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Tim McCabe, Director
Oregon Economic and Community Development Department
775 Summer St. NE, Suite 200
Salem, OR 97301-1280

Dear Mr. McCabe:

We have completed a review of the Oregon Economic and Community Development Department's (department) \$17,500 grant awarded to the Port of Newport (port) in January 2006. In May 2007, the Audits Division received an allegation that the port had misused the grant to promote a November 2006 bond measure for reconstructing the port's marine terminal in Newport, Oregon.

The objective of our review was to determine whether state funds the department granted to the port were used to promote the bond measure. We found the port spent at least part of the grant funds on information and activities to promote the port's capital construction bond measure, an action that appears to have violated Oregon statute. As a result, we question the department's decision to award funds for a purpose that could be construed as unlawful. Our finding and recommendations are in the accompanying results section.

Background

In December 2005, the port applied to the department for a grant to develop a plan and strategic framework for the port's public information and education campaign related to the bond measure. The port also entered into an agreement with a media consultant for \$27,350 to provide ongoing consultation services, production materials and media for an information and education campaign.

The department finalized the grant application in January 2006, awarding the port \$17,500 from the Port Planning and Marketing Fund, and requiring \$9,850 in matching funds.

Results

Oregon law establishes restrictions on political campaigning by public employees (ORS 260.432) and the use of public funds by public officials for any purpose not authorized by law (ORS 294.100). According to the Attorney General in a 1993 letter, the latter statute "has been found by Oregon courts to apply to public officials who used public funds either to support

or oppose measures which were before the voters.”¹ The Attorney General explained that “public bodies may use public funds to inform voters of facts pertinent to a measure, if the information is not used to lead voters to support or oppose a particular position in the election.”

We recognize that the department has little ability to prevent recipients from using grant funds unlawfully once the department has distributed those funds; however, we believe the department should use more discretion when it awards grants intended for purposes that could be construed as unlawful.

The port’s grant application and related explanatory documentation contained evidence of the port’s intention to use the grant not only for information and education purposes, but also to promote the capital construction bond measure. Following are examples of indicators that could have alerted the department to the risk that the grant funds would be spent promoting the bond measure.

- The port’s grant application indicated the funds were intended for the purpose of educating and informing the public about the 2006 bond measure and a “pure advocacy campaign.”²
- The communications plan submitted with the port’s grant application contained numerous phrases that indicated the project’s purpose was to promote the bond measure, including the project goal of maintaining and building community support for approval of the bond. One objective for the project included establishing a campaign committee to advocate measure approval.

Throughout the grant period and at the close of the grant, the port was required to submit documentation showing how the funds were spent. For this purpose, the port submitted invoices and products from its media consultant. The following examples from these materials show that funds were spent to promote the bond measure.

- On October 20, 2006, the consultant invoiced the port \$1,270 for costs related to placing newspaper ads in September and October 2006. The content of these ads was not impartial because it included persuasive wording such as “Rebuilding Our Future,” “We need to act now to protect and preserve our harbor’s resources,” and “There is no time to waste.” This type of wording favored the bond measure and the ads, taken as a whole, clearly intended to generate votes for the measure.
- The port’s media consultant developed a strategic plan, *Rebuild Our Marine Terminal Campaign Plan*, with the goal to “Pass a November 2006 bond measure to fund the rebuild of the Port’s International Marine Terminal.” This plan provided information and strategies for organizing a citizens’ committee and guiding the committee in campaigning for the passage of the bond measure. In the plan, the consultant recommended a name for the committee: *Vote Yes to Rebuild Our Marine Terminal Committee*. Subsequent

¹ The 1993 letter cited two cases where the courts determined it was unlawful to spend public funds in connection with ballot measures: Porter v. Tiffany, 11 Or App 542 (1972) and Burt v. Blumenauer, 299 Or 55 (1985).

² Political advocacy means to promote or oppose a candidate, election petition or ballot measure.

publications and radio ad copy developed by the consultant for the campaign committee referenced the committee by this name.

Based on the examples described above, our review of the grant file and the port's disbursement requests to the department, we determined that grant funding was spent for promoting the bond measure. However, we could not determine how much of the grant paid for the advocacy campaign and how much paid for allowable information and education materials because the port's disbursement requests and the media consultant's invoices were not in sufficient detail.

We recommend department management determine how much of the grant was used for activities that promoted the bond measure and seek recovery of those funds. If the port cannot adequately account for the grant funds, department management should recover the full amount of the grant. **We also recommend** department management more carefully monitor grant applications to identify conflicts with state laws, and work with the applicants to resolve the conflicts or refrain from funding such projects.

Methodology

We reviewed the grant agreement and other relevant documentation, including agreements between the port and its consultant, materials produced by the consultant, the consultant's invoices and the port's grant reports and disbursement requests. We also interviewed department management and responsible staff. In addition, we reviewed the Elections Division's September 27, 2007, response to a citizen's complaint relating to the port, the Elections Division's publication on political campaigning, and the October 5, 1993, letter from the Attorney General.

We appreciate your staff's time and cooperation during this review. If you have any questions, please contact me at (503) 986-2351.

Sincerely,
OREGON AUDITS DIVISION

V. Dale Bond, CPA, CISA, CFE
Audit Manager

VDB:brk

cc: Lynn Schoessler, Deputy Director
Gloria Muzquiz, Infrastructure Finance Division Manager
Scott Harra, Director, Department of Administrative Services