

**OKLAHOMA TOURISM AND RECREATION DEPARTMENT  
SPECIAL INVESTIGATIVE AUDIT  
FOR THE PERIOD JULY 1, 2001 THROUGH OCTOBER 10, 2002**

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STATE OF OKLAHOMA  
OFFICE OF THE AUDITOR AND INSPECTOR

Jeff A. McMahan  
State Auditor and Inspector

**TO THE HONORABLE DREW EDMONDSON**  
**OKLAHOMA ATTORNEY GENERAL**

Transmitted herewith is the Oklahoma Tourism and Recreation Department Special Investigative Audit Report for the period July 1, 2001 through October 10, 2002. The procedures we performed were conducted pursuant to 74 O.S.2001, §18f.

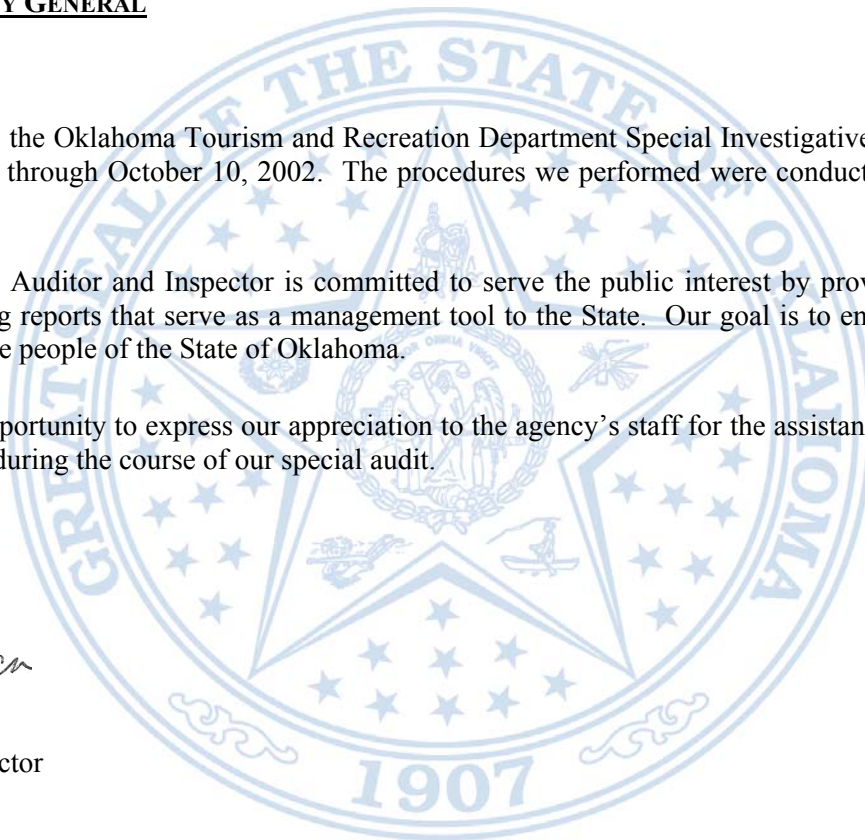
The Office of the State Auditor and Inspector is committed to serve the public interest by providing independent oversight and by issuing reports that serve as a management tool to the State. Our goal is to ensure a government that is accountable to the people of the State of Oklahoma.

We wish to take this opportunity to express our appreciation to the agency's staff for the assistance and cooperation extended to our Office during the course of our special audit.

Sincerely,

A handwritten signature in cursive script that reads "Jeff A. McMahan".

JEFF A. McMAHAN  
State Auditor and Inspector



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## *Executive Summary*

### **Bidding and Awarding of the Advertising Contract**

It appears the advertising contract awarded to Ackerman McQueen by the Oklahoma Tourism and Recreation Department (the Department) was bid competitively and awarded in compliance with the Oklahoma Central Purchasing Act.

### **Prepayment of Services**

The Department received invoices from Ackerman McQueen requesting payment on half of the project costs for both the aerial and ground filming prior to the actual performance of the service.

#### **Guardian Filming**

For the June 7, 2002, aerial filming, the warrant was not issued until July 10, 2002. It does not appear that a prepayment was made in this instance. However, the same warrant was also used to pay the first half of the costs related to the ground filming; that filming did not occur until July 15, 2002. Therefore, it appears that the Department made a prepayment of \$59,035 to Ackerman McQueen on July 10, 2002.

#### **Fall Filming**

The issue of whether or not a prepayment occurred in relation to the Fall 2002 filming project is not clear. The services were rendered to the Department on October 25 and 26, 2002. The first payment was made on the project October 25, 2002. It is debatable whether or not the Department had received sufficient services as of October 25, 2002, to justify paying \$138,588. This amount is 78% ( $\$138,588/\$177,488 = 78\%$ ) of the total estimated cost for the project; however, no evidence was provided to support the idea that the project was 78% complete at the time the warrant was issued.

#### **Weather Contingency Fee**

The task order included a provision for a weather contingency fee of \$38,735 per day. The Department paid \$14,061 in actual expenses for out-of-pocket costs as well as a one-time fee of \$38,735 related to the weather delay. It is our opinion that the agency should only have paid the \$14,061 for actual expenses. It appears no services were received to substantiate the one-time charge of \$38,735.

#### **Vendor Travel Costs**

The Department requested a waiver from the Department of Central Services pertaining to section 14.14 of the contract that required vendor travel costs to be reimbursed at the rates established in the State Travel Reimbursement Act. The Department requested authorization to apply 74 O.S.2001, §500.9A, which allows the Department to reimburse actual and necessary travel costs. Based on this authorization, it appears that the Department did not violate any provision of state law or the contract by paying actual and necessary travel costs.

#### **Project Initiation**

According to the contract between the Department and Ackerman McQueen, there is an established protocol for the initiation and authorization of projects and services to be performed by Ackerman McQueen. This protocol requires the Department to initiate projects by submitting a task order request to Ackerman McQueen. Ackerman McQueen is then required to respond by issuing a task order proposal that would then be approved by the Department. It appears that the Department did not follow this protocol and was therefore in violation of the contract.

### **Initiative Media**

Initiative Media was paid more than the actual costs it paid to the media outlets. This was a violation of the terms of the contract in effect for that time period. Ackerman McQueen's position on this issue is that the non-disclosed rates paid to Initiative Media were less expensive than the rates Ackerman McQueen could have obtained directly from the media outlets. The contract was modified on June 28, 2002, to allow the use of Initiative Media and to allow the

invoices from Initiative to suffice as supporting documentation for the Department. These invoices did not distinguish between actual costs and mark up. We subsequently obtained the actual costs paid by Initiative Media for the spots purchased by Ackerman McQueen. Initiative Media charged Ackerman McQueen a markup of 9% for the media spots purchased that was passed along to the Department by Ackerman McQueen. The total markup for this contract during our audit period was \$9,156.

### **Make Goods**

The Department did not perform adequate procedures to ensure compliance with the contract. As a result, Ackerman McQueen negotiated and accepted make good offers without the prior consent of the Department prior to June 28, 2002. This appears to have been a violation of the original contract. However, the contract was modified June 28, 2002, to allow Ackerman McQueen to make such negotiations within certain parameters.

OTRD was originally disputing approximately \$58,000 in charges related to make goods; however, the Department has developed a settlement process for these charges, which we believe is reasonable. To date, the Department has paid approximately \$36,000 on these disputed invoices leaving \$22,000 still in dispute. The disputed invoices that cannot be resolved by the two parties will be submitted to the Department of Central Services Central Purchasing Division for resolution assistance.

### **Oklahoma! on Broadway Trip**

The total cost to the State of Oklahoma for the March 2002 trip to New York, NY for the opening production of *Oklahoma!* on Broadway was approximately \$34,856.

It appears no clothing was purchased specifically for the Department's executive director for this trip. The only clothing purchased for this trip was for Travel Development Division employees at a cost of \$380. This clothing was to be worn in conjunction with their employment duties and remains the property of the Department.

No evidence exists that denim jackets were purchased specifically for this trip. However, denim jackets are purchased on a regular basis and either worn by Department employees at official functions or given to people within the tourism industry to promote Oklahoma tourism.

It appears there were no expenditures that violated state law.

### **Additional Concerns**

The State Auditor and Inspector's office issued a performance audit of the Oklahoma Tourism and Recreation Department, Division of State Parks, on April 2, 2001. The audit focused on the funding levels and operations of the Division. We noted in our report that the Division's equipment, buildings (i.e. State park facilities and lodges), etc. were in great need of maintenance and improvement. Lack of funding for capital projects and maintenance was one of the primary causes of the deterioration of the Division's facilities. Although the amount of funds requested by the Division for maintenance and capital has increased over the past 5 years, the amount of funding received has decreased significantly.

The Legislature might consider prioritizing the Department's funding in a more appropriate manner. A \$4.5 million dollar advertising contract may generate tourism to Oklahoma; however, if the condition of the parks and resorts is less than optimal, Oklahoma tourism may be negatively impacted overall. In addition, an advertising contract of \$4.5 million dollars per year may seem inappropriate during a period of economic downturn and severe budget cuts at the state government level.

### Background

Administered by an Executive Director under the guidance of a ten-member commission, the Department had its beginning in 1931 when the Legislature appropriated \$90,000 for the land where Lake Murray is located. In the late 1930s, Congress directed the U.S. Corps of Engineers to begin construction on several large reservoirs, primarily for flood control and water supply. In 1951, Lake Murray State Park also became the site for the first of seven state-owned resort lodges. Through the years, park, lodge, and tourism programs rested in the Planning and Resources Board, the Department of Commerce and Industry and the Industrial Development and Park Department. In 1972, the Legislature created the Oklahoma Tourism and Recreation Department, which is made up of ten divisions.

The mission of the Department is to promote the development and use of the state's lodges, parks, and recreational areas; to promote tourism through publicity and dissemination of information about the state's recreational facilities and to assist the many municipalities, associations and organizations in promoting special and local events.

### Commission Members

Mary Fallin, Lt. Governor.....	Chair
Kathryn Taylor.....	Secretary (Effective February 2003)
Robyn Batson.....	Member
Joe Harwood .....	Member
Boyd Lee .....	Member
Joe Martin .....	Member
Melvin Moran .....	Member
Janis Ricks .....	Member
Jim Schlimpert.....	Member
Sid Smith .....	Member
Becky Switzer .....	Member
Jane Jayroe .....	Former Secretary (Prior to February 2003)

### Limitation of Audit

Throughout this report, the numerous references to state statutes and legal authorities are cited as criteria used to evaluate various transactions. The inclusion of these references to specific statutes or authorities within this report does not, and is not intended to, constitute a determination by the State Auditor and Inspector that the Department or any individuals named in this report or acting on behalf of the Department have violated any statutory requirement or prohibition imposed by law. All cites and/or references to specific legal provisions are included within this report for the sole purpose of enabling the administration and other interested parties to review and consider the cited provisions, independently ascertain whether or not the Department's policies, procedures or practices should be modified or discontinued, and to independently evaluate whether or not the recommendations made by this office should be implemented.

## **Involvement of the State Auditor and Inspector's Office**

The State Auditor and Inspector's office received a request from the Attorney General's office to perform a special investigative audit of the Oklahoma Tourism and Recreation Department pursuant to Title 74 O.S.2001, §18f.

### **Scope**

Pursuant to the request of the Attorney General, the objective of our audit was primarily to determine whether or not violations existed concerning state purchasing regulations at the Oklahoma Tourism and Recreation Department during the period from July 1, 2001 through October 10, 2002. We also investigated specific issues that may have occurred after this time period if they were relevant to our overall objectives. The overall objectives were as follows:

1. To review all contracts with Ackerman McQueen to determine compliance with state law and agency policies.
2. To examine and analyze expenditures and claims for compliance with the terms of the contract with Ackerman McQueen.

Based upon our review of the original areas of concern presented to the Attorney General's office, interviews with Oklahoma Tourism and Recreation Department personnel, interviews with Department of Central Services personnel, interviews with Ackerman McQueen personnel and legal counsel, and guidance from the Attorney General's office, we determined that the scope of our audit would be focused on the following specific objectives:

1. Determine whether the contract awarded to Ackerman McQueen was bid competitively and awarded in compliance with the Oklahoma Central Purchasing Act.
2. Determine whether there is evidence of prepayments to Ackerman McQueen by the Oklahoma Tourism and Recreation Department.
3. Determine whether the use of Initiative Media for media purchases violated provisions of the contract.
4. Determine whether the settlement process between Ackerman McQueen and the Oklahoma Tourism and Recreation Department regarding "make goods" appears reasonable.
5. Determine the total cost to the State of Oklahoma related to the March 2002 trip to New York to attend the opening of the Broadway production of *Oklahoma!* and determine whether there were any purchases made or costs paid by the Oklahoma Tourism and Recreation Department that were in violation of state law.

### **Acronyms**

**AM** – Ackerman McQueen  
**DCS** – Department of Central Services  
**OTRD** – Oklahoma Tourism and Recreation Department  
**IM** – Initiative Media

<b>OBJECTIVE #1</b>	Determine whether the contract awarded to Ackerman McQueen was bid competitively and awarded in compliance with the Oklahoma Central Purchasing Act.
<b>Methodology</b>	We reviewed the statutory requirements regulating the procurement of contracts. We then reviewed the timeline and corresponding documentation related to the bidding and contract awarding process.
<b>Statutory Requirements</b>	<p>The statutory requirements set forth in 74 O.S.2001, §85.1, et. seq. (e.g., “The Oklahoma Central Purchasing Act”) regulate the procurement of contracts by state agencies. Below are excerpts or summaries of sections of the Oklahoma Central Purchasing act that are pertinent to the bidding process and subsequent awarding of the contract for advertising services by the Oklahoma Tourism and Recreation Department (OTRD).</p> <p>74 O.S. 2001, §85.4.E.2 requires each requisition for nonprofessional or professional services to be accompanied by a statement that justifies the reason for the requisition and documents specific certifications by management regarding the requisition.</p> <p>74 O.S. 2001, §85.7.A.1 states, “Except as otherwise provided by the Oklahoma Central Purchasing Act, no state agency shall make an acquisition for an amount exceeding Twenty-five Thousand Dollars (\$25,000.00) without submission of a requisition to the State Purchasing Director and submission of supplier’s competitive bids or proposals to the State Purchasing Director.”</p> <p>74 O.S.2001, §85.7.C states:</p> <p style="padding-left: 40px;">Bids for professional service contracts for an amount requiring submission of requisitions to the State Purchasing Director shall be evaluated by the State Purchasing Director and the state agency contracting for such service. Both cost and technical expertise shall be considered in determining the lowest and best, or best value, bid. Further, the state agency shall present its evaluation and recommendation to the State Purchasing Director. A documented evaluation report containing the evaluations of the State Purchasing Director and the state agency contracting for such service shall be completed prior to the awarding of a professional service contract and such report shall be a matter of public record.</p>
<b>Contract Timeline</b>	<p><b>March 19, 2001</b> OTRD submitted Purchasing Requisition #M000461 to the Department of Central Services (DCS) for the acquisition of marketing and advertising services. The amount of the requisition was for \$4,300,000 for one year with three renewal options. A service requisition justification form was submitted with the requisition pursuant to 74 O.S.2001, §85.4.E.2.</p> <p><b>March 29, 2001</b> DCS issued Request for Proposals (RFP) #M000461 in response to the requisition submitted by OTRD. The RFP was mailed to thirty-two potential bidders and was due May 1, 2001.</p> <p><b>April 13, 2001</b> DCS issued an amendment (Amendment 01) that revoked section 7.4 of the RFP. This clause required the awarded vendor to have an Oklahoma City office as part of the contract. This clause was removed at the request the OTRD Executive Director, communicated via e-mail by the OTRD Travel and Tourism Division Director to DCS, on April 11, 2001. The amendment was sent to the original thirty-two potential bidders who were sent the RFP.</p> <p><b>April 17, 2001</b> DCS issued Amendment 02 to incorporate bidder questions and answers received prior to the question submission deadline of April 9, 2001. These questions were</p>



received from Ackerman McQueen (AM) advertising agency and Littlefield advertising agency.

**May 1, 2001** DCS received 2 proposals in response to RFP #M000461. The proposal submitted by Ocean Media, Huntington Beach, CA, was deemed non-responsive by DCS. Their proposal did not meet the minimum requirements of the RFP and was not considered for evaluation. The proposal submitted by Ackerman McQueen was found responsive and forwarded to OTRD for committee review.

**May 14, 2001** A survey was sent out to the non-responsive bidders by the DCS Contract Administrator. A summary of the responses was also prepared.

**May 15, 2001** A site visit to Ackerman McQueen was conducted by the vendor selection committee. The purpose of the site visit is to confirm the rating given the vendor by the individual committee members and to ensure compliance with the production facility requirements of the RFP.

**May 24, 2001** The OTRD Executive Director submitted a recommendation to DCS Central Purchasing that Ackerman McQueen be awarded the contract for advertising services. The recommendation was based on the evaluation process and unanimous recommendation of the selection committee.

**May 31, 2001** The Contracting and Procurement Officer for DCS made the recommendation that Ackerman McQueen's proposal be accepted and the contract awarded to them.

**June 4, 2001** The State Purchasing Director approved the recommendation made by Contracting and Procurement Officer and the contract was awarded to Ackerman McQueen.

**June 28, 2002** The contract between Ackerman McQueen and OTRD was renewed for a second year with the approval of DCS.

### ***Conclusion***

While it is unfortunate that there was only one viable bidder on the contract, it appears the contract awarded to Ackerman McQueen by OTRD was bid competitively and awarded in compliance with the Oklahoma Central Purchasing Act.

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### ***OBJECTIVE #2***

Determine whether there is evidence of prepayments to Ackerman McQueen by the Oklahoma Tourism and Recreation Department.

### ***Methodology***

We reviewed the statutory requirements regarding the issue of prepayments. We then reviewed the timeline and corresponding documentation related to specific transactions for evidence of prepayments.

### ***Statutory Requirements***

The Oklahoma Central Purchasing Act (e.g., 74 O.S.2001, §85.1, et seq.) is very specific in §85.44B regarding the issue of prepayments. It states:

Payment for products or services pursuant to a contract executed by a state agency, whether or not such state agency is subject to the Oklahoma Central Purchasing Act, Section 85.1 et seq. of this title, shall be made only after products have been provided or services have been rendered. This does not

prohibit the payment for subscriptions to magazines, periodicals, or books or for payments to vendors providing subscription services.

***Contractual  
Requirements***

Section 13 of the *General Vendor Instructions, Terms and Conditions*, which is integral to the contract between Ackerman McQueen (AM) and the Oklahoma Tourism and Recreation Department (OTRD), states, "As outlined by Oklahoma Law, all invoicing is paid in arrears (whether monthly, quarterly, or annual billing) and in terms of NET 45 days". The following question was asked by AM, answered by the Department of Central Services (DCS) and incorporated into Amendment 02:

Quest.: *What options are available for out-of-pocket expenses from television production companies or research firms which demand payment up front to begin a project?*

Answer: *Oklahoma state law controls payments to vendors. The State cannot incur a debt by paying a claim before receiving a product or service. To the extent an "up-front" payment secures an option or a reservation or creates an enforceable claim for payment, the "up-front" payment may be permissible. Whether an "up-front" claim could be paid would depend on the facts of the situation, and the terms and conditions of the individual Task Order.*

***OSF  
Policy***

The Oklahoma Office of State Finance (OSF) has promulgated specific procedures concerning prepayments in the *OSF Policy and Procedures Manual*. Section 319 – Special Procedures states in part:

Past Attorney General's opinions have held that payment to a claimant (vendor) prior to the actual performance of work or receipt of product for which contracted, constitutes lending of credit or monies by the state, and therefore, violates the provisions of Art. 10, §15, of the Okla. Constitution. In addition, pursuant to Title 74 O.S., Sec. 85.44B, payment of goods and services by a state agency, whether or not such state agency is subject to the Oklahoma Central Purchasing Act, shall be made only after products have been provided or services rendered. The exception is payments for subscriptions to magazines, periodicals, or books or for vendors providing subscription services. OSF will allow a six (6) week lead time in submitting the payment prior to the subscription commencement or expiration period, unless service is at risk of being interrupted, then payment will be accepted at a reasonable period of time in advance of the six (6) weeks. Additionally, due to the nature of such payments, the following situations are subject to approval for advance payment only when failure to pay in advance would preclude the agency from contracting for those goods or services...

***Background***

One of the original areas of concern communicated to the Oklahoma Attorney General's office, and contributing to an investigative audit request pursuant to 74 O.S.2001, §18f, is the issue of alleged prepayment by OTRD for services that had not been received. There were two specific projects where prepayments were alleged:

1. The first project was the filming of the ceremonies for the installation of the *Guardian* Statue atop the State Capitol. There were two filming dates related to this issue. The first was for aerial filming on June 7, 2002 and the other was for ground filming on July 15, 2002. OTRD employees were allegedly requested to process payments for half of the costs of the project prior to both filming dates.

2. The second project was an October 2002 filming project for which OTRD employees were allegedly requested to process payments for half of the costs of the project by October 8, 2002. The shoot was not scheduled to occur until October 21, 2002. There were two secondary issues related to this project that we will also consider:
  - a. The inclusion of a weather contingency fee within the task order proposal.
  - b. Questionable travel costs of the film production crew.

***Guardian Filming  
Timeline***

**May 13, 2002** Invoice #58452 for \$34,648 issued by AM for first the half of the costs related to the June 7, 2002, aerial filming. The invoice wording was revised and re-submitted with the same invoice date.

**May 29, 2002** A Task Proposal for Job # BP203171-C0051 issued by AM for ground and aerial filming. Total proposed costs were \$203,166 for aerial filming, ground filming, and additional out of pocket costs. Of this total, AM obtained a sponsor (the Oklahoma City Chamber of Commerce) for \$20,000 and hoped to obtain an additional sponsor for another \$3,166. That brought the total projected out-of-pocket costs to \$180,000.

**May 30, 2002** The Travel and Tourism (T&T) director authorized Task Order Request #BP20371-OT-C0051 for the spring ground and aerial filming.

**May 30, 2002** Invoice #59033 for \$59,035 issued by AM for the first half of costs related to the July 15, 2002, ground filming.

**June 7, 2002** Aerial filming of the Guardian completed.

**June 14, 2002** Invoice #59517 for \$34,733.22 issued by AM for the second half of costs related to the June 7, 2002, aerial filming.

**June 17, 2002** Purchase order release #Y083881 issued for spring ground and aerial filming and miscellaneous expenditures in the total amount of \$128,416.22.

**July 10, 2002** Warrant #03-7021776 issued for \$128,416.22 to AM for spring ground and aerial filming and miscellaneous expenditures.

**July 11, 2002** Claim #00189 issued for \$128,416.22 for AM for the spring ground and aerial filming.

**July 15, 2002** Ground filming of the Guardian completed.

**July 23, 2002** Invoice # 60824 for \$52,925 issued by AM for the second half of costs related to the July 15, 2002, ground filming.

**August 22, 2002** Warrant #03-7165567 issued for \$56,223 to AM that included \$52,925 for the second half of ground filming costs.

**August 23, 2002** Claim #04850 issued for \$56,223 for AM that included \$52,925 for ground filming.

***Guardian Filming  
Conclusion***

Based on our review of the documentation noted above, interviews with personnel related to this issue, and review of correspondence, we made the following observations:

1. According to the contract between OTRD and AM, there is an established protocol for the initiation and authorization of projects and services to be performed by AM. OTRD must first issue a Task Order Request to AM for the desired service/product. AM should then respond within 10 days (unless otherwise specified) with a Task Order Proposal. After reviewing the Task Order Proposal and determining to proceed with the work identified in the proposal, the OTRD Program Manager should issue a Task Order for the work to be done. It appears that OTRD did not follow the contract requirements regarding initiation and authorization of projects and services to be performed by AM. Invoice #58452 was issued on May 13, 2002 by AM for half of the costs of aerial filming to be performed on June 7, 2002. This was prior to the issuance of both the Task Order Proposal by AM (May 29, 2002) and the Task Order Request by OTRD (May 30, 2002).
2. The Department received invoices from AM requesting payment on half the project costs for both the aerial and ground filming prior to the actual performance of the service. It appears that the basis for AM submitting these invoices for "up-front" payments may have been their understanding of the response to their question regarding prepayments which was incorporated into Amendment 02. Differences in business philosophies may also have been a contributing factor. While state government requires prior approval and accountability, the advertising industry relies on spur-of-the-moment decisions and trust. For the June 7, 2002, aerial filming, warrant #03-7021776 was not issued until July 10, 2002 to pay the corresponding invoices and claims. It does not appear that a prepayment was made in this instance. However, the same warrant was also used to pay invoice #59033 for \$59,035. This amount was for the first half of the costs related to the ground filming which did not occur until July 15, 2002. Therefore, it appears that OTRD made a prepayment of \$59,035 to AM on July 10, 2002 and was not in compliance with state purchasing laws.

***Fall Filming  
Timeline***

**September 23, 2002** E-mail sent from an AM executive notifying the OTRD Executive Director that AM would need payment by October 8, 2002, for half the costs of filming scheduled to take place October 21, 2002. This was forwarded to an OTRD employee for processing.

**October 4, 2002** Task Order Request #BP20371-OT-D0014 submitted by the OTRD Executive Director for the fall photo shoot.

**October 7, 2002** Task proposal with a total estimated cost of \$177,488 submitted by AM for the fall photo shoot in response to the OTRD Executive Director's October 4, 2002, request.

**October 9, 2002** Waiver regarding travel expense reimbursement obtained from DCS Central Purchasing via e-mail.

**October 9, 2002** Change order/revised task proposal submitted by AM to provide information concerning the weather contingency.

**October 10, 2002** Legal opinion regarding travel expenses and weather contingency issued by the Assistant Attorney General under contract with OTRD as legal counsel.

**October 10, 2002** Change order/revised task proposal submitted by AM to provide the correct sub-total in "Other Out of Pocket Costs". \$14,112.40 was an incorrect total and was removed.

**October 10, 2002** Change order/revised task proposal submitted by AM to provide itemized costs for the weather contingency fee.

**October 18, 2002** Change order/revised task proposal submitted by AM to provide itemized travel expenses.

**October 21/22, 2002** Original scheduled filming dates. Filming did not occur due to inclement weather.

**October 22, 2002** Change order/revised task proposal submitted by AM to provide itemized costs associated with the delay of fall filming due to inclement weather.

**October 23, 2002** Invoice #64055 for \$26,339 submitted by AM for costs incurred as of October 21, 2002, for the fall filming project. This invoice was subsequently canceled.

**October 25/26, 2002** Filming completed.

**October 25, 2002** Invoice #64118 for \$138,588 submitted by AM for work in progress through filming for the fall filming project.

**October 25, 2002** Purchase order release #Z033008 issued for the fall filming project and miscellaneous expenditures in the total amount of \$309,094.61.

**October 25, 2002** Claim #11218 issued for \$138,588 for AM for the fall filming project.

**October 25, 2002** Warrant #03-7389143 issued for \$138,588 to AM for work in progress on the fall filming project.

**November 15, 2002** Invoice #64579 for \$1,475.74 submitted by AM for work in progress through filming for the fall filming project.

**November 20, 2002** Claim #12831 issued for \$20,294.85 for AM for the fall filming project.

**November 20, 2002** Warrant #03-7468021 issued for \$20,294.85 to AM for fall filming project.

**December 9, 2002** Claim #14526 issued for \$14,061.31 for AM for the fall filming project.

**December 9, 2002** Warrant #03-7520728 issued for \$14,061.31 to AM for fall filming project.

**January 27, 2003** E-mail sent from the OTRD CPO regarding payment of the \$38,735 one-time weather contingency fee.

**January 29, 2003** Claim #18804 issued for \$38,735 for AM for the fall filming project weather contingency fee.

**January 29, 2003** Warrant #03-7670149 issued for \$38,735 to AM for the fall filming project weather contingency fee.

***Fall Filming  
Conclusion***

Based on our review of the documentation noted above, interviews with personnel related to this issue, and review of correspondence, we made the following observations:

1. The issue of whether or not a pre-payment occurred is not clear. The services were rendered to OTRD on October 25 and 26, 2002. The first payment was made on the project October 25, 2002. It is debatable whether or not OTRD had received sufficient services as of October 25, 2002 to justify paying \$138,588. This is 78% ( $\$138,588/\$177,488 = 78\%$ ) of the total estimated cost for the project on October 25, 2002; however, no evidence was provided to support the idea that the project was 78% complete at the time the warrant was issued.
2. Regarding the issue of the inclusion of a weather contingency fee of \$38,735 per day of delay, we noted the following. Due to the wording of the vendor's bid and the task proposal submitted by AM, there appears to have been some confusion as to what dictated the weather contingency fee. The initial understanding by some was that this fee represented a payment by OTRD with no consideration received from the vendor. This would constitute a gift and would not be allowable under Article X, §15 of the Oklahoma Constitution. However, upon further inquiry, we were told that this fee represented reimbursement for expenses incurred by the vendor in the event of a weather delay. The \$38,735 was itemized as the costs of holding over the producer, director, crew, equipment, and rented props in the event of a weather delay. Filming was delayed 3 days, which under the original task order proposal, would have resulted in a weather contingency fee of \$116,205. However, this was negotiated down to a one-time charge of \$38,735 plus actual expenses of \$14,860 or a total of \$53,595. According to the current director of the Travel and Tourism division, the \$38,735 is a fee based on a formula using the per day rates for production services as discussed above; however, this is not backed by actual costs. It is in effect a fee to prevent the production company from abandoning the Department's project in favor of another client's project or placing less priority on the project due to the weather delay. The Department paid \$14,061 in actual expenses for out of pocket costs related to the weather delay on December 9, 2002. The one-time fee of \$38,735 was paid by the Department on January 29, 2003. It is our opinion that the agency should only have paid the \$14,061 for actual expenses. It appears there were no services received to substantiate the one-time charge of \$38,735.
3. Regarding the secondary issue of reimbursement of vendor travel costs, we noted the following. According to section 14.14 of the original contract, "Travel must be incurred only at the request of the OTRD and shall be billed in accordance with the State of Oklahoma 'State Travel Reimbursement Act' (74 O.S.2001, §500.1 et seq.)". The State Travel Reimbursement Act applies to state employees and officials but is not mandatory for vendors contracting with the state. According to 74 O.S.2001, §500.9A, "Per diem payments, travel and other actual and necessary expenses may be paid if same is

provided for in any contract or grant". This authorizes travel reimbursements that are not consistent with the rates in the State Travel Reimbursement Act for non-state employees or officials. However, due to the requirement incorporated into the contract, State Travel Reimbursement Act rates would apply to AM and any subcontractors. AM failed to notify filming sub-contract bidders of the travel reimbursement requirements and subsequently submitted bids that included reimbursement for actual and necessary travel costs. Consequently, OTRD requested a waiver from DCS of section 14.14 of the contract and authorization to apply 74 O.S.2001, §500.9A. OTRD also received a legal opinion on this issue from their legal counsel, who is an Assistant Attorney General. Based on this, it appears that OTRD did not violate any provision of state law or the contract by paying actual and necessary travel costs.

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***OBJECTIVE #3***

Determine whether the use of Initiative Media for media purchases violated provisions of the contract.

***Methodology***

We reviewed the contractual requirements presented below. We then reviewed the timeline and corresponding documentation related to specific transactions to determine whether any evidence existed provisions of the contract were violated.

***Contractual Requirements***

The following sections of the contract between Ackerman McQueen (AM) and the Oklahoma Tourism and Recreation Department (OTRD) are pertinent to the issue regarding the use of Initiative Media:

- 7.9.4 Media Placements. The Contractor shall solicit, secure, place and monitor paid and non-paid media time and/or space in various domestic and international media, including but not limited to: broadcast, print, electronic, computer, and interactive media. The Contractor shall secure media placements and rates most advantageous to OTRD.
  
- 15.7 Broadcast Media – network spots, network prime, syndicated and cable direct television. The Contractor’s media or traffic department shall report monthly with the invoice to OTRD to determine that the proper commercial was aired at the correct time (proper rotation). The Contractor shall provide and trace commercials to Broadcast Advertiser Report (BAR), if available, and review for time of actual performance and possible infractions (over-commercialization, commercial separation, and too near competitive product.) Where audience deficiency (AD) units existed or programs do not meet their minimum rating points the Contractor shall review and report to OTRD post-buy evaluations to determine if OTRD received appropriate bonus weight or compensation (i.e., credit toward future media placements for broadcast in the same period).
  
- 16.5 A detailed billing of reimbursable work completed shall include copies of invoices the Contractor receives from any approved subcontractor, including but not limited to electronic media, Internet media, and print media, listing the newspapers or magazines and charges, tear sheets, and copies of invoices and affidavits from other such suppliers.

- 16.6 The Contractor agrees to render monthly invoices for media placement that reflect the actual costs between the Contractor or media placement agency and the media outlet(s).
- 16.6 (revised 6/28/02) The Contractor agrees to render monthly invoices for media placement that reflect the actual costs between the Contractor or media placement agency and the media outlet(s). **If the OTRD approves the use of a media placement agency at non-disclosed rates, the invoices from the agency need only reflect the actual cost paid to the media placement agency for the schedule; provided, that in no event shall the Contractor be entitled to retain any commission, rebate, credit, or other monetary or non-monetary consideration for use of the media placement agency for placement of the OTRD's media. The Contractor's submission to the OTRD of the invoice from the media placement agency shall be deemed to be a representation by the Contractor that no such consideration is or will be payable to the Contractor. Notwithstanding Section 14.12, costs of media buys by Contractor through third party media placement agencies approved in advance by OTRD are recognized as costs which are not to be included in the monthly service fee but are to be paid by OTRD.**
- 16.7 Cash. Discounts. Any cash discounts allowed to the Contractor by media for prompt payment will be credited to the OTRD.
- 16.8 Any discounts received by a third party media placement agency or business arrangements between a third party media placement agency and the media outlet(s) and/or the Contractor shall be passed on to OTRD. Contractor shall fully disclose to the OTRD any rebates received by, for, or on behalf of OTRD.

***Background***

One of the original areas of concern communicated to the Oklahoma Attorney General's office, and contributing to an investigative audit request pursuant to 74 O.S.2001, §18f, is the issue regarding the use of Initiative Media for purchasing media spots during the Fall 2001 advertising campaign. There were two main parts to this issue:

1. Whether the contract was violated by paying Initiative Media more than actual costs for purchased media spots.
2. Whether the Department obtained adequate documentation of actual costs of media purchases, and of media scheduling, as required by the contract.

***IM  
Timeline***

**November 12, 2001** Invoice #B47799A for \$63,528.15 issued by AM for media purchased by Initiative Media for the Dallas/Ft. Worth market for September of 2001.

**November 12, 2001** Invoice #B47800A for \$14,034.35 issued by AM for media purchased by Initiative Media for the Dallas/Ft. Worth market for October of 2001.

**November 12, 2001** Invoice #B47802A for \$23,730.30 issued by AM for media purchased by Initiative Media for the OKC market for September of 2001.

**November 12, 2001** Invoice #B47803A for \$5,275.09 issued by AM for media purchased by Initiative Media for the OKC market for October of 2001.



**November 12, 2001** Invoice #B47805A for \$15,896.70 issued by AM for media purchased by Initiative Media for the Tulsa market for September of 2001.

**November 12, 2001** Invoice #B47806A for \$3,530.90 issued by AM for media purchased by Initiative Media for the OKC market for October of 2001.

**November 16, 2001** OTRD Deputy Executive Director sent a letter to AM requesting that the spring advertising plan should be revised to eliminate the use of Initiative Media due to Initiative Media's lack of compliance with provisions of the contract.

**December 3, 2001** Memo received from AM in response to OTRD's questions regarding the use of Initiative Media.

**January 2, 2002** Memo received from AM in response to OTRD's additional questions regarding the use of Initiative Media.

**January 9, 2002** Supporting documentation for Initiative Media invoices received.

**January 10, 2002** Purchase order release #Y050974 issued for Initiative Media services for the Fall Plan in the amount of \$125,995.49.

**January 11, 2002** Claim #24239 issued for \$125,995.49 for AM for Initiative Media services for the Fall Plan.

**January 11, 2002** Warrant #02-7659855 issued for \$125,995.49 to AM for Initiative Media services for the Fall Plan project.

**February 6, 2002** Affidavit received by OTRD from Initiative Media verifying that the reconciliation invoices submitted accurately reflected the Department's commercials as reported to them by the television stations.

**June 28, 2002** Modification issued to contract to clarify terms and conditions of original contract.

### ***Conclusion***

Based on our review of the documentation noted above, interviews with personnel related to this issue, and review of correspondence, we made the following observations:

1. Initiative Media is a non-disclosed company. This means they do not disclose the rates they have negotiated with media outlets to outside entities. Initiative Media was paid more than the actual costs it paid to the media outlets. This was a violation of the terms of the contract in effect for that time period. However, it was AM's belief they were complying with section 7.9.4 of the contract, and consequently the spirit of the contract, that required them to secure media placements and rates most advantageous to OTRD. Their position is that they were doing this because the Initiative Media rates were still lower than what AM would have paid if they had purchased the spots directly. The contract was modified on June 28, 2002, to allow the use of Initiative Media, and to allow the invoices from Initiative to suffice as supporting documentation to the Department. These invoices did not distinguish between actual cost and markup. It appears that the Department did not ensure that Ackerman McQueen obtain adequate documentation from Initiative Media to support the invoices. We subsequently obtained the actual costs paid by Initiative Media for the spots purchased by Ackerman McQueen. It appears that Initiative Media charged Ackerman McQueen a

markup of 9% for the media spots purchased. This markup was passed along to the Department by Ackerman McQueen. The total markup for this contract during our audit period was \$9,156. According to the current director of the Travel and Tourism Division, Ackerman McQueen will make direct purchases of media spots in the future and will not use the services of Initiative Media.

2. It appears that that the Department did not initially ensure that AM obtain adequate documentation from Initiative Media to support the invoices. According to section 15.7 of the contract, AM is to provide detailed information confirming that the correct spots aired in the correct time slots. The only documentation originally provided as support by AM was the invoices from Initiative Media that did not reflect the required information. However, information confirming that the correct spots aired in the correct time slots was subsequently provided after it was requested by OTRD.

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**OBJECTIVE #4**

Determine whether the settlement process between Ackerman McQueen and the Oklahoma Tourism and Recreation Department regarding “make goods” appears reasonable.

**Methodology**

We reviewed the contractual requirements presented below. We then reviewed the “make goods” settlement process documentation to determine whether the process appeared reasonable.

**Contractual Requirements**

Section 15.8 of the original contract between Ackerman McQueen (AM) and the Oklahoma Tourism and Recreation Department (OTRD), states in part, “The Contractor shall report to OTRD and receive approval for “make goods” offered by the station. Section 15.8 of the contract was rescinded on June 28, 2002 and replaced with Section 15.7.1 which states in part:

Media Performance Review and Make Goods. As a part of each media buy, the Contractor shall constantly review performance of the media against the buy. Any spots not airing as scheduled shall be deemed a media discrepancy. As part of the media management process, the Contractor shall constantly evaluate how the spots ordered are clearing and as needed, approve make good spots for those spots which did not run as scheduled, subject to the following requirements. The Contractor may approve make good spots in accordance with the following parameters. A make good spot may always be accepted during an approved program (time and day) as long as the price remains the same and OTRD does not have any other paid spots running during that episode. A make good spot may be accepted without OTRD input if it meets each of the following criteria: (1) the offered make good is during a program with a rating (in our demographic) equal to or better than the scheduled spot; (2) the offered make good is priced equal to or less than the scheduled spot; (3) OTRD has no other paid spots running during the same timeslot; and (4) the offered make good is not during a program with controversial content that could reflect poorly on OTRD. When multiple make goods are offered for one scheduled spot, the arrangement should only be accepted when: (1) the make goods are all in previously approved programs; (2) the combined TRPs are equal to or more than the scheduled spots; and (3) the combined price is equal to or less than the scheduled spot price. Any make good not meeting the foregoing criteria shall require the prior written approval of the OTRD. Any spots that did not air and are not made good in accordance with the foregoing criteria will not be included on the OTRD invoice.

**Background**

One of the original areas of concern communicated to the Oklahoma Attorney General's office, and contributing to an investigative audit request pursuant to 74 O.S.2001, §18f, is the issue of whether or not the Department performed adequate procedures to ensure compliance with the contract regarding negotiation and purchasing of "make goods". This can be broken down into two main issues:

1. Whether the Department performed adequate procedures to ensure compliance with the contract regarding negotiation and purchasing of "make goods".
2. Whether the Department received adequate make goods in terms of price and total ratings points.

**Conclusion**

Based on interviews with personnel related to this issue and our review of settlement negotiation documentation, it appears that the Department may not have performed adequate procedures to ensure compliance with the contract. As a result, Ackerman McQueen negotiated and accepted make good offers without the prior consent of the Department prior to June 28, 2002. This appears to have been a violation of the original contract. However, the contract was subsequently modified to allow AM to make such negotiations within certain parameters as noted above.

OTRD was originally disputing approximately \$58,000 in charges related to make goods; however, the department has developed a settlement process for these charges. To date, the Department has paid approximately \$36,000 on these disputed invoices leaving \$22,000 still in dispute. OTRD was able to classify the disputed invoices into two primary categories: (1) total ratings points (TRPs) that fell short of projections and (2) spots that aired too near one another, i.e. within the same show. For invoices falling into the first category, the agency has paid for the TRPs that were actually received. In addition, they will accept station offers of make goods for the TRPs OTRD was guaranteed but did not receive. Those "make goods" will occur in the Spring 2003 media campaign and will not be paid until received. For invoices falling into the second category, OTRD has developed the following payment formula: (1) for the first spot aired within a program, they paid 100% of the spot cost (2) for the second spot they paid 60% of the spot cost (3) for the third spot they paid 40% of the spot cost. The rationale behind this formula is that OTRD did not receive the total reach originally planned because the spots aired multiple times within the same show. In addition, the agency has developed procedures and forms that provide written guidelines to which stations and media buyers must adhere in order to receive payment.

OTRD has received a response from AM regarding the make goods. Although AM is not in agreement with OTRD on all of the disputed invoices, negotiations are ongoing. In addition, OTRD is developing a list of invoices for which the parties are unable to reach a mutual agreement. This will be submitted to DCS Central Purchasing for assistance in resolving the issues.

Based on our review of the settlement process discussed above, it appears that OTRD has taken a reasonable approach to settling the disputed make good invoices.

<b>OBJECTIVE #5</b>	Determine the total cost to the State of Oklahoma related to the March 2002 trip to New York to attend the opening of the Broadway production of <i>Oklahoma!</i> and determine whether there were any purchases made or costs paid by the Oklahoma Tourism and Recreation Department that were in violation of state law.
<b>Methodology</b>	We reviewed the contractual requirements presented below. We then requested and obtained from OTRD a schedule of expenditures related to the Broadway trip. We reviewed this schedule and the accompanying supporting documentation (i.e. claims and travel vouchers) to determine whether expenditures were in compliance with state law.
<b>Statutory Requirements</b>	<p>The Oklahoma Tourism and Recreation Department (OTRD) is allowed by state statute to reimburse actual and necessary travel, subsistence, and entertainment expenses as opposed to the rates set forth in the State Travel Reimbursement Act. 74 O.S.2001, §500.18.B.5. states:</p> <p>The Oklahoma Tourism and Recreation Commission and Department staff who promote in-state and out-of-state business for Oklahoma's state-operated parks and lodges and the tourism and recreation industry, may be reimbursed for the actual and necessary expense of travel, subsistence and entertainment for this purpose. The Director of the Oklahoma Tourism and Recreation Department may reimburse the Publisher of Oklahoma Today magazine and its staff for expenses for meals and other entertainment in order to gain advertising and promotion for Oklahoma Today magazine. The Oklahoma Tourism and Recreation Department may reimburse the Director of the Oklahoma Film Office and staff for the actual and necessary expenses for meals and other entertainment in order to promote the film industry in the state. Reimbursement of all actual and necessary expenses shall be in accordance with rules adopted by the Oklahoma Tourism and Recreation Commission.</p>
<b>Background</b>	One of the original areas of concern communicated to the Oklahoma Attorney General's office is the issue of alleged inappropriate expenditures by OTRD relating to the trip to New York City, NY for the Broadway production of <i>Oklahoma!</i> in March of 2002. There was also a secondary allegation that clothing was inappropriately purchased for the OTRD Executive Director in conjunction with this trip. It was also alleged that denim jackets were inappropriately purchased and distributed in conjunction with this trip.
<b>Conclusion</b>	<p>The total cost to the State of Oklahoma for the Broadway trip was approximately \$34,856.</p> <p>There was no evidence that clothing was purchased specifically for the OTRD Executive Director for this trip. The only evidence of clothing purchased for this trip was for OTRD Travel Development Division employees at a cost of \$380. This clothing was to be worn in conjunction with their employment duties and remains the property of OTRD.</p> <p>There was no evidence that denim jackets were purchased specifically for this trip. However, jackets were purchased on a regular basis and either worn by OTRD employees at official functions or given to people within the tourism industry to promote Oklahoma Tourism.</p> <p>It appears there were no expenditures made that violated state law.</p>