

STATE BOARD OF ACCOUNTS
302 West Washington Street
Room E418
INDIANAPOLIS, INDIANA 46204-2769

SPECIAL COMPLIANCE REPORT

OF

KNOX COUNTY, INDIANA

January 1, 2017 to December 31, 2017



FILED
06/17/2019

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STATE OF INDIANA
AN EQUAL OPPORTUNITY EMPLOYER

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TO: THE OFFICIALS OF KNOX COUNTY, INDIANA

This is a special compliance report for Knox County (County), for the period January 1, 2017 to December 31, 2017, and is in addition to any other report for the County as required under Indiana Code 5-11-1. All reports pertaining to the County may be found at www.in.gov/sboa/.

We performed procedures to determine compliance with applicable Indiana laws and uniform compliance guidelines established by the Indiana State Board of Accounts and were limited to records associated with a road repair project performed in October 2017. The Results and Comments contained herein describe the identified reportable instances of noncompliance found as a result of these procedures. Our tests were not designed to identify all instances of noncompliance; therefore, noncompliance may exist that is unidentified.

Any Official Response to the Results and Comments, incorporated within this report, was not verified for accuracy.

Paul D. Joyce
Paul D. Joyce, CPA
State Examiner

May 1, 2019

KNOX COUNTY
RESULTS AND COMMENTS

CONFLICT OF INTEREST

Timothy J. Ellerman (Ellerman), Knox County (County) Commissioner, submitted a Uniform Conflict of Interest Disclosure Statement (State Form 54266 (4-1) /Form 236) dated April 17, 2017, with the County Auditor's office. Ellerman's disclosure statement was submitted as an "annual" disclosure statement, but did not contain the name of the contractor or vendor with which he had a pecuniary interest. The disclosure statement provided the description of the contract or purchase as "Undetermined at this Date 4-16-17." The description of his financial interest was "possible contracts or (unreadable) work for Knox County in form of repair or replacement & possible road construction contracts."

Ellerman did not update the disclosure statement to describe his pecuniary interest in a contract for road work in October 2017 when his personal business performed work as a subcontractor on a County road for a contractor. The December 18, 2017 Board of County Commissioners minutes indicated that the contractor claim was approved to be paid by all three County Commissioners, including Ellerman.

The Board of County Commissioners and County Council minutes did not mention the acceptance of the conflict of interest disclosure from Ellerman in a public meeting before final action on the contract. In addition, the disclosure was not filed timely with the Indiana State Board of Accounts for 2017, as it was submitted in Gateway on April 13, 2018. In addition, a copy of the disclosure was not filed with the Clerk of the Circuit Court.

Indiana Code 35-44.1-1-4 states in part:

". . . (b) A public servant who knowingly or intentionally:

- (1) has a pecuniary interest in; or
- (2) derives a profit from;

a contract or purchase connected with an action by the governmental entity served by the public servant commits conflict of interest, a Level 6 felony.

(c) It is not an offense under this section if any of the following apply:

- (1) The public servant or the public servant's dependent receives compensation through salary or an employment contract for:
 - (A) services provided as a public servant; or
 - (B) expenses incurred by the public servant as provided by law.
- (2) The public servant's interest in the contract or purchase and all other contracts and purchases made by the governmental entity during the twelve (12) months before the date of the contract or purchase was two hundred fifty dollars (\$250) or less.
- (3) The contract or purchase involves utility services from a utility whose rate structure is regulated by the state or federal government.
- (4) The public servant:
 - (A) acts in only an advisory capacity for a state supported college or university; and

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- (B) does not have authority to act on behalf of the college or university in a matter involving a contract or purchase.
- (5) A public servant under the jurisdiction of the state ethics commission (as provided in [IC 4-2-6-2.5](#)) obtains from the state ethics commission, following full and truthful disclosure, written approval that the public servant will not or does not have a conflict of interest in connection with the contract or purchase under [IC 4-2-6](#) and this section. The approval required under this subdivision must be:
- (A) granted to the public servant before action is taken in connection with the contract or purchase by the governmental entity served; or
- (B) sought by the public servant as soon as possible after the contract is executed or the purchase is made and the public servant becomes aware of the facts that give rise to a question of conflict of interest.
- (6) A public servant makes a disclosure that meets the requirements of subsection (d) or (e) and is:
- (A) not a member or on the staff of the governing body empowered to contract or purchase on behalf of the governmental entity, and functions and performs duties for the governmental entity unrelated to the contract or purchase;
- (B) appointed by an elected public servant;
- (C) employed by the governing body of a school corporation and the contract or purchase involves the employment of a dependent or the payment of fees to a dependent;
- (D) elected; or
- (E) a member of, or a person appointed by, the board of trustees of a state supported college or university.
- (7) The public servant is a member of the governing board of, or is a physician employed or contracted by, a hospital organized or operated under [IC 16-22-1](#) through [IC 16-22-5](#) or [IC 16-23-1](#).
- (d) A disclosure must:
- (1) be in writing;
 - (2) describe the contract or purchase to be made by the governmental entity;
 - (3) describe the pecuniary interest that the public servant has in the contract or purchase;
 - (4) be affirmed under penalty of perjury;
 - (5) be submitted to the governmental entity and be accepted by the governmental entity in a public meeting of the governmental entity before final action on the contract or purchase;

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(6) be filed within fifteen (15) days after final action on the contract or purchase with:

(A) the state board of accounts; and

(B) if the governmental entity is a governmental entity other than the state or a state supported college or university, the clerk of the circuit court in the county where the governmental entity takes final action on the contract or purchase; and

(7) contain, if the public servant is appointed, the written approval of the elected public servant (if any) or the board of trustees of a state supported college or university (if any) that appointed the public servant. . . ."

SMALL PURCHASES

Road repair work was performed on a County road in October 2017 at a cost of \$28,775. The contracted vendor used Ellerman's personal business to perform part or all of the road repair work. The County does not have a small purchase policy or rules adopted by the governmental body for small purchases, and they did not adhere to Indiana Code 36-1-12-5 in reference to obtaining quotes.

Indiana Code 36-1-12-4.9 states:

"(a) This section applies to a public work for the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property if the cost of the public work is estimated to be less than one hundred fifty thousand dollars (\$150,000).

(b) The board may award a contract for public work described in subsection (a) in the manner provided in [IC 5-22](#)."

Indiana Code 5-22-8-2 states:

"(a) This section applies only if the purchasing agent expects the purchase to be less than fifty thousand dollars (\$50,000).

(b) A purchasing agent may make a purchase under small purchase policies established by the purchasing agency or under rules adopted by the governmental body."

Indiana Code 36-1-12-5 states in part:

"(a) This section applies whenever a public work project is estimated to cost less than fifty thousand dollars (\$50,000). Except as provided in subsection (g) for local boards of aviation commissioners and local airport authorities, if a contract is to be awarded, the board may proceed under section 4 of this chapter or under subsection (b) or (c).

(b) The board must proceed under the following provisions:

(1) The board shall invite quotes from at least three (3) persons known to deal in the class of work proposed to be done by either of the following:

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(A) Mailing them a notice stating that plans and specifications are on file in a specified office. The notice must be mailed not less than seven (7) days before the time fixed for receiving quotes. The board may not require a person to submit a quote before the meeting at which quotes are to be received. The meeting for receiving quotes must be open to the public. All quotes received shall be opened publicly and read aloud at the time and place designated and not before.

(B) Soliciting at least three (3) quotes by telephone, facsimile transmission, or electronic mail. The seven (7) day waiting period required by clause (A) does not apply to quotes solicited under this clause. A quote received under this clause shall be reported to the board during the public meeting at which the contract is considered. The name of each person submitting a quote, and the amount of each quote, shall be read aloud at the public meeting.

(2) The board shall award the contract for the public work to the lowest responsible and responsive quoter.

(3) The board may reject all quotes submitted.

(4) If the board rejects all quotes under subdivision (3), the board may negotiate and enter into agreements for the work in the open market without inviting or receiving quotes if the board establishes in writing the reasons for rejecting the quotes.

(c) The board may not proceed under subsection (b) for the resurfacing (as defined in [IC 8-14-2-1](#)) of a road, street, or bridge, unless:

(1) the weight or volume of the materials in the project is capable of accurate measurement and verification; and

(2) the specifications define the geographic points at which the project begins and ends.

(d) For the purposes of this section, if contiguous sections of a road, street, or bridge are to be resurfaced in a calendar year, all of the work shall be considered to comprise a single public work project.

(e) The board may purchase or lease supplies in the manner provided in [IC 5-22](#) and perform the public work by means of its own workforce without awarding a public work contract.

(f) Before the board may perform any work under this section by means of its own workforce, the political subdivision or agency must have a group of employees on its staff who are capable of performing the construction, maintenance, and repair applicable to that work. . . ."

INTERNAL CONTROLS

Internal control weaknesses existed that contributed to Ellerman's ability to perform repair work on a county road without the required conflict of interest disclosure being submitted timely and in compliance with Indiana Code. In addition, internal control weaknesses existed allowing for small purchases under \$50,000 to be made without a small purchase policy adopted by the governmental body or following the requirements of Indiana Code 36-1-12-5.

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The Indiana State Board of Accounts (SBOA) is required under Indiana Code 5-11-1-27(e) to define the acceptable minimum level of internal control standards. To provide clarifying guidance, the State Examiner compiled the standards contained in the manual, *Uniform Internal Control Standards for Indiana Political Subdivisions*. All political subdivisions subject to audit by SBOA are expected to adhere to these standards. The standards include adequate control activities. According to this manual:

"Control activities are the actions and tools established through policies and procedures that help to detect, prevent, or reduce the identified risks that interfere with the achievement of objectives. Detection activities are designed to identify unfavorable events in a timely manner whereas prevention activities are designed to deter the occurrence of an unfavorable event. Examples of these activities include reconciliations, authorizations, approval processes, performance reviews, and verification processes.

An integral part of the control activity component is segregation of duties. . . .

There is an expectation of segregation of duties. If compensating controls are necessary, documentation should exist to identify both the areas where segregation of duties are not feasible or practical and the compensating controls implemented to mitigate the risk. . . ."

KNOX COUNTY
EXIT CONFERENCE

The contents of this report were discussed on May 1, 2019, with Robert Lechner, President of the County Council; Michael P. Morris, County Auditor; and Frederick Benjamin Boyd, County Highway Superintendent.

The contents of this report were discussed on May 1, 2019, with Trent Hinkle, County Commissioner.

The contents of this report were discussed on May 2, 2019, with Kellie E. Streeter, President of the Board of County Commissioners.