

**STATE OF NEBRASKA
ATTESTATION REVIEW
OF THE
NEBRASKA DEPARTMENT OF MOTOR VEHICLES
PROGRAM 644 - FEDERAL GRANTS
JULY 1, 2008 THROUGH JUNE 30, 2009**

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Issued on December 10, 2009

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Independent Accountant's Report

Citizens of the State of Nebraska:

We have reviewed the revenues, expenditures, capital assets, and Federal compliance of the Nebraska Department of Motor Vehicles - Program 644, Federal Grants (Program), for the period July 1, 2008, through June 30, 2009. The Program's management is responsible for the revenues, expenditures, capital assets, and Federal compliance. We did not obtain a written assertion regarding such matters from management.

Our review was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and the standards applicable to attestation engagements contained in *Government Auditing Standards* issued by the Comptroller General of the United States. A review is substantially less in scope than an examination, the objective of which is the expression of an opinion on the revenues, expenditures, capital assets, and Federal compliance. Accordingly, we do not express such an opinion.

Based on our review, nothing came to our attention that caused us to believe that the revenues, expenditures, capital assets, and Federal compliance are not presented, in all material respects, in conformity with the criteria set forth in the Criteria section.

In accordance with *Government Auditing Standards*, we are required to report findings of deficiencies in internal control, violations of provisions of contracts or grant agreements, and abuse that are material to the Program's revenues, expenditures, capital assets, and Federal compliance and any fraud and illegal acts that are more than inconsequential that come to our attention during our review. We are also required to obtain the views of management on those matters. We did not perform our review for the purpose of expressing an opinion on the internal control over the Program's revenues, expenditures, capital assets, and Federal compliance or on other types of compliance and other matters; accordingly, we express no such opinions.

Our review disclosed no findings that are required to be reported under *Government Auditing Standards*. However, we noted certain other matters, and those findings, along with the views of management, are described below in the Summary of Results.

This report is intended solely for the information and use of the Citizens of the State of Nebraska, management of the Program, others within the Program, and the appropriate Federal and regulatory agencies. Although it should not be used by anyone other than these specified parties, this report is a matter of public record, and its distribution is not limited.

Signed Original on File

Mike Foley
Auditor of Public Accounts

Timothy J. Channer, CPA
Assistant Deputy Auditor

December 10, 2009

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Background

Effective July 1, 2009, the Nebraska Office of Highway Safety was transferred from the Department of Motor Vehicles (DMV) Program 644 (Program) to the Department of Roads (DOR) pursuant to 2009 Neb. Laws LB 219, except for the Motorcycle Safety Act, which will continue to be administered by the DMV. Per 2009 Neb. Laws LB 219A, the Program will have funding appropriated by the Nebraska Legislature through Program 568 at DOR.

The APA's review of the Program's Federal Grants for the fiscal year ended June 30, 2009, was conducted at the request of the Director of DOR due to the passage and approval of LB 219.

The Program was established in 1967 to coordinate, develop, and implement Nebraska's annual traffic safety plan in accordance with the Federal Highway Safety Act of 1966. Under the Act, the Governor shall designate the Governor's Highway Safety Representative, whose responsibility is to oversee the State's annual Federal highway safety allocation to reduce traffic-related injuries and fatalities.

The Program's Administrator acts as the Governor's representative for highway safety. The Program helps State agencies, counties, and communities develop traffic safety programs. Examples of projects include programs to reduce drunken driving, enforce the speed limit, reduce road hazards, and safety belt promotion and education. The projects are outlined in the annual Nebraska Highway Safety Plan. Funds are allocated on a project basis.

The Federal government has instructed states to direct major attention to five categories involving highway safety which include police traffic services, alcohol, restraints, traffic records, and emergency medical services. The Program analyses traffic accident information to identify locations in the State or population groups with numerous traffic safety problems and develops projects with State agencies or political subdivisions to decrease these problems. Federal funds are distributed as grants to agencies and subdivisions to implement these projects. Examples of projects involving State agencies include: traffic safety training courses for law enforcement personnel, overtime speed enforcement projects, public safety information materials, emergency medical services training, and alcohol equipment support.

The Program is responsible for developing and implementing effective strategies to reduce the State's traffic-related injury and fatality rates. These strategies may take the form of stand-alone projects, activities and/or more comprehensive long-term programs. Both traditional and innovative strategies are encouraged and utilized to support the Program's goals.

Staff of the Program are responsible for the administration of the Federal highway safety funding and for facilitating the highway safety program's efforts supported by these funds.

Based on a problem identification process, the following priority traffic safety areas are being targeted: occupant protection, teen drivers, alcohol, speed, and other traffic safety areas. To address these problem areas, grants, training opportunities, and educational items are available.

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Funding assistance grants are available to organizations for traffic safety projects and activities. Applications for projects with the potential to impact the priority traffic safety areas are annually reviewed.

Funding assistance through mini-grants is also available to law enforcement for the following items: preliminary breath testing (PBT) units, radar units, in-car video cameras, and selective overtime enforcement. Law enforcement and other eligible organizations are also provided with funding assistance for traffic training, public information, and educational activities.

Training opportunities are available through the Program in the following traffic safety areas: accident investigation, child passenger safety (CPS), drug recognition expert (DRE), mobile video taping, motorcycle rider, radar, and standard field sobriety testing.

Various items are available to assist communities including brochures, posters, and videos. Alcohol testing supplies are available for law enforcement agencies. The following items are available on loan: breath alcohol testing (BAT) mobile device, speed monitoring trailer, Fatal Vision® goggles, Vince and Larry crash dummy costumes, and Bucklebear® puppet.

Any issue related to traffic safety may be considered under the role and responsibilities of the Program. Personnel are available for resource information (i.e., meetings) and referral to other appropriate agencies or organizations.

Criteria

The criteria used in this attestation review were Nebraska State Statutes, Nebraska Rules and Regulations, Nebraska Accounting Manual, and Federal Office of Management and Budget Circulars.

Summary of Procedures

Pursuant to Neb. Rev. Stat. § 84-304 (Reissue 2008), the Auditor of Public Accounts (APA) conducted an attestation review of the revenues, expenditures, capital assets, and Federal compliance for the period July 1, 2008, through June 30, 2009, in accordance with standards applicable to attestation engagements contained in *Government Auditing Standards* issued by the Comptroller General of the United States. The APA's attestation review consisted of the following procedures:

1. Reviewing internal controls over revenues, expenditures, capital assets, and compliance with Federal regulations.
2. Analytical procedures for revenues and expenditures.
3. Detail testing of revenues, expenditures, and compliance with Federal regulations.
4. Detail testing of negative records for revenues and expenditures.
5. Testing of transfer of Program personnel records and capital assets from DMV to DOR.
6. Follow up of prior findings.

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7. An exit conference was held on November 23, 2009, to discuss the results of this attestation review. Those in attendance were:
- Beverly Neth, Director—Department of Motor Vehicles
 - Gary Ryken, Budget Officer—Department of Motor Vehicles
 - Steve Maraman, Finance Administrator—Department of Roads
 - Fred Zwonechek, Highway Safety Administrator—Department of Roads

Summary of Results

The summary of our attestation review noted the following findings and recommendations:

1. Review of the Excluded Parties List System (EPLS) Was Not Documented

Title 2 CFR 180.220(b) states, “Specifically, a contract for goods or services is a covered transaction if...the amount of the contract is expected to equal or exceed \$25,000.”

Title 2 CFR 180.300 states, “When you enter into a covered transaction with another person...you must verify that the person with whom you intend to do business is not excluded or disqualified. You do this by:

- (a) Checking the EPLS; or
- (b) Collecting a certification from that person; or
- (c) Adding a clause or condition to the covered transaction with that person.”

Good internal control also requires review of the EPLS be documented.

Of 16 expenditures tested, 14 did not have the Program’s review of the EPLS documented.

Per discussion with the DMV Highway Safety Administrator, review of the EPLS for subrecipients, contractors, and vendors was performed by the Program’s Accountant, but was not documented. None of the 14 vendors were on the EPLS, no noncompliance on questioned costs was noted.

There is an increased risk of noncompliance when the Program’s review of the EPLS is not documented.

We recommend the Program implement procedures to ensure the review of the EPLS is documented for all applicable subrecipients, contractors, and vendors.

DMV’s Response: The Nebraska Office of Highway Safety (NOHS) is in the process of implementing an EPLS review process to ensure that all applicable subrecipients, contractors, and vendors are compliant.

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2. Required Information Was Not Communicated to Subrecipients

OMB Circular A-133 § ____.400(d) states, “A pass-through entity shall perform the following for the Federal awards it makes:

- (1) Identify Federal awards made by informing each subrecipient of CFDA (Catalog of Federal Domestic Assistance) title and number, award name and number, award year, if the award is R&D, and name of Federal agency. When some of this information is not available, the pass-through entity shall provide the best information available to describe the Federal award.
- (2) Advise subrecipients of requirements imposed on them by Federal laws, regulations, and the provisions of contracts or grant agreements as well as any supplemental requirements imposed by the pass-through entity.”

All 12 subrecipient award documents tested did not include all information required to be communicated. Subrecipients were not notified of the CFDA titles and numbers, and award names and numbers. Subrecipients were also not informed they were receiving Federal funds and the requirements of the Single Audit Act.

The Program was not in compliance with Federal regulations. Subrecipients may not have been aware they were receiving Federal funds and may not have been aware of all the compliance requirements.

We recommend the Program implement procedures to ensure all information required by OMB Circular A-133 is communicated to subrecipients.

DMV's Response: The NOHS “Grant Contract Proposal Application Guide and Policies and Procedures” booklet is required reading by all recipients. On page (2) of the booklet, under Audits, it provides references to the (OMB) Circular A-133 requirements for single audits. All grantees do sign the grant awards indicating that they are agreeing to abide by all applicable federal and state laws, rules, and regulations, including Circular A-133. While NOHS is now including the CFDA number in all award notifications, this information was previously provided to all grantees upon request.

APA's Response: We continue to recommend all subrecipients have the CFDA name and number, award name and number, and Single Audit Act requirements communicated to them in the award documents to ensure compliance with Federal regulations.

3. Monitoring of Subrecipient A-133 Single Audits

OMB Circular A-133 § ____.400(d)(4) states, “Ensure that subrecipients expending \$300,000 (\$500,000 for fiscal years ending after December 31, 2003) or more in Federal awards during the subrecipient's fiscal year have met the audit requirements of this part for that fiscal year.”

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OMB Circular A-133 § __.320(e) states, “(1) In addition to the requirements discussed in paragraph (d) of this section, auditees that are also subrecipients shall submit to each pass-through entity one copy of their reporting package described in paragraph (c) of this section for each pass-through entity when the schedule of findings and questioned costs disclosed audit findings relating to Federal awards that the pass-through entity provided or the summary schedule of prior audit findings reported the status of any audit findings relating to Federal awards that the pass-through entity provided. (2) Instead of submitting the reporting package to a pass-through entity, when a subrecipient is not required to submit a reporting package to a pass-through entity pursuant to paragraph (e)(1) of this section, the subrecipient shall provide written notification to the pass-through entity that: an audit of the subrecipient was conducted in accordance with this part (including the period covered by the audit and the name, amount, and CFDA number of the Federal award(s) provided by the pass-through entity); the schedule of findings and questioned costs disclosed no audit findings relating to the Federal award(s) that the pass-through entity provided; and, the summary schedule of prior audit findings did not report on the status of any audit findings relating to the Federal award(s) that the pass-through entity provided. A subrecipient may submit a copy of the reporting package described in paragraph (c) of this section to a pass-through entity to comply with this notification requirement.”

Good internal control requires documentation be obtained from subrecipients confirming their exemption from OMB A-133 Single Audit requirements.

Of 12 subrecipients tested, 7 did not have an A-133 Single Audit filed with the Federal Audit Clearinghouse (FAC) database. We also noted the Program did not have documentation of why these subrecipients did not have or file an OMB A-133 Single Audit with the FAC database.

The Program’s Accountant reviewed the FAC database to determine if any of their subrecipients had audit findings related to the Program’s grants. There was documentation of this review, but the Program did not follow up with subrecipients who did not have an OMB A-133 Single Audit filed with the FAC database as to why an OMB A-133 Single Audit was not performed.

The Program was not in compliance with Federal regulations. Subrecipients may not have had the required OMB A-133 Single Audit completed.

We recommend the Program implement procedures to ensure documentation is obtained from subrecipients without an OMB A-133 Single Audit on the FAC as to why one was not completed.

DMV’s Response: Previous to the NOHS’s most recent National Highway Traffic Safety Administration’s (NHTSA) management review, letters requesting single audit compliance status were being sent to all grantees, but due to a misunderstanding with NHTSA officials, NOHS staff thought that a review of the FAC data base was sufficient. The NOHS is reinstating the original procedure of sending verification information requests to all grantees.

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4. Service Contract Procurements

Neb. Rev. Stat. § 73-503(1) (Reissue 2003) states, “All State agencies shall process and document all contracts for services through the State accounting system.”

Neb. Rev. Stat. § 73-504(2) (Reissue 2003) states, “All proposed state agency contracts for services in excess of fifty thousand dollars shall be bid in the manner prescribed by the materiel division procurement manual or a process approved by the Director of Administrative Services.”

Neb. Rev. Stat. § 73-504(3) (Reissue 2003) states, “...state agency directors shall ensure that bid documents for each contract for services in excess of fifty thousand dollars are pre-reviewed by the materiel division...”

Neb. Rev. Stat. § 73 504(5) (Reissue 2003) states, “State agency directors, in cooperation with the materiel division, shall be responsible for ensuring that a request for contractual services in excess of fifty thousand dollars is filed with the materiel division for dissemination or web site access to vendors interested in competing for contracts for services.”

Neb. Rev. Stat. § 73-505 (Reissue 2003) states, “State agency directors shall be responsible for maintaining accurate documentation of the process used for selection of all contracts for services and for ensuring and documenting that services required under the contract are being performed in compliance with the terms of the contract for services. Such documentation shall be kept with each contract for services.”

OMB Circular A-87, Attachment A, Part C.1., states “To be allowable under Federal Awards, costs must meet the following general criteria:...e. Be consistent with policies, regulations, and procedures that apply uniformly to both Federal awards and other activities of the governmental unit.”

Good internal control requires all contracts have a termination clause.

Good internal control also requires that the contract be reviewed by legal counsel.

During our review we noted the following:

- Both service contracts tested were not properly entered into the Nebraska Information System (NIS), the States accounting system.
- Both service contracts tested did not have a competitive bidding process for selecting the recipients.
- The one applicable service contract tested did not have any documentation that the contract was pre-reviewed by the Nebraska Department of Administrative Services (DAS) Materiel Division.
- The one applicable service contract tested did not have any documentation that the request for contractual services was filed with DAS Materiel Division.

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- Both service contracts tested did not have any documentation for the basis of selection of the vendor on file.
- Both service contracts tested did not contain a termination clause.
- Both service contracts tested did not have any documentation that the contract was reviewed by legal counsel.

Both service contracts were for marketing services. One contract was with a marketing firm to have the Program's Nebraska Office of Highway Safety logo on media backdrops for the University of Nebraska athletics. The other contact was with a radio personality to develop an advertising campaign to report underage drinking.

The marketing firm contract is a three year agreement ending June 30, 2011. Only the first year of the contract was recorded on NIS.

There was no competitive bidding process for either contract as the Program Administrator considered both vendors a sole source due to the uniqueness of each. There was no sole source deviation approval obtained from DAS Materiel Division for either contract.

The marketing firm contract was in excess of \$50,000 and was not reviewed by DAS Materiel Division.

The marketing firm contract was not submitted to DAS Materiel Division for posting on the State website requesting bids for contacts to let.

As there was no bidding process or documentation of sole source authorization from DAS Materiel, there was no basis for selection of the vendor on file.

Noncompliance with State statutes is also considered noncompliance with Federal regulations.

Neither contract contained a termination clause. The DAS Materiel Division "Agency Procurement Manual for Services" "Request for Proposal Boilerplate" contains both an early termination clause and a loss of funding termination clause. Neither of these clauses was used in either of the contracts reviewed.

Neither contract was reviewed by legal counsel of the Program, DMV, or DAS Materiel Division.

The Program was not in compliance with State statutes or Federal regulations. There is also an increased risk of the State entering into unfavorable contracts when they are not reviewed by legal counsel.

We recommend the Program implement procedures to ensure procurement of service contracts is in compliance with State statutes and Federal regulations. We also recommend the Program implement procedures to ensure all contracts are reviewed by legal counsel.

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DMV's Response: In 2006, the Department of Motor Vehicles Director did request and received from DAS Materiel Division authorization that the University of Nebraska sports marketing contract was a "sole source" and therefore, the agency presumed that since there continued to be no other marketing resource, the sole source exception authorization would be valid for all subsequent contracts.

APA's Response: A vendor's sole source status should be reviewed by DAS Materiel Division each time a new contract is entered into. It is the responsibility of DAS Materiel Division to review and approve sole source designations, and agencies should not presume there would be no other marketing resources once an initial determination had been made.

5. Level of Effort Not Documented

Title 23 USC § 1350, App. B states "...the State ...will maintain its aggregate expenditures from all other sources for motorcyclist safety training programs and motorcyclist awareness programs at or above the average level of such expenditures in the fiscal years (FY) 2003 and 2004."

23 USC § 410(a)(2) states "...the State will maintain its aggregate expenditures from all other sources for alcohol traffic safety programs at or above the average level of such expenditures in its 2 fiscal years preceding the date of enactment of the SAFETEA-LU."

23 USC § 405(a)(2) states "...the State will maintain its aggregate expenditures from all other sources for programs described in paragraph (1) at or above the average level of such expenditures in its 2 fiscal years preceding the date of enactment of the SAFETEA-LU."

23 USC § 408(e)(3) states "...the State will maintain its aggregate expenditures from all other sources for highway safety data programs at or above the average level of such expenditures in the 2 fiscal years preceding the date of enactment of the SAFETEA-LU."

Good internal control requires the level of effort amounts be documented and a review of these on an annual basis be documented to ensure compliance.

The annual levels of effort were not documented or reviewed for Federal FY 2003 through 2008. The two Federal FY prior to the enactment of SAFETEA-LU were 2003 and 2004. The Program Administrator indicated it is difficult to document the State's aggregate expenditures from other sources, as this would include expenditures by political subdivisions. Guidance provided by the United States Department of Transportation noted a State is required to maintain its aggregate expenditures from all sources of funds for each traffic safety program (i.e., alcohol, occupant protection, or data). For each program, sources of funds include all State and Federal funds, (by regulation Title I funds are specifically excluded from consideration for the Section 405 program) other than National Highway Traffic Safety Administration (NHTSA) incentive grant funds.

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There is an increased risk of noncompliance with Federal regulations when levels of effort are not adequately documented or reviewed.

We recommend the Program implement procedures to ensure applicable levels of effort are documented and reviewed on an annual basis as required by Federal regulations. We also recommend the Program work with their Federal grantor to determine the appropriate expenditures to include in the Program's documentation of the State's aggregate expenditures from other sources.

DMV's Response: NHTSA has provided no description, training, or review of this compliance expectation for more than two decades. NHTSA has indicated that because no such guidance currently exists, that they will work with the NOHS staff to develop an acceptable process that meets this compliance measure.

Overall Conclusion

We noted the Program did not comply with all Federal requirements or State statutes. We recommend the Program implement procedures to ensure:

1. A documented review of the EPLS for all subrecipients, and contractors or vendors receiving \$25,000 or more is performed.
2. Required information such as CFDA title and number, award year, and requirements imposed on them by Federal laws, regulations, and the provisions of contracts or grant agreements as well as any supplemental requirements imposed by the pass-through entity are communicated to subrecipients.
3. Documentation is obtained from subrecipients without an OMB A-133 Single Audit on the FAC as to why they are exempt from these requirements.
4. Procurement of all service contracts is in compliance with State statutes and all contracts are reviewed by legal counsel.
5. Level of effort is documented and reviewed on an annual basis.

The APA staff members involved in this attestation review were:

Timothy J. Channer, CPA, Assistant Deputy Auditor
Shane T. Rhian, CPA, CFE, Auditor-In-Charge
Tom Goeschel, Auditor II

If you have any questions regarding the above information, please contact our office.

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EXHIBIT

FEDERAL GRANTS REVENUES AND EXPENDITURES

July 1, 2008 through June 30, 2009

REVENUES:

Intergovernmental	\$	5,626,947
Miscellaneous		500
TOTAL REVENUES	\$	<u>5,627,447</u>

EXPENDITURES:

Government Aid	\$	4,769,980
Operating		711,465
Personal Services		320,953
Travel		42,459
TOTAL EXPENDITURES	\$	<u>5,844,857</u>

