



# AUDITOR GENERAL

## WILLIAM O. MONROE, CPA



### DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES

### PRINTING AND DISTRIBUTION

### OF THE FLORIDA DRIVER'S HANDBOOKS

Operational Audit

**SUMMARY**

On May 4, 2005, the Department of Highway Safety and Motor Vehicles (Department) entered into a Contractual Service Agreement (Agreement) with the National Safety Commission, Inc. (NSC),<sup>1</sup> under which NSC agreed to provide printing and distribution of Florida Driver's Handbooks (Handbooks) at no cost to the Department in return for the exclusive right to Department-approved advertising in the Handbooks, on the Web, and in flyers and posters. Our review of the contracting process and the terms and conditions of the resulting Agreement disclosed the following:

- The Department did not document in the public record its consideration and disposition of any potential conflicts of interest identified in connection with the evaluation of the vendor response to the Invitation to Negotiate. We also found that neither the provisions of Part III of Chapter 112, Florida Statutes, nor Departmental policies and procedures require the avoidance of instances in which there will exist the appearance of a conflict of interest on the part of Department management or employees involved in the procurement process.
- Section 283.58, Florida Statutes, authorizes distribution of public information without charge; however, it

was not clear that the Department had the authority to allow NSC to charge a shipping and handling fee of up to \$6.95.

- Section 283.58, Florida Statutes, provides the underlying basis for the contract with NSC; however, this statute does not specifically provide for Web-based publications and commerce or require an evaluation of the potential impact that proposed advertising may have on the competition within an industry. Moreover, it was not clear that this statute authorized the Department to allow the placement of advertising external to public information material, such as the Handbooks.

**BACKGROUND**

Section 283.58, Florida Statutes, authorizes agencies, such as the Department, to enter into contractual agreements for the private publication and distribution of public information materials where the cost is borne by the vendor in return for the right of the vendor to place advertising of products or services harmonious with the subject matter of the publication.

The Department elected to utilize the provisions of Section 283.58, Florida Statutes, to have its Florida Driver's Handbooks printed and distributed and widely published an Invitation to Negotiate (ITN). On May 4, 2005, after receiving only one response to the ITN the Department entered into a five-year Agreement with NSC to print and distribute the

<sup>1</sup> NSC is used throughout this report to represent National Safety Commission, Inc., and affiliated organizations including Lowest Price Traffic School.

Handbooks. Over the term of the Agreement, the Department estimates cost savings to the State of \$2.5 million. Under a contract for the period June 2003 through August 2004, Department costs associated with the printing of the Handbooks were paid by the University of Online Education. The President of the University of Online Education was also the President of NSC.

Included in the May 2005 Agreement are provisions requiring NSC to provide a toll-free number for the public to use in ordering the Handbooks and a Handbook Web site. The Handbook Web site is to be maintained by NSC, and the Department's Web site is to provide a direct public access link to the Handbook Web site.

The Agreement also provides that the Handbooks are to be provided to the public at no charge, however, the Agreement does authorize the assessment of shipping and handling fees of up to \$6.95 should the Handbooks be mailed. In addition, the Agreement provided for the placement in Department Driver's License Offices Department-approved flyers and posters that promote electronic Handbooks.

---



---

### FINDINGS AND RECOMMENDATIONS

---



---

Our audit focused on the procedures and records pertinent to the award of the Agreement to NSC and the provisions of the Agreement. In addition, we considered citizen and industry concerns regarding provisions of the Agreement and Department actions taken pursuant to the Agreement. As indicated below, our audit disclosed areas in which changes in procedure and statutes should be considered.

---



---

#### **Finding No. 1: Potential Conflicts of Interest**

---



---

Section 112.313, Florida Statutes, addresses standards of conduct for public officers and employees of State agencies. Our audit included a review of Department policies and procedures established to reasonably

ensure the identification of and proper course of action upon disclosure of actual or perceived conflicts of interest. Our audit disclosed:

- The Department properly included in the ITN a requirement that vendors include conflict of interest disclosures as defined in Chapter 112, Florida Statutes. Information included in the NSC ITN response disclosed that the spouse of the Department's Executive Director formerly worked for the Department and, at the time of the ITN, was compensated by NSC. Department staff indicated that the disclosure was not pursued to determine the extent to which the relationship should have impacted the award of the contract. However, our audit disclosed no evidence that the business relationship between NSC and the spouse of the Executive Director had directly influenced the contract award or the Department's subsequent administration of the contract. Although widely advertised, NSC provided the only response to the ITN and the response offered the printing and distribution services desired by the Department.
- As indicated above, in awarding the Agreement for the printing and distribution of the Handbooks, the Department applied its competitive procurement policies and procedures. Our review of those policies and procedures disclosed that while they do require compliance with pertinent provisions of Part III of Chapter 112, Florida Statutes (Code of Ethics for Public Officers and Employees), neither the statutes nor the policies and procedures require the avoidance of instances in which there will exist, at the very least, the appearance of a conflict of interest on the part of Department management or employees involved in the procurement processes. Absent such direction, the Department may award contracts that give rise to allegations of conflicts of interest and a resulting loss of public confidence in the fairness of Department's procurement processes.

**Recommendation:** We recommend that the Department document in the public record its consideration and disposition of any potential conflicts of interest identified in connection with the evaluation of responses received from vendors. Additionally, the Department should amend its policies and procedures by adding provisions requiring the avoidance of potential conflicts of interest.

The Legislature should consider the need to amend Part III of Chapter 112, Florida Statutes, to more clearly address the impact that appearances of a conflict of interest may have on the public's confidence in public procurement processes.

**Finding No. 2: Shipping and Handling Fee**

The Agreement authorized NSC to charge a shipping and handling fee of up to \$6.95 for Handbooks ordered by the public by phone or via the Handbook Web site. Section 283.58(1), Florida Statutes, authorizes an agency to enter into agreements to secure the private publication of public information for distribution without charge to the public.

In view of the provisions of this statute, it was not clear that the Department had the authority to allow through its Agreement with NSC the assessment of a shipping and handling fee.

**Recommendation:** We recommend that the Department reevaluate the legality, pursuant to Section 283.58, Florida Statutes, of the Agreement provisions authorizing NSC to collect a shipping and handling fee.

**Finding No. 3: Advertising**

Section 283.58(1)(b), Florida Statutes, requires that the Department retain the right, by agreement, to approve all elements of any advertising placed in public information materials, including the form and content thereof. Consistent with the statute, the Department's agreement with NSC required that all advertising be approved by the Department. The advertising approved by the Department and disseminated by NSC included:

- Color advertisements within the Handbooks promoting the Lowest Price Traffic School, as well as other advertisements considered by the Department to be harmonious with the subject matter of the publication. Printed copies of the Handbooks were to be distributed to five Department-designated locations.
- A direct link from the Department's Web site to the Handbook Web site. The Handbook Web site contained advertisements promoting Lowest Price Traffic School.
- In the Department Driver's License Offices, flyers and posters that included, in addition to information relating to the Handbooks, advertisements promoting the Lowest Price Traffic School.

Our audit disclosed the following:

- The advertising described above promotes primarily the traffic school owned by the principal of NSC, and we have been advised by some traffic schools that the advertising approved by the Department has provided an unfair competitive advantage to that traffic school. Our audit disclosed that Section 283.58, Florida Statutes, does not require that, in the event that the proposed advertising exclusively promotes one competitor in a market, the agency document an evaluation demonstrating that the proposed advertising will not adversely impact the relative market shares of those competing in that market. Absent such evaluations, advertising associated with a State publication may inordinately impact competition. The Department did not conduct an evaluation of the impact that the proposed and approved advertising would have on the driving school industry, although it has, in response to our inquiries, identified other factors, such as a move by some schools to Web-based training, as also being a significant contributor to changes among the schools' relative market shares.

- Section 283.58, Florida Statutes, authorizes the inclusion of advertisements in public information materials. With respect to the advertising associated with the Web site linkage and the advertising included in the flyers and posters, it was not clear that the Department had sufficient expressed or necessarily implied legal authority to allow the placement of advertising external to the Handbooks.

---

**Recommendation:** The Legislature should amend Section 283.58, Florida Statutes, to address issues that have been introduced through Web-based publications and commerce and should consider whether Section 283.58, Florida Statutes, should be amended to require the preparation of an analysis addressing the impact that the proposed advertising may have on the competition within an industry. In addition, we recommend the Legislature clarify in the statute agency authority to allow the placement of advertising external to public information material, such as the Handbooks.

---

#### **OBJECTIVES, SCOPE, AND METHODOLOGY**

---

The scope of this audit included a review of the May 2005 Agreement between the NSC and the Department. Our audit objectives were to:

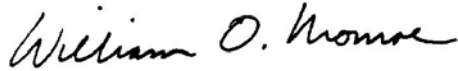
- Determine whether selected Department controls promote and encourage the achievement of management's objectives of compliance with controlling laws, administrative rules, and other guidelines.
- Obtain an understanding of citizen and industry concerns regarding the Agreement and Department actions taken pursuant to the Agreement.

Our audit methodology included:

- Reviewing the Department's policies and procedures established to ensure the proper procurement and evaluation of Invitations to Negotiate.
- Reviewing the Agreement and other Department documentation pertaining to the Agreement.
- Interviewing key personnel within the Department.
- Reviewing information provided by citizens and industry representatives related to concerns regarding the Agreement and Department actions taken pursuant to the Agreement.

**AUTHORITY**

Pursuant to the provisions of Section 11.45, Florida Statutes, I have directed that this report be prepared to present the results of our operational audit.



William O. Monroe, CPA  
Auditor General

**AUDITEE RESPONSE**

In a letter dated June 20, 2006, the Executive Director of the Department concurred with our findings and recommendations. The letter is included in its entirety at the end of this report as Appendix A.

To promote accountability in government and improvement in government operations, the Auditor General makes operational audits of selected programs, activities, and functions of State agencies. This operational audit was made in accordance with applicable *Government Auditing Standards* issued by the Comptroller General of the United States. This audit was conducted by Marcella Strange, CPA, and supervised by David R. Vick, CPA. Please address inquiries regarding this report to David R. Vick, CPA, Audit Manager, via e-mail at [davidvick@aud.state.fl.us](mailto:davidvick@aud.state.fl.us) or by telephone at (850) 487-9100. This report and audit reports prepared by the Auditor General can be obtained on our Web site (<http://www.state.fl.us/audgen>); by telephone ((850) 487-9024); or by mail (G74 Claude Pepper Building, 111 West Madison Street, Tallahassee, Florida 32399-1450).

APPENDIX A  
MANAGEMENT RESPONSE



State of Florida  
DEPARTMENT OF  
HIGHWAY SAFETY AND MOTOR VEHICLES

FRED O. DICKINSON  
Executive Director

JEB BUSH  
Governor

CHARLIE CRIST  
Attorney General

TOM GALLAGHER  
Chief Financial Officer

CHARLES H. BRONSON  
Commissioner of Agriculture

June 20, 2006

Mr. William O. Monroe, CPA  
Auditor General  
State of Florida  
111 West Madison Street  
Tallahassee, Florida 32302-1735

Dear Mr. Monroe:

Enclosed is a copy of this agency's response to the preliminary and tentative audit findings regarding your operational audit:

Department of Highway Safety and Motor Vehicles  
Printing and Distribution of the Florida Driver's Handbook  
For the period July 2004 through February 2006.

The professionalism exhibited by your staff during this audit was evident and appreciated. If you should need additional information, please contact Mr. Laurence W. Noda, Inspector General, at 617-3104.

Sincerely,

A handwritten signature in blue ink that reads "Fred Dickinson".

Fred O. Dickinson  
Executive Director

FOD/gc  
Enclosure

**APPENDIX A (CONTINUED)**  
**MANAGEMENT RESPONSE**

Preliminary and Tentative  
Audit Findings and Recommendations  
DHSMV Printing and Distribution of the Florida Driver's Handbook

Recommendation No. 1:

We recommend that the Department document in the public record its consideration and disposition of any potential conflicts of interest identified in connection with the evaluation of responses received from vendors. Additionally, the Department should amend its policies and procedures by adding provisions requiring the avoidance of potential conflicts of interest.

The Legislature should consider the need to amend Part III of Chapter 112, Florida Statutes, to more clearly address the impact that appearances of a conflict of interest may have on the public's confidence in public procurement processes.

Response No. 1:

**The audit disclosed no evidence that the business relationship between NSC and the spouse of the Executive Director had directly influenced the contract award or the subsequent administration of the contract. However, we recognize the Auditor General's concerns regarding documentation evidencing an agency's handling of potential conflicts of interest, and we agree that such documentation could enhance public confidence in such instances. As a result, the Department will ensure that procurement records include adequate explanations should vendors make any potential conflict of interest disclosures in the future.**

**The Department will continue to comply with the applicable provisions of Florida law and Department policies and procedures regarding competitive procurements. Should the Legislature amend the provisions of law related to these matters, the Department will ensure that its policies and procedures are revised accordingly.**

Recommendation No. 2:

We recommend that the Department re-evaluate the legality, pursuant to Section 283.58, Florida Statutes, of the Agreement provisions authorizing NSC to collect a shipping and handling fee.

Response No 2:

**The proper education of drivers is a key factor to promoting the safe operation of a motor vehicle in Florida. By utilizing this public-private partnership, the Department has ensured that the Handbook is more available to the motoring public today than ever before.**

**The Handbook remains available at no cost in our many offices throughout the state. Additionally, it may now be viewed or printed (in part or in its entirety) from the Web. Under the terms of the contract, the Department was also able to provide a new option for the public who wanted to receive a printed version of the Handbook, but did not want to visit one of our office locations.**

**APPENDIX A (CONTINUED)**  
**MANAGEMENT RESPONSE**

Preliminary and Tentative  
Audit Findings and Recommendations  
DHSMV Printing and Distribution of the Florida Driver's Handbook

**Although the payment of a shipping and handling fee is clearly at the discretion of the customer, we recognize the Auditor General's concern, and we will review the propriety of this provision with our General Counsel and take any appropriate action necessary.**

Recommendation No. 3:

The Legislature should amend Section 283.58, Florida Statutes, to address issues that have been introduced through Web-based publications and commerce and should consider whether Section 283.58, Florida Statutes, should be amended to require the preparation of an analysis addressing the impact that the proposed advertising may have on the competition within an industry. In addition, we recommend the Legislature clarify in the statute agency authority to allow the placement of advertising external to public information material, such as the Handbooks.

Response No. 3:

**In the event the Legislature elects to review and amend the provisions of Section 283.58, Florida Statutes, the Department will gladly provide assistance and information if requested to do so.**