

April 10, 2019

In September of 2018, the State Auditor's Office was engaged to provide a performance audit for the North Dakota University System ("NDUS"). The subject of the audit included North Dakota State College of Science ("NDSCS") and one or more of the following subject matter areas: the TrainND program, space utilization and enrollment, and capital projects. Specifically, the objective of the engagement was to answer the following questions:

1. Is TrainND Southeast meeting its identified goals and objectives?
2. Is TrainND Southeast reporting financial and non-financial data accurately?
3. Is spending on Workforce Career Academy authorized and appropriate?

The engagement letters identified management of NDUS as the entity responsible for providing all requested records and related information – NDSCS was not identified in the engagement letters as being required to provide any information to the Auditor's Office. NDSCS has, however, cooperated with the Auditor's requests, providing the information requested of them.

One of the final phases of the audit process is to provide a draft copy of the audit report to the entity being audited. To that end, on March 27th and 28th, NDSCS participated in two separate special meetings of the State Board of Higher Education Audit Committee. At the meeting on the 27th, the Auditor's Office initially shared a draft copy of the Audit Report ("Report") with the committee members and Chancellor Hagerott. After this initial distribution, and upon request from Committee Chair Neset, the Auditor's Office shared a copy of the Report with NDSCS. Prior to this meeting, no one at NDSCS had seen the Report or had any indication as to what the Report's findings and recommendations were. The purpose of the meeting on the 27th was for the Auditor's Office to present and discuss the findings of the Report. During this meeting, it was also made clear that the Report was not to be shared with anyone that was not included in the special meetings.

The purpose of the meeting on the 28th was to determine the process for responding to the Report, including who may gain access to the Report to allow NDSCS to provide the most complete response possible. Unfortunately, the Auditor's Office declined to participate in this meeting, leaving the Committee in the unenviable position of trying to discern the best path forward for responding to the Report without input from the Auditor's Office. As a result of the meeting on the 28th, it was determined that Chancellor Hagerott would provide a response to the audit findings, and that such a response would include the responses provided by myself on behalf NDSCS. In order to provide a complete response to the findings detailed in the Report, NDSCS made a request at the meeting that it be allowed to share the Report with the necessary NDSCS personnel. Understandably, the Committee was unwilling to provide such permission without written confirmation from the Auditor's Office that it would be permissible to do

so. Thereafter, NDSCS requested permission to share the Report with five employees¹ at NDSCS who would have information relevant to providing a response to the findings – this permission was denied by the Auditor’s Office.

NDSCS appreciates the time and effort exerted by the Auditor’s Office and the Audit Committee as it relates to this Report and the important task of auditing the operations of NDSCS. Additionally, NDSCS appreciates the opportunity to provide this response for inclusion in Chancellor Hagerott’s response to the Report. The goal of this response is to address the concerns raised in the Report; however, having been denied the opportunity to share the Report with the requisite NDSCS personnel, NDSCS is limited in the information it can provide.

Recommendation 1-1: We recommend NDSCS take timely and appropriate steps to ensure compliance with its conflict of interest policies and procedures.

NDSCS agrees that the employee did not complete a “Notification of Business Interest” form indicating the employee’s spouse’s business interest in the Flint Group. In this case, however, the completion of this form is a formality, as all the applicable parties were aware of the relationship between the employee and their spouse, and the spouse’s association with the Flint Group. The goal of the applicable policies, procedures, and form in question is to ascertain the existence of relationships that may potentially lead to a conflict of interest. In this case, there was nothing undisclosed about the relationship in question. The Report’s conclusion that the relationship in question was undisclosed is not supported by the facts; nor is it supported by the Report itself. As indicated in the Report, NDSCS was aware of the employee’s relationship with their spouse and the spouse’s association with the Flint Group. Simply put, despite the Report’s conclusion otherwise, there was nothing undisclosed about the relationship in question.

Policy 611.4

NDSCS disagrees with the finding that it failed to comply with SBHE Policy 611.4. Policy 611.4 specifically indicates that, unless certain conditions are met, “an employee of the Board may not have an interest in any contract involving the expenditure of public or institutional funds . . .” Therefore, in order to conclude that an institution violated this policy, it must be shown that the employee had an interest in the contract in question. While there is no definition of what “interest” is, it is clear that such an interest must be specific to the employee, not his/her spouse or other family members. In this case, there is no indication that the employee had any individual interest in the contract at issue, as defined by policy. To conclude otherwise would require a rewriting of the policy.

Regardless of the interest involved in this case, NDSCS complied with the requirements of Policy 611.4. As indicated above, having an interest in a contract is not forbidden. Rather, in situations where an interest may exist, the institution must ensure that N.D.C.C. §§ 12.1-13-03 and 48-02-12² do not apply, and that the contract is approved by the institution’s chief financial officer. These conditions were met in this case. The CFO approved of this contract; § 48-02-12, dealing with public construction or repair

¹ Of the five employees identified, four of them were named in the Report; the remaining employee is the Chief Information Office for NDSCS.

² This section has been repealed, but it appears that the contents have been moved to chapter 48-01.2.

contracts, is inapplicable to this contract; and there is no interest accruing to the employee personally, as required by 12.1-13-03. With all three conditions being met, there can be no conclusion that NDSCS violated Policy 611.4.

NDSCS Policy

NDSCS disagrees that it violated its more stringent conflict of interest policy, which incorporates the business interests of certain familial relationships. The goal of the NDSCS policy is to identify and root out conflicts of interests that are unknown to the administration of NDSCS, so that they can provide appropriate supervision and management over the conflict. This goal has been met in this instance. While it is true that the employee did not complete the pro forma process of filing the “Notification of Business Interest” form, it cannot be said that the employee’s conflict was undisclosed – everyone involved in this contract was aware of the employee’s relationship with their spouse, and the spouse’s association with the Flint Group. Furthermore, NDSCS provided the necessary supervision and management over this contract – the employee in question did not recommend or select the chosen vendor, nor did the employee negotiate any part of the contract with the Flint Group. The decision to retain the services of the Flint Group, including what to pay for those services, was made exclusively by me and resulted from my conversations with the CEO of the Flint Group. The involvement of the employee in question was limited to coordinating the necessary communications between the vendors – he played no role in the ultimate selection of which vendor to utilize, nor did he have any involvement in the price negotiations.

Recommendation 1-2: We recommend the State Board of Higher Education and management take any and all necessary actions to prevent future efforts to obstruct or mislead the Office of the State Auditor in carrying out its statutory duties.³

NDSCS disagrees that there was any attempt to obstruct or mislead the Auditor’s Office, willfully or otherwise. This finding centers around 700 emails that were provided to the Auditor’s Office by the NDUS. According to the Report, the Auditor’s Office received these emails after submitting a very specific request for emails to the NDUS. Specifically, the Report indicates that the Auditor’s Office submitted a request for emails “sent to or from Mr. Grindberg and President Richman, which mentioned Flint, Roger Reiersen (CEO of Flint) or Karen Grindberg (CFO of Flint).” The Report indicates that this search generated over 700 emails that should have been provided by NDSCS and that the failure to do so was an act to obstruct or mislead the Auditor’s Office. The facts do not support this conclusion.

First, and perhaps most importantly, the Auditor never submitted a detailed request for records to NDSCS. Had NDSCS received a detailed request akin to the one received by the NDUS, it could have easily directed its IT professionals to conduct the search, returning the same or substantially similar results to those provided by the NDUS IT professionals. The requests submitted to NDSCS by the Auditor, however, were entirely subjective and did not identify any specific records from NDSCS, nor did they provide any meaningful search parameters for NDSCS to conduct a search. According to the Report, the Auditor submitted the following three requests to NDSCS in an effort to uncover the emails in question:

³ According to the Auditor’s presentation at the March 27th meeting, it is this finding that required the Auditor to deviate from its normal practice of affording NDSCS the opportunity to respond to the Report.

- The first request, received on October 15, 2018, asked NDSCS to provide “Any procurement documentation related to the selection of Flint Communications related to contracts in effect 7/1/2014 to 10/12/2018.”
- The second request, received on November 9, 2018, asked NDSCS if they knew “who was involved in the decision making process for contracting Flint Communications to provide the contracted services in 2017? If so, could you provide me a listing of the individuals?”
- The third request, received on February 15, 2019, asked NDSCS to provide “all correspondence related to the selection of the Flint Group as a consultant on the Workforce Career Academy initiative.”

In reviewing these requests, it is clear that they are vastly different from the request that was submitted by the Auditor’s Office to the NDUS. The request submitted to the NDUS is objective and can be performed or verified by neutral third parties. The requests submitted to NDSCS, however, are entirely subjective, and cannot be verified by third parties; additionally, the requests submitted to NDSCS are vague in defining the records they are searching for. Based on this, it seems clear that these requests were not designed to elicit the same responses/information, nor is it reasonable to think that these requests would produce the same results. With these things in mind, however, at the time of receiving the requests from the Auditor’s Office, NDSCS tasked the necessary employees with attempting to respond to the Auditor’s requests. To that end, the necessary employees conducted searches of their email inbox in order to locate records. Notably, however, this search was being conducted more than a year after the procurement in question. After conducting these searches, NDSCS produced the records for the Auditor’s Office. However, due to the vague nature of the requests, and the time that had passed since the procurement, NDSCS was unable to provide a response that included all 700 emails that were eventually included in the response from the NDUS.⁴ There is simply no evidence to suggest that the discrepancy in these responses is due to a willful attempt on the part of NDSCS to obstruct or mislead the Auditor’s Office – the discrepancy in these responses is due to the vague nature of the requests and the considerable time that had passed between the procurement and the request for records.

Second, the Auditor’s revelations resulting from the review of the 700 emails do not demonstrate any attempt to conceal any information from the Auditor’s Office, nor do they reveal any attempt to obstruct the efforts of the Auditor’s Office. Rather, the revelations reveal what NDSCS has been consistently saying throughout the process of this audit – the employee in question was not involved in selecting or recommending Flint Group, nor was the employee involved in the negotiation of price terms with Flint Group. Due to his role as the VP of Workforce Affairs, the employee was, however, involved in acting as a courier of information between NDSCS and the two vendors that were approached about providing services.

The Report provides the following revelations with regard to the 700 emails provided by the NDUS:

⁴ Until receiving a copy of the Report, NDSCS was unaware that the Auditor’s Office had submitted a request for emails from the NDUS. NDSCS remains unaware of the timing of said request and the contents of the response provided by NDUS.

1. Mr. Grindberg was personally involved in recommending and engaging Flint Group for the consulting services related to the Career Academy (refer to e-mails starting on page A-14).
2. Mr. Grindberg submitted a written Request for Proposal to Flint Group (see page A-22 in appendix).
3. E-mail correspondence suggested Praxis, a strategic partner of Flint Group, would be a better candidate for this project than Flint Group; however, Mr. Grindberg stated he was hesitant to use Praxis (see pages A-16 and A-17 in appendix).
4. Mr. Grindberg received a written proposal from Flint Group via e-mail (see page A-21 in appendix).
5. Mr. Grindberg forwarded or copied President Richman on correspondence related to the Request for Proposal and forwarded a copy of the Flint Proposal. President Richman responded to Mr. Grindberg's correspondence. (see pages A-14, A-25, A-28 and A-32 in appendix).
6. Mr. Grindberg proposed modifications to the proposal, including specific payment terms. (see page A-30 in appendix).
7. Mr. Grindberg submitted the proposed contract to Flint Group's CEO (see page A-31 in appendix).

Revelations two through seven are easily explained when considering the roles and responsibilities of the VP of Workforce Affairs. Specifically, the VP of Workforce Affairs is responsible for coordinating communication with any and all vendors related to workforce affairs matters. Having controlled for any potential conflict of interest resulting from this transaction (See NDSCS's response to recommendation 1-1), the employee in question was free to complete these responsibilities in acting as a liaison between NDSCS and the Flint Group. The revelations contained in the Report do nothing more than show that the employee was involved in the administrative process of circulating paperwork in order to have the contract executed – actions that are clearly within the roles and responsibilities of the VP of Workforce Affairs.

As to revelation one, NDSCS disagrees with the conclusion that the employee in question was involved in recommending and engaging the Flint Group. In fact, the Report itself indicates that the Flint Group was recommended by the Cass County CTE Director (see page A-15 of the Report). Additionally, as stated earlier, the selection of the Flint Group was made exclusively by me in my role as President – the employee in question did not participate in the selection process. My decision making process carefully considered NDSCS's past experiences in working with the Flint Group, the Flint Group's familiarity with the various stakeholders and potential partners of the Career Academy, and the higher education experience of the Flint Group's CEO in serving as a Board Trustee for the Higher Learning Commission. Most notably, however, I selected the Flint Group due to their genuine excitement and passion in advancing the message and communicating the need for the Career Academy. Furthermore, as indicated in the Report, NDSCS's selection process for this contract involved contacting two vendors. Once the first vendor withdrew from consideration, the Flint Group was the only vendor being considered. Therefore, barring the Flint Group withdrawing from consideration, NDSCS had only one option remaining.

Finally, while it is unclear if the Auditor has made a finding regarding compliance with Policy 803.1, NDSCS disagrees with the intimation that it failed to comply with the policy. Policy 803.1 required NDSCS to solicit informal quotes or proposals from at least two vendors. As indicated in the Report, NDSCS did

exactly what it was supposed to do – NDSCS solicited informal proposals from two different vendors for the required consulting services. The fact that one of the vendors did not provide such a proposal is irrelevant, as the policy does not require that NDSCS obtain two different proposals, it simply requires that NDSCS solicit (i.e. ask or try to obtain) such proposals. Similarly, the focus on the use of the word “shall” v. “should” is irrelevant. Regardless of which word is used, NDSCS did exactly what it was supposed to do in soliciting informal quotes or proposals from two vendors.

Recommendation 1-3: We recommend management notify the South East Education Cooperative board of the excess funds remaining after paying the salary and fringe benefits of the Executive Director and determine proper disposition of those amounts on behalf of SEEC.

NDSCS disagrees that it improperly spent any of the SEEC dollars in paying for the Flint Group contract. The Executive Director of SEEC and I discussed the Career Academy project and the need for developing a strategic plan as recommended by the Superintendent of the Fargo Public Schools and potential donors to the Career Academy. After this discussion, we both determined that it would be appropriate to utilize the SEEC local funds to hire a consultant to lead the strategic planning process. In other words, NDSCS and the Executive Director of SEEC discussed and agreed to utilize SEEC funds in paying for the services of the Flint Group.

Recommendation 1-4: We recommend management adopt appropriate internal controls to ensure expenditures are authorized in accordance with all applicable policies and procedures and SBHE authorizations.

NDSCS disagrees that the SBHE directed NDSCS to not use any state or local funds for the fundraising activities related to the Career Academy Initiative. The Auditor cites the minutes of the SBHE in supporting this finding, indicating that the Board authorized NDSCS “to begin fundraising for a workforce academy, with [its] potential development without any NDUS or state funds.” The plain language of this excerpt from the Board’s minutes does not support the conclusion drawn by the Auditor. The first clause of the quoted language is approval for NDSCS to begin fundraising activities. The second clause is a reference to the project itself, indicating that NDSCS must not rely on any NDUS or state funds being utilized for the capital project itself. The conclusion that the quoted language is a prohibition against NDSCS utilizing state or local funds for its fundraising activities does not follow the plain language reading of the excerpted language; nor is it logical to conclude that the Board’s approval was subject to any such prohibition – if NDSCS were unable to utilize state or local funds for fundraising, the Board’s approval would be meaningless, as NDSCS must access state and local funds for such expenditures.

Recommendation 1-5: We recommend management take steps to ensure timely appropriate requests and approvals for creation of a new "center or institute" are obtained under SBHE Policy 307.1 and NDUS Procedure 307.1. We recommend the SBHE consider clarifying the level of responsibility and authority it is granting in approving Presidential Goals, to avoid management assuming greater authority than granted.

NDSCS disagrees that SBHE Policy 307.1 and NDUS Procedure 307.1 are applicable in this instance. Assuming for the sake of argument that the Career Academy could be considered a “center or institute,” NDSCS was not creating such a center or institute. As indicated in the Report, the required approvals are

needed only when the “center or institute” is created. In this instance, NDSCS was simply requesting permission to fundraise for the potential of creating the Career Academy. If NDSCS is unsuccessful in raising such funds, the Career Academy project will not move forward. Furthermore, regardless of the success of the fundraising campaign, NDSCS is aware that it will have to seek additional authorizations from the SBHE and the legislature before moving forward with the capital project.

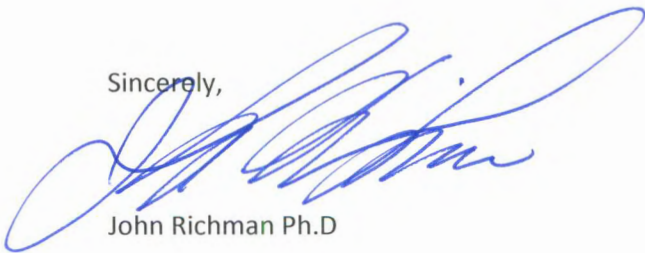
Recommendations 2-1 through 2-7

As indicated above, in an effort to provide a complete response to the findings and recommendations in the Report, NDSCS requested permission to share the Report with the requisite personnel at NDSCS. Having been denied the permission to share the Report, NDSCS is unable to respond to Recommendations 2-1 through 2-7 at this time. When the Report has been made public, NDSCS will work with the appropriate personnel to develop a response to these recommendations.

Other Recommendations

To the extent that this response does not address specific findings and recommendations, it is due to the fact that NDSCS has not been identified as being responsible for those findings or recommendations. NDSCS would refer all questions on such findings and recommendations to the SBHE and/or the NDUS.

Sincerely,



John Richman Ph.D