

Minnesota Department of Transportation Cultural Resource Program

Special Review

April 1995

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Financial Audit Division
Office of the Legislative Auditor
State of Minnesota

95-18

SUMMARY

State of Minnesota

Office of the Legislative Auditor

Centennial Office Building • St. Paul, MN 55155

612/296-4708

Minnesota Department of Transportation

Special Review: Cultural Resource Program

Public Release Date: April 28, 1995

No. 95-18

The Office of the Legislative Auditor has conducted a special review of the selection and utilization process for archaeological contractors used by the Minnesota Department of Transportation. We focused on a potential conflict of interest regarding Mr. G. Joseph Hudak, an employee of the department. We conducted the review at the request of a member of the Minnesota House of Representatives and the Commissioner of the Minnesota Department of Transportation.

Our objectives were to answer the following questions:

- Did the Department of Transportation properly resolve the potential conflict of interest between Mr. G. Joseph Hudak and certain contractors?
- Is there evidence that some T-contract vendors benefited from their relationships with Mr. Hudak in regard to work received through Mn/DOT's selection process?
- Is there evidence that Mr. Hudak received a financial gain or benefit from his involvement with certain T-contractors used for cultural resources?

Conclusions:

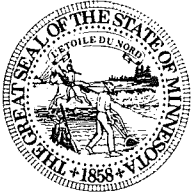
We conclude that the Minnesota Department of Transportation (Mn/DOT) did not properly document the resolution of Mr. Hudak's potential conflict of interest with certain T-contract vendors. We believe that Mr. Hudak had a potential conflict of interest with the firms that subcontracted with Foth & Van Dyke, a firm that employs Mr. Hudak's brother. Although various meeting notes indicate that Mr. Hudak provided proper notification, Mn/DOT did not remove him from the selection committee for the T-contract vendors. In addition, Mn/DOT did not maintain documentation showing the criteria or rationale for selecting certain vendors.

We did not arrive at a definitive conclusion on whether any T-contract vendors benefited from Mn/DOT's decision not to remove Mr. Hudak from the contract selection involving firms with which he had an acknowledged association. We found no direct evidence to indicate that Mr. Hudak was able to extend any advantage to those firms that subcontracted with Foth & Van Dyke. However, our analysis showed mixed indications as to whether the T-contractors with connections to Mr. Hudak have acquired more favorable status with the department.

We found no evidence that Mr. Hudak received any benefits or financial gain from the cultural resource vendors. Based on the evidence obtained, we found no financial relationship between Mr. Hudak and Foth & Van Dyke or with those vendors that subcontracted with Foth & Van Dyke.

Contact the Financial Audit Division for additional information.

296-1235



STATE OF MINNESOTA

OFFICE OF THE LEGISLATIVE AUDITOR

CENTENNIAL BUILDING, ST. PAUL, MN 55155 • 612/296-4708

JAMES R. NOBLES, LEGISLATIVE AUDITOR

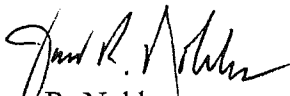
Members of the Legislative Audit Commission


Mr. James Denn, Commissioner
Minnesota Department of Transportation

The Office of the Legislative Auditor has conducted a special review of the selection and utilization process for archaeological contractors used by the Minnesota Department of Transportation. We focused on a potential conflict of interest regarding Mr. G. Joseph Hudak, an employee of the department. In addition, we reviewed the work allocated to consultants under "T-contracts" to determine if any private company benefited from its relationship with Mr. Hudak.

We conducted the review in response to requests from a member of the Minnesota House of Representatives and the Commissioner of the Minnesota Department of Transportation. This report presents the results of our review.

We received full cooperation from employees of the Department of Transportation, including Mr. G. Joseph Hudak.


James R. Nobles
Legislative Auditor


John Asmussen, CPA
Deputy Legislative Auditor

Report signed on: April 24, 1995

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Audit Participation

The following members of the Office of the Legislative Auditor prepared this report:

John Asmussen, CPA	Deputy Legislative Auditor
Renee Redmer, LPA	Audit Manager
Marla Conroy, CPA	Investigator
Rhonda Regnier, CPA	Senior Auditor
Susan Rumpca, CPA	Senior Auditor

Exit Conference

The following Mn/DOT representatives attended the exit conference on April 18, 1995:

James Denn	Commissioner
Ed Cohoon	Deputy Commissioner
Darryl Durgin	Deputy Commissioner - Chief Engineer
John Sandahl	Director, Engineering Services
Gerald Rohrbach	Director, Office of Technical Support
Bob McFarlin	Director, Public Affairs
Ronald Gipp	Audit Director
Joseph Hudak	Senior Transportation Planner - Archeology
Donald Mueting	Attorney General Representative

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This report addresses questions regarding the Minnesota Department of Transportation's (Mn/DOT) process for selecting and utilizing archeologists. Mn/DOT uses archeologists in its cultural resource reviews, which are mandated by law. A member of the Minnesota House of Representatives and the commissioner of Mn/DOT asked the Office of the Legislative Auditor to review the process by which Mn/DOT contracts for archeological services to determine if any improprieties exist. We were specifically asked to address a potential conflict of interest regarding Mr. G. Joseph Hudak, the project manager for the cultural resource contracts at Mn/DOT.

Background

Mn/DOT contracts for archeology services to determine whether cultural artifacts are present at proposed highway construction sites. When cultural artifacts are discovered, Mn/DOT either revises its construction plans to avoid the resource site or it contracts for excavation of the artifacts. Table 1 shows cultural resource expenditures recorded on the statewide accounting system for fiscal years 1993, 1994, and 1995.

The following Mn/DOT employees are primarily involved in the cultural resource program:

- Mr. Darryl Durgin is the Mn/DOT Deputy Commissioner in charge of various divisions within Mn/DOT, including Engineering Services. Mr. Durgin gives final approval of cultural resource consultant selections.
- Mr. John Sandahl is the Director/Assistant Chief Engineer in the Engineering Services Division. Mr. Sandahl is responsible for several program areas including the cultural resource program. Mr. Sandahl approves cultural resource project schedules and selected contractors. He also authorizes the cultural resources contracts on behalf of the department.
- Mr. Richard McAtee is the Pre-Design Liaison Engineer within the Engineering Services Division. Mr. McAtee reviews the Mn/DOT district offices' requests for cultural resource projects and develops recommendations for Mr. Sandahl's approval.
- Mr. G. Joseph Hudak is the Planner Senior, Transportation-Archaeology, within the Engineering Services Division. Mr. Hudak is the project manager for the cultural resource program and reports directly to Mr. McAtee. Mr. Hudak was first employed by Mn/DOT in August of 1992.
- Mr. Gabe Bodoczy is the Consultant Agreements Engineer in the Consultant Agreements Service Unit. Mr. Bodoczy ensures proper contracting procedures are followed including selection of contractors and compliance with applicable contract terms and conditions.

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TABLE 1: Summary of Cultural Resource Expenditures

	<u>FY 1993</u>	<u>FY 1994</u>	<u>FY 1995</u>	<u>Total</u>
<u>Contractors with connection to Mr. Hudak:(1)</u>				
Loucks & Associates		\$1,478,231	\$ 76,911	\$1,555,142
BRW, Inc.	\$200,000	340,280	490,240	1,030,520
Leech Lake Tribal Council		97,800	474,225	572,025
The 106 Group		113,582	425,730	539,312
Foth & Van Dyke (2)			21,033	21,033
<u>Other Contractors:</u>				
Minnesota Historical Society	662,985	886,727	637,473	2,187,185
Woodward Clyde		174,087	455,455	629,542
State Historic Preservation Office			400,000	400,000
University of Minnesota Duluth		47,527	191,226	238,753
Hess Roise Historical			220,835	220,835
Gemini	39,185	35,012	12,931	87,128
Institute for Minnesota Archeology			86,000	86,000
Mississippi Valley Archeology Center		60,317		60,317
Boise Forte Reservation			40,000	40,000
Mr. Ed Hajic	8,787			8,787
Beer Creek Archeology		19		19
Total (3)	<u>\$910,957</u>	<u>\$3,233,582</u>	<u>\$3,532,059</u>	<u>\$7,676,598</u>

Notes:

- (1) Mr. Hudak's connection to these firms is that his brother is employed by Foth & Van Dyke, a subcontractor for the firms.
- (2) Mr. Hudak stated that he was not involved in selection or awarding of the contract with Foth & Van Dyke.
- (3) Expenditure totals include expenditures and obligations as of December 31, 1994.

Source: Statewide Accounting System.

Several federal and state laws require that transportation projects be planned and constructed to avoid, as much as possible, any adverse effects on properties of archaeological, architectural, or cultural significance. For federally funded projects, the State Historic Preservation Office (SHPO) and the Federal Highway Administration (FHWA) require cultural resource reviews as part of the project development process. Between 1968 and 1993, Mn/DOT contracted primarily with the Minnesota Historical Society for archaeological reviews on proposed highway projects.

For all federally funded projects, Mn/DOT submits project requests to SHPO. According to Minn. Stat. Section 138.081, the Minnesota Historical Society is designated as the state agency to administer the SHPO. SHPO identifies those properties having archaeological, historical, architectural, and cultural significance. SHPO determines whether or not the construction project will have an effect upon each of those properties, and, if so, whether that effect will be adverse or not adverse. SHPO submits its decisions to the Federal Highway Administration. If a project is determined to have an adverse effect upon a property, the SHPO, FHWA, and Mn/DOT prepare a Memorandum of Agreement stipulating the actions to be taken to mitigate the adverse effect. After Mn/DOT receives the necessary approvals, it proceeds with the construction project.

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In December 1990, Mn/DOT established an eight member task force to review the State Historic Preservation Office (SHPO) clearance process. The task force made 24 recommendations including:

- hiring a full-time project manager in Mn/DOT central office;
- adding ten archaeologists to the Minnesota Historical Society (MHS) Trunk Highway Archaeological Reconnaissance Study (THARS) staff; and
- developing open-ended contracts and agreements with qualified consultants for archaeological assistance.

The task force stated that the last recommendation depended on the implementation of other staffing recommendations at MHS and may only be needed for timely or emergency work.

The task force forwarded its recommendations to a Mn/DOT management-level steering committee in May 1991. The steering committee concurred with 19 of the recommendations, including the hiring of a project manager and development of open-ended consultant contracts for archaeological assistance. However, it did not concur with five of the task force recommendations, such as hiring ten archaeologists at the Minnesota Historical Society. The steering committee's explanation for its opposition to this recommendation was that additional staff did not assure the timely delivery of Mn/DOT projects.

In August 1992, Mn/DOT hired Mr. Hudak as its full-time project manager for cultural resource projects. In early 1993, Mn/DOT implemented the task force and steering committee's recommendations regarding development of open-ended contracts and agreements with qualified consultants. At that time, Mn/DOT published a request for proposals for "archaeological survey of prehistoric and historic sites, historical research, geomorphologic studies, and/or archaeological data recovery."

To help it implement the open-ended contract concept, Mn/DOT decided to use master contracts or "T-contracts." This allowed Mn/DOT to stipulate a maximum dollar amount the department anticipated spending for cultural resource services over a three-year period (1993-1996) and assign specific projects to the T-contractors on a work order basis. The contractors' tasks and the agreed upon amount for the specific projects are set forth in project work orders. The Department of Administration considers master contracts an acceptable method for obtaining required professional/technical services.

The deadline for contractors to submit proposals to be considered for the T-contract list was April 26, 1993. In response, Mn/DOT received 14 proposals. The Minnesota Historical Society did not submit a proposal. The Consultant Agreements Unit recommended a five-member selection committee, consisting of employees from the central and district offices, to review the proposals. Mr. Hudak was one of the five members on the selection committee. Mr. John Sandahl, Director of Engineering Services, approved the members of the selection committee.

The selection committee reviewed and scored each proposal. The committee's results were tabulated and its recommendations forwarded to Mr. John Sandahl and Mr. Darryl Durgin,

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Deputy Commissioner, for approval. Mn/DOT established T-contracts with six private firms and the Minnesota Historical Society. The individual contracts ranged from \$500,000 to \$1,100,000. Table 2 illustrates the various contractors and their work order allocations under the T-contract process from September 1993 to February 1995.

Mn/DOT's district offices submitted projects that required cultural resource review. Mr. McAtee and Mr. Hudak prepared a listing of all projects that required SHPO clearance. Mr. McAtee, Mr. Hudak and Mr. Bodoczy then reviewed the projects and prepared a project schedule. They also recommended vendors for these specific projects. Mn/DOT's Consultant Agreements Unit maintained a list of contractors and projects awarded. Mn/DOT staff indicated the vendor selection was based on several factors, including contractor's expertise, site location, and work load. The work plan and recommended contractors were forwarded to Mr. Sandahl for review and approval. The selected consultants prepared proposals and budget estimates for various work projects. Mr. McAtee and Mr. Hudak, with assistance from Mr. Bodoczy, reviewed the work proposals, met with the contractors to negotiate the final budget estimates, and developed final work orders.

Mn/DOT required monthly reporting and invoicing for the work completed. Vendors generally submitted narrative summaries of work completed along with progress reports and invoices. Mr. Hudak was responsible for ensuring that the vendor completed the work or deliverables as outlined in the contract. Mr. Hudak also authorized the progress reports that support the payment of the invoice. The Consultant Agreements Unit authorized and paid the vendor invoices for archeological investigations.

Table 2: Summary of T-Contracts and Work Orders

<u>Contractors with Connection to Mr. Hudak (1)</u>	<u>T-contract Amount</u>	<u>Number of Work Orders</u>	<u>Total Work Order Amount</u>	<u>Percent Allocated</u>	<u>Balance to be Allocated</u>
Loucks & Associates, Inc.	\$500,000	6	\$484,277	97%	\$15,723
BRW, Inc.	500,000	9	474,784	95%	25,216
The 106 Group, Ltd. (2)	<u>500,000</u>	<u>13</u>	<u>500,943</u>	<u>100%</u>	<u>(943)</u>
Subtotal	<u>\$1,500,000</u>	<u>28</u>	<u>\$1,460,004</u>	<u>97%</u>	<u>\$39,996</u>
<u>Other Contractors</u>					
Woodward Clyde Consultants	500,000	12	410,483	82%	89,517
University of Minnesota Duluth	500,000	4	344,010	69%	155,990
Gemini Research	500,000	1	16,969	3%	483,031
Minnesota Historical Society	<u>1,100,000</u>	<u>30</u>	<u>792,232</u>	<u>72%</u>	<u>307,768</u>
Subtotal	<u>2,600,000</u>	<u>47</u>	<u>1,563,694</u>	<u>60%</u>	<u>1,036,306</u>
Total	<u>\$4,100,000</u>	<u>75</u>	<u>\$3,023,698</u>	<u>74%</u>	<u>\$1,076,302</u>

Notes:

- (1) Mr. Hudak's connection to these firms is that his brother is employed by Foth & Van Dyke, a subcontractor for the firms.
- (2) According to the T-contract, it is the contractor's responsibility to determine if a proposed work order will exceed the \$500,000 limit. Work performed over that amount will be the responsibility of the contractor.

Source: Mn/DOT Consultant Services Unit T-contract summary for the period of September 1993 through February 22, 1995.

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Mr. G. Joseph Hudak was involved in the critical aspects of the T-contract process. He was involved in both the selection of contractors and the allocation of work orders to the T-contract vendors. Mr. Hudak works mainly on the technical aspects of the cultural resource program and acts as the program manager. Table 3 shows Mr. Hudak's and other Mn/DOT employees' responsibilities in the T-contract process.

TABLE 3: Contract Duties

<u>Critical Contracting Duties</u>	<u>Mn/DOT Employee Responsibilities</u>
Preparation of the technical aspects of the Request for Proposals	Mr. Hudak, Planner-Senior, prepared the technical aspects of the request for proposals (RFPs). The RFPs were also reviewed by Consultant Services Unit.
Evaluation of T-contract proposals	Mr. Hudak and four other Mn/DOT employees from central and district offices evaluated proposals.
Recommendation of T-contractors	Mr. Hudak and four other Mn/DOT employees from central and district offices recommended T-contractors.
Recommend contractor for specific work orders	Mr. Hudak, Mr. McAtee, Pre-Design Liaison Engineer, and Mr. Bodoczy, Consultant Agreements Engineer, made recommendations to Mr. Sandahl, Transportation Division Engineer.
Mn/DOT's authorized signature on cultural resource contracts and work orders	Mr. Sandahl signed all cultural resource contracts and work orders.
Monitoring of technical aspects of contract performance and deliverables	Mr. Hudak monitored projects to ensure completion of work required in the contract.
Payment authorization	Mr. Hudak approved the invoiced work effort and recommended payment. Mr. Hudak approved the monthly progress reports. These reports substantiate completion of contracted work in accordance with contract terms. The Consultant Agreements Unit reviewed invoices and initiated payments based on recommendations of Mr. Hudak, the project manager. The Consultant Agreements Unit also ensured compliance with the contractual terms.

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Mr. Hudak's brother works for Foth & Van Dyke, a company that subcontracts with Loucks & Associates, Inc., BRW, Inc., The 106 Group, Ltd., and the Leech Lake Tribal Council. Mn/DOT was aware of this relationship before the selection of T-contract vendors.

Mr. Hudak disclosed other relationships to these and other firms including the following:

- BRW, Inc. employed Mr. Hudak from 1985 to 1990. Mr. Hudak was employed at another firm (Malcom Pirnie, Inc.) from 1990 until his employment with Mn/DOT.
- The 106 Group, Ltd. is owned by a former BRW employee. Mr. Hudak stated he was not employed at BRW, Inc. when BRW, Inc. hired this individual.
- Loucks and Associate's owner and employees have other connections to Mr. Hudak. Mr. Hudak disclosed that he and Mr. Loucks served the same township board, but in different capacities. In addition, Loucks & Associates employed several former colleagues of Mr. Hudak from BRW, Inc. and Malcom Pirnie, Inc. One of these employees was Dr. Henning, who was also a professor at the University of Nebraska where Mr. Hudak obtained his graduate degree. Dr. Henning is currently part owner of Rivercrest Associates, Inc. Rivercrest Associates, Inc. is not under a T-contract with Mn/DOT at this time.
- SHPO employed an archeologist who Mr. Hudak said attended the University of Nebraska, and they have a professional relationship.
- MHS employed staff who Mr. Hudak said he had worked with in the past.

Objectives

We asked the following questions regarding the cultural resource contracts:

- Did the Department of Transportation properly resolve the potential conflict of interest between Mr. G. Joseph Hudak and certain contractors?
- Is there evidence that some T-contract vendors benefited from their relationships with Mr. Hudak in regard to work received through Mn/DOT's selection process?
- Is there evidence that Mr. Hudak received a financial gain or benefit from his involvement with certain T-contractors used for cultural resources?

Methodology

We examined documents and other materials related to the cultural resource contracts, including internal budget reports from the Consultant Services Unit, vendor contracts, invoices, and correspondence files. We discussed the contract process for archeological services with various Mn/DOT staff in the Pre-Design Engineering Unit and the Consultant Agreements Unit. We

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reviewed articles of incorporation at the Office of the Secretary of State to review corporate officers or other authorized agents. We specifically examined documents regarding the notification and resolution process related to Mr. Hudak's potential conflicts of interest.

We took sworn testimony from Mr. Hudak on April 3, 1995. Because of the potential risk associated with financial transactions between Mr. Hudak and contract vendors, we subpoenaed Mr. Hudak's personal bank records. We searched the records for any evidence of improper transactions. We also discussed the source of receipts and disbursements with Mr. Hudak to ensure the propriety of these transactions.

Conclusions

Did the Department of Transportation properly resolve the potential conflict of interest between Mr. G. Joseph Hudak and certain contractors?

As a result of our review, we conclude that Mn/DOT did not properly document the resolution of Mr. Hudak's potential conflict of interest with certain T-contract vendors. We believe that Mr. Hudak had a potential conflict of interest with the firms that subcontracted with Foth & Van Dyke. Mr. Hudak's brother was employed by Foth & Van Dyke. Mr. Hudak testified that he informed his supervisor and other Mn/DOT staff on many occasions, either in writing or verbally, that he had a potential conflict of interest with these vendors. Although, various meeting notes showed that Mr. Hudak provided proper notification, Mn/DOT did not remove him from the selection committee for the T-contract vendors.

The other relationships disclosed by Mr. Hudak did not in and of themselves pose a conflict of interest. However, it is important for Mn/DOT to be aware of these types of relationships and assess the potential for conflicts of interest on a case-by-case basis.

The state's conflict of interest law defines conflicts and establishes resolution requirements. Minn. Stat. Section 43A.38, Subd. 5, provides that certain actions by an employee shall be deemed a conflict of interest and subject to procedures regarding resolution of conflicts. These actions include:

use or attempted use of the employee's official position to secure benefits, privileges, exemptions, or advantages for the employee or the employee's immediate family, or an organization with which the employee is associated, which are different from those available to the general public.

As discussed later, we found no direct evidence that Mr. Hudak had used or attempted to use his position to secure benefits for himself or his immediate family. The potential for a real or apparent conflict exists, however, with the firms that subcontract with Foth & Van Dyke.

Accordingly, we believe that Mn/DOT should have followed the statutory provisions regarding the resolution of conflicts of interest. Minn. Stat. Section 43A.38, Subd 7, provides:

If the employee, appointing authority or commissioner determine that a conflict of interest exists, the matter shall be assigned to another employee who does not have a conflict of interest. If it is not possible to assign the matter to an employee who does not have a conflict of interest, interested persons shall be notified of the conflict and the employee may proceed with the conflict.

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Mn/DOT's Code of Ethics states that employees are required to notify management when they personally are involved in a real or possible conflict of interest, or when they become aware of the perception of the existence of such a personal conflict. Minn. Stat. Section 43A.38, Subd. 6, also provides that when an employee believes the potential for a conflict of interest exists, it is the employee's duty to avoid the situation.

Mn/DOT had other employees assigned to the contract selection committee. Despite his potential conflicts of interest, the department allowed Mr. Hudak to participate in the selection process. The proposals received consistent ratings from each selection committee member. Mr. Hudak properly notified Mn/DOT of his personal and professional relationships with the T-contract vendors. We think that Mr. Hudak should have been removed from the selection process because of his potential conflicts of interest. Mn/DOT should structure work assignments so that another employee allocates work orders and reviews and approves contractor progress reports when a potential conflict of interest exists.

Mn/DOT did not properly document the contractor selection process when awarding work orders. Mr. McAtee, Mr. Hudak and Mr. Bodoczy allocated the work to the T-contractors based on contractor availability and experience. However, the documentation did not adequately show the criteria or rationale for selecting certain vendors. Although, Mn/DOT's T-contract procedures state that the Consultant Agreements Unit should select T-contract vendors, we found that Mr. McAtee and Mr. Hudak were also involved in the selection process. The T-contract guidelines also provide that selections will be rotated among qualified firms to the extent possible. The department needs to document its decision making process in authorizing vendor work orders to ensure that work is allocated on a fair and rationale basis.

Recommendations

- *When a potential conflict of interest exists, Mn/DOT should remove Mr. Hudak from the cultural resource contract selection process, including project allocations under the T-contracts. The selection committee may request technical expertise from Mr. Hudak as necessary. Mn/DOT should also involve another employee in the review of progress reports.*
- *Mn/DOT should develop more definitive guidance or criteria when allocating work orders to T-contract vendors. In addition, the department should document its rationale for the allocation of work to the T-contractors.*

Is there evidence that some T-contract vendors benefited from their relationships with Mr. Hudak in regard to work received through Mn/DOT's selection process?

We did not arrive at a definitive conclusion on whether any T-contract vendors benefited from Mn/DOT's decision not to remove Mr. Hudak from the contract selection involving firms with which he had an acknowledged association. We found no direct evidence to indicate that Mr. Hudak was able to extend any advantage to those firms that subcontracted with Foth & Van Dyke. However, an analysis of Table 2 produces mixed indications as to whether the T-contractor with connections to Mr. Hudak have acquired more favorable status with the department.

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We searched for any possible evidence that Mr. Hudak had extended special advantages or benefits to the vendors that subcontracted with Foth & Van Dyke. We reviewed the detailed documentation in the department, interviewed department employees, and took sworn testimony from Mr. Hudak. Our search did not produce any direct evidence that these firms had benefited from their relationship to Mr. Hudak.

Table 2 shows the allocation of T-contracts awarded to each vendor and the extent to which specific work orders have been granted to the vendors. Mr. Hudak was allowed to participate in rating the original T-contract proposals and to award contract amounts to the vendors. Table 2 shows that the three firms with the connection to Mr. Hudak received the same awards of \$500,000 as other private contractors. Thus, it does not appear that these vendors received a disproportionate amount of the T-contract awards.

On the other hand, the three firms that subcontracted with Foth & Van Dyke were granted work orders at a higher dollar percentage than the other vendors. Table 2 illustrates that the three firms that subcontracted with Foth & Van Dyke have been awarded work orders that comprise between 95 percent and 100 percent of their T-contract allocation. The other firms had received work orders that ranged from 3 percent to 82 percent of their T-contract allocations. This correlation raises the appearance that the vendors with connections to Mr. Hudak have benefited by receiving work sooner than the other vendors.

We could not determine the reason for this correlation and requested an explanation from Mn/DOT. Mn/DOT staff explained that the work was allocated based on the contractor's staff size and experience. Loucks & Associates, BRW, Inc., and The 106 Group, Ltd. are larger firms with the resources to manage more projects. Mn/DOT staff also indicated the department has assigned work under contracts other than the T-contracts to some of these other vendors. It considers their other workload when allocating work orders under the T-contract process.

Mn/DOT emphasized that Mr. Hudak did not have sole decision making authority for selecting the T-contract vendors or assigning work orders. He was a participant in the process, but other Mn/DOT employees also participated in the selection process. Certainly, the group decision-making reduces the risk that Mr. Hudak would have wielded undue influence. However, because the department had other employees capable of making these decisions, we think it should have removed Mr. Hudak's authority to participate in the selection process. We think that he could have remained available as a technical advisor, but not been allowed to make or share the authority for the actual selections.

Is there evidence that Mr. Hudak received a financial gain or benefit from his involvement with certain T-contractors used for cultural resources?

We found no evidence that Mr. Hudak received any benefits or financial gain from the cultural resource vendors. We searched Mr. Hudak's personal bank account records for the period August 1992 through January 1995. Our search and analysis focused on other outside sources of income. During sworn testimony, we questioned Mr. Hudak regarding several transactions. Mr. Hudak provided adequate documentation and justification for the transactions reviewed. We found no financial relationship between Mr. Hudak and Loucks & Associates, BRW, Inc., The 106 Group, Ltd., or Foth & Van Dyke. Based on the evidence obtained, Mr. Hudak did not receive any personal benefits or financial gain.



Minnesota Department of Transportation

Transportation Building

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Saint Paul, Minnesota 55155-1899

April 21, 1995

Mr. James R. Nobles
Legislative Auditor
100 Centennial Building
658 Cedar Street
St. Paul, Minnesota 55155

Dear Mr. Nobles:

Thank you for the opportunity to respond to your special review of Mn/DOT's Archaeological contracting program.

I am pleased, but not surprised, that the results of your review indicate that neither Mr. Hudak nor the consulting firms with which he had a "relationship" benefitted from contracts with Mn/DOT. Mr. Hudak's personal and professional financial activities have both been subjected to intense scrutiny by your review and no evidence of impropriety has been found to exist. The confidence Mn/DOT has continually professed in Mr. Hudak's integrity has been bolstered by your report.

As we discussed at the exit conference, I continue to disagree with your use of percent of T-Contract allocated as an appropriate measure of work awarded to specific T-Contractors. A more appropriate measure is dollar volume of work awarded. Using this as a measure shows that contractors who had no "connection" to Mr. Hudak received more work than those that had a "connection". This is clearly shown by the subtotals on Table 2. Further, Gemini Research, the firm that your report indicates has been allocated only 3% of its T-Contract value, is a small firm that has other work under separate contract with Mn/DOT. It is our judgement that Gemini could not take on any more work at this time under the T-Contract.

With respect to the two recommendations made in your report, I offer the following response;

- 1) Consistent with applicable Minnesota Statutes and Mn/DOT's Code of Ethics, any employee who is found to be in a potential conflict of interest situation similar to that which Mr. Hudak brought to his supervisors attention will be removed from that potential conflict of interest situation. Doing so in Mr. Hudak's case would not have altered any outcome, but perhaps would have altered the perception of impropriety.
- 2) Mn/DOT will develop more definitive criteria for allocating work orders under T-Contracts, and document its rationale for allocation of work to T-Contractors.

The professional manner in which you and your staff conducted this review was greatly appreciated.

Sincerely,

James N. Denn
Commissioner