

Washington State Auditor's Office
Accountability Audit Report

Puget Sound Partnership

Audit Period
July 1, 2007 through June 30, 2009

Report No. 1003598

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WASHINGTON
BRIAN SONNTAG
STATE AUDITOR



**Washington State Auditor
Brian Sonntag**

May 12, 2010

Mr. David Dicks, Executive Director
Puget Sound Partnership

Report on Accountability

We appreciate the opportunity to work in cooperation with your Partnership to promote accountability, integrity and openness in government. The State Auditor's Office takes seriously our role to advocate for government accountability and transparency and to promote positive change.

Please find attached our report on the Puget Sound Partnership's accountability and compliance with state laws and regulations and its own policies and procedures. Thank you for working with us to ensure the efficient and effective use of public resources.

Sincerely,

BRIAN SONNTAG, CGFM
STATE AUDITOR

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Audit Summary

State of Washington Puget Sound Partnership

ABOUT THE AUDIT

This report contains the results of our independent accountability audit of the Puget Sound Partnership for the period from July 1, 2007, through June 30, 2009.

We evaluated internal controls and performed audit procedures on the activities of the Partnership. We also determined whether the Partnership complied with state laws and regulations and its own policies and procedures.

In keeping with general auditing practices, we do not examine every transaction, activity or area. Instead, the areas examined were those representing the highest risk of noncompliance, misappropriation or misuse. The following areas were examined during this audit period:

- Personal service contracts
- General disbursements
- The Foundation For Puget Sound

RESULTS

In the areas we examined we identified conditions significant enough to report as findings:

- The Puget Sound Partnership circumvented state contracting laws, exceeded its purchasing authority and made unallowable purchases with public funds.
- The Puget Sound Partnership failed to enforce the terms of its agreements with a foundation it created, incurring costs without clear public benefit.

Related Reports

State of Washington Puget Sound Partnership

FINANCIAL

We perform an annual audit of the statewide basic financial statements, as required by state law (RCW 43.09.310). Our opinion on these financial statements is included in the Comprehensive Annual Financial Report (CAFR) prepared by and available from the Office of Financial Management. The CAFR reflects the financial activities of all funds, organizations, institutions, agencies, departments and offices that are part of the state's reporting entity. That report is issued by the Office of Financial Management in December of each year and can be found at www.ofm.wa.gov.

FEDERAL PROGRAMS

In accordance with the Single Audit Act, we annually audit major federal programs administered by the state of Washington. Rather than perform a single audit of each agency, we audit the state as a whole. The results of that audit are published in a report issued by the Office of Financial Management in March of each year.

Description of the Partnership

State of Washington Puget Sound Partnership

ABOUT THE PARTNERSHIP

The Puget Sound Partnership was established as an independent state agency on July 1, 2007, to lead efforts to restore the Puget Sound, replacing its predecessor the Puget Sound Action Team and the Puget Sound Water Quality Authority before it.

The law that created the Partnership states: "Leadership, accountability, government transparency, thoughtful and responsible spending of public funds and public involvement will be integral to the success of efforts to restore and protect the Puget Sound." (RCW 90.71.200 (d)) In December 2008, the Partnership released the Puget Sound Action Agenda, a strategy for cleaning up, protecting and restoring the Puget Sound by 2020.

The Partnership is led through the direction of a Leadership Council, an Executive Director, an Ecosystem Coordination Board and the Puget Sound Science Panel. For the 2007-2009 biennium, the Partnership was authorized 34 full-time employees and had a budget of \$16.1 million.

PARTNERSHIP CONTACT INFORMATION

Address: Puget Sound Partnership
P.O. Box 40900
Olympia, WA 98504-0900

Phone: (360) 725.5444

Web site: <http://www.psp.wa.gov>

AUDIT HISTORY

This is our first audit of the Partnership.

Schedule of Audit Findings and Responses

State of Washington Puget Sound Partnership

- 1. The Puget Sound Partnership circumvented state contracting laws, exceeded its purchasing authority and made unallowable purchases with public funds.**

Background

The 2007 Legislature established the Puget Sound Partnership to lead efforts to restore the Puget Sound. The Partnership is a stand-alone agency that replaced the Puget Sound Action Team, a group that had been under the Office of the Governor. The Partnership began operations on July 1, 2007. The law that created the Partnership states: "Leadership, accountability, government transparency, thoughtful and responsible spending of public funds and public involvement will be integral to the success of efforts to restore and protect the Puget Sound." (RCW 90.71.200 (d))

The law set a goal of 2020 for the restoration of the health of Puget Sound. In December 2008, as required by the law, the Partnership released the Puget Sound Action Agenda, which identified the work needed to accomplish this goal.

The Partnership consists of a Leadership Council, an Executive Director, an Ecosystem Coordination Board, a Puget Sound Science Panel and support staff.

For 2007-2009, the Partnership had an operating budget of \$16,147,000. Its sources of funding are general fund appropriations from state, federal and private/local sources, the aquatic lands enhancement account, the water quality account and the state toxics account.

This is our first audit of the Partnership. We focused our audit on contracting and purchases of information technology and other goods and services. These represent the areas in which the Partnership spent the most money.

Description of Condition

During our audit we found:

Contracts

The Partnership contracted for \$6.5 million in services in 2007-2009. We reviewed competitively procured contracts and sole source contracts.

Sole Source Contracts

We reviewed four sole source contracts totaling approximately \$278,000. In order to award a sole source contract, agencies must demonstrate only one vendor is able to

meet their contracting needs. State procurement law requires sole source contracts of \$20,000 or more be advertised for at least one day in a state or regional newspaper. We noted this did not happen for two of these contracts.

The Partnership awarded a sole source contract for \$33,300 for project management related to the Action Agenda without advertising to the public. The Partnership stated it was complying with a federal mandate to use this specific contractor, which exempted it from the advertising requirement. Partnership management stated this was a verbal mandate; it could not provide written documentation to that effect.

We contacted a representative of the Partnership's federal grantor, the Environmental Protection Agency (EPA), who stated the agency would not have required the Partnership to use a specific contractor. We were also provided with the agreement the Partnership signed with the EPA that states the Partnership is responsible for conducting its own procurement process. Federal grantors require state agencies to use the same procurement process they use when spending state dollars.

The Partnership also awarded a sole source contract to a law firm for legal support in establishing the Foundation for Puget Sound to assist the Partnership with fundraising and promotional support. We reviewed this contract and found:

- The contract originally was filed with the Office of Financial Management (OFM) for \$19,999, one dollar below the threshold for advertising or conducting a competitive procurement. We found no cost detail to show how the Partnership determined this amount.
- After OFM questioned the amount, the Partnership revised the contract for \$19,950. The contract was signed January 31, 2008.
- Between February 1, 2008, and January 16, 2009, the contract was amended three times. The first increased the contract amount to \$27,500, the second to \$35,000. These amendments also extended the contract deadline twice.
- The contract stated the Partnership would pay for the work of two of the law firm's employees. Documentation shows it paid for the work of three additional employees without amending the contract to include the work and/or how much would be paid for it.

It appears the Partnership structured the dollar amount of the contract to avoid advertising or following competitive procurement requirements. Additionally, nothing in the contract or other documentation supported the legitimacy of the sole source designation. The scope of work, establishing a not-for-profit foundation, would be within the capabilities of many law firms.

State law requires agencies to use the state Attorney General's Office for all legal business. In special circumstances, that Office will appoint a special assistant attorney general to perform legal assignments on behalf of the agency. Agencies must seek counsel and sign a contract with the attorney general to receive a special assistant attorney general assignment. The Partnership did not consult with the attorney general or receive special assignment prior to contracting with the private law firm.

We further noted that payments to the law firm continued after the amended contract maximum had been reached. In reviewing the financial activity between the Partnership and the Foundation for Puget Sound (see Finding 2), we determined that the law firm continued to perform work which exceeded the \$35,000 contract amount. In November

2008, the firm began invoicing the Foundation, which then submitted an invoice to the Partnership for payment. The Partnership paid the Foundation, who in turn paid the law firm. Total paid the firm was \$51,498.

The Partnership stated the additional legal services provided to the Foundation were not performed under the contract with the Partnership; that the Foundation had entered into its own agreement for legal services. However, these services were paid for by the Partnership. See Finding 2 regarding payments made by the Partnership in excess of the agreed-upon amounts.

Convenience Contracts

In the fall of 2007, the Partnership assembled a roster of vendors to assist in the development of the Action Agenda. Specific tasks included project management and support, cost/benefit analysis, environmental research and marketing and communication services. Vendors submitted proposals to the Partnership with their costs and qualifications in response to a published solicitation. The Partnership evaluated these proposals and signed contracts with 35 of the vendors, establishing a roster of qualified contractors. The roster allowed the Partnership to select contractors for work as services were needed.

In the original solicitation, the Partnership stated it would send a notice to the roster, asking the vendors to respond with their availability, hours and estimated costs when specific services were needed. After evaluating the responses, the Partnership would select a vendor and sign an agreement called a task order for the work to be performed.

We reviewed these convenience contracts for 22 of the 35 vendors, totaling \$4.8 million in payments. Although management established the process noted above, we found no evidence it was consistently adhered to or enforced. The Partnership could not provide sufficient documentation to show notices of work were distributed to all vendors. Therefore, the opportunity to perform work was not fairly and equitably provided to all vendors on the roster in accordance with state procurement requirements.

Although a signed contract did not guarantee a vendor would receive work, we noted some contracts were amended several times and these vendors received multiple task orders; other contractors were not used at all. The 13 vendors we did not review did not receive any task orders to perform work for the Partnership. Because the Partnership did not solicit work from all vendors on the roster as originally indicated, it is possible these vendors were not provided opportunity to bid on specific task orders.

We also noted:

- Fourteen proposals did not have at least three separate score sheets on file.
- No score sheets on file for two proposals.
- None of the proposals were stamped with the time and date received to show they met the deadline specified in the solicitation.
- We could not review two of the 22 proposals selected because they were not retained in the files and the Partnership was unable to locate them.
- No Conflict of Interest and Confidentiality certifications on file for two of the reviewers who scored the proposals.

Information Technology purchases

The Information Services Board (ISB) develops the standards governing the acquisition of information technology (IT) goods and services for all state agencies. State agencies are prohibited from acquiring IT goods and services unless the ISB has delegated them the authority to do so. In order to receive and maintain this authority, an agency must comply with the ISB's policies and standards. The Department of Information Services (DIS) works with agencies to ensure compliance and to meet IT needs. These policies promote and facilitate electronic information sharing and access on a statewide level.

We worked with the Partnership and DIS to determine if the Partnership complied with policies and standards pertaining to the acquisition of IT equipment. We found:

- Between July 1, 2007, and January 1, 2009, the Partnership did not have delegated authority from ISB to purchase IT equipment.
- According to ISB meeting minutes dated November 13, 2008, the Partnership did not comply with ISB policies relating to security, business resumption, disaster recovery and IT management. The Partnership had not performed an IT security audit.
- The Partnership did not submit an investment plan to DIS prior to purchasing IT equipment as required by the IT Investment Policy established by ISB.
- The Partnership did not obtain IT equipment through the use of open, vendor-neutral specifications and standards.

In 2007, the Partnership reported to DIS it had budgeted \$114,600 for IT investments for the 2007-2009 biennium. We were able to determine the Partnership spent at least \$120,000 on IT goods and services. We reviewed these purchases that were made at the direction of executive management and included the following:

- \$48,378.17 spent between December 2007 and June 2008 at a retail store for Apple Macintosh desktops and laptops, video and power adapters, flat screens, software and other accessories.
- \$28,076.29 spent between August 2007 and February 2009 at another retailer on Apple Macintosh desktops and laptops, flat screens, memory drives, a server, a tape autoloader for backup storage of data, external hard drives, projectors and other accessories.
- \$44,056.41 spent between October 2007 and June 2009 at other retailers for geographic information systems software, a server, ethernet switches, e-mail services and broadband services. Approximately \$30,000 of this was paid for broadband services between December 2008 and June 2009. None of these payments included an invoice from the broadband company. Amounts were paid according to e-mails reporting the amount due.

A comparison of costs for 12 desktops and 10 laptops performed by the Partnership on October 9, 2007, determined that Hewlett Packard or Dell would cost \$25,000 to \$28,000. Apple Macintosh costs were determined to be \$42,000. The Partnership began acquiring IT equipment in August 2007 prior to this determination.

Apple Macintosh hardware and software is not compatible with statewide information systems and applications for financial reporting, payroll and travel.

Partnership staff can perform only cursory reviews and approve some documents using the Macintosh computers. However, they are unable to change or edit information, and cannot directly access programs like the Agency Financial Reporting System and the Travel and Expense Management System.

Goods and services

We reviewed purchases of goods and services totaling approximately \$485,000.

We found instances of noncompliance with state law related to gifting of public funds, competitive purchasing requirements and unallowable activities for each of the purchases detailed below:

- \$6,853 for 120 monogrammed fleece vests.
- \$5,044 for 30 monogrammed jackets.

Documentation stated the vests and jackets were given to staff members as thank you gifts and were an attempt at establishing what is known as a “brand” for the agency. The vests were purchased from April to October 2008. The jackets were purchased in January 2009.

These purchases were not competitively procured. The Partnership also gave vests and jackets to elected and appointed officials, which violates state law on recognition awards. Documentation on who received the vests is vague. It stated they were given to “other folks who are making a large contribution to efforts to restore and protect the Puget Sound.” Not all recipients of the vests were listed in the documentation.

- \$3,650 for 5,000 tubes of lip balm.

Documentation stated the lip balm was purchased to hand out as a promotional tool to raise awareness about the Puget Sound. This purchase was not competitively procured.

- \$10,000 for a membership to the Cascade Land Conservancy.

The Partnership stated the contribution was intended to give it public visibility and to promote its efforts and to help it work with the Conservancy on environmental issues. The Partnership’s name appeared on several sponsorship lists for the Conservancy, but the Partnership could not show the public received value commensurate with the amount of funding provided for the membership.

- \$2,474 in catering for a private reception.

State agencies are prohibited from incurring expenditures for meals or refreshments for hosting activities. Hosting activities are defined as social events rather than governmental business events, and include individuals whom agencies are not legally authorized to reimburse. The private reception was attended by 186 people and included local government employees, independent contractors, entertainers and private citizens who were not state employees.

- \$687 for 20 personalized, engraved mahogany gift boxes containing bottles of sparkling apple cider.

These boxes were given to contractors, including individuals representing the Canadian government, elected and appointed officials and others as recognition awards as part of the Puget Sound Georgia Basin Conference. State law allows recognition awards to be given only to state employees. It does not allow recognition awards to be given to elected and appointed officials. Gifts to foreign representatives and contractors are a gift of public funds. The Partnership could not demonstrate state funds were not used to purchase these gifts.

- \$5,109 on printing and reproduction costs for 250 copies of the revised Action Agenda.

The Department of Printing was used to print the original Action Plan; however, the Partnership did not request a bid from the Department of Printing for revised copies. Staff at the Partnership went to a commercial vendor to make copies to be distributed at an upcoming event, even though the Department of Printing is the mandated state printer.

- \$8,638 for a Nikon D300 camera, equipment and accessories including a tripod and lenses.

The Partnership could not provide documentation to show this purchase was competitively procured in accordance with state requirements.

Cause of Condition

Partnership management has not placed a priority on adhering to state rules and regulations over expenditures of public funds.

Effect of Condition and Questioned Costs

Public funds set aside for the restoration of Puget Sound were improperly spent. If the Partnership continues to make accountability over public resources a low priority, additional money will be at risk.

We also are questioning \$33,000 in federal money paid on a contract that was improperly procured.

Recommendation

We recommend the Partnership:

- Adhere to state laws and regulations over expenditure of public funds.
- Work with the federal grantor to determine if it should repay all or part of the \$33,000.

We also recommend the Department of Information Services work with the Partnership to bring it into compliance with state law and policy on information services, including a security and recovery plan.

We recommend the Office of Financial Management work with the Partnership to ensure it understands and follows state administrative policy and accounting procedures.

Partnership's Response

The agency appreciates your recommendations to improve compliance with state laws regulations and administrative procedures related to the expenditure of state funds.

The agency fully recognizes that improvement in the Partnership's compliance and accountability mechanisms must be strengthened. Even prior to your audit, agency staff has been directed to establish the proper procedures and accountability mechanisms that have been recommended. These steps include:

- *Prior to contracting for outside legal services the agency will confer with and seek authorization from the state Attorney General's Office to avoid duplicating existing capacity and services.*
- *Based upon its experience in using convenience contracts during this audit period the Partnership will no longer use this mechanism to contract for services. Rather the agency will evaluate each potential contract on a case-by-case basis and using the appropriate contracting methods.*
- *The Partnership has taken steps to comply with Department of Information Services policies and standards. Although the Partnership was not considered compliant at the beginning of the biennium, the agency was considered compliant by the ISB in January 2009. This includes obtaining delegated purchase authority. An information technology security audit was completed on February 17, 2010. Although the Partnership had not completed a security audit during the audit period, the agency continued to implement security, business resumption and disaster recovery programs required by ISB policies.*
- *In the future the agency will acquire IT equipment through the use of open, vendor neutral specifications.*
- *Regarding purchasing goods and services, the Partnership has put in place policies designed to ensure that state contracting requirements are fully met.*

Auditor's Remarks

We appreciate the Partnership's commitment to resolving the identified weaknesses. We will follow up with the Partnership at a later date to determine what corrective actions have been taken.

Applicable Laws and Regulations

Washington State Constitution

Article 8, Section 7: No county, city, town or other municipal corporation shall hereafter give any money, or property, or loan its money, or credit to or in aid of any individual, association, company or corporation, except for the necessary support of the poor and infirm, or become directly or indirectly the owner of any stock in or bonds of any association, company or corporation.

Code of Federal Regulations

40 CFR 31.36 states, in part:

- (a) When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non- Federal funds.
- (b) Grantees and sub-grantees will use their own procurement procedures which reflect applicable State and local laws and regulations.

Revised Code of Washington

RCW 39.29.018 states, in part:

(1) . . . Documented justification for sole source contracts shall be provided to the office of financial management when the contract is filed, and must include evidence that the agency posted the contract opportunity on the state's common vendor registration and bid notification system. For sole source contracts of twenty thousand dollars or more, documented justification shall also include evidence that the agency attempted to identify potential consultants by advertising through statewide or regional newspapers.

(2) The office of financial management shall approve sole source contracts of twenty thousand dollars or more before any such contract becomes binding and before any services may be performed under the contract. These requirements shall also apply to sole source contracts of less than twenty thousand dollars if the total amount of such contracts between an agency and the same consultant is twenty thousand dollars or more within a fiscal year. Agencies shall ensure that the costs, fees, or rates negotiated in filed sole source contracts of twenty thousand dollars or more are reasonable.

RCW 43.10.040 states:

The attorney general shall also represent the state and all officials, departments, boards, commissions and agencies of the state in the courts, and before all administrative tribunals or bodies of any nature, in all legal or quasi legal matters, hearings, or proceedings, and advise all officials, departments, boards, commissions, or agencies of the state in all

matters involving legal or quasi legal questions, except those declared by law to be the duty of the prosecuting attorney of any county.

RCW 43.10.067 states:

No officer, director, administrative agency, board, or commission of the state, other than the attorney general, shall employ, appoint or retain in employment any attorney for any administrative body, department, commission, agency, or tribunal or any other person to act as attorney in any legal or quasi legal capacity in the exercise of any of the powers or performance of any of the duties specified by law to be performed by the attorney general, except where it is provided by law to be the duty of the judge of any court or the prosecuting attorney of any county to employ or appoint such persons: PROVIDED, That RCW 43.10.040, and 43.10.065 through 43.10.080 shall not apply to the administration of the commission on judicial conduct, the state law library, the law school of the state university, the administration of the state bar act by the Washington State Bar Association, or the representation of an estate administered by the director of the department of revenue or the director's designee pursuant to chapter 11.28 RCW.

RCW 43.78.030 states, in part:

The public printer shall print and bind the session laws, the journals of the two houses of the legislature, all bills, resolutions, documents, and other printing and binding of either the senate or house, as the same may be ordered by the legislature; and such forms, blanks, record books, and printing and binding of every description as may be ordered by all state officers, boards, commissions, and institutions, and the supreme court, and the court of appeals and officers thereof, as the same may be ordered on requisition, from time to time, by the proper authorities.

RCW 43.105.041 states:

Powers and duties of board (Information Services)

- (1) The board shall have the following powers and duties related to information services:
 - a. To develop standards and procedures governing the acquisition and disposition of equipment, proprietary software and purchased services, licensing of the radio spectrum by or on behalf of state agencies, and confidentiality of computerized data.
 - b. To purchase, lease, rent, or otherwise acquire, dispose of, and maintain equipment, proprietary software, and purchased services, or to delegate to other agencies and institutions of state government, under appropriate standards, the authority to purchase, lease, rent, or otherwise acquire, dispose of, and maintain equipment, proprietary software, and purchased services: PROVIDED, That, agencies and institutions of state government are expressly prohibited from acquiring or

disposing of equipment, proprietary software, and purchased services without such delegation of authority.

RCW 43.19.1906 states, in part:

Quotations from three thousand dollars to thirty-five thousand dollars, or subsequent limits as calculated by the office of financial management, shall be secured from at least three vendors to assure establishment of a competitive price and may be obtained by telephone or written quotations, or both.

RCW 90.71.330 states, in part:

The partnership shall condition, with interagency agreements, any grants or funding transfers to other entities from the Puget Sound recovery account to ensure accountability in the expenditure of the funds and to ensure that the funds are used by the recipient entity in the manner determined by the partnership to be the most consistent with the priorities of the action agenda. Any conditions placed on federal funding under this section shall incorporate and be consistent with requirements under signed agreements between the entity and the federal government.

State Administrative and Accounting Manual

Chapter 20.15.30 states, in part:

Who is responsible for internal control?

Each agency, regardless of size, is required to adopt methods to periodically assess risk and to develop, implement, and review its system of internal controls. The methods should be tailored to the specific needs of the agency.

Chapter 85.32.20 states:

Goods and services are not to be ordered, contracted for, or paid for unless they are provided by authorized vendors and within the limitations prescribed by:

- The Department of General Administration, Office of State Procurement, (RCW 43.19.190), or
- The Department of Information Services (RCW 43.105.041), or
- The Office of Financial Management, Personal Service Contracts (RCW 39.29.065) or
- Other statute.

Chapter 15.40.15.f states:

Agencies shall not structure contracts, especially the dollar amounts, to avoid the competitive procurement or other requirements of the contract policies.

It is not appropriate to award contracts in the amounts of \$4,999 or \$19,999 without budget documentation. These amounts give the appearance of avoiding either informal or formal competition, avoiding filing the contract with OFM, or of advertising it as a sole source.

Chapter 15.20.40.g states, in part:

Convenience or "on call" personal service contracts, for the purposes of this policy, are those that agencies competitively award for their own agency use. Typically, convenience contracts are awarded to multiple firms to provide the agency quick access to personal services on an as-needed or on-call basis.

Agencies must first conduct the solicitation in accordance with Subsection 15.20.30. The solicitation document must identify the method by which services will be awarded under the convenience contracts so that work is distributed fairly and equitably among the contractors.

Methods that can be used include rotating through the contractors as services are needed, sending a scope of work to those on the list in a particular category of service and evaluating and selecting the best response, selecting based on specialized expertise if only one firm is qualified and available, or selecting based on geographical area.

Chapter 30.40.10 states, in part:

The following assets are inventoriable assets and must be carried on the property records of an agency:

- Assets with a unit cost (including sales tax and ancillary costs) less than \$5,000 identified as small and attractive assets (refer to Subsection 30.40.20 below),

Chapter 70.15.20 states:

Agencies may not make expenditures for meals in the following situations:

- For anniversaries of agencies, receptions for new, existing, and/or retiring employees or officials, election celebrations, etc.
- Any "hosting" activities. "Hosting" includes, but is not limited to, those activities that are intended either to lobby a legislator or a governmental official, or are to be a social rather than governmental business event, and include expenditures for meals for those whom agencies are not legally authorized to reimburse.

Information Technology Investment Policy, Policy 200.P2

Policy

The Information Services Board (ISB) has authority over the purchase of all information technology (IT) investments made by executive and judicial

branch agencies. The ISB may delegate this authority to agency directors, who are prohibited from making IT investments without it. Agency directors are responsible for the management and use of information systems, telecommunications, and IT equipment, software, and services of their respective agencies.

Except for making any of the investments listed [as exceptions], agency directors are granted a delegated authority of:

- \$50,000 for agencies with 49 or less total agency FTEs, or
- \$250,000 for agencies with 50 to 149 total agency FTEs, or
- \$1,000,000 (or a greater amount determined by the ISB) for agencies with 150 or greater total agency FTEs,

if the agency has complied with the provisions of the portfolio management and investment policies and standards.

Agencies that fail to comply with the provisions of the portfolio management and investment policies and standards, including but not limited to annual portfolio updates, are limited to a maximum delegated authority of \$10,000.

Information Technology Investment Standards, Policy 201.S3

Scope

These standards apply to all executive and judicial branch agencies and educational institutions, as provided by law, that operate, manage, or use IT services or equipment to support critical state business functions.

Acquisitions conducted within delegated authority must comply with the requirements in these Investment Standards, as well as those of the IT Investment Policy. The planning and policy component of the Department of Information Services (DIS) is staff to the ISB and the contact point for investment issues.

If ISB or DIS approval is required, it must be obtained before conducting the acquisitions and before releasing any formal solicitation document. If the solicitation results in investment cost and/or risk assessment higher than the approval authority level already obtained, the investment must receive the appropriate approvals for the revised investment cost and/or risk assessment before moving forward.

Investment Plans

To obtain ISB or DIS approval, an agency must submit an investment plan to DIS. If an investment requires ISB approval, the investment plan will be presented to the ISB. In addition to the plan, agencies may provide other documentation that contains the required information and will become the basis of the approval recommendation.

Schedule of Audit Findings and Responses

State of Washington Puget Sound Partnership

2. The Puget Sound Partnership failed to enforce the terms of its agreements with a foundation it created, incurring costs without clear public benefit.

Background

The 2007 legislation that created the Puget Sound Partnership included language which gave the Executive Director the authority to create a private, non-profit entity “to assist the partnership in restoring Puget Sound by raising money and other resources through charitable giving, donations and other appropriate mechanisms.” Efforts to create this entity, The Foundation for Puget Sound, began in January 2008.

The Foundation filed its articles of incorporation with the Secretary of State on June 4, 2008, and became registered as a non-profit corporation. The articles define the Foundation’s purpose as “engaging and educating the public regarding Puget Sound’s health, including efforts and opportunities to restore Puget Sound ecosystems; lessening the burdens of government by carrying out, promoting and supporting activities that further the public purposes of the Puget Sound Partnership . . . and raising funds and other resources to support the foregoing purposes.”

Between January 2008 and January 2009, the Partnership contracted with a private law firm to provide services related to establishing the Foundation. (See Finding 1) These services included attending conferences and meetings, drafting, revising and finalizing Foundation documents and submitting forms to government entities. The Partnership paid approximately \$32,000 directly to the law firm for these services.

Additionally, the Partnership paid more than \$167,000 for activities related to the start up and operation of the Foundation from December 2008 through June 2009.

Description of Condition

Our audit determined the Partnership created and financed the non-profit with public resources, but failed to enforce the terms of its agreements with the Foundation.

On November 1, 2008, the Partnership signed a cooperative agreement with the Foundation that stated the Foundation initially would focus on public education and would, with the exception of startup costs to be provided by the Partnership, be self-sustaining. The Partnership agreed to pay the Foundation \$64,668 for startup costs through June 30, 2009.

On December 6, 2008, the Partnership signed a grant agreement with the Foundation to provide it with an additional \$500,000 to develop a comprehensive public education program. Payment of these funds was conditional on the Foundation raising matching funds dollar for dollar.

In May 2009, the grant agreement was amended, revising the deliverables and projects undertaken by the Foundation, and reducing the compensation amount by more than \$410,000. The amendment stated the Partnership and the Foundation had developed a comprehensive Public Education and Awareness Plan, but that the plan had been restructured to approach public education and engagement more directly. Changing the approach to the plan delayed its completion, which, according to the amendment, limited the ability of the Foundation to raise matching funds.

By the end of June 2009, the Partnership had paid the Foundation \$167,341, as follows:

- \$77,381 for startup costs, \$12,713 more than stated in the original signed cooperative agreement. Additional costs included \$7,535 in consulting services not included in the budget attached to the cooperative agreement and \$5,178 in legal fees above the amount budgeted for those services.
- \$19,960 for support and promotion of a documentary film on Puget Sound produced for public television.
- \$70,000 to underwrite a program on Puget Sound put on by the Institute for Journalism and Natural Resources for 16 journalists in July 2009. The Partnership could not provide a signed agreement between the Foundation and the Institutes for this arrangement. The payment was based on an invoice submitted by the Institute dated June 8, 2009.

Both the cooperative agreement and the grant agreement stipulated payments would be for activities identified in the Public Education and Awareness Plan. Staff initially indicated such a plan had never been developed. However, staff later provided a draft of the plan, which has not been finalized or adopted by the Foundation Board.

A key component of the enabling legislation was that the Foundation raise money and other resources to support its mission. The grant agreement stated funding was conditional on the Foundation's "successful and continuing efforts to secure and commit matching funds . . . on a dollar-for-dollar basis." We found limited documentation to show the Foundation engaged in fundraising during the audit period. It does appear it collected \$125,000 in late July and August 2009, but the Partnership paid the Foundation \$89,960 prior to receiving the matching funds as required by the grant agreement.

Cause of Condition

The Puget Sound Partnership failed to enforce the terms of its agreements with a foundation created under the authority granted to the Executive Director.

Effect of Condition

The Partnership spent public funds set aside for the protection and restoration of Puget Sound to support a nonprofit foundation without first receiving matching funds or deliverables required by the contract. Payments for startup costs were made in excess of agreed-upon amounts. Expenditures for these projects provided no clear public benefit above and beyond what the Partnership was authorized to provide by state law.

Recommendation

We recommend the Partnership:

- Ensure all funds spent provide a clear public benefit and are directed at achieving the goals of the Action Agenda.
- Enforce all signed agreements and do not make payments unless deliverables are received.

Partnership's Response

The agency fully understands your recommendations intended to ensure that the public benefits from the expenditure of public funds. The information that you received during the audit established that the Foundation for Puget Sound began operations in January 2008. The Foundation was granted \$564,668 in November 2008. The terms of the grant provided \$500,000 in state funds for the development and implement a comprehensive public education program. These state funds were to be explicitly matched by funds raised by the Foundation. As we have previously stated, the Foundation did not raise the required matching funds during the 2007-2009 Biennium. The Partnership closely monitored the status of the match requirement during 2009. Because the Foundation was unable to raise matching funds, the Foundation and Partnership began discussions in March 2009 and formally amend the grant agreement in May of 2009 to remove the matching requirement but to allow the expenditure of funds on important public education efforts. The Partnership also reduced the total grant agreement with the Foundation by \$410,040 to a total of \$154,628 reflecting the revised scope of work. Although the Partnership paid \$19,960 to support the television documentary in April 2009, the Foundation was able to coordinate a \$20,000 match through another foundation to act as match for the agreement in place.

The agency is convinced that public benefits resulted from the expenditure of these monies by the Foundation for Puget Sound. Support for the public television documentary on Puget Sound educated citizens both in Washington State and around the country on the very real challenges to the health of Puget Sound. Support for the education of journalists about Puget Sound through the Institute for Journalism and Natural Resources resulted in over 19 news stories both regionally and nationally covering the plight of Puget Sound. The Foundation was also able to raise at least \$125,000 during the summer of 2009 to support education and communication with citizens and Puget Sound.

In the 2009-2011 Biennium the Partnership is currently not providing any grant funding to the Foundation for Puget Sound. If a decision is made to provide grant funding to the Foundation in the future, then the Partnership will work to insure that public benefits are received and that terms of its agreements are enforced.

Auditor's Remarks

We appreciate the Partnership's commitment to resolving the identified weaknesses. We will follow up with the Partnership at a later date to determine what corrective actions have been taken.

Applicable Laws and Regulations

Revised Code of Washington

RCW 90.71.240 states, in part:

(5) Upon approval of the council, the executive director may take action to create a private nonprofit entity, which may take the form of a nonprofit corporation, to assist the partnership in restoring Puget Sound by:

(a) Raising money and other resources through charitable giving, donations, and other appropriate mechanisms;

(b) Engaging and educating the public regarding Puget Sound's health, including efforts and opportunities to restore Puget Sound ecosystems; and

(c) Performing other similar activities as directed by the partnership.

RCW 90.71.350 states, in part:

1. The council is accountable for achieving the action agenda. The legislature intends that all governmental entities within Puget Sound will exercise their existing authorities to implement the applicable provisions of the action agenda.

RCW 90.71.340 states, in part:

1. The legislature intends that fiscal incentives and disincentives be used as accountability measures designed to achieve consistency with the action agenda by:

- a. Ensuring that projects and activities in conflict with the action agenda are not funded;
- b. Aligning environmental investments with strategic priorities of the action agenda; and
- c. Using state grant and loan programs to encourage consistency with the action agenda.

2. The council shall adopt measures to ensure that funds appropriated for implementation of the action agenda and identified by proviso or specifically referenced in the omnibus appropriations act pursuant to RCW 43.88.030(1)(g) are expended in a manner that will achieve the intended results. In developing such performance measures, the council shall establish criteria for the expenditure of the funds consistent with the responsibilities and timelines under the action agenda, and require reporting and tracking of funds expended. The council may adopt other measures, such as requiring interagency agreements regarding the expenditure of provisoed or specifically referenced Puget Sound funds.



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Our mission is to work in cooperation with our audit clients and citizens as an advocate for government accountability. As an elected agency, the State Auditor's Office has the independence necessary to objectively perform audits and investigations. Our audits are designed to comply with professional standards as well as to satisfy the requirements of federal, state, and local laws.

The State Auditor's Office employees are located around the state to deliver our services effectively and efficiently.

Our audits look at financial information and compliance with state, federal and local laws on the part of all local governments, including schools, and all state agencies, including institutions of higher education. In addition, we conduct performance audits of state agencies and local governments and fraud, whistleblower and citizen hotline investigations.

The results of our work are widely distributed through a variety of reports, which are available on our Web site and through our free, electronic subscription service. We continue to refine our reporting efforts to ensure the results of our audits are useful and understandable.

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