

MEMORANDUM

TO: Commissioner Michelle Kommer
CC: Celeste Engelhard, Accounting Manager
FROM: Deputy Commissioner Shawn Kessel
DATE: November 1, 2019
RE: Control Enhancements

As you know, our most recent audit identified opportunities for improvement in our control environment. We have thoroughly reviewed the audit report to identify appropriate control enhancements. Please see the Department of Commerce's action plan, below.

FINDING 19-01 "CIRCUMVENTING PROCUREMENT GUIDELINES"

Audit Issue (pg. 2 of Audit Report)

"These contracts should have been treated as one contract for services and allowed for contractor competition following the Office of Management and Budget (OMB) procurement requirements."

Commerce Position

"We disagree with the finding that the Department "violated state law by circumventing procurement requirements related to the 'Be Legendary' logo and overall brand refresh. As correctly stated in the audit report, the value of this contract was \$9,500, and as such, did not require a competitive bid process under procurement rules. Contract deliverables were met prior to the contract being completed. Subsequently, temporary workers were hired to perform work that was connected to the brand refresh but was separate from the contract deliverables. We acknowledge there was overlap in the time frame of the contract and the temporary employment as the final contract payment was made in November 2018, and the temporary employees began employment with the Department in October 2018. After the hiring of the temporary employees, the OMB Procurement Office was consulted, and steps were taken to ensure the contract was appropriately terminated after final payment. The Department will ensure there is a clear separation between contract deliverables and temporary employment arrangements in the future and that all procurement requirements are followed."

As stated above, there were two separate workstreams: one to create the website design, or "frame," and the other to develop content for the website, which required additional resources. While we acknowledge these efforts were related, there was no overlap with the original contract, and we believe Commerce properly complied with OMB Purchasing Guidelines. Commerce also followed state hiring practices and generally accepted employment law principles in treating those hired for the second workstream as temporary employees.

ACTIONS	INITIATION	CONCLUSION
1. Conduct mandatory training on procurement guidelines at least once during the biennium, at an All Staff Meeting	Q1 2020	(ANNUALLY)
2. Require at least one member of each of Commerce's four divisions become Level 3 procurement trained <i>-Hiring in Workforce & DCS has slowed compliance along with OMB cancelling May Level 3 & 4 training</i>	Q4 2019	Q2 2020
3. Include procurement training as part of the on-boarding process for all new Commerce employees.	Q1 2020	(ONGOING)
4. When a program/contract transitions from one Commerce division to another Commerce division, a review of contract deliverables between division leads shall take place within 15 days of the transfer.	Q4 2019	(ONGOING)
5. Commerce procurement designee will attend a senior team meeting at least once per quarter and provide an update, sufficient to meet senior team expectations, on staff trained in procurement, active procurement processes and a list of open contracts that were procured.	Q4 2019	(ONGOING)
6. All contract related approvals shall have timely documentation and contract deliverables will be acknowledged in writing.	Immediately	(ONGOING)
7. Commerce will consult/review level 3+ procurement processes with OMB liaison.	Immediately	(ONGOING)
8. Commerce will consult/review level 4 procurement processes with OMB procurement staff.	Immediately	(ONGOING)
9. Review, revise & communicate Financial Policies as necessary to implement these enhanced controls, and communicate, train as necessary.	Q4 2019	Q2 2020

FINDING 19-02 "VIOLATION OF APPROPRIATION AUTHORITY"

Audit Issue (pg. 5 of Audit Report)

"...violated their appropriation authorized in the 2017 Session Laws by improperly charging \$853,908 to the wrong biennium."

Commerce Position

The Department of Commerce agrees with the recommendation and acknowledges that these expenditures should have been charged to the 2019-21 biennium rather than the 2017-19 Biennium. The Department will strengthen internal controls and implement procedures to ensure in the future expenditures are properly allocated to the correct biennium.

As acknowledged, this was a timing error related to payment for agreed-upon work on an infrastructure project at Grand Sky UAS park – a project that was funded by the Legislature and had been delayed by weather. The Department made the correct payment to the correct party at the incorrect time, and Commerce has since implemented changes to prevent it from happening again. Ultimately, the funds went to the Legislature’s intended purpose, and no party received undue benefit. Funding for infrastructure projects often comes with continuing appropriation authority, or “carryover” authority, which allows the funding to be carried into the next biennium in case of construction delays. That carryover authority was not in place for this project. Commerce will request such authority in the future to prevent this from happening again.

ACTIONS	INITIATION	CONCLUSION
<p>1. Educate all involved parties regarding Office of Management & Budget policies and procedures relating to the “allow-back period”, including and especially partners affected by the appropriation.</p> <p>- The following email was distributed to all Commerce Staff. The State financial system will be shut down July 29-30, 2020 for fiscal year end processing.</p> <ul style="list-style-type: none"> • Payments cannot be processed during this time so plan ahead. • Please have all payment requests and invoices submitted to fiscal staff by July 15, 2020. • All June travel must be submitted for reimbursement by July 15, 2020. *Please see policy below. • Remember goods and services paid with Fiscal Year 2020 funds need to be delivered by June 30, 2020. • Please be cognizant of P-Card charges made in late June. The charge must be on your June statement in order to use FY20 funds. <p><u>*Submitting Travel Expense Voucher</u> All Travel Expense Vouchers (SFN 52785) must be submitted within 60 days of the end of the month for which the travel is being claimed.</p> <p><u>Travel Expense Vouchers for June must be submitted by July 15 so they can be paid during the fiscal year in which they are incurred.</u></p> <p>Please share the July 15, 2020 deadline with any vendors, partners or sub-grantees that you may be working with, so they can submit June invoices or payment requests timely. This will ensure they are paid prior to shut down.</p> <p>M. Halone also reviewed the allow-back procedure at the July 15, 2020 Commerce Huddle</p>	Q1 2020	Q2 2020
2. Request continuing appropriations authority for all grants designated by the Legislature to the Department of Commerce.	67 th Leg. Session	(ONGOING)
3. Request continuing budget authority pursuant to North Dakota Century Code Section 54-44.1-11 if complications	>67 th Leg. Session	(ONGOING)

arise (i.e. construction delays) where the Department does not have continuing appropriations.		
4. Review, revise & communicate Financial Policies as necessary to implement these enhanced controls, and communicate, train as necessary.	Q4 2019	Q2 2020

FINDING 19-03 "NONCOMPLIANCE WITH CONTRACT REQUIREMENTS"

Audit Issue (pg. 6 of Audit Report)

"...did not monitor contract deliverables of an entrepreneurial contract with a total cost of \$253,921. As a result, contract payments totaling \$123,750 were made to unapproved subcontractors. Further, \$23,448 of these payments were not supported by progress reports."

Commerce Position

"We disagree with the finding that the Department did not monitor contract deliverables and that contract payments were made to unapproved subcontractors.

The auditor's report indicates that the following contract deliverables were not met:

- CONTRACTOR must submit sub-contractors to state for approval with proof of sustainability of developed programming/positions.
- Sub-contractor progress reports must be reported in CONTRACTOR quarterly required reports.

The auditor's report indicates that the "The Department did not approve subcontractors...as required by the contract." The Department did provide approval for sub-contracts; however, this approval occurred verbally, as verified by the previous contract manager and vendor. The auditor's report indicates that unsupported payments were made to unapproved subcontractors. As noted, the Department verbally approved subcontractors, hence disagrees payments were made to "unapproved" contractors. The Department has implemented contract monitoring procedures to ensure appropriate documentation is secured in advance of payment for all future contracts."

As stated above, subcontractors were verbally approved as allowed for in the contract, and no payments were made to unapproved subcontractors. Commerce specifically reconciled the subcontractor billing with the aggregated billing to ensure that no one was overpaid or underpaid.

ACTIONS	INITIATION	CONCLUSION
1. When a program/contract transitions from one Commerce Division to another Commerce Division, a review of contract deliverables between division leads shall take place within 15 days of the transfer.	Q4 2019	(ONGOING)

2. All contract related approvals will have timely documentation and contract deliverables will be acknowledged in writing.	Q4 2019	(ONGOING)
3. A report of any charges to be made during the "allow-back period" will be provided to the Office of Management and Budget and Attorney General's Liaison for review prior to formal submission	July 2021	(ONGOING)
4. Review, revise & communicate Financial Policies as necessary to implement these enhanced controls, and communicate, train as necessary.	Q4 2019	Q2 2020

FINDING 19-04 "LACK OF INTERNAL CONTROL SURROUNDING APPROPRIATIONS"

Audit Issue (pg. 7 of Audit Report)

"...identified \$853,908 charged to the wrong biennium."

Commerce Position

The Department of Commerce agrees with the recommendation and acknowledges that these expenditures should have been charged to the 2019-21 biennium rather than the 2017-19 biennium. The Department will strengthen internal controls and implement procedures to ensure in the future expenditures are properly allocated to the correct biennium.

As acknowledged, this was a timing error related to payment for agreed-upon work on an infrastructure project at Grand Sky UAS park – a project that was funded by the Legislature and had been delayed by weather. The Department made the correct payment to the correct party at the incorrect time, and Commerce has since implemented changes to prevent it from happening again. Ultimately, the funds went to the Legislature's intended purpose, and no party received undue benefit. Funding for infrastructure projects often comes with continuing appropriation authority, or "carryover" authority, which allows the funding to be carried into the next biennium in case of construction delays. That carryover authority was not in place for this project. Commerce will request such authority in the future to prevent this from happening again.

ACTIONS	INITIATION	CONCLUSION
1. Work with vendors to assure invoices accurately reflect the month that the vendor issued payment for the service.	Q1 2020	(ONGOING)
2. A report of any charges to be made (invoices to be submitted) during the "allow-back period" will be provided to the Office of Management and Budget and Attorney General's Liaison for review prior to formal submission	July 2021	(ONGOING)

3. All temporary employee arrangements will be reviewed by the Commerce Attorney General liaison prior to execution, if they are expected to work for longer than six months.	Immediately	(ONGOING)
4. Commerce will schedule a quarterly meeting to review matters related to procurement with the Attorney General's office	Nov. 2019	
5. Review, revise & communicate Financial Policies as necessary to implement these enhanced controls, and communicate, train as necessary.	Q4 2019	Q2 2020

PROPOSED AMENDMENTS TO SENATE BILL NO. 2018

Page 1, line 2, after "commerce;" remove "and"

Page 1, line 2, after "transfer" insert, "and to provide an appropriation to the department of transportation for costs related to the construction of unmanned aircraft system towers."

Page 3, line 14, after "center" insert:

"SECTION 8. APPROPRIATION – DEPARTMENT OF TRANSPORTATION – CONSTRUCTION OF UNMANNED AIRCRAFT SYSTEM TOWERS. Of the \$28,000,000 appropriated to the department of commerce in section 12 of chapter 18 of the **2019 Session Laws**, up to \$28,000,000 may be provided to and is appropriated to the department of transportation for the purpose of beyond visual line of sight unmanned aircraft system program tower infrastructure construction, during the biennium beginning July 1, 2021, and ending June 30, 2023. The department of transportation may bid, award and administer any contracts necessary to complete the construction of the tower infrastructure."

Renumber accordingly

From: Kessel, Shawn skessel@nd.gov

To: Bekkedahl, Brad bbekkedahl@nd.gov, Holmberg, Ray E. rholmberg@nd.gov, Heckaman, Joan M. jheckaman@nd.gov

Cc: Kinnischtzke, Levi lkinnischtzke@nd.gov, Bloms, Renae R. rrbloms@nd.gov, - Grp-COM Leadership Team comleadership@nd.gov, Tolan, Michael P. mtolan@nd.gov, Heick, Tammy A. theick@nd.gov, Engelhard, Celeste R. cengelhard@nd.gov

Date: Wednesday, February 10, 8:29 AM

 2019 Audit Plan Final.docx 74 KB
 PROPOSED AMENDMENTS SB 2018 2-2-21 (UAS tower).docx 27 KB

Chairman Bekkendahl, Senator Holmberg, Sen. Heckaman,

In the continued effort to answer all of the questions asked of Commerce and in preparation for the sub-committee meeting scheduled for this am, I have attached the proposed amendment for the NDDOT to be involved in the UAS tower construction and the Control Enhancements we created as a response to the 2019 audit that has been well documented in the press. The Control Enhancement document is provided in response to the preparation document we were provided in anticipation of committee consideration of SB2018.

Here also are the commitments and incurred expenses made from the Commerce Momentum (Discretionary) Fund requested earlier by the committee. I can review this doc today if we have time and/or Katie and Sara can speak to their department commitments if time is short.

Project	Commitments	Paid
	\$	
Workforce	920,000.00	
	\$	\$
AHEC	300,000.00	100,000.00
	\$	
Dakota Strike	20,000.00	
	\$	
Workbay	200,000.00	
Workforce Planning Grant	\$	
Program	200,000.00	

<i>Workforce Training Program</i>	\$ 200,000.00	
Community Building	\$ 722,602.50	
Planning Grants	\$ 492,695.00	\$ 220,136.48
Vibrancy Grants	\$ 36,350.00	\$ 1,500.00
Summit and Regional Convenings	\$ 75,000.00	\$ 53,696.70
Tech Platforms	\$ 118,557.50	\$ 68,557.50
Economic Development	\$ 1,332,319.00	
PTAC	\$ 190,000.00	\$ 87,019.59
SBDC	\$ 102,319.00	
<i>Development Fund</i>	\$ 500,000.00	
Energy Innovation Center	\$ 250,000.00	
<i>Primary Sector Automation</i>	\$ 20,000.00	
Innovation Grants	\$ 270,000.00	\$ 94,419.34
Tourism/Marketing	\$ 690,000.00	
Tourism Infrastructure Grants	\$ 160,000.00	\$ 40,000.00
Tourism/Marketing Branding	\$ 80,000.00	
<i>Pilot Program Marketing</i>	\$ 50,000.00	
<i>Primary Marketing Campaign</i>	\$ 400,000.00	

Project Support

\$	\$
215,000.00	53,217.32

\$	\$
3,879,921.50	718,546.93

Yet to commit

\$
12,305.50

\$

3,892,227.00

If you are in need of any further documents to answer questions you may have please let me know.

Thanks you & see you soon.

By the way, Workforce Director Ralston and Tourism/Marketing Director Otte Coleman will be on-site today along with Lead Finance Officer Engelhard. James Leiman and I will be attending virtually – thanks again for providing that option.

Shawn Kessel
Int. Commerce Commissioner
skessel@nd.gov
701.328.5331
701.690.7776
