

UNIFIED FIRE SERVICE AREA

Findings and Recommendations
For the Period January 1, 2011 through July 31, 2016

Report No. SSVF-17-SPb



OFFICE OF THE STATE AUDITOR

AUDIT LEADERSHIP:

John Dougall, State Auditor
Van Christensen, CPA, CFE, Audit Director
Tyson Plastow, Special Projects Senior Auditor



OFFICE OF THE
STATE AUDITOR

REPORT NO. SSVF-17-SPb

January 18, 2017

Coralee Moser, Board Chair
Unified Fire Service Area
3380 South 900 West
Salt Lake City, Utah 84119

Dear Ms. Moser:

We have performed the procedures described below to certain aspects of the Unified Fire Service Area's (UFSA) internal control and compliance for the period January 1, 2011 through July 31, 2016 unless otherwise stated. The purpose of these procedures is to assist UFSA in evaluating its internal control and investigate allegations of improper compensation to certain employees, misuse of purchase cards, and other potential misuse of public funds. We performed the following procedures at the UFSA:

1. We reviewed the arrangement for Unified Fire Authority (UFA) to provide administrative services to UFSA for reasonableness.
2. We reviewed incentive payments for proper approval and compliance with employment agreements, policy, and law.
3. We reviewed fire station construction costs for reasonableness.
4. We reviewed purchase-card disbursements for proper approval and reasonableness.
5. We reviewed compliance with record retention laws in certain circumstances.
6. We reviewed the appropriate use and reasonableness of technology assets assigned to the former clerk.

Our procedures were more limited than would be necessary to express an audit opinion on compliance or on the effectiveness of UFSA's internal control or any part thereof. Accordingly, we do not express such opinions. Alternatively, we have identified the procedures we performed and the findings resulting from those procedures. Had we performed additional which identified concerns or had we made an audit of the effectiveness of UFSA's internal control, other matters might have come to our attention that would have been reported to you.

Our findings resulting from the above procedures are included in the attached findings and recommendations section of this report.

By its nature, this report focuses on exceptions, weaknesses, and problems. This focus should not be understood to mean there are not also various strengths and accomplishments. We appreciate the courtesy and assistance extended to us by the personnel of UFSA during the course of the engagement, and we look forward to a continuing professional relationship. If you have questions, please call Van Christensen, Audit Director, at 801-538-1394 or vchristensen@utah.gov.

Office of the State Auditor

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BACKGROUND

The Unified Fire Service Area (UFSA) is a “local district” organized under *Utah Code* Title 17B. Local districts are special-purpose local governments, meaning that they generally provide a single specific service or a group of closely related services to a defined geographical area. UFSA encompasses five cities (Eagle Mountain, Herriman, Midvale, Riverton, and Taylorsville) and the unincorporated area of Salt Lake County. As of December 2016, UFSA was governed by an eight-member board (Board) comprised of elected officials from each member city and three county officials. The purpose of UFSA is to provide fire and emergency services to the service area. One of UFSA’s primary functions is financing the construction of fire stations within its service area. Funding is primarily generated through property taxes.

Although UFSA does not provide fire and emergency services directly, it does provide those services through the Unified Fire Authority (UFA), of which UFSA is a member. UFA is an “Interlocal Entity” formed under *Utah Code* 11-13 “Interlocal Cooperation Act.” *Utah Code* 11-13-102 states that the purpose of the Interlocal Cooperation Act is “...to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and ... to provide the benefit of economy of scale.” As of December 2016, member entities of UFA included the UFSA plus four additional cities (Alta, Cottonwood Heights, Draper, and Holladay). As of December 2016, UFA was governed by a 12-member board (UFA Board) which included all eight members of the Board plus elected officials from the four additional member cities.

Beginning in January 1, 2007, UFA assumed management and administrative support for UFSA. UFSA had one part-time employee (former Clerk) who was responsible for clerical and informational activities such as updating the Board on construction activities, ensuring the website was operating, and reviewing contracts and agreements.

This report focuses on findings and recommendations specific to UFSA.

FINDINGS AND RECOMMENDATIONS

1. LACK OF CLEAR CONTRACTUAL ARRANGEMENT EXISTED BETWEEN UFSA AND UFA

Prior to May 2016, there was no written agreement between UFSA and UFA clarifying duties that UFSA expected UFA to perform on its behalf. Also, the eight members of the Board comprise the majority of the members of the UFA Board. These two factors resulted in a significant blurring of the lines of responsibility and cross organizational activities between UFSA and UFA which created the following issues:

- Actions taken by former Board chairs resulted in the former UFA Chief making unauthorized payments to himself.

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- Actions taken by the former UFA Chief resulted in improper payments to the former Clerk.
- Confusion regarding actions performed by UFA employees and whether those actions should have been billed to UFSA.
- Questions as to whether and to what extent certain members of UFA's Executive Administration¹ should have received separate compensation for activities supporting UFSA or whether those duties were simply part of their UFA duties.

We believe a clear and detailed contract could have largely clarified the duties that UFSA expected UFA to perform on its behalf and would have created a framework to resolve other issues as they arose. A formal Memorandum of Understanding (MOU) was not entered into until May 2016.

UFSA's arrangement was directly with UFA. It was not directly with any individuals who were also UFA employees.

UFSA meeting minutes show that the Board appointed certain members of UFA's command staff (hereinafter referred to as "Executive Administration") to serve in effectively the same positions on behalf of UFSA.² However, no other action was taken to implement these appointments, define responsibilities, or provide compensation and a method of payment. It is significant to note that UFSA never took the basic step of making those individuals employees of UFSA. In addition, the conflict of interest forms submitted to UFA by its former UFA Chief and former UFA Deputy Chief do not list any employment arrangement with UFSA. As such, the Executive Administration were never employees of UFSA. Therefore, UFA operated in a subcontractor-type relationship whenever it provided support to UFSA. This relationship is important because it dictates that any work performed by UFA on UFSA's behalf should be paid by UFSA directly to UFA and not steered by UFSA to any specific employee of UFA.

Prior to the commencement of our audit, UFSA had not directly compensated any individuals who were members of the Executive Administration. Instead, UFSA pays an administrative fee to UFA. As such, UFSA's informal agreement for UFA services above and beyond baseline services is directly with UFA. The former UFA Chief Legal Officer's (CLO's) and former UFA Chief Financial Officer's (CFO's) employment agreements with UFA specify that they may receive additional compensation for support of UFSA. Specifically, the agreements state:

The parties acknowledge that the [CLO/CFO] has been and may continue to be assigned duties relating to the [legal affairs/financial management] of the Unified Fire Service Area. Such work shall be considered as separate from the work for the

¹ The Executive Administration is comprised of UFA's Chief, Deputy Chief, Chief Legal Officer (CLO), and Chief Financial Officer (CFO).

² Former UFA Chief was appointed UFSA CEO Sept. 15, 2009. Former UFA Deputy Chief was appointed UFSA COO Oct. 20, 2009. Former CLO was appointed UFSA Legal Counsel March 16, 2010. We found no record of UFSA's explicit appointment of the former CFO. UFSA appointed its current CFO January 2016.

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UFA required under this agreement and shall not relieve the [CLO/CFO] from the faithful performance of [his/her] duties under this agreement. Work performed by the [CLO/CFO] for the Service Area shall be subject to such compensation as may be agreed upon by the Fire Chief and the [CLO/CFO].

The last sentence of this clause allows UFA's chief to determine with the CLO/CFO the amount of additional compensation they will receive for work these employees perform on behalf of UFSA. This clause further supports the position that UFSA's agreement was directly with UFA not with any individuals who were UFA employees.

Recommendations:

We recommend that UFSA revise its MOU with UFA, as follows:

- **Establish the services UFA will provide and the rates UFSA will pay for those services (both baseline and enhanced administrative services), including the methodology for UFA to bill UFSA for administrative, operational, and other activities.**
- **Identify quantifiable methods, such as timecards, receipts, and other reliable documentation, which should be used to track expenses incurred by UFA on behalf of UFSA.**
- **Create policies and controls for the review and monitoring of expenses incurred by UFA on behalf of UFSA.**

2. CURRENT MOU CONTAINS WEAKNESSES THAT FAIL TO ADEQUATELY CLARIFY THE UFA/UFSA ARRANGEMENT

In May 2016, UFSA and UFA adopted an MOU to define "the sharing of resources between UFA and [UFSA]." Unfortunately, that MOU fails to address significant risks or implement safeguards that protect against conflicts created by the UFSA/UFA arrangement. These conflicts include the following:

- The MOU allows for the Executive Administration to be directly compensated as employees of UFSA and UFA, creating risks that are difficult to effectively mitigate. For example, administrative decisions by an individual employed by both entities may favor one entity over the other, such as the allocation of administrative costs to UFSA which includes estimates that may be subject to bias. We believe the agreement should clearly dictate that any work performed by UFA on UFSA's behalf should be paid by UFSA directly to UFA and not steered by UFSA to any specific UFA employee (see Finding No. 1 above).
- Because UFSA is the largest member of UFA and the interlocal agreement forming UFA specifies that UFA will provide baseline services to members, the line between UFA and UFSA duties can be difficult to clearly differentiate. The agreement should state that UFSA will provide extra compensation to UFA only for work that is

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clearly outside the scope of UFA baseline responsibilities and clearly delineate that scope.

- The current agreement does not specify the services to be performed by UFA personnel on behalf of UFSA and when these services will occur. As a result, there exists both the perception and possible occurrence of an individual being “on the clock” for both entities simultaneously. It is important that the agreement defines the specifics, including the timing, of UFA services performed on behalf of UFSA so that they do not interfere with the full discharge of UFA responsibilities.
- The MOU does not establish quantifiable outcomes which measure performance and award compensation accordingly. Without quantifiable outcomes, an appropriate review and approval cannot be conducted that protects against the inherent conflict of having individuals set their own compensation.

We recognize that a benefit exists for UFSA to use the Executive Administration for administrative services due to their expertise and the coordination that must occur between the two entities. Rather than creating separate agreements with each member of the Executive Administration, the MOU should clearly establish an agreement between UFSA and UFA to provide support services, and UFA should direct, monitor, and compensate its employees, as appropriate.

Recommendation:

We recommend UFSA revise its MOU with UFA to dictate that any work performed by UFA on UFSA’s behalf be paid by UFSA directly to UFA and not steered by UFSA to any specific UFA employee.

3. ILLEGAL ACTIONS RESULTED IN IMPROPER INCENTIVE AWARD PAYMENTS

From January 2011 to December 2015, two former Board chairs unilaterally “approved”³ \$81,000 in incentives for the former UFA Chief, who was not an employee of UFSA. Although the incentive awards included language characterizing them as UFSA awards, these incentives were paid from UFA funds. In effect, the former Board chairs authorized payments to be made from a different legal entity (UFA). There is no record nor testimony that the former Board chairs consulted with legal counsel regarding these actions.

The former UFA Chief has referred to these payments from UFSA as “incentive awards”; however, the Board never took action to approve incentives nor to authorize anyone, including its chair, to approve incentives. As such, these payments ignored *Utah Code* 17B-1-642 which states: “The board of trustees of each local district *shall approve all*

³ We use the term “approve” because that is the action the former UFSA Board chairs thought was being done regarding the incentives. We do not believe the former UFSA Board chairs had any legal authority to approve these incentives.

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expenditures of the district except as otherwise provided in this section” (emphasis added). There is an exception for payroll expenditures, “if the checks are prepared in accordance with a schedule approved by the board.” None of these incentive payments followed an approved schedule. Also, Board Rules of Procedure policy 2.2 states that, “The Chair... shall sign all resolutions, contracts, documents, etc. authorized by the Board.” The meeting minutes do not indicate that the Board authorized the former chairs to approve incentive award payments.

In addition, the authorization of these payments circumvented common fundamentals of governing boards, including a review to ensure the payments are justifiable.⁴

The majority of the UFA Board was unaware of these payments to the former UFA Chief at the time they were made and in December 2015 demanded repayment from UFSA upon learning of the expenses incurred on behalf of UFSA.⁵

These illegal actions were caused by:

- The former Board chairs’ blind trust in former UFA/UFSA personnel who presented the former UFA Chief’s incentives for payment, failure to understand their roles as chair and the limits on a chair’s authority, failure to consult legal counsel, and failure to question and research the appropriateness of the expenditure.
- The Board’s failure to have in place internal controls for reviewing and approving all expenditures and ensuring that expenditures are justifiable and appropriate.

Recommendations:

We recommend:

- **The Board consider pursuing reimbursement of the improperly authorized incentive awards from the former UFA Chief and possibly from the former Board chairs who acted outside the scope of their authority.**
- **All future Board chairs operate within the law and within the duties delegated by the Board.**
- **The Board develop internal controls to review and approve all expenditures.**
- **The Board approve and pay incentive awards only to UFSA employees and ensure employee incentive awards are justifiable and given only for actions above and beyond typical duties.**
- **Board members clearly recognize the boundaries between UFSA and UFA.**

⁴ The nature and amount of the incentives were determined by the UFA Executive Administration at the end of each year when they discussed UFSA-related work and determined an amount they felt was appropriate. The incentive amounts appear arbitrary as they were not based upon quantifiable information such as time reports or detail records indicating the date and type of service provided. Without quantifiable information, the former UFSA chairs could not conduct an appropriate review; however, the chairs approved the incentives anyway.

⁵Our audit report to UFA addresses the inappropriateness of these bonuses in greater detail.

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4. ILLEGAL INCENTIVES PAID TO FORMER CLERK

From November 2010 to January 2015, the former Clerk received incentive awards totaling \$22,000. We found no record of the Board approving these incentives nor did we find any record of the Board adopting an incentive program. *Utah Code* 17B-1-642 states that, “The board of trustees of each local district *shall approve all expenditures of the district* except as otherwise provided in this section” (emphasis added). Exceptions are available when the board authorizes a manager or other official to approve “...payroll checks if prepared in accordance with a schedule approved by the board and routine expenditures such as utility bills, payroll-related expenses, supplies, and materials.”

These awards were “approved” by the former UFA Chief and former UFA Deputy Chief. Employees of one organization (UFA) should not authorize payments to employees of a different organization (UFSA). As such, these payments were both improper and illegal.

The payment of these illegal incentives was the result of the former UFA Chief’s failure to understand his role with UFSA and with the state laws requiring board approval of district expenditures.

Recommendations:

We recommend:

- **The former Clerk or former UFA Chief repay these illegal payments.**
- **The Board properly oversee employee compensation.**
- **UFSA and UFA respect the boundaries between the two organizations.**

5. FORMER UFA CFO AND FORMER UFA CLO FAILED TO ADEQUATELY INFORM THE BOARD OF ONGOING CONCERNS

The former UFA Chief Legal Officer (CLO) stated he informed the former UFA Chief of concerns regarding incentive awards which were largely dismissed. In addition, the former UFA Chief Financial Officer (CFO) informed the former UFA Chief of various financial concerns which were also largely dismissed. However, both the former UFA CLO and former UFA CFO failed to adequately inform the Board of concerns until allegations became public. While some members of the Board believe that the former UFA CLO and former UFA CFO worked directly for the Board, it is abundantly clear that in practice the former UFA CLO and former UFA CFO reported to the former UFA Chief who also controlled their compensation and terms of employment. Furthermore, emergency response organizations (police, fire, etc.) often have a culture that demands loyalty. Because of UFA’s strong chain of command, the former UFA CLO and former UFA CFO felt they could not circumvent the former UFA Chief (and former UFA Deputy Chief). In this type of culture, it is especially important for the Board to have unfiltered communication from key individuals to ensure that loyalty is not rewarded over integrity.

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The former UFA CLO routinely provided legal counsel to the Board, leading them to believe he represented their interests. However, there was a conflict between his representation of the Board and the former UFA Chief, specifically related to incentive awards. As an attorney representing local governments for many years, the former UFA CLO should have known that *Utah Code* 17B-1-642 prohibited a board chair from unilaterally approving expenditures without authorization from the full board. Also, the former UFA CLO prepared the former UFA Chief's UFA employment agreement and should have known that incentive awards violated either disclosure or compensation provisions of this agreement. Despite violations of the law and employment agreement, the former UFA CLO failed to inform the Board. His failure to inform the Board of potential violations may have been caused by a conflict in representing the Board's interests versus the former UFA Chief's interests, as well as his personal interests since he also received incentive awards approved by the former UFA Chief. These conflicts may violate the rules of professional conduct established by the American Bar Association as well as the Public Officers' and Employees' Ethics Act found in *Utah Code* 67-16-4.

Recommendations:

We recommend the Board:

- **Appoint, set the terms of appointment, and perform the evaluations of the CFO and CLO.**
- **Consider filing an ethics complaint against the former UFA CLO with the Utah State Bar Office of Professional Conduct for a potential violation of the Rules of Professional Conduct due to a conflict of interest created by the former UFA CLO representing the Board, former UFA Chief, and his own personal financial interests.**

6. FAILURE TO ENSURE RETENTION OF DOCUMENTS MAY HAVE RESULTED IN VIOLATION OF RECORD RETENTION LAWS

The former Clerk recently terminated employment with UFSA. After he turned in his computers and other electronic equipment, UFSA noted that most electronic UFSA files had been deleted. We used professional forensic services to recover data. We found what appears to be UFSA government records on two of three computers. Files on the third computer indicate that the computer was used entirely for personal purposes. The former Clerk claimed to have saved all files onto a USB flash drive; however, the USB drive contained only one Excel file while the computers contained many UFA/UFSA files. Many of the files appear to have been created by the former Clerk. Therefore, it appears that all documents were not saved onto the USB.

Utah Code 63G-2-604 requires public records to be retained in accordance with applicable retention schedules. *Utah Code* 63A-12-105(3) states that it is a class B misdemeanor for disposing of a government record that is required to be retained. The former Clerk stated

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that he was the records officer; therefore, he should have been familiar with retention requirements for government records.

The Board's failure to adopt and communicate policies and procedures that ensure public records are properly retained likely contributed to this error. However, given the work experience and duties of the former Clerk, he should have known the legal requirement to retain certain public records and may have deleted the files to conceal personal use. Public records provide important information such as deliberations, decisions, and agreements made by the entity.

Recommendations:

We recommend the Board:

- **Adopt policies and procedures regarding the security and retention of public records as required by state retention laws and ensure its employees comply with these laws.**
- **Consider referring the possible destruction of public records by the former Clerk to law enforcement for possible criminal investigation.**

7. PUBLIC RESOURCES IMPROPERLY USED FOR ELECTIONEERING

A UFSA-owned computer, assigned to the former Clerk, had at least fifty files that appeared to support several candidates for elected office. These files included campaign donations, campaign calling lists, marketing flyers and posters, and political biographies. The computer also contained software that could create these types of files.

Utah Code 20A-11-1203 states, "...a public entity may not make an expenditure from public funds for political purposes." *Utah Code* 20A-11- 1202(9) defines political purposes as "an act done with the intent or in a way to influence or intend to influence, directly or indirectly, any person to refrain from voting or to vote for or against any candidate for public office at any caucus, political convention, primary, or election."

Because these files could be used to influence a person to vote for a specific candidate, the former Clerk appears to have violated the law by using equipment purchased with public funds to improperly electioneer.

Recommendations:

We recommend:

- **The Board establish and communicate policies to prevent an employee from using resources purchased with public funds for political purposes.**
- **The former Clerk reimburse UFSA for the value of the computer, while in his possession, that appears to have been used for illegal electioneering.**

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- **The Board refer the use of public funds to improperly electioneer by the former Clerk to law enforcement for possible criminal investigation.**

8. EXCESSIVE UFSA ASSETS ASSIGNED TO FORMER CLERK

UFSA assigned the former Clerk four computers—two desktops (one kept at work and the other at home) and two laptops, with one laptop costing \$2,200. The former Clerk also had an iPad Mini, an Apple Watch, and two printers in his office. The Apple Watch cost approximately \$750 and was unnecessary given the former Clerk's job responsibilities. Also, the less expensive model of printer was not being used. We obtained payroll records from 2012 through 2015 and found that the former Clerk averaged less than 14 hours per week. To assign four computers plus other technology devices to an employee who works approximately third-time is unnecessary and a waste of taxpayer funds. Additionally, the capability of most of these computers far exceeded their actual business use, resulting in unnecessary costs.

The Board failed to effectively review expenditures and ensure they were appropriate and necessary.

Recommendation:

We recommend the Board establish policies and procedures that ensure purchases are necessary, appropriate, and not excessive considering each employees' job duties.

9. SOME ASSETS APPEAR TO HAVE BEEN USED PRIMARILY FOR PERSONAL PURPOSES

We reviewed information on a UFSA-owned computer which the former Clerk kept at his home. Despite much of the information being deleted, we recovered much of the data through the use of professional forensic services. We found that the computer appears to have been used almost entirely for personal purposes. The computer's browser history, photos, and personal email all indicated personal use. We also noted that the phone belonging to the former Clerk's wife backs up to the computer, and the computer is configured to log into her iTunes accounts.

The former Clerk informed us that one of the computers he received from UFSA had not worked for many years and was never really used. However, contrary to what the former Clerk claims, the computer was in use from at least 2013 until his resignation in August 2016, based on information resident in the computer. Another computer was supposed to be surplus, but the former Clerk kept it for personal use. We identified pornography on this computer. One laptop computer contained the political files noted in Finding No. 7 above. Perhaps in an attempt to avoid being scrutinized, files were deleted from these devices.

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It appears the excessive personal use of computers purchased with public funds was caused by the Board's failure to effectively review whether expenditures are necessary and track and monitor assets within the organization.

Recommendations:

We recommend:

- **The Board establish policies and procedures regarding allowable de minimus personal use of UFSA resources.**
- **The former Clerk reimburse UFSA for the cost of the computers that were used predominantly for personal use.**

10. CONSTRUCTION OF THE TAYLORSVILLE FIRE STATION DID NOT FOLLOW STATE PROCUREMENT LAWS

UFSA used a request for proposal (RFP) process rather than simply bidding for the construction of the Taylorsville fire station. *Utah Code* 63G-6a-702 states that the RFP process is appropriate "when cost is not the most important factor... [or] when factors, in addition to cost, are highly significant in making the selection that is most advantageous to the procurement unit." For UFSA, RFPs must follow guidelines outlined in *Utah Code* 63G-6a. We found the following areas where the RFP process did not comply with *Utah Code* 63G-6a:

- UFSA did not ensure that the cost of each proposal was hidden to the evaluation committee; instead, UFSA had cost as one of their primary criteria for each committee member to score. According to the Construction Manager, one of the difficulties during the Taylorsville fire station RFP was that each reviewer calculated the total construction cost different, which influenced the final score. *Utah Code* 63G-6a-707(6) states that:

"...each member of the evaluation committee is prohibited from knowing, or having access to, any information relating to the cost or the scoring of the cost, of a proposal until after the evaluation committee submits its final recommended scores on all other criteria to the issuing procurement unit. The issuing procurement unit shall ... assign an individual who is not a member of the evaluation committee to calculate scores for cost based on the applicable scoring formula..."

This cost scoring inconsistency could have been mitigated by having a separate, experienced individual independently score the cost of each proposal as required by *Utah Code* 63G-6a.

- After the initial scoring process, the evaluation committee conducted interviews with three offerors. During the interviews, offeror A ("Winning Bidder") provided a "change order percentage" since it was missing from the original proposal. Offeror B

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did not appear to include certain winter costs. And offeror C requested more time be added to the proposed timeline, which would materially add to the cost of the construction. *Utah Code 63G-6a-707(5)*, states that these interviews may be held “...for the purpose of clarifying information contained in proposals...” and that during the interview, “...an offeror may only explain, illustrate, or interpret the contents of the offeror’s original proposal; and may not ... correct a deficiency, inaccuracy, or mistake in a proposal that is not an immaterial error; [or] correct an incomplete submission of documents ...”

In order to ensure a fair and consistent evaluation, material changes to RFPs should not be allowed to be made after the deadline for submission. UFSA should have, at a minimum, evaluated the significance of the additional information and potentially rejected proposals with material changes.

- The bid evaluation documentation shows that three selection committee members recommended the Winning Bidder and three selection committee members recommended offeror B. *Utah Code 63G-6a-707.5* states that, when “...differences between proposals in one or more material aspects are too slight to allow the evaluation committee to distinguish between proposals...” the evaluation committee may ask for “best and final offers” from offerors.

These errors appear to be caused by the Board’s failure to provide appropriate oversight of the RFP evaluation process. Following state procurement laws may have lowered the cost, increased quality, and clearly defined the best offer.

Recommendation:

We recommend the Board adopt policies and provide oversight necessary to ensure that evaluation committees follow state procurement laws.

11. GRATUITIES HAVE APPEARANCE OF INFLUENCING PROCUREMENT DECISION

During a period of time when UFSA did not have a fire station under construction nor an RFP for construction issued, the former Clerk went to Phoenix, Arizona at the invitation of a Phoenix-based architectural firm and a construction company who eventually became the Winning Bidder noted in Finding No. 10 above. The stated business purpose was to visit fire stations and review architectural designs. However, the Winning Bidder provided us with an itinerary showing that the trip consisted of one day’s worth of fire station tours with additional personal days, which included attending spring training for major league baseball teams.

The former Clerk is a “procurement professional” as defined in *Utah Code 63G-6a-2402*. As a procurement professional, the former Clerk is prohibited from accepting gratuities. *Utah Code 63G-6a-2402(5)* defines a gratuity as “anything of value without anything provided in

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exchange” and includes “admission to an event, a meal, lodging, or travel, entertainment for which a charge is normally made... .” It is unlawful to offer or accept a gratuity when it is given to a “public entity; a procurement professional or contract administration professional” and is done with the intent to induce the public entity to “...award a contract or grant or make a procurement decision.”

The Winning Bidder stated they provided baseball tickets and purchased meals for the former Clerk during the trip, which meet the definition of gratuity. It appears the former Clerk violated the procurement code by participating in this selection process after receiving these gratuities.

As noted above, UFSA did not have a fire station under construction nor an RFP for construction issued. However, the Winning Bidder had constructed fire stations for UFSA in the past and knew of plans for future construction. The former UFA Deputy Chief participated in this trip receiving similar perks, but appears to be exempted from the procurement code.

The procurement process experienced the following issues:

- The UFA Construction Manager explained that she normally selects evaluation committee members based upon Board direction; however, for this project the former UFA Deputy Chief was assigned to the committee outside of normal practice.
- One evaluation committee member explained that during discussion among evaluation committee members, the former UFA Deputy Chief strongly opposed one committee member’s recommendation, using his position to override the process, which led to the member changing their recommendation to the Winning Bidder. Had this change not occurred, the Winning Bidder would not have been selected.

Recommendations:

We recommend the Board:

- **Implement processes to identify potential conflicts of interest, which may include anonymous reporting of concerns to the Board.**
- **Provide oversight necessary to minimize the risk of bias in the selection of contractors.**
- **Refer potential violations of the procurement code by the former Clerk to law enforcement for possible criminal investigation.**
- **Research whether the former Clerk’s costs for the Phoenix trip were incurred by UFA or UFSA and recover any excessive expenditures from the former Clerk.**

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12. FORMER BOARD CHAIR DEFERRED SETTING BOARD AGENDA TO FORMER UFA CHIEF

The former Board Chair indicated that topics on Board meeting agendas were typically set by the former UFA Chief. A governing body has responsibilities that are separate and distinct from management. A governing body is responsible to direct and oversee management, ensuring that management fulfills their obligations, and to set policies and procedures. Management is responsible to oversee operations. Meeting agendas should not be set by management because management 1) is then placed in the de facto role of a governing board member, 2) is unlikely to place items on the agenda which are critical of management's performance, and 3) is unlikely to propose policies they consider unfavorable to management's interests.

The former Board Chair's failure to understand the Board Chair's role and responsibilities allowed the former UFA Chief to improperly set meeting agendas.

Recommendation:

We recommend only the Board be responsible for setting topics on Board meeting agendas.



Unified Fire Service Area

UFSA Board

Coralee Moser
Chair
Herriman

Larry Johnson
Vice Chair
Taylorsville

Sam Granato
Salt Lake County

Paul Glover
Midvale

Ben McAdams
Salt Lake County

Sheldon Stewart
Riverton

Christopher Pengra
Eagle Mountain

Jeff Silvestrini
Millcreek

Richard Snelgrove
Salt Lake County

January 17, 2017

Mr. John Dougall
State Auditor
Utah State Capitol Complex
East Office Building, Ste E310
Salt Lake City, Utah 84114-2310

Re: Unified Fire Service Area Findings and Recommendations for the Period
January 1, 2011 through July 31, 2016

Unified Fire Service Area ("UFSA") acknowledges receipt of the report of Findings and Recommendations for the Period January 1, 2011 through July 31, 2016 (the "Audit") by the Office of the State Auditor ("OSA"). UFSA appreciates the opportunity to provide a response and acknowledge the thorough efforts of the OSA. The Audit provides perspective on administrative services and compliance with agreements, policy, and law. We concur with the findings in this Audit and have prepared this document in response to the final audit report delivered on January 17, 2017.

Since becoming aware of management deficiencies, the UFSA Board has acted promptly and aggressively to restructure the administration. The Board recognizes its deficiencies in lacking sufficient oversight to have prevented these problems. We are deeply disappointed in the abuse of the public trust that occurred and the attempts by dishonest persons to circumvent established controls and law.

The following are the UFSA's specific responses to the Audit findings and recommendations.

1. LACK OF CLEAR CONTRACTUAL ARRANGEMENT EXISTED BETWEEN UFSA AND UFA.

UFSA concurs with the finding indicating lack of a clear contractual agreement between Unified Fire Authority (“UFA”) and UFSA. The lack of a clear contractual arrangement resulted in uncertainty in billing employee activities to UFA or UFSA, and questions on Executive Administration compensation.

UFSA agrees with the recommendations to improve specificity in the Memorandum of Understanding (“MOU”), including the addition of methods, policies and controls to monitor expenses incurred on behalf of UFSA.

2. CURRENT MOU CONTAINS WEAKNESSES THAT FAIL TO ADEQUATELY CLARIFY THE UFA/UFSA ARRANGEMENT

The Board agrees the MOU adopted to clarify the UFA and UFSA contractual relationship is insufficient to differentiate between UFA baseline duties and enhanced UFSA services or to provide quantifiable outcomes for compensation.

Since the adoption of the original MOU, each Board has appointed separate legal counsel to ensure the independent interests of each organization are represented. Legal counsel will further work to ensure compliance with the Audit recommendations to make payments by UFSA directly to the UFA while still complying with statute on Treasurer and Clerk appointments and compensation.

3. ILLEGAL ACTIONS RESULTED IN IMPROPER INCENTIVE AWARD PAYMENTS

UFSA acknowledges the former Board members, acting in the capacity of Board Chairs, lacked understanding of their authority.

UFSA will be conducting a comprehensive policy review. This review will include a review of all internal controls and an assessment of Board and employee training to ensure appropriate review and approval of all expenditures, recognizing the boundaries between UFA and UFSA. Additionally, we acknowledge the recommendation to recover misused public funds and will consult with appropriate legal counsel and refer to appropriate local authorities for possible investigations.

4. ILLEGAL INCENTIVES PAID TO FORMER CLERK

UFSA failed to review expenditures of the district which could have resulted in exposure of the illegal incentives. Misplaced trust in the integrity of the former Chief also provided opportunity for the illegal expenditures.

In association with a complete UFSA policy review, the Board will review all internal controls and assess Board and employee training to ensure appropriate review of all expenditures, recognizing the boundaries between UFA and UFSA. Additionally, we acknowledge the recommendation to recover misused public funds and will consult with appropriate legal counsel.

5. FORMER UFA CFO AND FORMER UFA CLO FAILED TO ADEQUATELY INFORM THE BOARD OF ONGOING CONCERNS

UFSA trusted the Chief Legal Officer (“CLO”) and Chief Financial Officer (“CFO”) to perform their fiduciary duties to protect assets and provide professional expertise in oversight of the district.

We acknowledge the recommendation to file an ethics complaint.

6. FAILURE TO ENSURE RETENTION OF DOCUMENTS MAY HAVE RESULTED IN VIOLATIONS OF RECORD RETENTION LAWS

UFSA is disappointed in the actions of the former Clerk as revealed in this finding. The UFSA will review policies and procedures regarding the security and retention of public documents. The Board is grateful for the efforts of the OSA to conduct this forensic recovery and will ensure recovered documents are properly archived.

UFSA will ensure compliance with record retention laws. We will consult with appropriate legal counsel to refer the possible destruction of public records to appropriate authorities for possible investigation.

7. PUBLIC RESOURCES IMPROPERLY USED FOR ELECTIONEERING

UFSA acknowledges the finding of inappropriate use of district resources by the former Clerk for electioneering.

In association with the comprehensive policy review, Board will assess policy and train employees on proper use of public resources. We acknowledge the recommendations to obtain computer use reimbursement and to refer the use of public resources for electioneering to authorities. UFSA will work with appropriate legal counsel to identify the appropriate course of action.

8. EXCESSIVE UFSA ASSETS ASSIGNED TO FORMER CLERK

UFSA acknowledges the excessive allocation of resources to the former Clerk and associated misuse of public funds. UFSA failed to review expenditures of the district which could have resulted in exposure of these unreasonable purchases.

The Board will evaluate policies and procedures to ensure purchases are appropriate and necessary for their job duties.

9. SOME ASSETS APPEAR TO BE USED PRIMARILY FOR PERSONAL PURPOSES

UFSA acknowledges resources assigned to the former Clerk appear to be used inappropriately for personal purposes.

The Board will ensure *de minimus* personal use policies for UFSA resources are analyzed in association with the thorough UFSA policy review. We will consult with appropriate legal counsel to determine appropriate action regarding reimbursement for the value of assets used primarily for personal purposes.

10. CONSTRUCTION OF THE TAYLORSVILLE FIRE STATION DID NOT FOLLOW STATE PROCUREMENT LAWS

The minutes¹ of the April 21, 2015, Special Meeting reference the attendance of the CLO during which a Construction Review was provided. The meeting minutes reflect the former Chief's statement "...we want to get the RFP out for a construction firm" for the construction of the Taylorsville Fire Station. The findings note an RFP is not a correct procurement method for station construction. UFSA trusted the CLO and any procurement officer(s) to have knowledge of the appropriate state procurement laws and make recommendations to ensure compliance by the district.

The Board will evaluate all UFSA policies and procedures and provide oversight to ensure state procurement laws are followed.

¹UFSA Clerk (2015), 'Construction Review'. *Minutes of UFSA Special Meeting 21 April 2015*, Unified Fire Service Area Station 126, Midvale, Utah. <http://unifiedfireservicearea.com/wp-content/uploads/2014/02/042115-Minutes.pdf>

11. GRATUITITES HAVE APPEARANCE OF INFLUENCING PROCUREMENT DECISION

UFGA is disappointed in the actions of the former Clerk as noted in this finding.

UFGA will examine all procurement policies, ensure a proper vetting of conflicts of interest, provide for anonymous reporting of concerns to the Board, and minimize risk of bias in contractor selection. The Board will confer with appropriate legal counsel to assess all recommendations to refer potential violations of the procurement code to appropriate authorities for possible investigation and research possible excessive travel expenditures by the former Clerk.

12. FORMER BOARD CHAIR DEFERRED SETTING BOARD AGENDA TO FORMER CHIEF

UFGA acknowledges the former Board members, acting in the capacity of Board Chairs, deferred the Board agenda process to the Chief, resulting in reduced oversight.

The UFGA Board will set the topics of the Board agenda.

In conclusion, UFGA has made corrections and will continue to address recommendations made by the Office of the State Auditor to regain public trust. Additionally, we are committed to working with proper authorities in any investigations to recover misused public funds and resources.

As noted in the Auditor's report, "By its nature, this report [the Audit] focuses on exceptions, weaknesses, and problems. This focus should not be understood to mean there are not also various strengths and accomplishments." We recognize the many strengths and accomplishments of our organization, the pinnacle of which is the dedication of our UFGA employees who, despite organizational challenges, have provided unmatched professional emergency response services to the public we serve.

We thank the Auditor and his staff for the opportunity to respond to the Audit and commit to rapid progress in adopting the recommendations offered.

Respectfully submitted,

Board of Directors
Unified Fire Service Area