that the October 1, 2012 meeting between AAGs to discuss the status of the math textbook contract and a potential AG investigation violated AG conflict wall policies. The topics reportedly discussed in this meeting are not prohibited under conflict separation policy.

Incomplete information and misunderstanding appear to have contributed to this accusation. The individual claiming wrongdoing knew about the October 1<sup>st</sup> meeting, but appears not to have known its purpose, having merely reviewed emails likely obtained through Government Records Access and Management Act (GRAMA)

requests. Such a meeting between the AAGs representing UDP and USOE could have been perceived as inappropriate because they were on opposite sides of the conflict wall.

Conflict walls are put in place at the AG's office to protect against potential conflicts of interest. These walls separate physical and electronic files to help compartmentalize information. The conflict walls prohibit the exchange of certain information between attorneys who represent opposing clients (in this case, UDP and USOE). Actions contrary to conflict walls carry stiff penalties, including possible disbarment.

## **Protestor Chose Not to Appeal The Procurement Decision**

UDP fulfilled all of its responsibilities related to the math textbook protest when it issued a formal decision in December 2012, stating there was no “apparent basis to rule in favor of continuing to delay the process of the award....” The protestor chose not to appeal, finalizing UDP's decision and ending the need for further government action. Given the details of the procurement and the protest, we believe it is unlikely an appeals panel would have overturned the protest decision.

Though the Director of Purchasing was not required to issue a decision on the protest, he did so for the math textbook procurement protest and included a copy of the *Utah Code* detailing the appeals process. Section 63G-6a-1702<sup>8</sup> details that, given an adverse decision or the absence of a decision for the protest, the protestor could have appealed to the Utah State Procurement Policy Board. If the protestor had appealed, the Procurement Policy Board would have appointed an appeals panel to consider the appeal based solely on the protest decision and information that was available to the protest officer. The panel would have been able to overturn the decision only if the panel determined the protest decision was arbitrary and capricious or clearly erroneous. Based on our review of the findings of the protest, as well as the facts themselves, we believe it is unlikely that the results of an appeal would have ultimately changed the decision made because we

---

<sup>8</sup> The protest appeals section of procurement statute was 63G-6-807 at the time of this protest in 2012.

---

**When they represent opposing clients, the AGs must have strict conflict walls to prevent inappropriate contact among attorneys.**

---

---

**The protestor did not take the next step in the statutory process, which would have been appealing the decision.**

---

find no convincing evidence the decision was arbitrary, capricious, or erroneous.

## **Our Review Found Insufficient Evidence to Support the Allegations**

We concur with the conclusions of UDP and the AG that the allegations were either not supported by evidence or did not violate the *Utah Code*. The allegations were correctly dismissed at the conclusion of the protest process.<sup>9</sup>

The 22 allegations targeted various aspects of the math textbook procurement. Figure 2.2 summarizes the types of allegations and the frequency with which they were raised in the protest.

---

**Figure 2.2 The Protestor Alleged a Variety of Wrongdoing in the Textbook Procurement.** The 22 allegations fall into 5 general categories.

---

<b>Categories of Allegations</b>	<b>Number of Allegations</b>
Evaluation committee had conflicts of interest (allegations 1-6)	6
Proposal scoring was biased, unfair (allegations 7-12)	6
Miscellaneous criticisms of the U of U proposal (allegations 13-17)	5
Evaluation committee members were not qualified (allegations 18-20)	3
Individuals employed anticompetitive practices (allegations 21-22)	2*

Source: Auditor summary of protest.

\* This includes the allegation of the money offer discussed beginning on page 7.

Overall, our analysis of available evidence indicates these allegations did not have merit. Only the money offer allegation posed a potential case of serious wrongdoing. This issue was resolved by an investigation by the AG and we concur with their conclusion.

Each category of allegations is discussed and each respective allegation reproduced below. Agency responses and our analysis follow each allegation. Purchasing's responses are quoted in blue, the

---

**The following sections contain USOE, Purchasing, and LAG responses to the allegations.**

---

---

<sup>9</sup> The allegations addressed in depth hereafter, are the remaining 21.

comments presented in red are summaries of USOE’s responses, and our conclusions (LAG) are given in green.<sup>10</sup>

### **Audit Did Not Identify Convincing Evidence of Conflicts of Interest**

Conflicts of interest in purchasing are defined as an evaluator or evaluator’s immediate family members having a personal or financial relationship with a vendor or a vendor’s competitor. In our opinion, there was no evidence that the alleged relationships violated these requirements.

In addition, the responses by both UDP and USOE that evaluation members have professional relationships with members of both proposal teams (universities) indicate a mutual relationship issue, regardless of which institution received the award. While professional relationships do exist, we found no evidence that they influenced proposal evaluations.

The following six allegations addressed concerns with alleged conflicts of interest.

1. “[Reviewer 1], being expressly opposed to [SB217]<sup>11</sup> from the very beginning, and making every effort to thwart the legislative intent, surely cannot be impartial. Moreover, [Reviewer 1] is conflicted, given [Reviewer 1’s] preexisting relationship with [U of U Team Member A].”

Purchasing: “Having a point of view on a particular issue is not a violation of the Procurement Code. [Reviewer 1] signed a conflict of interest statement indicating [the reviewer] did not have any conflict of interest. Moreover, [Reviewer 1’s] scores were in line with the other evaluation committee members....”

USOE: Reviewer 1 also has preexisting relationships with BYU team members as part of Reviewer 1’s professional duties. Utah is a small state with only ten institutions of higher education preparing teachers.

---

**Evaluation team members have relationships with both proposal teams.**

---

---

<sup>10</sup> Names and identifying information have been omitted from both the accusations and the responses.

<sup>11</sup> SB217 was the bill requiring USOE to procure a 7<sup>th</sup> and 8<sup>th</sup> grade math textbook.

---

Choosing evaluation team members with no relationship to either team would have been difficult.

---

---

Evaluation committee scores are kept anonymous to prevent undue supervisory influence.

---

Reviewer 1's relationship with U of U Team Member A is extremely limited. U of U Team Member A is connected professionally to many individuals since this individual is an expert in openly licensed, online educational materials.

LAG: We concur with USOE and UDP. The *Utah Code* does not specifically prohibit this type of relationship. We were provided no evidence of a preexisting relationship that violated statutory intent. Moreover, there may not be enough individuals with expertise in mathematics and mathematics education in Utah to realistically prohibit these types of relationships for evaluation committee members.

2. "[Reviewer 1] is [Reviewer 2]'s boss, and thus [Reviewer 2] cannot be impartial."

Purchasing: "The employment relationship between [Reviewer 1] and [Reviewer 2] is not a violation of the Procurement Code."

USOE: Both of these individuals are extremely qualified to serve on the committee. Their positions and expertise made them good candidates for the evaluation committee.

LAG: We concur with USOE and UDP. Although Reviewer 1 is Reviewer 2's superior, the *Utah Code* does not prohibit this type of relationship. Evaluation committee scores are anonymous with no names attached to scorecards; this system would mitigate undue influence by a supervisor.

3. "[Reviewer 2] is a [team member] on a grant with [U of U Team Member A], and thus should not have been on the committee."

Purchasing: "Based on [Reviewer 2]'s statements, there does not appear to be a direct conflict of interest regarding [Reviewer 2's] involvement with [U of U Team Member A]."

USOE: Reviewer 2 is also a team member on a grant through BYU, which is supporting openly licensed, online educational materials development and research in science materials. Reviewer 2 provides coordination between the researchers and USOE. Reviewer 2 does not actively participate in the grant and did not remember the reviewer had signed off on it in December 2011. Reviewer 2 has fulfilled



similar roles on many grants for schools throughout Utah without compensation (other than the reviewer's salary).

LAG: We concur with USOE and UDP. The *Utah Code* does not specifically prohibit this type of relationship. In addition, the protestor did not provide any documentation to prove the existence of the professional relationship that would justify a conflict of interest. Although there is evidence that U of U Team Member A and Reviewer 2 worked together on the referenced grant, we do not believe that would in itself be sufficient to justify a conflict of interest.

4. “[Reviewer 3] is in the same research group as [U of U Team Member B], who is one of the awardee’s investigators, and thus should not have been on the committee. They published a paper together.”

Purchasing: “It is not uncommon for evaluation committee members to know or to have previously worked with other individuals in their field of expertise. Knowing someone or having worked with someone, does not constitute a violation of the Procurement Code.”

USOE: Team members on both the BYU and U of U proposal teams are associated with many mathematicians around the state. Westminster University was the only university that did not participate in either of the two proposals. Selecting reviewers without knowledge of the various participants would be impossible.

LAG: We concur with USOE and UDP. While it does appear that U of U Team Member B and Reviewer 3 appear to have a professional relationship, the *Utah Code* does not specifically prohibit this type of relationship. In addition, the protestor did not provide any documentation to prove the existence of the professional relationship that would justify a conflict of interest. Moreover, there may not be enough individuals with expertise in mathematics and mathematics education in Utah to prohibit these types of relationships for evaluation committee members.

5. “[Reviewer 4] has worked extensively with [U of U Team Member C]. They serve together on the Weber State University Region P-16 Alliance [an alliance between Weber State

---

**Professional relationships are not specifically prohibited in the procurement statute.**

---

---

**Knowing or previously working with someone involved in a procurement does not violate procurement statute.**

---

University and surrounding districts], and have worked together in various professional development capacities.”

Purchasing: “It is not uncommon for evaluation committee members to know or to have previously worked with other individuals in their field of expertise. Knowing someone or having worked with someone, does not constitute a violation of the Procurement Code.”

USOE: The number of individuals participating in the RFP (between the two teams) made it difficult to select reviewers without a connection to the participants. In addition, the school district where Reviewer 4 works did not sign any letters of support for either proposal, while other school districts did.

LAG: We concur with USOE and UDP. While it does appear these two individuals work together as part of the P-16 Alliance, the *Utah Code* does not specifically prohibit this type of relationship. In addition, the protestor did not provide any documentation to prove the existence of the professional relationship that would justify a conflict of interest. Moreover, there may not be enough individuals with expertise in mathematics and mathematics education in Utah to prohibit these types of relationships for evaluation committee members.

6. “[Reviewer 5] was also conflicted.... [Reviewer 5] is a co-author on [openly licensed, online educational] materials written under [U of U Team Member A] and is thus also conflicted.”

Purchasing: “Experts in the industry are selected to serve as evaluation committee members because they are experts in the industry and the ones most qualified to evaluate proposals. A conflict of interest must involve some personal benefit to a committee member or family member of a committee member. No evidence of such a conflict was submitted with the protest.”

USOE: The alleged conflicts of interest are actually qualifications for Reviewer 5 to serve on the evaluation committee. U of U Team Member A was minimally involved on the referenced project.

LAG: We concur with USOE and UDP. The *Utah Code* does not specifically prohibit this type of relationship. In addition, the protestor did not provide any documentation to prove the existence of the

---

There may not be enough individuals with expertise in mathematics and mathematics education in Utah to prohibit certain types of relationships on evaluation committees.

---

---

Evaluation committee members are chosen because they are experts in their fields.

---

professional relationship that would justify a conflict of interest. Moreover, there may not be enough individuals with expertise in mathematics and mathematics education in Utah to prohibit these types of relationships for evaluation committee members.

### **Scoring Allegations Ignore the Inherent Subjectivity of Proposal Evaluation**

Scoring and the evaluation of proposals is meant to be, at least in part, a subjective process. Most of the total points possible during evaluation scoring are tied to subjective criteria, while the remainder of the points relate to cost, an objective criterion. In addition, the United States District Court for the District of Utah recently found that the “RFP process grants the State substantial discretion in selecting a contractor.” Explanations for points assigned can be helpful to vendors for future proposals but cannot effectively be scrutinized after the fact because points awarded are based on the opinions of evaluators. In addition, maintaining the confidentiality of the reviewer scores lends to the integrity of the system.

The following six allegations addressed concerns with biased and unfair scoring of proposals.

**7. “Comment on [BYU’s] proposal: ‘Do they actually have actual 7 and 8 grade educators involved?’ Yes, we clearly stated that we had five middle school teachers on the proposal, as well as a 6<sup>th</sup> grade teacher who teaches 7<sup>th</sup> grade math for advanced kids. We also had two high school teachers with recent middle school teaching experience.”**

Purchasing: “Courts have consistently upheld that evaluation committee members are the best and most informed individuals to determine the scoring on an RFP. This is because they are generally experts in the particular field of study and they are the ones that have spent considerable time and effort reading and analyzing the proposals that have been submitted. ...The RFP process is subjective—intentionally so by legislation. ...Our review of proposal scoring did not reveal any overt evidence of bias. The committee members appear to have scored the proposals consistently and fairly....”

**USOE: None of the middle school teachers listed in the BYU proposal have listed that they teach 7<sup>th</sup> or 8<sup>th</sup> grade math. Nothing**

---

**The procurement process is meant to be, in part, subjective.**

---

---

The evaluation committee used Common Core–related standards to judge proposals’ quality.

---

demonstrated the recent middle school teaching experience of the high school teachers. The resume pages for BYU focused too much on BYU professors and graduate students. BYU mentioned a mathematics specialist/teacher in Nebo District who, according to USOE, had not attended USOE training for Common Core implementation. The U of U proposal included both higher education and K-12 participants who were heavily involved with the Common Core.

LAG: We concur with USOE and UDP. The relevant experience and current assignments for teachers listed on the BYU proposal are not all clearly stated—some resumes list classes taught but not grade levels. Also, the evaluation committee used attendance at Common Core training/conferences in part to judge the quality of the development team. Use of this criteria was consistent with the RFP, which states, “the instructional methods in the textbook must support developing understanding of mathematics...as outlined in the standards of the Utah Core.” Although this seems reasonable since knowledge and training in the Common Core would help the development of new materials, the RFP could have benefitted by specifically identifying Common Core training as an individual criteria.

8. “The scorecard shows that [the U of U team] outscored our team by 8.4 points on the “Sample Lesson” despite the fact that they did not have a sample lesson in their proposal. We had a 40 page sample lesson and only received 6 points.”

Purchasing: “Courts have consistently upheld that evaluation committee members are the best and most informed individuals to determine the scoring on an RFP. This is because they are generally experts in the particular field of study and they are the ones that have spent considerable time and effort reading and analyzing the proposals that have been submitted. ...The RFP process is subjective—intentionally so by legislation. ...Our review of proposal scoring did not reveal any overt evidence of bias. The committee members appear to have scored the proposals consistently and fairly....”

USOE: The U of U provided a sample lesson as part of the further clarifying information submitted<sup>12</sup>. The number of pages does not impact the score assigned for a sample lesson—quality of the lesson impacts scoring. At least one evaluator thought BYU’s lesson was too traditional.

LAG: We concur with USOE and UDP. Upon review of the original proposals and supplemental information, we confirm that the U of U team did submit a lesson with their proposal. We make no assessment of the quality of the included lesson for either team.

9. “The scorecard shows that we outscored [the U of U team] only slightly on the adaptive assessment despite the fact that they did not include any adaptive assessment in their proposal.”

Purchasing: “Courts have consistently upheld that evaluation committee members are the best and most informed individuals to determine the scoring on an RFP. This is because they are generally experts in the particular field of study and they are the ones that have spent considerable time and effort reading and analyzing the proposals that have been submitted. ...The RFP process is subjective—intentionally so by legislation. ...Our review of proposal scoring did not reveal any overt evidence of bias. The committee members appear to have scored the proposals consistently and fairly....”

USOE: The U of U provided information on their adaptive assessment as part of the supplemental information provided in June, 2012. The small difference in average scores is partially due to the limited scale of points creditable to adaptive assessment; each reviewer can assign from zero to five points.

LAG: We concur with USOE and UDP. The U of U team provided additional information about an adaptive assessment software in response to a request for clarification. This opportunity to provide additional information about their proposals was provided to both teams. Proposals are initially classified as acceptable, potentially

---

**Contrary to allegations, the U of U team submitted a sample lesson with their proposal.**

---

---

**The U of U team later provided supplemental information on their adaptive assessment, which would have been useful for UDP to clearly communicate to the protestor.**

---

---

<sup>12</sup> In their response, USOE and their purchasing agent mistakenly refer to this clarifying information as a Best and Final Offer (BAFO).

---

**Both Proposals were initially classified as “potentially acceptable” and needing further information.**

---

acceptable<sup>13</sup>, or unacceptable. Both BYU and the U of U’s proposals were initially classified as “potentially acceptable”. This leeway is granted “to facilitate and encourage an adequate number of potential contractors to offer their best proposals....” Both teams provided additional information about their proposals, which led to both teams’ proposals being classified as “acceptable.” Upon further questioning, members of the review team stated that classifying both proposals as “acceptable” was a matter of acquiring documentation, and neither proposal would have been rejected without this additional information. Indeed, upon review, we confirmed that the U of U’s scores would have been sufficient to receive the award without the additional information. It would have been useful for UDP to clearly communicate to the protestor that the additional information was contained in the supplemental information provided in June, 2012.

**10. “Under ‘Demonstrated Ability to Complete Project,’ four of the five reviewers gave BYU a score of 1, with no explanation of why BYU had not demonstrated the ability to complete the project. We had all the qualified personnel in place to complete the project, a detailed plan, and a thorough 40-page sample lesson.”**

Purchasing: “Courts have consistently upheld that evaluation committee members are the best and most informed individuals to determine the scoring on an RFP. This is because they are generally experts in the particular field of study and they are the ones that have spent considerable time and effort reading and analyzing the proposals that have been submitted. ...The RFP process is subjective—intentionally so by legislation. ...Our review of proposal scoring did not reveal any overt evidence of bias. The committee members appear to have scored the proposals consistently and fairly....”

USOE: The BYU proposal concentrated too much on using graduate students on the project and marketing possibilities to other states and contained an unrealistic time-frame. The BYU proposal also did not include resumes for all involved.

---

<sup>13</sup> Potentially acceptable is defined as being “reasonably susceptible of being made acceptable.”

LAG: We concur with USOE and UDP. Proposal scoring is meant to be subjective, and the actual scores, in the end, are up to individual evaluators. BYU proposed having a working draft ready by August 1, 2012, two and a half months after the proposal submission deadline. The committee was in the best position to determine whether this was an unrealistic timeline and whether BYU had demonstrated ability to complete the project. Despite this, further explanation of the evaluation committee's reasoning for their scoring could have been included in their response.

11. "Under 'Quality of Plan for Coordination with Publisher,' the scores between the two proposals were similar. Yet we had a detailed plan and price to produce books, while [the U of U team]'s proposal dismissed the whole concept of producing textbooks. [Their] proposal said merely that: 'Any school, district, or other organization that wishes to use printed copies of the materials will be free to print these through whatever print-on-demand vendor will give them the best price. While numerous factors, including the number of books purchased, determine the cost of print-on-demand books, we anticipate that printed versions of the material will cost approximately \$3.' The language in the RFP specified that the state would contract with a publisher who would do the printing, and that coordination would be necessary. The [the U of U team] response had no plan to coordinate this."

Purchasing: "Courts have consistently upheld that evaluation committee members are the best and most informed individuals to determine the scoring on an RFP. This is because they are generally experts in the particular field of study and they are the ones that have spent considerable time and effort reading and analyzing the proposals that have been submitted. ...The RFP process is subjective—intentionally so by legislation. ...Our review of proposal scoring did not reveal any overt evidence of bias. The committee members appear to have scored the proposals consistently and fairly...."

---

**The evaluation committee is in the best position to determine whether a proposed timeline is realistic, but reason for this belief could have been more clearly communicated after the protest was filed.**

---

---

Preferred printing methods came down to evaluator opinion, and it was decided the U of U team's overall proposal was superior.

---

USOE: The BYU proposal included a detailed plan on how it would coordinate with a private publisher. The U of U had a less detailed plan for coordinating publishing. However, the U of U plan was sufficient to assure the committee that the U of U would work with whatever publisher was chosen by the state.

LAG: We concur with USOE and UDP. This matter comes down to evaluator opinion. The actual scores, in the end, were up to individual evaluators. The evaluators felt that the U of U's proposal adequately addressed publishing and printing coordination, including the requirement that the cost be no more than \$3 per textbook. Scoring is the prerogative of individual evaluators.

12. "Despite the fact that [the U of U team] proposal was missing two key elements of the RFP, and failed to propose the development of textbooks, [a reviewer] gave [the U of U team's proposal] 60 percent more points than our proposal and [another reviewer] gave [the U of U team's proposal] 50 percent more points than our proposal. We want to know who these reviewers were, and whether they had conflicts of interest."

Purchasing: "Courts have consistently upheld that evaluation committee members are the best and most informed individuals to determine the scoring on an RFP. This is because they are generally experts in the particular field of study and they are the ones that have spent considerable time and effort reading and analyzing the proposals that have been submitted. ...The RFP process—intentionally so by legislation. ...Our review of proposal scoring did not reveal any overt evidence of bias. The committee members appear to have scored the proposals consistently and fairly..."

USOE: Everything was done according to the law and procurement statute as well as purchasing policies and procedures. Both teams were allowed to submit proposal clarifications in order to fix proposal deficiencies. Names cannot be connected to scores in order to prevent possible future harassment. Differences in scores is not a reason to accuse conflicts of interest.

LAG: We concur with USOE and UDP. The two items the protestor believed were missing were likely the adaptive assessment software and

---

Scoring is the prerogative of individual evaluators.

---



a sample lesson<sup>14</sup>. The U of U team provided clarifying information for their adaptive assessment software at the request of UDP. Scoring is the prerogative of individual evaluators. As discussed earlier, the protestor did not provide sufficient documentation to justify a conflict of interest, and the confidentiality of the reviewer scores lends to the integrity of the system.

### **Allegations Related to Incomplete Information Do Not Have Merit**

Some allegations appear to be the product of misunderstandings on the relevance of the Utah Common Core standards in mathematics as well as the procurement process. Details from the procurement clearly refute each allegation, indicating that lack of information or confusion contributed to these allegations. The protestor appears to have been unaware of information contained in the U of U proposal or the proposal clarification submitted by the U of U.

The following five allegations addressed concerns of missing or erroneous components of the U of U proposal.

**13. “No sample lesson was included in the awardee’s proposal. This was a requirement for a proposal to be considered responsive, and the RFP said that failure to include a sample lesson would result in the proposal’s being ruled non-responsive.”**

Purchasing: “This allegation appears to be factually wrong and without merit. [There is] [n]o violation of the Procurement Code.”

USOE: The U of U proposal included a lesson. The RFP did not state that failure to provide a sample lesson would result in the proposal being ruled non-responsive. Compared to BYU’s lesson, the U of U lesson was better written, aligned better with Utah Core Mathematics Standards, and included actual material that a student or teacher would use.

---

**The protestor may have been unaware of all the information contained in the proposals and subsequent clarifications.**

---

---

<sup>14</sup> The supposed absences are addressed in allegations eight and nine previously.

---

**It is the procurement officer's role to disqualify an offeror, but it was deemed unwarranted.**

---

LAG: We concur with USOE and UDP. The U of U proposal had a sample lesson that the evaluation team deemed sufficient. In addition, the RFP did not state specifically that a missing sample lesson would cause a proposal to be non-responsive. Leeway is given to procurement officers to disqualify an offeror.

**14. “No adaptive assessment software to measure student performance was included in the winning proposal, yet this was required by both the law and the RFP. Somehow the winners were able to spin an ‘acceptable’ response about assessing the content, not the students. Nonetheless, there is no software development in their proposal.”**

Purchasing: “[There is] [n]o violation of Procurement Code.”

USOE: Neither proposal included all required materials and information. Declaring both proposals non-responsive would waste valuable time and taxpayer dollars. These deficiencies were handled by requesting additional information from the vendors. In the opinion of the evaluation committee, BYU’s online assessment program was not adaptive and was not given full points.

LAG: We concur with USOE and UDP. The U of U team provided additional information about an adaptive assessment software in response to a request for clarification. This opportunity to provide additional information about their proposals was provided to both teams. Proposals are initially classified as acceptable, potentially acceptable, or unacceptable. Both BYU and the U of U’s proposals were initially classified as “potentially acceptable”. This leeway is granted “to facilitate and encourage an adequate number of potential contractors to offer their best proposals.” Both teams provided additional information about their proposals, which led to both teams’ proposals being classified as “acceptable”. Upon further questioning, members of the review team stated that classifying both proposals as “acceptable” was a matter of acquiring documentation, and neither proposal would have been rejected without this additional information. Indeed, upon review, we confirmed that the U of U’s scores would have been sufficient to receive the award without the additional information. It would have been useful for UDP to clearly

---

**Neither proposal initially included all required materials.**

---

communicate to the protestor that the additional information was contained in the supplemental information provided in June, 2012.

15. “The [U of U] proposal is to develop Open Content materials<sup>15</sup>, which will generate no revenue for the state of Utah. Moreover, the awardee’s proposal states that ‘the openly licensed materials produced in response to this RFP will be distributed completely free online.’ This is blatantly counter to both the (corrected) RFP and SB-217.”

Purchasing: “Neither the legislation [n]or the RFP prohibit this practice. [There is] [n]o violation of Procurement Code.”

USOE: SB217 and the RFP do not prohibit licensing the materials under Creative Commons.

LAG: We concur with USOE and UDP. There is no prohibition in the RFP or SB217 on distributing the materials free online. SB217 requires that the mathematics textbook be made available online for direct download. The only money this project would generate for Utah would be half of the sale price of textbooks sold outside of the state. The U of U’s proposal does not appear to preclude this.

16. “[The U of U] proposal was for worksheets and a teacher’s manual, not a textbook, and then links to Open Content that they will develop. Indeed, the awardees said that they would provide only a ‘brisk’ introduction that could serve as a reference. This philosophy is not consistent with SB-217 since a ‘brisk’ introduction does not ensure that ‘the content of the curriculum is substantially contained in the textbook,’ as required by the law.”

Purchasing: “The RFP followed the law. [The protestor’s] personal opinions do not substitute for what the actual law states or what the RFP called for. [There is] [n]o violation of Procurement Code.”

USOE: The proposal was not meant to be a complete textbook.

---

**There is no prohibition on the U of U’s proposal to distribute the materials free online.**

---

---

**The evaluation committee believed the U of U proposal fulfilled the RFP requirements.**

---

---

<sup>15</sup> Open content materials are materials available for download by anyone for no fee that are able to be revised and redistributed. Materials licensed under Creative Commons can be termed “open content”.

LAG: We concur with USOE and UDP insofar as scoring is the prerogative of individual evaluators. The RFP states that “the content of the textbooks must meet the standards of the Utah 2012 Mathematics Core for grades 7 and 8... The content and instructional methods in the textbook must support student development of the Standards for Mathematical Practice as outlined in the 2012 Core.” The evaluation committee believed the U of U proposal fulfilled the RFP requirements.

17. “The review committee noticed that the sample teacher guide that was submitted by [the U of U team] was plagiarized (the USOE’s word, not mine). This material came from the Shell Centre for Mathematical Education, University of Nottingham, copyrighted in 1985. The fact that they (i) submitted a teacher’s guide instead of a sample lesson and (ii) used plagiarized materials and were not immediately disqualified is remarkable.”

Purchasing: “[T]his allegation is outside the jurisdiction of the Chief Procurement Officer. Our office has no jurisdiction over this issue. As with all of the other allegations raised by [the protestor], there was no proof—only accusations. ... [T]his allegation does not involve a violation of the Procurement Code. If materials were plagiarized, it is strictly a civil matter between the parties involved...”

USOE: UDP advised USOE to ask for clarification on alleged plagiarism. The materials were not actually plagiarized—two teachers at a charter school had developed the materials and had released the materials. Many math tasks have similar characteristics, and it is difficult to connect materials to original authors. The allegations were dismissed in part based on supplemental information submitted by the U of U team.

LAG: We concur with USOE and UDP. The U of U team provided clarifying information that addressed allegations of plagiarism in the sample lesson. Leeway is given to procurement officers to disqualify an offeror. The U of U’s supplemental information stated that they were given permission to use material from the Learning Mathematics for Teaching Instrument Workshop and Creative Commons licensed materials by several school districts (Jordan, Granite, and Salt Lake).

---

The U of U was actually given permission to use materials that were allegedly plagiarized.

---

## Evaluation Committee Members Were Qualified According to Procurement Statute

Each of the five evaluation committee members was qualified because they met the two requirements in procurement statute: ability to fairly evaluate proposals and no conflicts of interest. Contrary to allegations, members of evaluation committees do not need specific college degrees to fairly evaluate the proposals.

The following three allegations addressed concerns that evaluation committee members were not qualified to judge proposals.

18. “It is my understanding that [Reviewer 1] does not have a math degree. I do not believe [this reviewer] is certified as a secondary-school math teacher.”

Purchasing: “Not having a math degree or being certified as a secondary-school math teacher does not disqualify a person from sitting on an evaluation committee—no violation of the Procurement Code.”

USOE: These specific qualifications are not required by legislation, the RFP, or procurement statute. Reviewer 1 has graduate degrees in education and is a licensed educator/administrator. Reviewer 1 has 31 years of experience in education.

LAG: We concur with USOE and UDP. There were no specific requirements for committee members in the *Utah Code*; however, in order to serve on the committee, evaluators are required to sign a form attesting that they have no conflicts of interest.

19. “It is my understanding that [Reviewer 4] does not have a math degree. I do not believe [this reviewer] is certified as a secondary-school math teacher.”

Purchasing: “Not having a math degree or being certified as a secondary-school math teacher does not disqualify a person from sitting on an evaluation committee—no violation of the Procurement Code.”

USOE: Reviewer 4 is a licensed educator and administrator from a district that is looking for 7<sup>th</sup> and 8<sup>th</sup> grade mathematics materials. Reviewer 4 provides a district level perspective.

---

Evaluation committee members met the requirements to serve on the committee despite the allegation of not being qualified to judge proposals.

---

---

The only requirements to sit on an evaluation committee are no conflicts of interest and ability to fairly evaluate proposals.

---

LAG: We concur with USOE and UDP. There were no specific requirements for committee members in the *Utah Code*; however, in order to serve on the committee, evaluators are required to sign a form attesting that they have no conflicts of interest.

20. “The Legislature commanded that [the leader for each proposal team] of the Math Materials Access Improvement Grant have a Ph.D. in mathematics, and yet not one of the reviewers has a Ph.D. in mathematics. [Reviewer 3’s] Ph.D. is in math education).”

Purchasing: “While the Legislature may have ‘commanded’ that the [team leader] have a Ph.D., this is not a requirement for an evaluator. [There is] [n]o violation of the Procurement Code.”

USOE: There is no requirement for reviewers to have this background. Reviewer 3 was qualified—the reviewer is a mathematician and mathematics educator.

LAG: We concur with USOE and UDP. While the RFP does require the proposal team leader to have a Ph.D. in mathematics, there is no similar requirement for evaluation committee members. There were no specific requirements for committee members in the *Utah Code*; however, in order to serve on the committee, evaluators are required to sign a form attesting that they have no conflicts of interest.

---

There is no requirement for an evaluation committee member to have a Ph.D. in mathematics.

---

### **There Was No Evidence That Individuals Employed Anticompetitive Practices**

The two allegations against evaluation committee members concerning anticompetitive practices do not appear to have merit. These two allegations are the alleged money offer<sup>16</sup> to an evaluation committee member and alleged collusion between the USOE purchasing agent and members of the evaluation committee.

The following two allegations addressed concerns that evaluation committee members engaged in illegal, anticompetitive activities.

---

<sup>16</sup> Discussed at length beginning on page 7.

21. (Note: this is the only one of the 22 allegations that was sent to the AG's office.)

“On June 07, 2012, [U of U Team Member B] sent an email to [Reviewer 2] inviting [Reviewer 2] to participate in [U of U Team Member B's] “standards project” and offered [Reviewer 2] a \$300/day honorarium for several days. [Reviewer 2] responded that same day saying [they were] ‘happy to participate’. This occurred during the period of review and seems unethical at minimum.”

LAG: As this allegation and the corresponding responses were discussed at length on pages 7 through 10, we will not re-analyze them here.

22. “The USOE purchasing agent [who assisted the evaluation committee] may have been in collusion with [Reviewers 1 and 2's] efforts to thwart the integrity of this procurement process. In an email dated June 18, 2012, [Reviewer 2] told [Reviewer 4] that ‘[The purchasing agent] is on our side...that being the side of doing things right. It would be good to call [the purchasing agent]. [The purchasing agent]’s trying to protect the committee’s findings’. This email clouds the overall integrity of the USOE’s purchasing and procurement processes.”

Purchasing: “... [T]here is no proof of collusion other than [the protestor's] personal interpretation of one statement in an email made by [Reviewer 2]....”

USOE: Reviewer 1's words are being twisted to mean something else. The USOE purchasing agent believes this email occurred due to the high level of scrutiny on legislative mandated RFP's and the fact that Reviewer 4 had only met the purchasing agent once before. The purchasing agent wanted to ask about the proposal from a publisher.

LAG: We concur with USOE and UDP. It appears Reviewer 2 wrote this in an email to Reviewer 4. However, the protestor has not provided any evidence of actual wrongdoing. Taken at face value, Reviewer 2's words indicate that he/she wants to abide by the procurement statute. It appears the email exchange occurred because

---

**The exchanged email, questioned by the protesters, was not collusion but appears to merely be clarifying in nature.**

---

Reviewer 4 was not acquainted with the purchasing agent and wanted to verify that he/she should contact the purchasing agent.

## Recent Legislation Should Improve The Procurement Process

Updates to procurement statute may improve the transparency of future procurements and prevent future confusion similar to what the protestor may have experienced during this math textbook RFP. We do not believe, however, that these changes would have influenced the outcome of the math textbook procurement or the related protest.

The Utah State Legislature passed Senate Bill 179 in 2014. This bill modified procurement statute found in Title 63G Chapter 6a of the *Utah Code*. Figure 2.3 summarizes the change made by SB179 that may affect future procurements and identifies where they are found in *Utah Code*.

**Figure 2.3 Changes to *Utah Code* May Help Prevent Future Protests and Increase Transparency.** The revised procurement statute modifies some policies and procedures related to proposal scoring.

Section of <i>Utah Code</i>	Relevant Changes After SB179
63G-6a-708	The evaluation committee and conducting procurement unit now must prepare a written justification statement that explains the score assigned to each evaluation category and how the proposal with the highest total score provides the best value.

Source: *Utah Code*

Five allegations in the protest questioned the scoring for different sections of the proposals. Procurement statute in 2012 did not require the evaluation committee to provide justification for scores assigned to each section of submitted proposals. Under the new law, the BYU team could have obtained explanations for scores assigned for each evaluation category and accompanying explanations as to why the winning proposal provided the best value. This information may have answered the questions brought up in these five allegations, avoiding the need, in part, for a protest.

**Procurement statute now requires an explanation for scoring by evaluation committees.**



In summary, our review found no substantive evidence of wrongdoing during the 2012 math textbook procurement. All agencies involved in the protest process and related investigations performed their duties according to *Utah Code* requirements and professional standards. All allegations were thoroughly considered and found not to have merit. These allegations may have stemmed from misunderstandings by the protestor, not inappropriate actions on the part of UDP, USOE, or the AG. We believe our review brought to light some additional information that may have been lacking, thereby leading to some misunderstandings; however, all actions by involved agencies appear to be appropriate. Because required processes were followed, this report does not recommend any changes, although some areas may have benefitted from clearer communication<sup>17</sup>.

---

**Actions by involved state agencies in this matter appear to have been appropriate.**

---

---

<sup>17</sup> Specific suggestions for improved communication can be found in our responses to allegations 7, 9, 10, 14, and 17 on pages 18-26.

**This Page Left Blank Intentionally**

# Appendix

**This Page Left Blank Intentionally**

# Memorandum

---

To: John Schaff, Legislative Auditor General  
From: Thomas R. Vaughn, Associate General Counsel  
Date: May 15, 2014  
Re: Review of a criminal investigation conducted by the Office of the Attorney General

---

Mr. Schaff:

You asked me to review evidence gathered as part of a criminal investigation conducted by the Office of the Attorney General in relation to an RFP (GL12031) issued by the State Division of Purchasing on behalf of the State Board of Education. Specifically, you asked me to determine whether, based on the evidence, the Office of the Attorney General correctly concluded that the evidence did not support a criminal prosecution based on the allegation that a person offered an emolument to a member of the RFP evaluation committee.

I have completed my review of the investigation conducted by the Office of the Attorney General. As you are aware, my opinion is based solely on information provided to me by your office. I did not conduct an independent investigation into the matter.

Based on the information you provided me, I agree with the Office of the Attorney General that there is not sufficient evidence to support criminal charges based on an allegation that money was unlawfully offered to a member of the RFP evaluation committee in order to influence the member's score. I also agree that the evidence indicates that the alleged offer did not influence the score awarded.

Please contact me if you have additional questions in relation to this opinion.



---

Thomas R. Vaughn  
Associate General Counsel  
Office of Legislative Research & General Counsel



**This Page Left Blank Intentionally**

## **Agency Responses**

**This Page Left Blank Intentionally**





## State of Utah

GARY R. HERBERT  
*Governor*

SPENCER J. COX  
*Lieutenant Governor*

Department of Administrative Services  
KIMBERLY HOOD  
*Executive Director*

Division of Purchasing and General Services  
KENT D. BEERS  
*Division Director*

June 9, 2014

Mr. Schaff:

I am writing this letter in response to the Legislative audit report (No. 2014-05) on the protest process followed by the Division of State Purchasing involving a protest filed on the Office of Education Math Textbook contract award.

The audit report is accurate and well written. We agree with the audit conclusion that the Division of State Purchasing followed the protest process as outlined in statute.

Your audit staff is to be commended for their hard work, diligence and professionalism. It was a pleasure working with them.

Sincerely,

*Kent D. Beers*

Kent D. Beers  
Director, State Purchasing and General Services

**This Page Left Blank Intentionally**

June 10, 2014

John M. Schaff, CIA  
Auditor General  
W315 Utah State Capitol Complex  
P.O. Box 14315  
Salt Lake City, UT 84114-5315

Dear Mr. Schaff,

Thank you for your report, *A Review of Allegations Concerning the Math Textbook Procurement* (Report No. 2014-05). We agree with your findings and appreciate the professional manner in which the audit was conducted. We concur that the actions taken by this agency and others were appropriate, performed in accordance with professional standards, and in compliance with Utah Code.

If you have any further questions or concerns, please let me know. We value your input and are pleased to assist you in any way.

Sincerely,



Brenda Hales, M.Ed.  
Deputy Superintendent