



NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

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November 17, 2015

Darin Egr, Mayor
City of Yutan
P.O. Box 215
Yutan, NE 68073

Dear Mr. Egr:

As you know, the Nebraska Auditor of Public Accounts (APA) received a concern regarding the City of Yutan (City). The APA began limited preliminary planning work to determine if a full financial audit or attestation would be warranted. Pursuant thereto, the APA requested certain information regarding the City's financial transactions or compliance matters.

Based upon the outcome of this preliminary planning work, the APA has determined that a separate financial audit or attestation of the City is unnecessary at this time. However, during the course of the preliminary planning work, we noted certain internal control or compliance matters, or other operational matters within the District, that are presented below. The following information is intended to improve internal controls or result in other operational efficiencies.

City Administrator Compensation

In addition to being paid \$27.36 per hour, the City Administrator receives a monthly stipend of \$1,041.10 as part of his compensation package. City Resolution 2015-04A, Section 2, dated May 19, 2015, states the following:

The City of Yutan shall pay a percentage, to be determined by the Mayor and City Council, of the total cost of the Group Health, Life, AD&D insurance coverage for full-time employees and their children. For employees with Medicare coverage the City will enter into a separate agreement concerning reimbursement of medical costs. For policy year ending September 1, 2015, the City will pay 70% of the deductible into the employee's H.S.A. account and 50% of the employee's dependent children H.S.A. account, and 100% of the insurance cost for employee and a minimum of 50% for employee's dependent children insurance cost.

According to the City Clerk, the City Administrator was advised, for cost savings and administrative purposes, to secure his own insurance coverage outside of the City's group plan to improve the overall group rates for the City's employees. The monthly stipend serves as reimbursement for that expense.

The City provided the following documentation to support the reimbursement to the City Administrator:

Renewal Rating Results For: CITY OF YUTAN

Group Number: 501802
 Experience Period From: September 1, 2012
 To: May 31, 2014
 Renewal Period From: September 1, 2014
 To: August 31, 2015

These rates reflect your renewal option with the closest available plan design in relation to your current benefits. The renewal rates are illustrated in the attached exhibit along with all other available options.

For complete benefit descriptions, please refer to our website, www.nebraskablue.com.

Monthly Rates

Age Band	Option 11 Renewal Rates		
	Male	Female	
		w/o Maternity	w/Maternity
Under 24	\$248.22	\$391.94	\$582.92
25-29	\$268.81	\$465.95	\$748.96
30-34	\$323.57	\$572.18	\$771.74
35-39	\$384.90	\$614.03	\$705.15
40-44	\$442.29	\$699.65	\$736.25
45-49	\$573.72	\$810.49	\$826.94
50-54	\$836.58	\$942.16	\$942.16
55-59	\$1,099.43	\$1,169.97	\$1,169.97
60-64	\$1,449.91	\$1,384.20	\$1,384.20
65 +	\$819.93	\$893.09	\$893.09
Child	\$332.77		

Group Monthly Percentage Change: 0.70%

Note 1: Maternity coverage is optional for groups with 2 - 9 covered employees. If selected, maternity coverage will apply to all covered individuals.

Note 2: If your group is subject to COBRA Medicare Secondary Rates will apply.

2014 - 2015	
819.93 X 12	9839.16
104.50 X 12	1254.00
DEDUCTIBLE	1400.00
	<u>12493.16</u>
MONTHLY	1041.10

The City Clerk explained that the reimbursement amount is comprised of \$819.93 per month for medical insurance, \$104.50 per month for supplemental coverage, and 70% of the \$2,000 deductible.

Because the City Administrator has insurance outside of the City's group plan, and his insurance does not appear to be Medicare insurance, it does not appear that the City's resolution allows the City to pay for this separate health insurance coverage. Nonetheless, even if the resolution were applicable to the extra compensation paid to the City Administrator, the APA would find the following areas problematic:

- The City could not produce a written agreement to document the City Administrator's compensation package.
- The supplemental insurance amount does not appear to be addressed in the City's resolution.
- The City did not provide documentation to support the \$2,000 deductible.

Good internal controls and sound accounting practices require adequate written documentation to support all payments to City employees, including the compensation package for the City Administrator. Without such documentation, there is an increased risk for the misuse of public funds.

We recommend the City formally document its compensation agreement with the City Administrator and obtain appropriate supporting documentation.

Conflict of Interest Issues

One Council member, Justin C. Long, has interests in businesses that contract with the City. The Council member has ownership interests in Long Construction LLC and 2DS Contracting. During fiscal year 2015, the City paid \$3,873.41 to Long Construction LLC and \$400 to 2DS Contracting.

The Nebraska Political Accountability and Disclosure Act (Act), which is set out at Neb. Rev. §§ 49-1401 to 49-14141 (Reissue 2010, Cum. Supp. 2014), addresses matters involving actual or potential conflicts of interest on the part of public officials. Specifically, § 49-14,102(1) provides the following:

Except as otherwise provided by law, no public official or public employee, a member of that individual's immediate family, or business with which the individual is associated shall enter into a contract valued at two thousand dollars or more, in any one year, with a government body unless the contract is awarded through an open and public process.

For purposes of the above statutory provision, § 49-1443 defines a “public official” to include “an elected or appointed official in . . . a political subdivision” Additionally, § 49-14,103 says that any contract “involving a prohibited conflict of interest under section 49-14,102” is voidable by court order.

Likewise, § 49-14,103.01(2) of the Act says, in relevant part, “[N]o officer may have an interest in any contract to which his or her governing body, or anyone for its benefit, is a party.” For purposes of this particular prohibition, subsection (1) of that same statute defines “officer” to include “any elected county, school district, educational service unit, city, or village official[.]”

According to § 49-14,103.01(4), the prohibition applies “only when the officer . . . has a business association as defined in section 49-1408 with the business involved in the contract or . . . will receive a direct pecuniary fee or commission as a result of the contract.” Neb. Rev. Stat. § 49-1408 (Reissue 2010) defines a “business association” as follows:

Business with which the individual is associated or business association shall mean a business: (1) In which the individual is a partner, limited liability company member, director, or officer; or (2) in which the individual or a member of the individual's immediate family is a stockholder of closed corporation stock worth one thousand dollars or more at fair market value or which represents more than a five percent equity interest or is a stockholder of publicly traded stock worth ten thousand dollars or more at fair market value or which represents more than ten percent equity interest.

It should be noted that § 49-14,103.01(5) provides the following exception to the prohibition in subsection (2) against an officer having an interest in a contract with which his or her governing body is a party:

(5) The prohibition in this section does not apply if the contract is an agenda item approved at a board meeting and the interested officer:
(a) Makes a declaration on the record to the governing body responsible for approving the contract regarding the nature and extent of his or her interest prior to official consideration of the contract;
(b) Does not vote on the matters of granting the contract, making payments pursuant to the contract, or accepting performance of work under the contract, or similar matters relating to the contract, except that if the number of members of the governing body declaring an interest in the contract would prevent the body with all members present from securing a quorum on the issue, then all members may vote on the matters; and
(c) Does not act for the governing body which is party to the contract as to inspection or performance under the contract in which he or she has an interest.

In light of all the above, it is imperative that the City ensure any contracts between it and businesses with which City officials are associated are “awarded through an open and public process,” as required by § 49-14,102(1). Likewise, in order to avoid any prohibited conflicts of interest involving such contracts, the requirements in § 49-14,103.01(5) should be strictly observed.

Additionally, 49-14,103.02 of the Act requires certain information to be maintained “about every contract entered into by the governing body in which an officer of the body has an interest and for which disclosure is made pursuant to section 49-14,103.01,” as follows:

(1) The person charged with keeping records for each governing body shall maintain separately from other records a ledger containing the information listed in subdivisions (1)(a) through (e) of this section about every contract entered into by the governing body in which an officer of the body has an interest and for which disclosure is made pursuant to section 49-14,103.01. Such information shall be kept in the ledger for five years from the date of the officer's last day in office and shall include the:
(a) Names of the contracting parties;

- (b) Nature of the interest of the officer in question;*
 - (c) Date that the contract was approved by the governing body;*
 - (d) Amount of the contract; and*
 - (e) Basic terms of the contract.*
- (2) The information supplied relative to the contract shall be provided no later than ten days after the contract has been signed by both parties. The ledger kept pursuant to this section shall be available for public inspection during the normal working hours of the office in which it is kept.*

By keeping this required information, the City will ensure not only compliance with § 49-14,103.02 but also a heightened degree of transparency and accountability with regard to its contracts and expenditures.

Finally, Section 49-14,100 of the Act authorizes the Nebraska Accountability and Disclosure Commission (Commission) to issue advisory opinions regarding matters falling within its purview:

Any person who is in doubt as to the propriety of action proposed to be taken by him may apply to the commission for an advisory opinion relating thereto, and the commission shall have authority to render such opinions. When an advisory opinion is issued pursuant to a complete and accurate request, such opinion shall be a complete defense to any charge of violation of sections 49-1493 to 49-14,104 as to any action taken strictly subject to the terms of such opinion.

While it can be acceptable for a Council member's personal business to conduct business with the City, whenever a Council member is faced with the possibility of taking action that could result in a prohibited conflict of interest – or, for that matter, any other violation of the Act – seeking an advisory opinion from the Commission is a prudent course of action.

We recommend the City implement procedures necessary to address any prohibited conflicts of interest under the Act by Council Members. Such procedures should include maintaining appropriate records of certain contracts, as required by the Act. We recommend further the City seek guidance from the Commission, as needed, regarding prohibited conflicts of interest, or any other possible violations of the Act, on the part of Council members.

Policy Regarding Personal Use of City Equipment

In an October 19, 2015, email response to the APA's inquiry regarding current policy governing the use of City-owned equipment, Dawn Schmidt, the City Clerk, pointed to the City's "Employee Handbook," which she quoted as saying, "At no time should a city vehicle be used for purposes other than the transaction of city business."

In that same email message, Ms. Schmidt added the following to her response:

In addition, all employees are informed that none of the city-owned equipment may be used for their personal benefit or for any other reason other than city business. This policy also applies to elected officials.

While commendable for restricting the use of City vehicles, the "Employee Handbook" policy quoted by Ms. Schmidt does not address other City-owned property. Thus, the supplemental verbal warning also mentioned by Ms. Schmidt appears to lack documentary foundation.

Neb. Rev. Stat. § 49-14,101.01(2) (Reissue 2010) of the Act prohibits the use of property under the “official care and control” of a public official or employee, as follows:

A public official or public employee shall not use or authorize the use of personnel, resources, property, or funds under his or her official care and control other than in accordance with prescribed constitutional, statutory, and regulatory procedures or use such items, other than compensation provided by law, for personal financial gain.

In addition to the definition of “public official” under § 49-1443, as referenced in the previous comment, Neb. Rev. Stat. § 49-1442 (Reissue 2010) defines a “public employee” as “an employee of the state or a political subdivision thereof.”

The prohibition in § 49-14,101.01(2) applies to all public property, not simply to vehicles. Thus, to ensure compliance with that statute, good internal controls require any formal policy restricting the use of City property to be applicable to all type of property owned by the City.

We recommend the City expand its current “Employee Handbook” policy restricting the use of City-owned vehicles for official business to include all property owned by the City.

Solicitation of Bids for Goods or Services

According to the City Clerk, Dawn Schmidt, in the October 19, 2015, email response referenced in the preceding comment, the City adheres to unwritten bidding procedures when purchasing certain goods and services:

The City follows policies and procedures regarding the solicitation of bids for goods and services. The policies and procedures are not written, however, they have been followed for as long as anyone can remember. Any time the City is seeking goods or services related to a City project or contract, the City (usually through the department head i.e., streets, sewer, library, parks) seeks a minimum of two quotes from providers and selects the lowest and best quote received. For projects or purchases exceeding \$30,000.00, the City follows the public bidding processes set forth in the statutes, specifically §17-568.01 and §73-101 through §73-105.

The above response is problematic for at least two reasons. To start, good internal controls require that the City’s bidding procedures – as well as any other administrative regulations, especially those having statutory compliance implications – be formally supported by written documentation to ensure their proper and consistent application.

More importantly, the statutes cited in Ms. Schmidt’s response apply whenever bids are sought, not simply for contracts in excess of \$30,000. In particular, Neb. Rev. Stat. § 73-101 (Reissue 2009) provides the following:

Whenever the State of Nebraska, or any department or any agency thereof, any county board, county clerk, county highway superintendent, the mayor and city council or commissioner of any municipality, any entity created pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act, or the officers of any school district, township, or other governmental subdivision, shall advertise for bids in pursuance of any statutes of the State of Nebraska, on any road contract work or any public improvements work, or for supplies, construction, repairs, and improvements, and in all other cases where bids for supplies or work, of any character whatsoever, are received for the various departments and agencies of the state, and other subdivisions and agencies enumerated in this section, they shall fix not only the day upon which such bids shall be returned, received, or opened, as provided by other statutes, but shall also fix the hour at which such bids shall close, or be received or opened, and they shall also provide that such bids shall be immediately and simultaneously opened in the presence of the bidders, or representatives of the bidders,

when the hour is reached for the bids to close. If bids are being opened on more than one contract, the officials having in charge the opening of such bids may, if they deem it advisable, award each contract as the bids are opened.

(Emphasis added.) Thus, regardless of the amount involved, if the City accepts bids for the purchase of goods or services, the requirements found at § 73-101 et seq. must be followed.

We recommend that the City formally support its bidding procedures with written documentation that is consistent with statutory public letting requirements.

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Our audit procedures are designed primarily on a test basis and, therefore, may not bring to light all weaknesses in policies or procedures that may exist. Our objective is, however, to use our knowledge of the City to make comments and suggestions that we hope will be useful to its Council members.

This communication is intended solely for the information and use of the City and its management. It is not intended to be, and should not be, used by anyone other than the specified parties. However, this letter is a matter of public record, and its distribution is not limited.

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

Sincerely,



Mary Avery
Special Audits and Finance Manager
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