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BUREAU OF AUDITING



CHIEF FINANCIAL OFFICER  
JEFF ATWATER  
STATE OF FLORIDA

July 12, 2013

Ms. Cynthia F. O'Connell, Secretary  
Florida Department of Lottery  
250 Marriott Drive  
Tallahassee, Florida, 32399

Dear Secretary O'Connell:

The Bureau of Auditing (Bureau) performs audits in accordance with Section 17.03, Florida Statutes. This statute relates to the Chief Financial Officer's (CFO) responsibilities to settle the claims of the state using various methods. The Bureau also audits pursuant to the requirements of Section 215.971, F. S., for grant agreements funded with Federal and State monies. Audits on contractual services agreements are audited pursuant to Sections 287.057(14) and 287.058(1), F. S. The CFO also issues memorandums that provide additional audit requirements.

The Bureau reviews contracts and grants to determine:

- Whether the agreement clearly establishes the tasks to be performed by the provider (has a clearly defined scope of work)
- Whether the agreement defines quantifiable, measurable, and verifiable units of deliverables that must be received and accepted before payment is made
- Whether the agreement specifies the financial consequences that the agency must apply if the provider fails to perform in accordance with the contract
- Whether the manager provided written certification for the receipt of goods and services.

Because many of the deficiencies in agency contract and grant agreements stem from poor contract management and a lack of effective monitoring, the Bureau visits agencies and reviews contracts, along with the contract manager's files. In addition to reviewing the contract document, the Bureau evaluates the contract management function to determine if the agency is monitoring the contractor's performance and validating the actual delivery of goods and services. These audits result in written reports to the agency, with the agency providing a corrective action plan to address any deficiencies noted during the review. To date, eighteen reviews have been completed and the results are available on the Bureau website

[http://www.myfloridacfo.com/aadir/auditing\\_activity.htm](http://www.myfloridacfo.com/aadir/auditing_activity.htm).

FLORIDA DEPARTMENT OF FINANCIAL SERVICES

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Division of Accounting and Auditing

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We have concluded our review of selected Florida Department of Lottery (Department) contracts on or after July 1, 2011, and related management activities. Our review focused on compliance with the following statutory requirements:

- Contract/grant agreements must contain a clear scope of work.
- Contract/grant agreements must contain deliverables that are quantifiable, measurable, verifiable and directly related to the scope of work.
- Contract/grant managers must enforce performance of the agreement terms and conditions; review and document all deliverables for which payment is requested by service providers; and provide written certification of the Department's receipt of goods and services.

According to statute, it is the legislative intent that lottery games be operated by state government as an entrepreneurial business enterprise. Section 24.105 (13), Florida Statutes was identified as allowing the Department to adopt rules providing alternative procurement procedures if the Department finds that compliance with Chapter 287, Florida Statutes would impair or impede the operation of the Department. The Department adopted 53ER07-55, Florida Administrative Code, to provide alternative procedures for purchasing commodities and contractual services in an open and competitive manner; however, the rule specifically states that Chapter 287, F.S. governs in all areas not specifically addressed by 53ER07-55, F.A.C. These specific statutes and the Department's rule have been taken into consideration for the audit.

We reviewed twenty service contracts. During the exit conference, the Department stated they were aware of issues with the Department's Policies and Procedures as it relates to the tracking of tickets for promotional events and were changing processes and writing new procedures to address these issues. We recommended the Department include any changes to procedures and process areas in their corrective action plan. Below are the areas we identified where improvements can be made.

### Cost Analysis

Section 287.057(4), F. S., requires an agency to document its compliance with Section 216.3475, F. S., for the purchase of noncompetitively procured contractual services that exceed Category Two. The cost analysis should be performed prior to the award of the agreement to ensure the contractor is not billing for services at a cost greater than fair market value. Each agency shall maintain records to support a cost analysis which includes a detailed budget submitted by the person or entity awarded funding and the agency's documented review of individual cost elements from the submitted budget to determine allowability, reasonableness, and necessity. CFO Memorandum No. 02, (2012-2013), requires agencies to complete the cost analysis on an approved Bureau form and maintain the completed cost analysis in the contract manager's contract file.

- We conducted a review of six contract management files on December 13, 2012, and two contract management files on December 27, 2012. Cost analyses meeting the criteria of CFO Memorandum No. 02 (2012-2013) were not identified in the files. A copy of the cost

analysis was requested during the interview with Department staff that was held in conjunction with the file review. In response, the Department directed us to the financial analysis included in each promotion which identifies the net sales gain for seven of the agreements. A request for the cost analyses, along with a copy of CFO Memorandum No. 02 (2012 – 2013), was emailed to the Department on December 14, 2012. Two additional requests for the cost analyses were emailed on December 28, 2012 and January 22, 2013.

On January 31, 2013, the Department provided completed cost analysis for seven of the agreements. Upon review we noted there was no date ascertaining when the cost analyses were prepared; therefore, we were unable to determine if the cost analyses had been performed prior to the award of the agreements.

The Department's response related to one agreement (WFSU-TV) was that the cost analysis was not applicable, citing the statutory exemption found in section 287.057(3)(f)12, F.S., which states that services or commodities provided by governmental agencies are not subject to the competitive solicitation requirements of Chapter 287, F.S. This statute does not exempt the Department from complying with section 216.3475, F.S. which requires a cost analysis for awards of a noncompetitive nature.

Contract #	Service Provider	Contract Amount
SP-125	Daytona International Speedway	\$92,000
SP-119	Hurricane Sports Properties	\$128,312
SP-118	IMG College	\$154,000
A0971	Miami Dolphins LTD	\$168,166
A0976	Guy Harvey	\$553,500
A438E9	WFSU-TV	\$115,143
SP-123	Florida Panthers Hockey Club	\$65,000
SP-115	IMG College	\$128,549

### **Contract/Grant Management**

Each year the Bureau receives numerous settlement agreements where the scope of work is not clear and/or Agencies authorize services verbally. As a result, work is not completed as expected giving rise to disputes between the Agency and the contractor. Ultimately, the State of Florida enters into a settlement agreement. As a result the Agency's goals are not realized, and the relationship with the contractor begins to erode.

Contract/Grant managers must enforce performance of the contract terms and conditions; review and document all deliverables for which payment is requested by vendors; and provide written certification of the Department's receipt of goods and services and ensure all payment requests are certified.

- Several issues with the Department's contract management were identified for one agreement:
  - Under the contract, the Department acquired public relations services for three years with a budget cap of up to \$1,000,000. The agreed upon compensation was expressed as a tiered hourly rate ranging from \$50 per hour to \$315 per hour dependent upon the skill level of the staff person performing the work. The contractor subcontracted a portion of the work to be performed at a flat rate of \$175 per hour regardless of the skill level of the staff person performing the work. The Department was unable to provide prior written approval to subcontract work as required under the contract.

The subcontract was not based on the same terms and conditions of the primary contract, and the Department was unable to provide a copy of the subcontract; therefore, it is unclear whether the Department is receiving equivalent services based on the hourly rate structure of the primary contract. At the time of the review a total of \$37,056 was paid in subcontracting fees.

- The contract established a broad scope of work that was to be further detailed in the quarterly work plans submitted by the contractor. The quarterly work plans were to include work to be accomplished, projects to be initiated, intended outcomes and criteria to measure performance. The work plans were an integral part of the contract and intended to drive the contractor's assignments. As required by the contract, the Department was unable to provide written approval of the work plans prior to beginning the proposed activities.

After review of the contract management file and interview with the Department, a request for prior written approval of the work plans was emailed to the Department on January 10, 2013. A second request was emailed on January 25, 2013. The Department responded on January 31 and February 4, 2013, but did not provide evidence of prior written approval of the work plans.

- The Department could not provide documentation to validate how performance was measured. The contract manager is responsible for enforcing the contract terms and evidencing contractor performance.
- Duplicate invoices were authorized by the contract manager, transmitted to the accounting department and overpayments were issued to the contractor totaling \$6,513.

- The contract manager approved the payment of \$7,108 for services that occurred prior to the execution date of the contract. Pursuant to Section 287.058(2), Florida Statutes, "The written agreement shall be signed by the agency head and the contractor prior to the rendering of any contractual service...." Work performed prior to the establishment of a signed contract could result in disputes requiring resolution through settlement agreements that could be financially costly to the Department and detrimental to the relationship with the contractor.
- Invoices in the amount of \$6,064 identifying out-of-pocket costs were approved and paid without documentation supporting the necessity of the line items. Although the contract provides for the Department to reimburse the contractor for out-of-pocket costs, there were no explanations included in the contract management file as to the necessity of the costs incurred.
- The contract manager approved, and the accounting office issued, payment for travel without obtaining the travelers signatures on the travel vouchers. Section 112.061(11)(b)1., F. S. requires, "...a certification or affirmation, to be signed by the traveler, indicating the truth and correctness of the claim in every material manner.....".

Contract #	Service Provider	Contract Amount
A0973	GolinHarris	\$1,000,000

- The Department entered into contracts to establish a promotional partnership or sponsorship relationship with the contractor. The benefits provided to the Department include promotional advertising and hospitality tickets to sporting events including college and professional football games and a weekend NASCAR race. Five contracts contained provisions where the contractor was required to deliver the tickets to the Department. One of the five contracts also contained a provision where the contractor provided gift cards in addition to the tickets. A summary of tickets and gift cards provided by contractors is provided below.

Contract #	Service Provider	Number of Tickets Provided	Number of Gift Cards Provided
	Daytona International		
SP-125	Speedway	200	-
SP-119	Hurricane Sports Properties	56	-
SP-118	IMG College	6	-
A0971	Miami Dolphins LTD	108	27
SP-115	IMG College	56	-
	<b>TOTAL</b>	<b>426</b>	<b>27</b>

According to the contracts, the tickets could be used by the Department for business development and retailer appreciation. Two of the five contracts contain an additional provision allowing the Department to use the tickets for "the sole purpose of reviewing and auditing a Lottery sponsored event."

We were unable to obtain evidence regarding the distribution of the event tickets during the interview and review of the contract management files on December 13, 2012. A written request for this information was emailed to the Department on December 14, 2012. Two additional requests for this information were emailed on January, 10, 2013, and January 25, 2013. The Department responded on January 31 and February 4, 2013 by submitting documentation that had been previously reviewed in the contract files.

To gain a further understanding of the Department's process relating to the event tickets, a request for a copy of the Department's written procedures was emailed on February 6, 2013. A second request was emailed on February 13, 2013. The Department's Policy on the Receipt and Use of Hospitality Services Provided by Major Sponsorship Contractors (Policy) was provided on February 14, 2013. The Policy was insufficient to address the chain of custody, authorization and overall independent reconciliation to account for the tickets.

Specifically we noted the following:

- A written record was not created nor maintained for receipt of tickets into or removal of tickets from the safe. The Department secures the tickets in a locked safe where one staff member has access. The Policy states, "...all items are audited and secured..." by Department staff. To enhance internal controls, the Department should require a written record to track tickets placed into and removed from the safe.
- The criterion for requesting tickets on three of the Department's Event Ticket and Hospitality Request Forms (Request Form) was not supported by the Department's Policy. The Policy states, "The Lottery's acceptance and use of Hospitality Services ('Event Tickets and/or Hospitality Credentials') must be used to support marketing and promotional advertising and/or retailer recruitment, retention and recognition." For example, one form did not contain any criteria and the proposed ticket usage was, "to see the game".
- The Department did not consistently follow written procedures established for requesting the use of event tickets. Although the Policy identifies staff that has authority to request event tickets, a review of the Request Forms showed 40% (169/426) of the tickets were requested by someone other than those authorized.

- The Department did not establish a clear separation of duties for handling tickets. On 20% (87/426) of the Request Forms the "Authorized Lottery Headquarter Approver" was the same staff member who shipped the tickets.
- The Department did not document acknowledgement for the receipt of tickets as required by the Policy. Documentation that the intended end-recipient received the tickets was not provided for 46% (194/426) of the event tickets.
- The Department did not provide documentation showing independent reconciliation of the initial receipt, custody and final distribution of the event tickets. According to the Policy a Department staff member, "...will maintain a hard-copy file of all documents supporting the request, utilization and audit of each contracted Hospitality event." Independent reconciliation must be performed by someone not responsible for the custody, authorization, requesting, or shipping of the tickets.

Contract #	Service Provider	Contract Amount
SP-125	Daytona International Speedway	\$92,000
SP-119	Hurricane Sports Properties	\$128,312
SP-118	IMG College	\$154,000
A0971	Miami Dolphins LTD	\$168,166
SP-115	IMG College	\$128,549

➤ During the review of the contract file it was noted that the Department received two skybox tickets and a valet parking pass to a Miami Hurricane home game without supporting documentation establishing parameters for the receipt and use of the items. A request for an explanation was emailed to the Department on February 20, 2013. According to the Department, the tickets and parking pass were provided so that Department staff could participate in a live, 3-4 minute half-time interview for promotional purposes where participation in the interview was a deliverable under the contract.

- Receipt of skybox tickets and a valet parking permit was not included as a provision under the contract. According to the terms of the contract, the Contractor was to provide the Department with a one 3-4 minute half-time interview during a home game broadcast at no cost to the Department.
- The Department did not provide documentation to substantiate the use of one of the skybox tickets. The contract management file contained an email from the Department staff member who used one of the tickets to participate in the half-time interview stating the additional ticket was returned to a Miami Hurricane staff person. No additional supporting documentation was provided.

Contract #	Service Provider	Contract Amount
SP-119	Hurricane Sports Properties	\$128,312

- Four agreements did not have a provision that provided for substitute media buys in the contracts. However, the Department accepted substitute media buys from the contractors.

In addition, one agreement allowed for media substitutions but did not contain documentation to validate the value of the substitution was of comparable value as the contracted media buy.

Contract #	Service Provider	Contract Amount
A0971	Miami Dolphins LTD	\$168,166
SP-119	Hurricane Sports Properties	\$128,312
SP-118	IMG College	\$154,000
SP-123	Florida Panthers Hockey Club	\$65,000
SP-115	IMG College	\$128,549

#### **Contract/Grant Management – Training Requirement**

Section 287.057(14), Florida Statutes, requires all contract managers that are responsible for contractual service contracts in excess of threshold of Category Two to attend training conducted by the Chief Financial Officer for accountability in contract and grant management. Additionally, according to CFO Memorandum No. 04 (09-10), contract managers who are required by statute to attend training are responsible for attending at least once every two years.

- Since the inception of the statute, the Bureau records show that none of the Department's contract managers have attended the required Advancing Accountability Training.

#### **Contract Agreement - Other**

Section 287.058(1) & (2), Florida Statutes, requires all contractual service agreements to be in a written agreement or purchase order prior to the rendering of any contractual service over the Category Two threshold.

- The Department allowed the contractor to begin services prior to the transmittal of the purchase order for five agreements. These purchase orders were procured using State Term Contract 973-561-10-1, which states the contractor shall not deliver or furnish services until the transmittal of a purchase order. Allowing the contractor to provide services without an executed written agreement or purchase order could result in the Department entering into a settlement agreement with the contractor.



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Contract #	Service Provider	Contract Amount
A4C408	Brandt Information Services, Inc	\$93,005
A44B8D	ISOCORP, Inc	\$43,520
A4C430	ISOCORP, Inc	\$70,975
A4C416	Infinity Software Development, Inc	\$62,616
A5CA53	Global Information Services	\$72,224

Please provide the Department's corrective action plan which addresses how these deficiencies will be corrected for future contracts. This plan should include steps the Department will take to provide a system of quality control, including training, periodic management review, and feedback to Departmental staff that develop and manage contracts and grants. We request that the plan be submitted within 30 days of receipt of this letter.

Our office provides Contract Manager Training that would be beneficial to your staff. Additional information on these classes is available at <http://www.myfloridacfo.com/Division/AA/Training/default.htm>

We appreciate your staff's support and cooperation during the review. Please contact Mark Merry, Chief of the Bureau of Auditing, at 850-413-3074 if you have any questions.

Sincerely,



Christina Smith