



April 16, 2014

TOTAL SAVINGS SUMMARY

This is a summary of savings from operational costs, change order, and avoiding the general contractor markup as provided in previous reports. This analysis takes into account the cost of the construction management services in FY12 post re-organization:

1. Annual operating savings = \$736,022
2. Change order savings for completed projects = \$2,587,143 million
3. General contractor markup cost avoidance = \$6,671,909

Total savings is \$9,995,074 since the reorganization. This savings allows additional major maintenance projects to be completed. Note: the annual savings of \$736,022 is only included once in the above number even though this analysis spans multiple fiscal years.

Calculation of Savings

1. Annual Operating Savings

$$\text{FY12 budget } (\$1,757,740) - \text{FY13 budget } (\$1,021,718) = \$736,022$$

2. Change Order Savings for Complete Projects

FY:	Total Dollars	% Change Orders	Change Order Value	Change Order %
FY09	\$ 51,940,381	3.16%	\$ 1,641,316	
FY10	\$ 59,358,973	8.98%	\$ 5,330,436	
FY11	\$ 98,618,826	10.06%	\$ 9,921,054	
	\$ 209,918,180		\$ 16,892,806	8.05%
FY12	\$ 5,354,706	2.02%	\$ 108,165	
FY13	\$ 57,965,027	5.81%	\$ 3,367,768	
FY14 (FYTD)	\$ 27,776,855	4.58%	\$ 1,272,180	
	\$ 91,096,588		\$ 4,748,113	5.21%

FY09 - FY11 Average Change Order %: 8.05%

FY12 - FY14 Average Change Order %: 5.21%

Difference: 2.84%

Savings: FY12 - FY14

$$\$91,096,588 \times .0284 = \$2,587,143$$

3. General Contractor Markup Cost Avoidance: Implementing Construction Management (CM) services contracts avoids the general contractor supervision and markup of 15%ⁱ

Total FY13 Payments	\$ 98,333,149.79
Total FY14 Payments	\$ 48,816,317.34
Total	\$147,149,467 (rounded)ⁱⁱ

<u>Breakdown of Total</u>		<u>%</u>
Design Professional	\$ 6,570,677	4.47%
Construction Manager Fees	\$ 7,446,164	5.06%
Trades Contractor Costs	\$ 80,002,415 ⁱⁱ	54.37%
Prime Contract on Phase I ICIW & ISP	\$ 52,568,828	35.72%
Printing, insurance, DAS cost, and other expenditures	\$ 561,383	0.38%

Without implementing CM services contracts, the estimated Trades Contractor costs would have been 15% higher or \$94,120,488 ($\$80,002,415 / 85\% = \$94,120,488$)

Savings realized during FY13 and FY14 with CM services contracts:

Estimated Trades Contractor Costs Prior to CM services contracts:	\$94,120,488
Actual Trades Contractor Costs using CM services contracts:	<u>\$80,002,415</u>
	Difference \$14,118,073
	Less Construction Manager Fees \$ <u>7,446,164</u>
	Estimated Savings to Date \$ 6,671,909

ⁱ RS Means is a construction industry guide for industry cost information

ⁱⁱ This number takes into account less the 15% markup

From: "Robinson, Ron [LEGIS]" <Ron.Robinson@legis.iowa.gov>
 Subject: RE: request - for I3 information
 Date: April 14, 2014 9:34:49 AM CDT
 To: "Godes, Bridget [LEGIS]" <Bridget.Godes@legis.iowa.gov>, "Ferguson, Dwayne [LEGIS]" <Dwayne.Ferguson@legis.iowa.gov>
 Cc: "Petersen, Janet [LEGIS]" <Janet.Petersen@legis.iowa.gov>, Matt McCoy <realmccoy@me.com>, "Schoenjahn, Brian [LEGIS]" <Brian.Schoenjahn@legis.iowa.gov>, "Cook, Ed [LEGIS]" <Ed.Cook@legis.iowa.gov>, "Lyons, Holly [LEGIS]" <Holly.Lyons@legis.iowa.gov>

1 Attachment, 19 KB

Bridget,

Below is the listing of all payments made to the nine companies involved with construction management since 1/1/2011 and last Friday.

Company	Vend. Num.	Payments
Ryan Company:	00003035285	\$ 1,233,763.14
Story Construction:	00002110695	\$ 1,046,679.61
Samuels Group:	00003033402	\$ 3,275,477.24
DCI Group:	00003025029	\$ 1,845,153.50
Weitz:	00002106600	\$ 329,158.30
JE Dunn:	00003043944	\$ 569,404.14
Taylor Ohde Kitchell:	00003000309	\$ 1,919,276.18
GTG:	00002097497	\$ 22,531.36
Heery International:	00002138660	\$ 1,515,967.79
		<u>\$ 11,757,411.26</u>

Payments are 1/1/2011 - 4/11/2014

If work was done besides construction management, it is included at this time.

Ron

From: Robinson, Ron [LEGIS]
 Sent: Monday, April 14, 2014 8:19 AM
 To: Godes, Bridget [LEGIS]; Ferguson, Dwayne [LEGIS]
 Cc: Petersen, Janet [LEGIS]; Matt McCoy; Schoenjahn, Brian [LEGIS]; Cook, Ed [LEGIS]; Lyons, Holly [LEGIS]
 Subject: RE: request - for I3 information

Bridget,

We should have the total of all payments made to the vendors before your deadline. I am not sure how long it will take to review each payment to make sure it is related to the construction management work.

Ron

From: Robinson, Ron [LEGIS]
 Sent: Friday, April 11, 2014 6:55 PM
 To: Godes, Bridget [LEGIS]; Ferguson, Dwayne [LEGIS]
 Cc: Petersen, Janet [LEGIS]; Matt McCoy; Schoenjahn, Brian [LEGIS]; Cook, Ed [LEGIS]; Lyons, Holly [LEGIS]

RFP0211335248

Project programming, preliminary design, cost estimating, and related services.

The Iowa Department of Administrative Services DAS is accepting proposals on a time and materials basis to provide project programming, preliminary design, cost estimating, and related services.

The selection of the successful firm will be based upon:

1. Qualifications and expertise in construction project programming, preliminary design, cost estimating, and related services.
2. Immediate availability.
3. Ability to successfully meet aggressive project delivery dates.
4. Number of qualified staff that will be assigned to project.
5. Staff/classification rates of pay and any/all billed cost rates.
6. And, any other qualification identified in DAS's Administrative Rules.

Proposals shall be no more than eight 8 pages printed front/back or sixteen 16 pages printed on one side. Proposal submittal date is on/before 12:00 noon on Monday, July 11, 2011.

Contact for additional information:

Doug Woodley

515-281-8388

doug.woodley@iowa.gov.

Your sealed proposal shall be addressed to the attention of

Doug Woodley

Iowa Department of Administrative Services

Hoover Building- Level A

1305 East Walnut Street

Des Moines, IA 50319-0105

Contact Information

Name: Doug Woodley
PUB SER EX 5

Email: Doug.Woodley@iowa.gov

Phone: 515 281-8388

Valid Date: From: Jul 5, 2011 — TUESDAY
Until: Jul 11, 2011 — MONDAY
End Time: 12:00 PM

MEMORANDUM

CONFIDENTIAL: ATTORNEY-CLIENT PRIVILEGE

TO: Rita Grimm & Tim Whipple, Iowa Economic Development Authority
FROM: Assistant Attorney General Adam Humes, Iowa Department of Justice
SUBJECT: Energy Loan Fund
DATE: August 8, 2013

ISSUE PRESENTED

Did the Iowa Department of Administrative Services (DAS) violate U.S. Department of Energy (DOE) requirements when it selected itself as a recipient of a loan that was funded with federal funds?

SHORT ANSWER

Yes, DAS likely violated DOE's requirements when it selected itself as a recipient of a loan that was funded with federal funds.

ANALYSIS

I. Background.

Prior to 2011, the Iowa Office of Energy Independence (OEI) administered the Energy Loan Fund ("the Fund"). The Fund provides loans to "the state, state agencies, political subdivisions of the state, school districts, area education agencies, community colleges, and nonprofit organizations to implement energy management improvements or energy analyses." Iowa Code §473.19 (2013).

The Fund received a \$12.5 million DOE grant under the 2009 American Recovery and Reinvestment Act. The DOE grant is governed by special terms and conditions as well as DOE Assistance Regulations.

In 2011, Iowa enacted legislative changes that reorganized the Iowa Department of Economic Development into the Iowa Economic Development Authority (IEDA). As part of this reorganization, IEDA assumed OEI's duties related to the Fund. In September 2011, IEDA signed a Memorandum of Understanding (MOU) with DAS, under which DAS would control the Fund.

To date, DAS has made approximately fifteen loans to eligible government and nonprofit entities. One of those loans resulted from DAS—as administrator of the fund financed with federal money—selecting itself as a loan recipient. On June 21, 2012, DAS signed a Loan and Disbursement Agreement. Under the Agreement, DAS was both the borrower and the lender.

II. Analysis of DOE Regulations.

By selecting itself for an award and signing a loan agreement with itself, DAS likely violated DOE standards for the use of the federal money contained in the Fund. The terms and conditions of the DOE award incorporate DOE's administrative rules. The DOE regulations on grants and cooperative agreements with state and local governments contain restrictions on "real or apparent" conflicts of interest. 10 C.F.R. § 600.236(b)(3). The regulations prohibit an individual or entity from participating in the selection, award, or administration of a contract that uses federal funds if the individual or entity is employed by or has another interest in the recipient. 10 C.F.R. § 600.236(b)(3). The

regulations also require compliance with state laws on awarding and administering subgrants. 10 C.F.R. § 600.237(a).

Consistent with these regulations, DOE's informal guidance advises States to create standards, rank applicants, and make selections in accordance with express criteria established by the States. Furthermore, under both Iowa and federal law—for purposes of competitive bidding—a party involved with creating selection criteria or participating in the selection process for a government contract is typically precluded from competing for that government contract. *See, e.g., Medco Behavioral Care Corp. of Iowa v. State, Dep't of Human Servs.*, 553 N.W.2d 556, 564-65 (Iowa 1996).

In this situation, DAS selected itself for an Energy Fund loan using only staff from DAS to initiate and approve the transaction. And the DAS loan agreement contained an origination fee, paid to DAS, as part of the transaction. (The origination fee provision was a standard provision in all the loan agreements). Even though no one involved with the DAS loan received a direct personal payment, the direct benefit to DAS—the employer of those responsible for the selection, awarding, and contracting—is likely sufficient to constitute a violation of DOE's conflict of interest regulations. *See* 10 C.F.R. § 600.142; 10 C.F.R. § 600.236(b)(3); *see also Medco Behavioral Care Corp. of Iowa v. State, Dep't of Human Servs.*, 553 N.W.2d 556, 564-65 (Iowa 1996).

RECOMMENDATION

In order to minimize the impact of the selection and be candid with DOE, I recommend the following actions: (1) repay, with purely State money, any funds withdrawn from the State Energy Revolving Loan Fund as part of the DAS Loan; and

(2) notify DOE about the DAS Loan and about all corrective measures the State has taken or will take.