

# Nevada System of Higher Education

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## MEMORANDUM

Date: April 10, 2023  
To: Daniel L. Crossman, Legislative Auditor  
From: Dale A.R. Erquiaga, Acting Chancellor  
Re: NSHE Response to the 2022 Performance Audit of Capital Construction Projects

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### INTRODUCTION

Thank you for the opportunity to respond to the 2022 Performance Audit findings. The Nevada System of Higher Education (NSHE) appreciates that the intent of this audit was to assess compliance with NSHE policies and procedures as well as with legislation and regulations established by the State of Nevada, and to provide recommendations on how NSHE can improve compliance within its operations.

We understand the value of the audit as it identified deficiencies that need to be addressed, opportunities for improvement to enhance accountability and operational management, and areas where differences in interpretation of the guidance or expectations may exist. NSHE has begun work to address the findings in the audit related to capital construction projects.

Pursuant to LCB requirements, we are submitting a 60-day response, followed by a final report in October. This document contains our initial responses/actions and the 60-day response. As discussed in January, I will appoint three NSHE committees, including external representatives, to advise on recommended actions over the next six months. We expect to bring any necessary policy changes to the Board in June and/or September.

Below are the Legislative Counsel Bureau audit recommendations and NSHE's related responses.

### RECOMMENDATIONS AND RESPONSES

**Recommendation 1:** Revise policies and procedures to clarify state-appropriated operating funds are not to be used for capital construction and develop controls to help ensure compliance.

**Initial Response:** NSHE agrees with and accepts this recommendation.

NSHE will work with the institutions to develop a policy within NSHE's Procedures and Guidelines Manual that clearly defines the use of state-appropriated operating funds, including year-end procedures to prohibit unallowable transfers. This policy will also include appropriate monitoring parties for the funds to help ensure compliance.

**Sixty Day Response:** In progress.

NSHE will work with the institutions and will review and revise the following policies and procedures where appropriate to clearly define the use of state-appropriated operating funds, the responsible monitoring parties, and the definition of allowable and unallowable transfers:

Board of Regents *Handbook*, Title 4, Chapter 9, Section C, Subsection 2(1) Uniform Accounting Policies and Procedures

Board of Regents *Handbook*, Title 4, Chapter 9, Section C, Subsection 2(5) Transfers

NSHE Procedures and Guidelines Manual, Chapter 1, Section 2, Subsections 6 and 7

NSHE Procedures and Guidelines Manual, Chapter 5, Section 2

**Recommendation 2:** Revise policy regarding the management of construction projects using state appropriations and develop procedures to ensure involvement of the State Public Works Division where required and appropriate.

**Initial Response:** NSHE agrees with and accepts this recommendation.

NSHE will work with the institutions to ensure a revised policy surrounding management of construction projects using state appropriations aligns within institutional policy, purchasing guidelines, NSHE Procedures and Guidelines Manual, and NRS 341.1407. This will include monitoring of initial project budgets to ensure State Public Works Division involvement when required and appropriate.

**Sixty Day Response:** In progress

NSHE will work with the institutions and will review and revise the following policies and procedures where appropriate:

Board of Regents *Handbook*, Title 4, Chapter 10, Section 1 Purchasing Policy

Board of Regents *Handbook*, Title 4, Chapter 10, Section 26 Property, Capital Improvement Planning, and Facility Management

NSHE Procedures and Guidelines Manual, Chapter 1, Section 2, Subsections 6 and 7

NSHE Procedures and Guidelines Manual, Chapter 5, Section 2

**Recommendation 3:** Work with the State Public Works Division on an agreement regarding the management of projects funded with state appropriations to ensure compliance with statute and Board of Regent policies.

**Initial Response:** NSHE agrees with and accepts this recommendation.

NSHE will work with the institutions to develop an agreement with the State Public Works Division that outlines the expectations of each party's management responsibilities for the various phases of the project when state appropriation funding is utilized.

**Sixty Day Response:** In progress

Board of Regents *Handbook*, Title 4, Chapter 10, Section 26(8) will be updated to include the terms of the agreement with the State Public Works Division.

NSHE Procedures and Guidelines Manual, Chapter 1 will be updated to include the terms of the agreement with the State Public Works Division.

**Recommendation 4:** Develop policies for monitoring construction project accounts, identifying potential funding shortfalls, and ensuring original project scopes and any modifications are appropriate considering realized funding or anticipated funding shortfalls.

**Initial Response:** NSHE agrees with and accepts this recommendation.

NSHE will work with the institutions to ensure development of an aligned policy to evaluate actual funding and resources, anticipated shortfalls, and the details to monitor construction project budgets more closely.

**Sixty Day Response:** In progress

A policy will be added to the Board of Regents *Handbook*, Title 4, Chapter 9, Section 1 requiring projects with unsecured funding above a certain threshold be approved by the "Business, Finance, and Facilities Committee" prior to commitments. NSHE will work with the institutions to establish a threshold.

As part of the reporting of Self-supporting budget to actual review process, Board of Regents *Handbook*, Title 1, Article VI, Section 3(b) shall be revised to include monitoring by the "Business, Finance, and Facilities Committee" for construction projects with funding shortfalls above an established threshold. NSHE will work with the institutions to establish a reasonable monitoring threshold.

Board of Regents *Handbook*, Title 4, Section C, Subsection 2(3) Self-Supporting Budget Review categories will be reviewed and modified if appropriate.

**Recommendation 5:** Develop standardized construction contracts that define allowable overhead and profit markup fees for both general contractors and subcontractors, and clearly define unallowable charges.

**Initial Response:** NSHE agrees with and accepts this recommendation.

NSHE will work with the institutions to develop, review and/or revise construction contracts to define the allowable terms for overhead and markup fees, while also defining unallowable charges.

**Sixty Day Response:** In progress

NSHE Procedures and Guidelines Manual, Chapter 5, Section 3 governs the preparation and approval of contracts. If appropriate this section will be revised to address this audit finding.

**Recommendation 6:** Implement proper controls so institution personnel do not deviate from contract terms.

**Initial Response:** NSHE agrees with and accepts this recommendation.

NSHE will work with institution personnel to ensure monitoring of the construction contract terms. This will include identification of the key terms and costs during the payment approval process, and implementation of a periodic contract to actual cost review to ensure compliance throughout the life of the project.

**Sixty Day Response:** In progress

NSHE Procedures and Guidelines Manual, Chapter 5, Section 2, Subsection I(g) governs the purchasing and related procedures for capital construction. This section will be reviewed and modified, if appropriate, to address this audit finding.

**Recommendation 7:** Ensure all construction projects funded by institutions have construction contracts that control costs and allow institutions access to all pertinent cost information, regardless of the procurement method.

**Initial Response:** NSHE agrees with and accepts this recommendation.

NSHE will work with the institutions to evaluate the current construction contract review process to ensure all costs and pertinent cost information are included in a periodic review.

**Sixty Day Response:** In progress

NSHE Procedures and Guidelines Manual, Chapter 5, Section 2, Subsection I(g) governs the purchasing and related procedures for capital construction. This section will be reviewed and modified, if appropriate, to address this audit finding.

**Recommendation 8:** Develop policies and procedures to thoroughly review change order costs, including subcontractor overhead and profit markup fees.

**Initial Response:** NSHE agrees with and accepts this recommendation.

NSHE is working with the institutions in the development of standardized policies and procedures to enable a thorough review of change order costs, including detailed guidelines of how to process and approve a change order and allowable terms of change orders.

**Sixty Day Response:** In progress

NSHE Procedures and Guidelines Manual, Chapter 5, Section 2, Subsection I(g)(14) governs the purchasing and related procedures for capital construction change orders. This section will be reviewed and modified, if appropriate, to address this audit finding.

**Recommendation 9:** Develop systemwide policy to help ensure appropriate entities, including the departments that will be the users of the project, fully participate in project planning and to limit changes to project's scopes after the awarding of the construction contract.

**Initial Response:** NSHE agrees with and accepts this recommendation.

NSHE will work with the institutions to develop a systemwide policy that identifies the project team most appropriate to facilitate and provide feedback in the construction project planning process. This team will include representatives from impacted departments.

**Sixty Day Response:** In progress

NSHE Procedures and Guidelines Manual, Chapter 1 and Chapter 5, Section 2 will be reviewed and updated to address these issues if applicable.

**Recommendation 10:** Develop a systemwide policy to help ensure all project costs are identified and included in the project construction budget before awarding the construction contract, and to ensure change orders are not used to spend additional funding or unused state appropriations.

**Initial Response:** NSHE agrees with and accepts this recommendation.

NSHE will work with the institutions to develop an aligned, systemwide policy that identifies required project costs to be considered in the project budget prior to the award.

**Sixty Day Response:** In progress

NSHE Procedures and Guidelines Manual, Chapter 1 and Chapter 5, Section 2 will be reviewed and updated to address these issues if applicable.

**Recommendation 11:** Develop procedures to ensure institutions comply with state law and notify the Labor Commissioner prior to final contractor payment.

**Initial Response:** NSHE agrees with and accepts this recommendation.

NSHE will work with the institutions to review and update policies to ensure all university policies, purchasing guidelines, and the NSHE Procedures and Guidelines Manual are revised to align with NRS 338.013(4).

**Sixty Day Response:** In progress

NSHE Procedures and Guidelines Manual, Chapter 1 and Chapter 5, Section 2 will be reviewed and updated to address these issues if applicable.

**Recommendation 12:** Ensure that essential project closeout documentation is obtained prior to final contractor payment.

**Initial Response:** NSHE agrees with and accepts this recommendation.

NSHE will work with the institutions to ensure review and, if necessary, revision of the construction contract to include a certificate of substantial completion. This will be performed in conjunction with the corrective action of recommendation #5 (develop, review and/or revise construction contracts to define the allowable terms for overhead and markup fees, while also defining unallowable charges).

**Sixty Day Response:** In progress

NSHE Procedures and Guidelines Manual, Chapter 1 and Chapter 5, Section 2 will be reviewed and updated to address these issues if applicable.

**Recommendation 13:** Require institutions to develop policies and procedures to monitor project balances and to ensure unused project funds are reverted timely.

**Initial Response:** NSHE agrees with and accepts this recommendation.

NSHE will work with the institutions to develop an aligned policy that details the timelines for project close out and the reversion of any unused project funds.

**Sixty Day Response:** In progress

NSHE Procedures and Guidelines Manual, Chapter 1 and Chapter 5, Section 2 will be reviewed and updated to address these issues if applicable.

**Recommendation 14:** Seek clarification of state law to determine whether institutions have the authority to enter into public-private partnerships to construct capital projects.

**Initial Response:** NSHE agrees with and accepts this recommendation.

NSHE will work to seek clarification of state law to determine whether institutions have the authority to enter into public-private partnerships to construct capital projects and will apprise the institutions of any determination.

**Sixty Day Response:** In progress

Upon closer review, the projects that are referred to in the audit as “public private partnerships” are not actually legal partnerships under Nevada law. Instead, they are a series of real estate transactions (including ground leases, and real property conveyances, for example). The Board of Regents, acting for the Nevada System of Higher Education, already has legal authority to enter into such contracts.

NSHE will continue to seek clarification of state law to determine whether institutions have the authority to enter into true public-private partnerships to construct capital projects and will apprise the institutions of any determination.

**Recommendation 15:** Develop systemwide policies and procedures for the use of public-private partnerships to construct capital projects and enforce existing policies related to institutions’ development of lease-purchase procurements.

**Initial Response:** NSHE agrees with and accepts this recommendation.

NSHE will work with the institutions to develop an aligned, systemwide policy that defines the use of a public-private partnership to construct capital projects as well as language for lease-purchase agreements.

**Sixty Day Response:** In progress

NSHE Procedures and Guidelines Manual, Chapter 5, Section 2 will be reviewed and updated to address these issues if applicable.

**Recommendation 16:** Develop policies and procedures to help ensure that capital construction solicitations comply with laws and adhere to both the Nevada System of Higher Education and institutional policies and procedures.

**Initial Response:** NSHE agrees with and accepts this recommendation.

NSHE will work with the institutions to review current capital construction solicitation policies and revise as needed to ensure compliance. The process surrounding projects solicited through the Design-Build method will be more clearly defined.

**Sixty Day Response:** In progress

Board of Regents *Handbook*, Title 4, Chapter 10, Section 1 and NSHE Procedures and Guidelines Manual, Chapter 5, Section 2 will be reviewed and updated to address these issues if applicable.

**Recommendation 17:** Develop policies and procedures for construction project solicitations that include a defined procurement schedule and proper monitoring to ensure contracts are awarded timely.

**Initial Response:** NSHE agrees with and accepts this recommendation.

NSHE will work with the institutions to develop an aligned policy that includes a defined timeframe to evaluate and award the contract timely.

**Sixty Day Response:** In progress

Board of Regents *Handbook*, Title 4, Chapter 10, Section 1 and NSHE Procedures and Guidelines Manual, Chapter 5, Section 2 will be reviewed and updated to address these issues if applicable.

**Recommendation 18:** Revise policy to clarify the use of written agreements with appropriate terms to ensure design and construction contracts protect Nevada System of Higher Education interests.

**Initial Response:** NSHE agrees with and accepts this recommendation.

NSHE will work with the institutions to propose a policy revision that clarifies the use of written agreements with appropriate terms to ensure design and construction contracts protect NSHE interests.

**Sixty Day Response:** In progress

Board of Regents *Handbook*, Title 4, Chapter 10, Section 1 and NSHE Procedures and Guidelines Manual, Chapter 5, Section 2 will be reviewed and updated to address these issues if applicable.

## CONCLUSION

We look forward to reporting detailed improvements surrounding these recommendations in the future and will keep you apprised should there be any deviation from our expectations.