



State of Nevada  
Governor's Finance Office  
Division of Internal Audits

**Audit Report**

**Department of Transportation  
Administrative Contracts**

Report No. C18-02  
June 14, 2018



**EXECUTIVE SUMMARY**  
**Department of Transportation**  
**Administrative Contracts**

**Introduction**..... page 1

---

**Objective:.....Improve Oversight of  
NDOT's Contract Management**

---

**Submit Administrative Contracts and Amendments of \$50,000 and more to NDOT Board for Approval**.....page 2

Submitting administrative contracts and amendments of \$50,000 and above to the NDOT Board for approval will ensure consistency with approval levels required by the State Administrative Manual (SAM) 0322 for other state agencies.

The NDOT Board approves administrative contracts of \$300,000 and above. Both the NDOT Board and the State Board of Examiners (BOE) provide for a high level of approval; however, BOE approves contracts of \$50,000 and more in accordance with SAM 0322.

**Submit Sole Source Contracts to Purchasing for Approval**.....page 4

Submitting sole source contracts to the Purchasing Division Administrator for approval will ensure compliance with regulations and state-wide consistency when awarding sole source contracts.

Two contracts for aircraft pilot services and one contract for employee training were approved by the NDOT director instead of the Purchasing Division Administrator. NAC 333.150 requires sole source contracts be approved by the Purchasing Division Administrator.

**Renew Director Approval Limit for New Governor.....page 5**

Renewing the NDOT director’s contract approval limit when there is a new Governor will ensure the limit is consistent with the Governor’s vision of state administration.

The Governor serves as chair of the NDOT Board. The Board delegates to the director the authority to approve contracts up to a specified limit. Contracts approved by the director do not require Board approval, and are submitted to the Board as informational items only. The director’s contract approval limit is currently \$300,000.

**Ensure All Relevant Contract Information is Provided to NDOT Board for Informational Items.....page 6**

Ensuring all relevant contract information is provided to the NDOT Board for informational items by using the Budget Division’s contract summary form, or modifying NDOT’s agreement summary sheet will ensure all relevant information is provided to the NDOT Board in summary form as is provided to the BOE.

For informational items, the NDOT Board is not provided the same information provided to the BOE; such as, reason the contractor was chosen; whether the contractor is currently involved in litigation with the state; and why state employees are not able to perform the job.

NDOT should use the Budget Division’s contract summary form, currently provided to the BOE, for providing information to the NDOT Board. Alternatively, NDOT could modify its agreement summary sheet to contain the same information as the Budget Division’s contract summary form and provide it to the Board.

**Comply with State and Federal Guidelines and NDOT’s Reporting Requirements..... page 8**

Complying with state and federal guidelines regarding contracts will ensure uniformity and completeness of contract documentation. Additionally, reporting informational items to the NDOT Board ensures consistency and transparency.

We noted missing documentation, including: certificates of liability insurance and/or worker’s compensation insurance affidavits; contract evaluation criteria; and a federal form related to disclosure of lobbying activities. Not maintaining these documents may leave the state open to financial risks, possible loss of federal funding, and subject recipients to civil penalties.

Additionally, three contracts were not reported to the NDOT Board as informational items in accordance with NDOT’s reporting requirements.

Section 0320 of the State Administrative Manual (SAM) requires every contractor to furnish the state with a certificate of liability insurance or worker’s compensation insurance affidavit prior to the start of work. NDOT’s Procurement and Agreement Manual requires contract evaluation criteria to be submitted to Agreement Services prior to solicitation. Pursuant to Title 31, United States Code, Section 1352, recipients of federal funds are required to complete the Disclosure of Lobbying Activities form.

---

<b>Appendix A</b> .....	page 10
Budget Division's Contract Summary Form	
<b>Appendix B</b> .....	page 12
NDOT's Agreement Summary Sheet	
<b>Appendix C</b> .....	page 13
Scope and Methodology, Background, Acknowledgments	
<b>Appendix D</b> .....	page 14
Nevada Department of Transportation Response and Implementation Plan	
<b>Appendix E</b> .....	page 29
Timetable for Implementing Audit Recommendations	

---



---

---

## INTRODUCTION

---

---

At the request of the Governor's Finance Office, the Division of Internal Audits conducted an audit of the Nevada Department of Transportation (NDOT). Our audit focused on NDOT's administrative contracts. The audit's scope and methodology, background, and acknowledgements are included in Appendix C.

Our audit objective was to develop recommendations to:

- ✓ Improve oversight of NDOT's contract management.

### **Nevada Department of Transportation Response and Implementation Plan**

We provided draft copies of this report to NDOT for its review and comments. NDOT's comments have been considered in the preparation of this report and are included in Appendix D. In its response, NDOT accepted our recommendations. Appendix E includes a timetable to implement our recommendations.

NRS 353A.090 requires within six months after the final report is issued to the Executive Branch Audit Committee, the Administrator of the Division of Internal Audits shall evaluate the steps NDOT has taken to implement the recommendations and shall determine whether the steps are achieving the desired results. The administrator shall report the six month follow-up results to the committee and NDOT officials.

The following report contains our findings, conclusions, and recommendations.

---

---

## **Improve Oversight of NDOT's Contract Management**

---

---

The Nevada Department of Transportation (NDOT) can improve oversight of administrative contract management by:

- Submitting administrative contracts and amendments of \$50,000 and above to the NDOT Board for approval;
- Submitting sole source contracts to the Purchasing Division Administrator for review and approval;
- Renewing the director's contract approval limit when there is a new Governor;
- Ensuring all relevant contract information is provided to the NDOT Board for informational items; and
- Complying with state and federal guidelines and NDOT's reporting requirements.

### **Submit Administrative Contracts and Amendments of \$50,000 and Above to NDOT Board for Approval**

NDOT should submit administrative contracts and amendments of \$50,000 and above to the NDOT Board for approval. This will provide consistency with approval levels required by the State Administrative Manual (SAM) 0322 for other state agencies.

### **NDOT Board Approves \$300,000 and Above**

The NDOT Board approves administrative contracts of \$300,000 and above. In accordance with NRS 408.131, the NDOT Board delegated to the director contract approval limit of up to \$300,000. These contracts are submitted to the NDOT Board as informational items only.

Both the NDOT Board and the State Board of Examiners (BOE) provide for a high level of approval; however, BOE approves contracts of \$50,000 and more in accordance with SAM 0322.



## **Conclusion**

Submitting administrative contracts and amendments of \$50,000 and above to the NDOT Board for approval will ensure consistency with approval levels required by the State Administrative Manual (SAM) 0322 for other state agencies.

## **Recommendation**

1. Submit administrative contracts and amendments of \$50,000 and above to the NDOT Board for approval.

## **Submit Sole Source Contracts to Purchasing for Approval**

NDOT should submit sole source contracts to the Purchasing Division Administrator for review and approval.<sup>1</sup> This will ensure compliance with regulations and state-wide consistency when approving sole source contracts.

### **Director Authorized Sole Source Contracts**

Our review revealed three sole source contracts were approved by the director. Two of the contracts were for aircraft pilot services on an as-needed basis to support NDOT flights and one was for NDOT employee training.

NAC 333:150 requires sole source contracts to be approved by the Administrator of the Purchasing Division. This ensures consistency for sole source approvals with state guidelines.

### **Conclusion**

Submitting sole source contracts to the Purchasing Division Administrator for approval will ensure compliance with regulations and state-wide consistency when approving sole source contracts.

### **Recommendation**

2. Submit sole source contracts to Purchasing Division Administrator for approval.

---

<sup>1</sup> Sole source contracts are not required to be opened to competitive bidding if the Purchasing Division Administrator deems them not adaptable to competitive selection.

## **Renew Director Approval Limit for New Governor**

The NDOT Board should renew the director's contract approval limit when there is a new Governor.<sup>2</sup> This will ensure the director's contract approval limit is consistent with the Governor's vision of state administration. Pursuant to NRS 408.131, the NDOT Board can delegate contract approval to the director.

### **Conclusion**

Renewing the director's contract approval limit when there is a new Governor will ensure consistency with the Governor's vision of state administration.

### **Recommendation**

3. Renew the director's contract approval limit when there is a new Governor.

---

<sup>2</sup> Per NRS 408.106, the Governor serves as the Chair of the NDOT Board.

## **Ensure All Relevant Contract Information is Provided to NDOT Board for Informational Items**

NDOT should ensure all relevant contract information is provided to the NDOT Board by using the Budget Division's contract summary form or modifying its agreement summary sheet for informational items. This will ensure all relevant information regarding the contract is provided to the NDOT Board in summary form as is provided to the BOE.

The BOE is provided contract information for contracts \$10,000 and above using Budget Division's contract summary form.<sup>3</sup> The contract summary form summarizes all relevant contract information for the BOE.

For informational items, the NDOT Board is provided a list of contracts that includes the name of the contractor, purpose of the contract, amount, start and end date, agreement type (i.e., interlocal, cooperative, right of way), and miscellaneous notes about the contract.

The list does not include some of the information contained on the Budget Division's contract summary form, such as: what conditions require this work to be done; why state employees were not able to perform this work; if the contractor is a current or former employee of the state; and if the contractor is currently involved in litigation with the state.

### **NDOT's Agreement Summary Sheet is Not Provided to the Board**

NDOT has an agreement summary sheet that is used to summarize contract information; however, the agreement summary sheet is not provided to the NDOT Board.<sup>4</sup> The agreement summary sheet is maintained in the contract's folder as part of the contract file.

The agreement summary sheet contains more information than the list provided to the Board but does not include all the information provided to BOE on Budget Division's summary form. The agreement summary sheet does not include information, such as: reason the contractor was chosen; whether the contractor is currently involved in litigation with the state; and why state employees are not able to perform the job.

NDOT could modify its agreement summary sheet to contain the same information as Budget Division's contract summary form or use the Budget Division's contract summary form.

---

<sup>3</sup> Appendix A – Budget Division's Contract Summary Form.

<sup>4</sup> Appendix B – Agreement Summary Sheet.

## **Conclusion**

Ensuring all relevant contract information is provided to the NDOT Board by using Budget Division's contract summary form or modifying its agreement summary sheet for informational items will help guarantee all relevant information regarding the contract is provided to the NDOT Board in summary form as is provided to the BOE.

## **Recommendation**

4. Ensure all relevant contract information is provided to NDOT Board for informational items.

## **Comply with State and Federal Guidelines and NDOT's Reporting Requirements**

NDOT should comply with state and federal guidelines regarding contracts. This will ensure uniformity and completeness of contract documentation. Additionally, NDOT should report required informational items to the NDOT Board pursuant to NDOT's reporting requirements. Reporting informational items to the NDOT Board ensures consistency and transparency.

### **NDOT Did Not Comply with State and Federal Guidelines**

Our review of 47 out of 858 contracts (5 percent) totaling almost \$10 million executed in fiscal years 2016 and 2017 revealed instances of missing documentation.

#### Missing Documentation

There were four contract files missing documentation, including: certificates of liability insurance and/or worker's compensation insurance affidavits; contract evaluation criteria; and a federal form related to disclosure of lobbying activities.

- Three contract files were missing certificates of liability insurance and/or worker's compensation insurance affidavits. Missing certificates of liability insurance and/or worker's compensation insurance affidavits may leave the state open to financial risk.

Section 0320 of the State Administrative Manual requires every contractor to furnish the state with a certificate of liability insurance or worker's compensation insurance affidavit prior to the start of work. This information is required to be maintained by NDOT per the Division of Risk Management; and

- One contract file was missing both contract evaluation criteria and the federal disclosure of lobbying activities form. Missing disclosure forms may leave the state open to possible loss of federal funding and subjects recipients to civil penalties.

NDOT's Procurement and Agreement Manual requires contract evaluation criteria to be submitted to Agreement Services prior to advertisement of the solicitation.<sup>5</sup> Pursuant to Title 31, United States Code, Section 1352, recipients of federal funds are required to complete the Disclosure of Lobbying Activities form.

---

<sup>5</sup> Agreement Services is a division within NDOT that reviews contracts and agreements prior to execution.

## **NDOT Did Not Report Informational Items to the NDOT Board**

Our review of 47 contracts revealed one amendment and two contracts were not reported to the NDOT Board. The amendment was for \$53,275 (previously approved \$1.8 million contract for Northern Nevada traffic study); one contract for \$150,000 (aerial survey for I-80); and one contract for \$289,410 (landscape architecture) were not reported to the NDOT Board as informational items.

Each of these contracts is required to be submitted to the NDOT Board as an informational item. Complying with NDOT reporting requirements will ensure consistency and transparency in reporting to NDOT Board members.

## **Conclusion**

Compliance with state and federal guidelines will ensure uniformity and completeness of contract documentation. Additionally, reporting required informational items to the NDOT Board pursuant to NDOT's reporting requirement will ensure consistency and transparency.

## **Recommendations**

5. Comply with state and federal guidelines.
6. Report informational items to the NDOT Board.

# Appendix A

## Budget Division's Contract Summary Form

BOE

For Board Use Only

Date: \_\_\_\_\_

### CONTRACT SUMMARY

(This form must accompany all contracts submitted to the Board of Examiners (BOE) for review and approval)

#### I. DESCRIPTION OF CONTRACT

1. Contract Number: 19965

Agency Name: DEPARTMENT OF  
TRANSPORTATION

Agency Code: 800

Appropriation Unit: 4660 - All Categories

Is budget authority available?: Yes

If "No" please explain: Not Applicable

Legal Entity Name: BARKER COLEMAN CONSTRUCTION

Contractor Name: BARKER COLEMAN CONSTRUCTION

Address: LLC  
5945 LOS ALTOS PKWY STE 101  
City/State/Zip SPARKS, NV 89436

Contact/Phone: 775/626-4144

Vendor No.: T27017345

NV Business ID: 5

To what State Fiscal Year(s) will the contract be charged? 2019-2020

What is the source of funds that will be used to pay the contractor? Indicate the percentage of each funding source if the contractor will be paid by multiple funding sources.

General Funds	0.00 %	Fees	0.00 %
Federal Funds	0.00 %	Bonds	0.00 %
X Highway Funds	100.00 %	Other funding	0.00 %

2. Contract start date:

a. Effective upon Board of Examiner's approval? Yes or b. other effective date: NA

Anticipated BOE meeting date 07/2018

Retroactive? No

If "Yes", please explain

Not Applicable

3. Termination Date: 06/30/2020

Contract term: 2 years

4. Type of contract: Contract

Contract description: Test bg

5. Purpose of contract:

to print blank

6. NEW CONTRACT

The maximum amount of the contract for the term of the contract is: \$1,000,000.00

#### II. JUSTIFICATION

7. What conditions require that this work be done?

comparison

8. Explain why State employees in your agency or other State agencies are not able to do this work:

different system

9. Were quotes or proposals solicited? No

Was the solicitation (RFP) done by the Purchasing Division? No

a. List the names of vendors that were solicited to submit proposals (include at least three):

Not Applicable

b. Solicitation Waiver: Not Applicable

c. Why was this contractor chosen in preference to other?

d. Last bid date:

Anticipated re-bid date:

Contract #: 19965

Page 1 of 2



10. Does the contract contain any IT components? No

**III. OTHER INFORMATION**

11. Is there an Indirect Cost Rate or Percentage Paid to the Contractor?

No If "Yes", please provide the Indirect Cost Rate or Percentage Paid to the Contractor  
Not Applicable

12. a. Is the contractor a current employee of the State of Nevada or will the contracted services be performed by a current employee of the State of Nevada?

No

b. Was the contractor formerly employed by the State of Nevada within the last 24 months or will the contracted services be performed by someone formerly employed by the State of Nevada within the last 24 months?

No

c. Is the contractor employed by any of Nevada's political subdivisions or by any other government?

No If "Yes", please explain  
Not Applicable

13. Has the contractor ever been engaged under contract by any State agency?

No If "Yes", specify when and for which agency and indicate if the quality of service provided to the identified agency has been verified as satisfactory:  
Not Applicable

14. Is the contractor currently involved in litigation with the State of Nevada?

No If "Yes", please provide details of the litigation and facts supporting approval of the contract:  
Not Applicable

15. The contractor is registered with the Nevada Secretary of State's Office as a:

LLC

16. a. Is the Contractor Name the same as the legal Entity Name?

Yes

17. a. Does the contractor have a current Nevada State Business License (SBL)?

No b. If "No", is an exemption on file with the Nevada Secretary of State's Office?

Yes

18. a. Is the legal entity active and in good standing with the Nevada Secretary of State's Office?

Yes

19. Agency Field Contract Monitor:

20. Contract Status:

Contract Approvals:

Approval Level	User	Signature Date
Budget Account Approval	Pending	
Division Approval	Pending	
Department Approval	Pending	
Contract Manager Approval	Pending	
Budget Analyst Approval	Pending	
BOE Agenda Approval	Pending	
BOE Final Approval	Pending	

# Appendix B

## NDOT's Agreement Summary Sheet

### NEVADA DEPARTMENT OF TRANSPORTATION AGREEMENT SUMMARY SHEET

Agreement No. \_\_\_\_\_ Amendment No. \_\_\_\_\_ Task Order No. \_\_\_\_\_ Task Order Amendment No. \_\_\_\_\_  
 Start Date: \_\_\_\_\_ End Date: \_\_\_\_\_ Amendment Date: \_\_\_\_\_ Procured by: \_\_\_\_\_  
 Agreement Type: \_\_\_\_\_ Agreement Sub-Type: \_\_\_\_\_ Procurement No.: \_\_\_\_\_  
 Purpose: \_\_\_\_\_

County(ies) where work is being performed: \_\_\_\_\_  
 Contact Person: \_\_\_\_\_ Phone No.: \_\_\_\_\_ Email: \_\_\_\_\_ @dot.nv.gov  
 Project Manager: \_\_\_\_\_ Phone No.: \_\_\_\_\_ Email: \_\_\_\_\_ @dot.nv.gov

**Second Party Information**

Contact Person: \_\_\_\_\_ Email: \_\_\_\_\_ Phone No.: \_\_\_\_\_  
 Company Name: \_\_\_\_\_ NV Business License No.: \_\_\_\_\_  
 Primary Address: \_\_\_\_\_ Business License Expiration: \_\_\_\_\_  
 Invoice Remit To Address: \_\_\_\_\_ [Business License Search](#)

**Original budget approval (Form 2A) must be attached**

Total Estimated Cost of Agreement: \_\_\_\_\_ Org No. Responsible for Billing: \_\_\_\_\_ Funding Percentage: \_\_\_\_\_  
 Payable Amount: \_\_\_\_\_ Fixed Fee %: \_\_\_\_\_ Payment Code: \_\_\_\_\_ Federal %: \_\_\_\_\_  
 Receivable Amount: \_\_\_\_\_ Overhead %: \_\_\_\_\_ Payment Cycle: \_\_\_\_\_ State %: \_\_\_\_\_  
 Amendment Amount: \_\_\_\_\_ Retention %: \_\_\_\_\_ Security Deposit: Yes  No  Local %: \_\_\_\_\_  
 Fed Participation: Yes  No  In-Kind Services: Yes  No  Deposit Amount: \_\_\_\_\_ DBE Goal: \_\_\_\_\_  
 Appr Unit: \_\_\_\_\_ Activity: \_\_\_\_\_ Object: \_\_\_\_\_ Job/Project: \_\_\_\_\_

**Project Identification**

Project ID No.: \_\_\_\_\_ Contract: \_\_\_\_\_  
 EA No.: \_\_\_\_\_ Other: \_\_\_\_\_

**Board Approval**

Yes  No  Transportation  BOE  Meeting Date: \_\_\_\_\_ BOE Contract No.: \_\_\_\_\_  
 Approved Date: \_\_\_\_\_ Agenda Item No.: \_\_\_\_\_  
 Does the firm employ current or former State employees who have left State employment in the past two years? Yes  No   
 If yes, who, where did they work, and when did they leave?

<b>Review Approval:</b>	<b>Final Distribution</b>	<b>Required docs to start process:</b>	<b>Execution:</b>
Asst. Director _____	Recipient: _____	(to be completed by Admin Services)	(to be completed by Admin Services)
Dist./Div. Head _____	_____	Summary Sheet (signed by Div. Head): <input type="checkbox"/>	<input type="checkbox"/> Do Not Pay (Federal only)
Environmental _____	_____	Completed Form 2A: <input type="checkbox"/>	<input type="checkbox"/> NV Board of Engineers
IT _____	_____	Electronic Draft of Agreement: <input type="checkbox"/>	<input type="checkbox"/> AGMM <input type="checkbox"/> ANOT
Legal _____	_____	Agree Services _____	<input type="checkbox"/> AGMT <input type="checkbox"/> AGML
Proj. Accting. _____	_____		<input type="checkbox"/> Notice of Award Sent
Right of Way _____	_____		<input type="checkbox"/> Tracking Log Updated
			<input type="checkbox"/> Insurance Log Updated
			Date/Initials _____
			Verified _____

NDOT  
 070-001  
 Rev. 04/17

## **Appendix C Scope and Methodology, Background, and Acknowledgements**

---

### **Scope and Methodology**

We began the audit in February 2018. In the course of our work, we interviewed NDOT staff and discussed processes inherent to their responsibilities.

We reviewed contracts, documents and records, applicable Nevada Revised Statutes, Nevada Administrative Code, State Administrative Manual, and other state and NDOT guidelines. We concluded fieldwork and testing in April 2018.

We conducted our audit in conformance with the *International Standards for the Professional Practice of Internal Auditing*.

### **Background**

The Nevada Department of Transportation (NDOT) is administered by a seven-member Board of Directors consisting of the Governor, Lieutenant Governor, State Controller who services as ex officio member, and four members appointed by the Governor who represent different highway districts based on population. NDOT is responsible for maintaining and improving Nevada's highway system which includes U.S. highways and Interstate highways within the state's boundaries. For fiscal years ended 2016 and 2017, NDOT had 858 non-construction contracts of approximately \$332.6 million.

### **Acknowledgments**

We express appreciation to the NDOT director, assistant director, and staff for their cooperation and assistance throughout the audit.

Contributors to this report included:

Vita Ozoude, CMA, CGMA, CPA, MBA  
Executive Branch Audit Manager

Jaynalynn Seley, MBA  
Executive Branch Auditor

## Appendix D

# Nevada Department of Transportation Response and Implementation Plan



BRIAN SANDOVAL  
Governor

STATE OF NEVADA  
DEPARTMENT OF TRANSPORTATION  
1283 S. Stewart Street  
Carson City, Nevada 89712

RUDY MALFABON, P.E., Director  
In Reply Refer to.

June 5, 2018

Mr. Steve Weinberger  
Administrator  
Division of Internal Audits  
209 E. Musser Street, Suite 302  
Carson City, NV 89701

**RECEIVED**  
JUN 06 2018  
DIVISION OF INTERNAL AUDITS

Dear Mr. Weinberger:

Thank you for meeting with me, key NDOT managers and NDOT's Chief Counsel on May 10, 2018 to discuss the draft audit report. NDOT appreciated the opportunity to meet with you and your executive branch auditors to learn your perspective on the findings, conclusions, and recommendations. As requested, NDOT is providing responses to each of the recommendations below.

### **Submit Administrative Contracts and Amendments of \$50,000 and Above to NDOT Board for Approval**

#### **NDOT Board Approves \$300,000 and Above**

The NDOT Board approves administrative contracts of \$300,000 and above. In accordance with NRS 408.131, the NDOT Board delegated contract approval to the director approval of contracts up to \$300,000. These contracts are submitted to the NDOT Board as informational items only.

Both the NDOT Board and the State Board of Examiners (BOE) provide for a high level of approval; however, BOE approves contracts of \$50,000 and more in accordance with SAM 0322.

**NDOT's comments:** In 2011, newly elected Governor, Brian Sandoval, recognized the high value of NDOT's contracts and as Chairman of the Transportation Board, engaged the Board members to determine the contract limits of NDOT's director. At the July 2011 Transportation Board meeting the Board was presented with two options for approving future contracts and agreements. Option No. 1 provided for the Board approve all agreements (including amendments) while Option No. 2 provided for the Board to approve all agreements over \$300,000, accounting for approximately 70% of all contracts. Governor Sandoval stated that he would support Option No. 2. Member Frank Martin moved for approval of Option No. 2 and the motion was passed unanimously. The minutes from the July 2011 Transportation Board meeting are attached.

## **Conclusion**

Submitting administrative contracts and amendments of \$50,000 and above to the NDOT Board for approval will ensure consistency with approval levels required by the State Administrative Manual (SAM) 0322 for other state agencies

**NDOT's comments:** While lowering the authority granted to the NDOT director to \$50,000 will be consistent with the levels for BOE approval (SAM 0222) for other state agencies, NDOT has concerns with possible loss of efficiencies. NDOT is neutral on this issue and will defer to the direction of the Executive Audit Committee, however, the delegation of authority to the NDOT director will be referred to the Transportation Board for final approval as was determined in July 2011 (Transportation Board Minutes Attached).

## **Recommendation**

1. Submit administrative contracts and amendments of \$50,000 and above to the NDOT Board for approval.

### Nevada Department of Transportation Response:

The Nevada Department of Transportation requires Transportation Board approval to accept this recommendation. NDOT will present this recommendation to the Transportation Board for their consideration

Implementation period: Present at August 2018 Transportation Board for consideration.

### **Director Authorized Sole Source Contracts**

The audit report states, "NAC 333.150 requires sole source contracts to be approved by the Administrator of the Purchasing Division. This ensures consistency for sole source approvals with state guidelines."

**NDOT's comments:** NAC 333.150 states "*Except as otherwise provided by specific statute, a contract entered into pursuant to NRS 333.700 for the services of an independent contractor must: (a) Be awarded pursuant to the provisions of this chapter and chapter 333 of NRS.*" NDOT contracts, including sole source contracts, are an exception to NRS 333.700, which do not require approval of the Administrator of the Purchasing Division. The three sole source contracts cited in the audit are administrative contracts specifically for the Department of Transportation. Pilot Services are exclusively for the aircraft managed by NDOT to conduct highway related business and the third contract is for NDOT employee training, which is related to the administration of the highways of the state and appropriately approved by NDOT's director.

## **Conclusion**

Submitting sole source contracts to the Purchasing Division Administrator for approval will ensure compliance with regulations and state-wide consistency when approving sole source contracts. Submit sole source contracts to Purchasing Division Administrator for approval.

**NDOT's comments:** NDOT is required to be efficient and responsive to Constitutionally elected officers and their need to travel for state business. The two sole source contracts cited in this finding were necessary to continue to provide flight services to NDOT employees and elected officials until NDOT could fill vacant pilot positions. Securing State Purchasing Administrator approval only creates inefficiency in the approval process causing delays resulting in the purchase of more expensive commercial airline flights. This would not only affect NDOT, but the Constitutionally elected officials' travel budgets. NDOT is in compliance with NRS when awarding sole source contracts which ensures compliance with regulations and statewide consistency.

An example of efficiency achieved when NDOT awards sole source contracts is the Reno Early Action Project south of the Spaghetti Bowl. This sole source was supported by the Transportation Board when it approved a major amendment to the consultant agreement at the May 2018 Transportation Board meeting. There are many agreements that are time sensitive and/or specific to NDOT expertise, and having the current process ensures that NDOT can keep the projects moving forward with little to no delay. NDOT will coordinate with the Purchasing Administrator to ensure a timely approval process on certain sole source contracts to ensure continued efficiency.

## **Recommendation**

2. Submit sole source contracts to Purchasing Division Administrator for approval.

### Nevada Department of Transportation Response:

The Nevada Department of Transportation accepts this recommendation and will develop a process with the Purchasing Administrator to ensure timely and efficient approval of any sole source contracts not excepted from NRS 333.700, emergency contracts issued pursuant to NRS 408.323, and those not addressed by AGO Opinion No. 96-31.

**Implementation period:** Within the next six months before the end of Governor Sandoval's term.

## **Renew Director Approval Limit for New Governor**

The NDOT Board should renew the director's contract approval limit when there is a new Governor. This will ensure the director's contract approval limit is consistent with the Governor's vision of state administration. Pursuant to NRS 408.131, the NDOT Board can delegate contract approval to the director.

**NDOT's comments:** It will be appropriate to present this to the new Governor and Transportation Board.

## **Conclusion**

Renewing the director's contract approval limit when there is a new Governor will ensure consistency with the Governor's vision of state administration.

**NDOT's comments:** NDOT appreciates the need for consistency with the new Governor's vision of state administration and will review many administrative details with the new Governor to ensure transparency and consistency as well as efficiency and effectiveness of project administration, delivery, and operations.

## **Recommendation**

3. Renew the director's contract approval limit when there is a new Governor.

### Nevada Department of Transportation Response:

The Nevada Department of Transportation accepts this recommendation and will meet with the new Governor to review the contract approval limits. Any changes to the current delegation of authority requires Transportation Board action.

**Implementation period:** After the election of the new Governor at that Governor's discretion.

## **Ensure All Relevant Contract Information is Provided to NDOT Board for Informational Items**

### **NDOT's Agreement Summary Sheet is Not Provided to the Board**

NDOT could modify its agreement summary sheet to contain the same information as Budget Division's contract summary form or use the Budget Division's contract summary form.

## **Conclusion**

Ensuring all relevant contract information is provided to the NDOT Board by using the Budget Division's contract summary form or modifying its agreement summary sheet for informational items will help guarantee all relevant information regarding the contract is provided to the NDOT Board in summary form as is provided to the BOE.

**NDOT's comments:** NDOT appreciates the helpful suggestions to modify its agreement summary sheet to contain more information for the Board's review. Doing so would add approximately 60 pages on average to an already substantial board packet. However, NDOT always provides more information to interested Board members upon request and could make the agreement summaries available as requested.

## **Recommendation**

4. Ensure all relevant contract information is provided to NDOT Board for informational items.

### Nevada Department of Transportation Response:

The Nevada Department of Transportation accepts this recommendation and will work on revising its agreement summary form to provide more detailed information. The department will also write a memorandum to be included in the informational items section of the Board agenda notifying Board members that agreement summaries will be made available to the Board (and the public) upon request.

Implementation period: Within the next six months before the end of Governor Sandoval's term.

## **Comply with State and Federal Guidelines and NDOT's Reporting Requirements**

### **NDOT Did Not Comply with State and Federal Guidelines**

There were four contract files missing documentation, including: certificates of liability insurance and/or worker's compensation insurance affidavits; contract evaluation criteria; and a federal form related to disclosure of lobbying activities.

**NDOT's comments:** NDOT appreciates this finding and has already been working with the Agreement Services Section to ensure all files are complete and contain the necessary documentation described above.

### **NDOT Did Not Report Information Items to the Board**

One amendment and two contracts were not reported to the NDOT Board.



**NDOT's comments:** NDOT appreciates this finding and has already been working with the Agreement Services Section to ensure all informational items are reported to the Board. NDOT processes many contracts and agreements and from time to time finds an amendment or agreement that failed to be reported to the Board. When discovered, NDOT adds the agreement or amendment to the next Board agenda and notes the oversight for transparency purposes.

## **Conclusions**

5. Comply with state and federal guidelines.
6. Report informational items to the NDOT Board.

### **Nevada Department of Transportation Response:**

The Nevada Department of Transportation accepts these recommendations and has begun immediate implementation to ensure NDOT files are complete and in compliance with state and federal guidelines as well as reporting all amendments and agreements as informational items to the Board.

**Implementation period:** Within the next six months before the end of Governor Sandoval's term.

NDOT thanks the Division of Internal Audits for its recommendations and appreciates the professionalism shown by the executive auditors during the audit period. We strive to be efficient and effective as a department in keeping with the Governor's Strategic Planning Framework to deliver projects, programs, and services to the citizens of Nevada. Specifically, NDOT strives to eliminate redundant policies, procedures, and practices in keeping with Section 8.2.1 of the Governors Strategic Planning Framework.

NDOT values the audit's objective to "Improve Oversight of NDOT's Contract Management" and thanks Governor Sandoval for the leadership he has provided over the last eight years to achieve this goal as Chairman of the Transportation Board. NDOT looks forward to continuing to work with the Governor's Finance Office on furthering the Governor's legacy to develop greater efficiencies, eliminate redundancies, and streamline processes in the best interest of Nevada.

Sincerely,



Rudy Malfabon, P.E.  
Director

**Attachments:** Agenda Item #9 July 11, 2011 Transportation Board  
Minutes for Agenda #9 from July 11, 2011 Transportation Board

**Copy:** James Wells, Director, Governor's Finance Office

## **Timetable for Implementing Audit Recommendations**

### **Category 1: Recommendations with an anticipated implementation period of less than six months**

<u>Recommendation</u>	<u>Time Frame</u>
1. Submit administrative contracts and amendments of \$50,000 and above to the NDOT Board for approval.	August 2018
2. Submit sole source contracts to Purchasing Division Administrator for approval.	By December 2018
4. Ensure all relevant contract information is provided to NDOT Board for informational items.	By December 2018
5. Comply with state and federal guidelines.	By December 2018
6. Report informational items to the NDOT Board.	By December 2018

### **Category 2: Recommendations with an anticipated implementation period of greater than six months.**

<u>Recommendation</u>	<u>Time Frame</u>
3. Renew the director's contract approval limit when there is a new Governor.	January 2019 (approximately)

# **Attachment**

**Nevada Department of Transportation**

**Executive Audit Response**

**June 5, 2018**

**Nevada Department of Transportation Board Minutes**

**Agreement and Contract Process Approval**

**Action Item #9**

**July 11, 2011**



1263 South Stewart Street  
Carson City, Nevada 89712  
Phone: (775) 886-7440  
Fax: (775) 886-7201

## MEMORANDUM

June 27, 2011

**TO:** Department of Transportation Board of Directors  
**FROM:** Susan Martinovich, Director  
**SUBJECT:** July 11, 2011 Transportation Board of Directors Meeting  
**Item #9:** Agreement and Contract Process Approval

---

### Summary:

This item is to discuss and present for approval a process for the Transportation Board of Directors to approve Agreements and Contracts entered into by the Department of Transportation.

### Background:

As background to this item it might be beneficial for the board to have a brief summary of certain of its statutory duties and responsibilities as well as a brief history of the Board's delegation of authority to the NDOT director.

Pursuant to NRS 408.131(5), the Transportation Board has authority to "[e]xecute or approve all instruments and documents in the name of the state or department necessary to carry out the provisions of the chapter." The Board also has the statutory authorization to delegate to the NDOT director "such authority as it deems necessary under the provisions of this chapter." NRS 408.131(6). See also NRS 408.205. However, "[t]he board shall not delegate to the director its authority to approve purchases of equipment . . ." NRS 408.389. Additionally, the director may execute all contract necessary to carry out the provisions of Chapter 408 of NRS with the approval of the board, except those construction contracts that must be executed by the chairman of the board. See NRS 408.205(1). This statutory authorization is consistent with its legislative intent behind the creation of NDOT:

To this end, it is the express intent of the legislature to make the board of directors of the department of transportation custodian to the state highways and roads and to provide sufficiently broad authority to enable the board to function adequately and efficiently in all areas of appropriate jurisdiction, subject to the limitation of the constitution and the legislative mandate proposed in this chapter.

A brief history as to how the Board's delegation of authority evolved may be informative and may provide context for this agenda item. The Legislature created the Department of Transportation and abolished the Department of Highways in 1957. See 1957 Nev. Stat. Ch. 370, Sec. 21, p. 665. At that time, the Legislature created a board of directors consisting of the governor, attorney general, and the state controller. In 1987, the Legislature repealed that section and amended NRS 408.100 making the Department's director rather than a board of directors the administrator of the Department. See 1987 Nev. Stat. Ch. 740, Sec. 9.7, p. 1799. In 1989, the Legislature created a new board of directors consisting of the governor, lieutenant governor, attorney general, the state controller, and three members appointed by the governor. See 1989 Nev. Stat. Ch. 603, Sec. 3, p. 1296. The following year at its meeting in April of 1990, the Board considered delegating to the director the ability to execute contracts which otherwise would have required Board approval. The Board approved by motion the delegation to the director of the duty to approve agreements, contracts, and instruments required to be

approved by the Board and granted the director the authority to delegate such authority to the deputy director and assistant directors as deemed necessary by the director.

**Analysis:**

With this overview of certain statutory authority granted to the Board coupled with the brief summary of the delegation of authority, the following is a recommendation for a revised process for approval of agreements and contracts with a recommendation on what types of matters would be presented to the Board of Examiners for approval, and those which would be presented to the Transportation Board of Directors for approval, ratification, or informational purposes.

**Option 1:**

- All claim settlements would go to the Board of Examiners for approval (except those within the jurisdiction and financial threshold of the Tort Claim Fund which would go to the tort claims administrator). All claim settlements that are presented to the Board of Examiners will be reported to the Transportation Board as informational items. (Examples include claim settlements for: personnel, construction, right-of-way)
- All agreements related to policy and planning for railways, urban public transportation, and aviation would go to the Board of Examiners.
- All of the following would be presented to the Transportation Board for approval/ratification:
  - All design build construction contracts.
  - All agreements (including amendments) for nonconstruction matters such as consultants, service providers, leases, licenses, etc. (except as otherwise noted above related to railways, urban public transportation, and aviation, and those items excepted below.)

In order to allow for the free flow of commerce, since Board Meetings are currently held quarterly, it is recommended that the director be authorized to enter into all these agreements (except the design build contracts) provided that they contain a cancellation clause in the event the Board does not approve or ratify the agreement. The contracting party would receive prorated compensation from the start date of the effective date of the cancellation.

- All construction contracts will be signed by the governor as chairman of the board and will be presented to the Board for informational purposes. These contracts will relate to projects that are on the Annual Work Program which is approved by the Board.
- All right of way acquisition agreements (except right-of-way settlement claims as mentioned above) will be presented to the Board for informational purposes. These agreements follow the Federal Highway Administration processes as defined in CFR 23, and timing is critical in both working with the property owners and in project delivery.

- The director or her/his designee may enter contracts as deemed necessary in the event of disaster or great emergency as authorized by NRS 408.323(2). Any such contracts will be reported to the Board.
- Any agreement or contract not involving the expenditure of any state funds (i.e. those involving only federal or local monies) may be signed by the director, and will not be submitted to the Board. Matters handled by State Purchasing will not be submitted to the Board. Routine operational matters such as truck permitting, event permits, facility special use permit, highway agreements for liter-free highways, interlocal agreements, non-governmental traffic video use agreement, etc. will not be presented to the Board.

#### Option 2:

- All claim settlements would go to the Board of Examiners for approval (except those within the jurisdiction and financial threshold of the Tort Claim Fund which would go to the tort claims administrator). All claim settlements that are presented to the Board of Examiners will be reported to the Transportation Board as informational items. (Examples include claim settlements for: personnel, construction, right-of-way)
- All agreements related to policy and planning for railways, urban public transportation, and aviation would go to the Board of Examiners.
- All of the following would be presented to the Transportation Board for approval/ratification:
  - All design build construction contracts.
  - All agreements over \$300k (including amendments) for non-construction matters such as consultants, service providers, leases, licenses, etc. (except as otherwise noted above related to railways, urban public transportation, and aviation, and those items excepted below). This accounts approximately 70% of all contracts.
  - All construction contracts over \$5 million. This accounts for approximately 80% of contracts.

To meet time frames established to deliver seasonal work and to minimize impact to the public to accomplish work in one construction season, or to meet milestone dates, or funding parameters, the Transportation Board would need to meet monthly to accommodate project delivery schedules and contractor's bidding practices. NDOT will also work with industry to change our practice of 30 day award to 60 days as they will need to hold their bid prices until approval.

- All construction contracts under \$5 million will be signed by the governor as chairman of the board and will be presented to the Board for informational

purposes. These contracts will relate to projects that are on the Annual Work Program which is approved by the Board.

- All right of way acquisition agreements (except right-of-way settlement claims as mentioned above) will be presented to the Board for informational purposes. These agreements follow the Federal Highway Administration processes as defined in CFR 23, and timing is critical in both working with the property owners and in project delivery.
- The director or her/his designee may enter contracts as deemed necessary in the event of disaster or great emergency as authorized by NRS 408.323(2). Any such contracts will be reported to the Board.
- Any agreement or contract not involving the expenditure of any state funds (i.e. those involving only federal or local monies) may be signed by the director, and will not be submitted to the Board. Matters handled by State Purchasing will not be submitted to the Board. Routine operational matters such as truck permitting, event permits, facility special use permit, highway agreements for liter-free highways, interlocal agreements, non-governmental traffic video use agreement, etc. will not be presented to the Board.

**Recommendation for Board Action:**

Approval and adoption of one the options as outlined above or combination thereof.

**Prepared by:**

Dennis Gallagher, Chief Deputy Attorney General Transportation Division,  
Office of the Nevada Attorney General

## MINUTES

### 9. Agreement and Contract Approval Process – *For possible action.*

Director Martinovich explained that this item is an effort to be more transparent and provide more information to the public and to the Board. Staff has developed two options for consideration by the Board as to a new and improved process for approval of agreements and contracts.

The first option is that all claims and settlements would go to the Board of Examiners for approval except those that fall within the tort claim fund and then would be reported to the Transportation Board. This would include all claims and settlements that involve legal counsel which would include settlements with contracting claims, personnel issues or even right-of-way issues. She wanted to clarify that it wouldn't be the contracts that come in at low bid, it would be for all non-construction matters would come to this Board. It would be set up that if the Board does not approve an agreement, that we could terminate it.

Option 2 is different because everything would be brought to the Board. All claims and settlements would still go to the Board of Examiners, but the biggest difference is that all agreements over the amount of \$300,000 would be presented to the Board for approval, as well as all construction projects over \$5,000,000. The difference and the challenge is that the Board would need to meet monthly as opposed to quarterly to accommodate contract bid prices and the construction season.

Governor Sandoval asked if the only difference with Option 1 is that the Board would have the ability to ratify construction contract as opposed to them being presented as an informational item.

Director Martinovich stated that was correct. The other difference is that at this time, the Department does not take claim approvals before the Board of Examiners.

Dennis Gallagher stated that an extraordinary delegation of authority that was given to the Director that authorized the Director to enter into all contracts.

Member Martin stated that he has strong feelings about this particular subject and the matter of delegation, and the fiduciary responsibility of the Board approving certain contracts or just ratifying based on a review process that's within the NDOT.

Governor Sandoval stated that he does not believe that the Board has to look at every single contract, but would provide approval of contracts above a certain threshold.

Director Martinovich stated that staff took the liberty in Item No. 10 for all of the agreements that we've entered into during the last quarter and will present them for approval.

Governor Sandoval asked that, in the future, would the Board be seeing them for approval.

Controller Wallin asked what the difference is between construction settlements and construction claims and what the current approval process is for each of these.



Director Martinovich responded that construction claims are when a contractor makes a claim for additional compensation due to change orders or due to other circumstances and these are processed through the Dispute Resolution Board and the Director usually follows that recommendation. Other times we just don't come to settlement and those typically go to Legal and then would go to the Board of Examiners. At this time, they do not go through the Board of Examiners. The Director works through the Attorney General's Office in making a final settlement. At this time, both claims and settlements are decided by the Director in conjunction with the Attorney General's Office.

Controller Wallin would like information regarding how much has been paid in construction settlements over the last five years, the company name and how much was paid for the contract amount prior to settlement. She also wants to know how much was paid in right-of-way claims, who was paid and what was the appraisal amount compared to how much was actually paid.

Director Martinovich responded that staff will provide the requested information to all Board Members.

Controller Wallin then asked about companies filing false claims.

Director Martinovich responded that the Department works closely with the Attorney General's Office to take action against false claims and that is part of the consideration in settlement.

Controller Wallin asked if a Project Manager can change the scope of a design build project or should it come before the Board for approval.

Director Martinovich responded that the Project Manager typically cannot change the scope of a design build project because the Department has issued an RFP that closely outlines the specifications required as well as the criteria for selection. There may be circumstances because of unknown conditions, such as utility locations, where modifications need to be made and that is not brought back to the Board.

Controller Wallin would like the Board to be informed of those things and then expressed concerns about entering into a contract with somebody and then the Board does not approve the contract, it may not be cost effective to terminate the contract and would like to know the reason staff would want contracts with federal dollars to be exempt.

Director Martinovich responded that in reality, most contracts are not under way in three months and the reason for the exemption is that rarely is there a contract with only federal monies and those are typically non-governmental traffic use agreements.

Member Savage asked if a committee was established to come up with these two options and how were the thresholds in Option No. 2 determined.

Director Martinovich responded that she looked at how other states moved forward and their processes, as well as worked with the Governor's Office to develop these recommendations. The thresholds are very flexible and were established by looking at the amount of the majority of contracts.

Member Savage stated that this is a difficult decision and there needs to be some serious consideration before moving forward.

Governor Sandoval asked if the Board would be approving approximately 70% of the contracts if Option No. 2 was approved.

Director Martinovich stated that is correct.

Governor Sandoval stated that he would support Option No. 2 as he would have more comfort in having the ability to review the contracts and would be more than happy to meet monthly and establishing a regular meeting time would be beneficial.

Director Martinovich suggested that we do not start monthly meetings until after the regularly scheduled meeting in October.

Governor Sandoval agreed that starting in October would be a good idea if Option No. 2 is approved. He then asked for further discussion by the Board or any public comment. Hearing none, he asked for a motion.

Member Martin moved for approval of Option No. 2 with implementation to begin after the October Board meeting.

The motion was passed unanimously and Governor Sandoval declared the item passed.

## Appendix E

### Timetable for Implementing Audit Recommendations

---

In consultation with the Department of Transportation (NDOT), the Division of Internal Audits categorized the recommendations contained within this report into one of two separate implementation time frames (i.e., *Category 1* – less than six months; *Category 2* – more than six months). NDOT should begin taking steps to implement all recommendations as soon as possible. NDOT's target completion dates are incorporated from Appendix D.

---

#### **Category 1: Recommendations with an anticipated implementation period of less than six months.**

<u>Recommendations</u>	<u>Time Frame</u>
1. Submit administrative contracts and amendments of \$50,000 and above to the NDOT Board for approval. (page 3)	Aug. 2018
2. Submit sole source contracts to Purchasing Division Administrator for approval. (page 4)	Dec. 2018
4. Ensure all relevant contract information is provided to NDOT Board for informational items. (page 7)	Dec. 2018
5. Comply with state and federal guidelines. (page 9)	Dec. 2018
6. Report informational items to the NDOT Board. (page 9)	Dec. 2018
	Dec. 2018

---

#### **Category 2: Recommendations with an anticipated implementation period exceeding six months.**

<u>Recommendations</u>	<u>Time Frame</u>
3. Renew the director's contract approval limit when there is a new Governor. (page 5)	Jan. 2019

---

The Division of Internal Audits shall evaluate the action taken by NDOT concerning the report recommendations within six months from the issuance of this report. The Division of Internal Audits must report the results of its evaluation to the Executive Branch Audit Committee and NDOT.