

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

June 16, 2016

Howard Zemsky
Commissioner
Department of Economic Development
Empire State Development Corp
633 3rd Ave – 37th Floor
New York, NY 10017

Re: Report 2016-BSE01-01

Dear Commissioner Zemsky:

As part of our daily audit, we examined¹ three vouchers totaling \$350,000 the Empire State Development Corporation (ESD) approved to pay Trivision Tek Group, Inc. (Trivision) under Grant Disbursement Agreement X199 (GDA X199) for the period April 1, 2010 through June 30, 2012. Under both GDA X199 and as a subcontractor to Currier McCabe & Associates, Inc. (CMA) under CMA's contract C024937 with the New York State Department of Health (DOH), Trivision was to provide consulting services for the DOH Medicaid Data Warehouse. Our objective was to determine if the payment requests ESD approved under GDA X199 were appropriate.

During the course of this audit, our fieldwork was temporarily suspended to avoid interfering with reviews conducted by other public oversight authorities of the matters addressed in this report.

A. Results of Examination

Our audit found none of the payment requests ESD approved under GDA X199 were appropriate. ESD approved and certified to the State Comptroller as just, true and correct \$330,200 to pay Trivision for the same consulting services that were previously paid or were payable by CMA, and \$19,800 to pay Trivision for project management services that were never performed by the brother of Trivision's owner.

We shared a draft report with ESD officials and considered their comments (Attachment A) in preparing the final report. ESD officials believe they have appropriate controls to prevent payments like these from being approved. As discussed in the State Comptroller's Office comments on ESD's response (Attachment B), ESD's controls are not effective.

¹We performed our examination in accordance with the State Comptroller's authority set forth in article V, Section 1 of the State Constitution, as well as Article II, Section 8, and Article VII, Section 111 of the State Finance Law.

B. Background and Methodology

In November 2010, ESD approved grant number GDA X199 to Trivision to provide consulting services for the DOH Medicaid Data Warehouse. Trivision was concurrently a subcontractor to CMA, DOH's prime contractor since February 2010, for the Medicaid Data Warehouse under contract C024937. According to GDA X199, Trivision was not allowed to bill ESD for services that were paid or were payable from other funding sources.

To accomplish our objective, we analyzed the terms and conditions of grant number GDA X199 and CMA contract C024937 and their related subcontracts; reviewed vouchers and other pertinent documentation; and interviewed officials at ESD, Trivision and CMA.

C. Details of Findings

ESD certified to the State Comptroller as just, true and correct:

- \$330,200 payable to Trivision for the same consulting services that were previously paid, or were payable, by CMA. Of this amount, Trivision had already received \$265,764 (approximately 80 percent) from CMA prior to billing ESD.
- \$19,800 payable to Trivision for project management services allegedly performed by the brother of Trivision's owner. However, both CMA and the brother of Trivision's owner confirmed the services were never performed.

ESD officials approved the three vouchers because they relied on Trivision's certifications "...that the payment and/or reimbursement of expenditures for which it is seeking payment and/or reimbursement from OSC does not duplicate reimbursement or disbursement of costs and/or expenses from any other source."

At the time of our examination, ESD had already paid Trivision \$138,891. As a result of our examination, we stopped the final \$211,109 payment request ESD approved. In addition, as a result of our inquiries, ESD terminated GDA X199 and Trivision repaid ESD the \$138,891.

In response to this report, ESD officials stated that they already employ safeguards to prevent grantees from receiving funds for the same expenditures from different funding sources within ESD. Officials further state that their procedures will verify all services are actually performed. As noted in Attachment B, the safeguards and procedures ESD currently has in place will not prevent or detect false billing and duplicate billing like those Trivision submitted and ESD approved.

Recommendations

- 1) *Monitor future awards with multiple funding sources to ensure ESD does not pay contractors for services paid or payable from other funding sources.*
- 2) *Ensure future projects are sufficiently monitored to verify all services are actually performed prior to certifying the appropriateness of payment requests to the Comptroller.*

We would appreciate your response to this report by July 15, 2016, indicating any actions planned to address the recommendations in this report. We thank the management and staff of the Empire State Development Corporation for the courtesies extended to our auditors.

Sincerely,

Bernard J. McHugh
Director of State Expenditures

Enc: Attachment A
Attachment B

cc: Elizabeth Fine, Executive Vice President Legal and General Counsel
Simon Wynn, Senior Counsel Litigation
Benson Martin, Director of Compliance, Legal Division
Tom Brennan, Senior Vice President and Audit Director



May 16, 2016

Mr. Bernard J. McHugh
Office of the State Comptroller
Division of Contracts and Expenditures
110 State Street
Albany, New York 12236

RE: Response to OSC's Draft Report 2016-BSE01-01

Dear Mr. McHugh:

We received your February 16, 2016 e-mail and Draft Audit Report ("Draft Report") regarding Empire State Development's ("ESD") \$350,000 grant to Trivision Tek Group, Inc. ("Trivision"). The pertinent facts of this audit are as follows:

I. Background

In 2010, ESD approved a \$350,000 grant to Trivision pursuant to the terms of a grant disbursement agreement ("GDA"). The GDA allowed ESD to reimburse Trivision for certain business expenditures. ESD disbursed approximately \$138,000 of the \$350,000 grant to Trivision in 2011.

In 2012, Trivision requested payment for approximately \$212,000, the balance of the grant. Later in 2012, OSC informed ESD that Trivision requested reimbursement for the same expenditures from another entity, CMA Consulting Services ("CMA"), a prime contractor for the New York State Department of Health.

ESD immediately commenced its own investigation and determined that Trivision did, in fact, request reimbursement for the same expenditures from CMA. As this was a clear violation of the parties' GDA, ESD clawed back the \$138,000 that it had given Trivision in 2011, thereby fully recovering all of the money granted to Trivision pursuant to the GDA. ESD then terminated the GDA, and refused to pay Trivision the remaining \$212,000 balance.

II. OSC's Recommendations

Based on the audit, OSC recommended that ESD: a) monitor future awards with multiple funding sources to ensure that the grantee does not bill more than one funding source for the same

* Comment 1

services; and b) ensure future projects are sufficiently monitored to verify all services are actually performed.

A. ESD Properly Monitors Grants with Multiple Funding Sources

OSC recommended that ESD monitor future awards with multiple funding sources to ensure that grantees do not bill more than one funding source for the same services. However, ESD already employs safeguards to prevent grantees from receiving funds for the same expenditure from different funding sources. Further, before a New York State agency or authority can disburse funds, OSC must approve the release of those funds. Each agency or authority must provide back-up documentation to OSC for each potential disbursement.

*
Comment
2

ESD fully comports with all relevant laws and procedures in disbursing funds through its GDAs. ESD has implemented an enhanced disbursement process for multiple funding sources within ESD. Specifically, because an ESD grantee may also be the recipient of an ESD loan, tax subsidy, or a second ESD grant, ESD has considered OSC's recommendations and currently takes the following steps to monitor whether a grantee is receiving multiple ESD funding.

- First, ESD lists all distinct funding sources for projects with multiple ESD funding sources and tracks these sources in the ESD Project Tracking System ("PTS"). This system ensures that project managers are able to easily identify any other ESD commitment for the same project.
- Second, ESD created distinct project numbers for projects with multiple funding sources and tracks these project numbers in PTS, which also allows project managers to easily identify any other ESD commitment for the same project.
- Third, ESD assigns projects with multiple funding sources to one project manager, which allows ESD to more easily identify if double-billing is occurring on multiple ESD commitments.
- Fourth, ESD requires all grantees to certify that ESD's reimbursement does not duplicate reimbursement from any other funding source.

*
Comment
2

B. ESD Properly Monitors Projects to Ensure Services Are Performed

OSC also recommended that ESD ensures that future projects are sufficiently monitored to verify that all services are actually performed. ESD employs procedures to ensure that grantees actually perform services. Before ESD disburses grant funds, grantees must submit payment requests with

*
Comment
3

detailed supporting documentation that indicate how the disbursement requirements have been satisfied. When ESD project managers review the payment requests, they cross-reference them with the grant disbursement requirements to confirm that all disbursement requirements have been satisfied. ESD Contracts Administration also performs a similar audit. ESD project managers and ESD Contracts Administration (as well as others) must approve each disbursement prior to any payments.

*
Comment
3

In addition, GDAs include detailed requirements to prevent fraud and improper conduct. Acceptable methods of documentation of investment include: (1) a letter from an independent certified public accountant ("CPA") indicating that the CPA has reviewed a sample of the invoices/proof of payment and certifies that the required investment amount has been expended; (2) submission of all invoices/proof of payment to ESD to confirm that the required investment amount has been incurred; or (3) an affidavit listing all the project costs. This affidavit method is used for a municipality or a publicly-traded company if ESD's assistance is less than 60 percent of the total project cost. If the GDA includes job requirements, the grantee must submit a certification indicating the number of employees and a recent New York State *Quarterly Combined Withholding, Wage Reporting, And Unemployment Insurance Return*. Grantees that knowingly provide false information are subject to civil and criminal penalties under New York State law. These penalties help ensure the accuracy of the information grantees provide.

*
Comment
3

ESD, however, continually looks to improve its Grant Program and will consider OSC's recommendations.

III. Conclusion

Thank you for the opportunity to respond to your Draft Report. If you have any questions, please do not hesitate to contact me.

Yours truly,



Benson V. Martin
Director of Compliance

State Comptroller's Office Comments on Auditee Response

1. ESD did not commence its own investigation until approximately two months after the OSC's auditors began their examination and only after OSC rejected a Trivision voucher. OSC's auditors rejected the \$211,109 voucher ESD officials certified as just, true and correct when officials could not provide sufficient, appropriate evidence to support the Trivision expenditures were valid.
2. ESD asserts that it has an "enhanced disbursement process" to identify multiple funding sources *within ESD*. That process was insufficient to identify the overpayments to Trivision since the funding sources were *within and outside of ESD*. ESD correctly recognizes that OSC may request back up documentation for payment audit, but OSC is not the first line of defense in guarding against inappropriate payments. That responsibility is at the agency.

Pursuant to Law and Regulation, each agency is required to maintain adequate internal controls over the payment process. Internal controls are the first line of defense and the best mechanism the state has to safeguard its assets and to provide reasonable assurance that payments are proper. Agencies and authorities must obtain and review sufficient, appropriate evidence prior to certifying to OSC that payment requests are just, true and correct. The evidence ESD provided to OSC was neither sufficient nor appropriate to determine the appropriateness of the payment to Trivision.

In this case, ESD relied entirely on the self-certification by the grantee that requested funds did not duplicate other payments. There are no other controls in place at ESD to provide assurance that payments are appropriate when projects include multiple funding sources from *within and outside of ESD*. This is not a best practice nor an effective control as demonstrated by the findings in this report. Trivision signed three certifications – and ESD relied on these – to certify to OSC that the vouchers were proper.

Furthermore, ESD was aware that both ESD and CMA (via the DOH contract and via Trivision's Application for Funding for GDA X199) would pay Trivision for work on the Medicaid Data Warehouse. ESD could have obtained independent verification but did not contact CMA prior to submitting vouchers to OSC to confirm whether Trivision billed for services paid or payable by CMA and whether services for which Trivision billed ESD had been provided. OSC's auditors contacted CMA and readily identified Trivision's duplicate and false billings.

3. ESD listed a variety of documentation grantees submit and project managers review prior to approving payment requests. We caution ESD officials that documentation alone may not provide sufficient, appropriate evidence of grantee performance. We examined documents to support Trivision paid its owner's brother \$19,800 to provide project management services for the DOH Medicaid Data Warehouse. However, as the report details, both CMA and the owner's brother himself confirmed the project management services were never provided.

As ESD considers additional steps to confirm performance under grants, officials should obtain reliable evidence from the most independent sources possible. This will minimize the risk that ESD incorrectly certifies as correct any payment requests for services that were not performed.



September 14, 2016

Hon. Andrew M. Cuomo
Governor
NYS Executive Chamber
State Capitol, 2nd Floor
Albany, New York 12224

Hon. Thomas P. DiNapoli
Comptroller
Office of the New York State Comptroller
110 State Street, 15th Floor
Albany, New York 12236

Senator John J. Flanagan
President Pro Tempore, NYS Senate
State Capitol, Room 330
Albany, New York 12224

Assemblyman Carl E. Heastie
Speaker, NYS Assembly
Legislative Office Building, Room 932
Albany, New York 12248

Senator John A. DeFrancisco
Chairman, Senate Finance Committee
State Capitol, Room 416
Albany, New York 12224

Assemblyman Herman D. Farrell
Chairman, Assembly Ways and Means
Committee
Legislative Office Building, Room 923
Albany, New York 12248

Assemblyman Joseph D. Morelle
Majority Leader, NYS Assembly
Legislative Office Building, Room 926
Albany, New York 12248

Assemblyman Brian Kolb
Assembly Minority Leader
Legislative Office Building, Room 933
Albany, New York 12248

Senator Liz Krueger
Ranking Minority Member
Senate Finance Committee
Legislative Office Building, Room 617
Albany, New York 12247

Assemblyman Bob Oaks
Ranking Minority Member
Assembly Ways and Means Committee
NYS Assembly
Capitol Building, Room 444
Albany, New York 12248

Dear Sir/Madam:

In accordance with the provisions of Section 170 of the Executive Law, we are hereby submitting to your Office a copy of Empire State Development's ("ESD") response regarding recommendations for corrective action set forth in the Office of the New York State Comptroller's audit of a grant ESD made to Trivision Tek Group, Inc.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

Benson V. Martin
Director of Compliance

Enclosure

September 14, 2016

The Honorable Thomas P. DiNapoli
Office of the New York State Comptroller
110 State Street
Albany, New York 12236

RE: 90-Day Response to the New York State Office of Comptroller Audit Report 2016-BSE01-01
Concerning Trivision Tek Group, Inc.

Dear Comptroller DiNapoli:

On June 16, 2016, the Office of the State Comptroller ("OSC") released a final audit report, which was the result of an examination of three vouchers totaling \$350,000 that Empire State Development ("ESD") approved to pay Trivision Tek Group, Inc. ("Trivision") under Grant Disbursement Agreement X199 ("GDA") for the period April 1, 2010, through June 30, 2012. OSC commenced its audit to determine whether the payments made by ESD to Trivision under the GDA were appropriate. OSC made two recommendations in the final audit report. First, OSC recommended that ESD monitor future awards with multiple funding sources to ensure that ESD does not pay contractors for services paid or payable from other funding sources. Second, OSC recommended that ESD ensure future projects are sufficiently monitored to verify that all services are actually performed prior to certifying the appropriateness of payment requests to the Comptroller. In accordance with Section 170 of the Executive Law, within ninety days of the release of the final audit report, by this letter, ESD is advising of our progress to date with respect to OSC's two recommendations contained in the final audit report.

I. Background

In 2010, ESD approved a \$350,000 grant to Trivision pursuant to the terms of a GDA. The GDA allowed ESD to reimburse Trivision for certain business expenditures. ESD disbursed approximately \$138,000 of the \$350,000 grant to Trivision in 2011. In 2012, Trivision requested payment for approximately \$212,000, the balance of the grant. Later in 2012, before any further payments of these funds were made, OSC informed ESD that Trivision had also requested reimbursement for the same expenditures from another entity, CMA Consulting Services ("CMA"), a prime contractor for the New York State Department of Health.

ESD immediately commenced its own investigation and determined that Trivision had, in fact, requested reimbursement for the same expenditures from CMA. As this action clearly violated the terms of the GDA, ESD successfully clawed back the \$138,000 that it had provided to Trivision in 2011, thereby fully recovering all of

the money granted to Trivision pursuant to the GDA. ESD then terminated the GDA, and refused to pay Trivision the remaining \$212,000 balance.

II. Internal Controls

Pursuant to OSC's *Standards for Internal Control in New York State Government* dated March 2016, internal control is defined as:

...a process, effected by an entity's board of directors, management, and other personnel, designed to provide reasonable assurance regarding the achievement of objectives relating to operations, reporting, and compliance.

OSC recognizes that internal controls "can provide only reasonable—not absolute assurance." *See Standards for Internal Control in New York State Government*, Office of the New York State Comptroller (March 2016) p. 4. Therefore, an improper payment, by itself, does not indicate a systemic lack of controls. Throughout over a decade of frequent audits of ESD's grant programs, the Trivision fraud is the only instance of fraud by a grantee in a grant disbursement that OSC has identified.

ESD fully comports with all relevant laws and procedures in disbursing funds through its GDAs. We work on an ongoing basis to improve our internal controls to better serve the citizens of New York State. To achieve this, we would welcome a discussion with OSC about how best to enhance our internal controls as they relate to grant disbursements. Although OSC's final audit report points out perceived deficiencies, we would welcome OSC's suggestions for remedial measures or additional controls.

III. OSC's Recommendations

OSC's recommendations are below:

Recommendation #1:

Monitor future awards with multiple funding sources to ensure ESD does not pay contractors for services paid or payable from other funding sources.

ESD currently takes the following steps to monitor whether a grantee is receiving multiple funding:

- First, ESD lists all distinct funding sources for projects with multiple ESD funding sources and tracks these sources in the ESD Project Tracking System ("PTS"). This system ensures that project managers are able to easily identify any other ESD commitment for the same project.

- Second, ESD created distinct project numbers for projects with multiple funding sources and tracks these project numbers in PTS, which also allows project managers to easily identify any other ESD commitment for the same project.
- Third, ESD assigns projects with multiple funding sources to one project manager, which allows ESD to more easily identify if double-billing is occurring on multiple ESD commitments.
- Fourth, ESD requires all grantees to certify that ESD's reimbursement does not duplicate reimbursement from any other funding source.

OSC's final audit report states that ESD's procedure "is not a best practice nor an effective control as demonstrated by the findings in [the] report." However, OSC's recommendation on this issue was difficult to implement because OSC's final audit report did not elaborate on what best practices in the state grant program field were.

Again, ESD wants to identify and implement improvements to our internal controls to better serve the citizens of New York State. Here, our process worked. When ESD received notification of Trivision's fraud, it successfully recouped its total disbursements made to Trivision. Even though this represents the first instance of fraud by a grantee in a grant disbursement that OSC has found in over a decade, our goal is to uncover and eliminate any fraud. That goal is best served when we collaborate together, as exemplified in this matter.

Recommendation #2:

Ensure future projects are sufficiently monitored to verify all services are actually performed prior to certifying the appropriateness of payment requests to the Comptroller.

ESD employs procedures to ensure that grantees actually perform services. Before ESD disburses grant funds, grantees must submit payment requests with detailed supporting documentation that indicate how the disbursement requirements have been satisfied. When ESD project managers review the payment requests, they cross-reference them with the grant disbursement requirements to confirm that all disbursement requirements have been satisfied. ESD Contracts Administration also performs a similar audit. ESD project managers and ESD Contracts Administration (as well as others) must approve each disbursement prior to any payments.

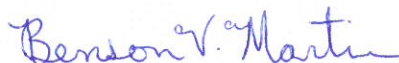
OSC's final audit report alleges that the documentation that ESD collects to verify the performance of services by grantees is inadequate. We request further input from OSC on what documentation it would consider sufficient. Before a New York State agency or authority can disburse funds, OSC must approve the release of those funds. Each agency must provide back-up documentation to OSC for each potential

disbursement. ESD's grant programs provide back-up documentation to OSC whenever ESD requests disbursements. ESD has provided this documentation to verify the performance of services by grantees to OSC and OSC has considered this documentation sufficient for years. Since both of our agencies have a role in the approval process, we would welcome further discussions with OSC on appropriate documentation requirements for disbursement, especially if OSC is now revising its policy on that front.

III. Conclusion

ESD's goal is to uncover and eliminate any fraud. We appreciate OSC's efforts in helping ESD identify a fraudulent grantee. We are eager to partner with OSC to discuss practical solutions to address OSC's concerns and strengthen our internal controls.

Yours truly,



Benson V. Martin

Director of Compliance