

Compliance with Executive Order 20-44 **Advisory Memorandum 202223-30**

June 28, 2023

Executive Summary

Governor Ron DeSantis issued Executive Order (EO) 20-44 on February 20, 2020, requiring state agencies to review executive leadership compensation for entities named in statute which must form a sole-source, public-private agreement; or which annually receive 50 percent or more of their budget from state funds or a combination of state and federal funds. As directed by EO 20-44, Section 4, the Department is responsible for collecting and reviewing annual reports regarding total executive leadership compensation and other documentation from entities that meet the criteria outlined in EO 20-44.

The objective of this engagement was to review the Department's compliance with EO 20-44, Section 4. The scope of this review included the Department's actions in response to EO 20-44, Section 4 for the period of July 1, 2022 – May 31, 2023. We reviewed documentation maintained by the Bureau of Purchasing and Contracts (BPC) and the Bureau of Motorist Services Support (BMSS).

The BPC has addressed the requirements of Section 4 by requiring templates, memorandums of understanding, contracts, and solicitations to contain language requiring the contractor to comply with the provisions of EO 20-44, if applicable. Our review of a sample of contracts and solicitations noted all sampled items contained the required language in conformance with EO 20-44.

The BPC and BMSS have addressed the requirements of Section 4 by requiring entities reporting to have received 50 percent or more of their budget from the state or from a combination of state and federal funds to submit an annual report and IRS Form 990. However, our review of 10 identified entities noted 6 (60 percent) had not provided the most current annual report or IRS Form 990 necessary for the Department to review executive leadership compensation. While both BPC and BMSS stated they follow-up when required documents are not submitted, neither section had records to evidence follow-up was conducted with the six entities to receive the most current annual report and IRS Form 990.

There is no clear guidance that specifies roles and responsibilities for follow-up or monitoring entities that meet Section 4 criteria but have not provided the required annual report and IRS Form 990. We recommend the BPC and BMSS coordinate to establish clear roles and responsibilities for collecting and reviewing annual reports regarding total executive leadership compensation and other documentation from

entities that meet the criteria outlined in EO 20-44 and maintain records to evidence compliance.

Background and Introduction

EO 20-44 was issued on February 20, 2020, in response to discovered misappropriation of state funds by a private entity to increase executive leadership compensation.

EO 20-44, Section 1 required state agencies to submit a list, within 45 days of the date of the Order, of entities named in statute with which the agency must form a sole-source, public-private agreement, or that, through contract or other agreement with the state, annually receive 50 percent or more of their budget from the state or from a combination of state and federal funds.

EO 20-44, Section 4 requires the following:

- Each executive agency shall henceforth require entities that meet the criteria listed in Section 1, an annual report, including the most recent IRS Form 990, detailing the total compensation for the entities' executive leadership teams.
- Contracted entities must agree through appropriate contract or grant agreement amendment to inform the agency of any changes in total executive compensation between the annual reports.
- All compensation reports must indicate what percent of compensation comes directly from the state or federal allocations to the contracted entity.

As directed by EO 20-44, the Department is responsible for collecting an annual report regarding total executive leadership compensation and other documentation from entities with which the Department must form a sole-source, public-private agreement or which annually receive 50 percent or more of their budget from state or federal funds or both. The Department is required to review the annual report and IRS Form 990, and if the compensation totals exceed limits set forth in federal or state law and regulations, refer the matter to the Office of the Chief Inspector General for investigation and appropriate action.

The Office of Policy and Budget requires each executive agency to submit a Section 4-Attestation Request form signed by the agency head to the agency's Office of Inspector General no later than May 31st annually. The Department submitted the signed form to the Office of Inspector General on May 30, 2023.

Accordingly, each state agency must attest that:

- As necessary, the state agency amended all applicable contracts and grant agreements to comply with EO 20-44, Section 4 by requiring the submission of an annual report including compensation information described above.

- The state agency has modified its internal contract and grant administration procedures to require this information from current and future agreements with entities that meet the criteria in Section 1.

Results of Review

The Department identified 10 entities that reported receiving 50 percent or more of their budget from state and/or federal funds for the preceding year. The 10 entities identified were all entities receiving funds from the sale of specialty license plates. Specialty license plate funds are considered state financial assistance and the recipient organizations are specifically named in Sections 380.08058, and 320.08056, Florida Statutes. The Department did not identify any other entities named in statute with which it must form a sole-source, public-private agreement.

Entities that met the criteria were required to submit¹ an annual report, including documentation of total compensation for the entities' executive leadership team, and an IRS Form 990 to the BPC. The BMSS notifies specialty license plate organizations of the requirement through email each year. Additionally, the BMSS maintains a PowerPoint presentation for new specialty license plate recipient organizations with pertinent reporting requirements and instructions, and provisions for compliance with EO 20-44.

We reviewed documentation received from the 10 identified entities to determine whether the current annual report and IRS Form 990 were submitted to the Department and reviewed as required. We reviewed documentation maintained by the BPC and the BMSS.

We noted that for 6 of the 10 entities reviewed, the Department did not have the most recent annual report or IRS Form 990. While both BPC and BMSS stated they follow-up when annual documents are not submitted, neither section had records that evidenced follow-up was conducted with the six entities that had not submitted the most current annual report and IRS Form 990. Further, there is no clear guidance that specifies roles and responsibilities for follow-up or monitoring entities that meet Section 4 criteria but have not provided the required annual report and IRS Form 990.

To further address the requirements of Section 4, the BPC issued a directive on May 5, 2021, that all templates, memorandums of understanding, contracts, and solicitations contain language requiring the contractor to comply with the provisions of EO 20-44, if applicable.

¹ Submissions are due no later than nine months after the end of the entities' fiscal year.

We examined a sample of 10 contracts and solicitations in the Department's Electronic Repository of Executed Contracts (EREC) system to determine if the agreements included language referencing the EO 20-44 requirements. The sample reviewed included five contracts and five solicitations. Our review noted all sampled contracts and solicitations contained the required language in conformance with Section 4.

Conclusions

The BPC has addressed the requirements of Section 4 by requiring templates, memorandums of understanding, contracts, and solicitations to contain language requiring the contractor to comply with the provisions of EO 20-44, if applicable. Our review of a sample of five contracts and five solicitations noted all sampled contracts and solicitations contained the required language in conformance with EO 20-44.

The BPC and BMSS have addressed the requirements of Section 4 by requiring the submission of an annual report and IRS Form 990 by entities reporting to have received 50 percent or more of their budget from the state or from a combination of state and federal funds. However, we noted 6 out of 10 entities reviewed had not provided the most current documentation necessary for the Department to review executive leadership compensation. While both BPC and BMSS stated they follow-up when annual documents are not submitted, neither section had records to evidence that follow-up was conducted with the six entities to receive the most current annual report and IRS Form 990.

There is no clear guidance that specifies roles and responsibilities for follow-up or monitoring entities that meet Section 4 criteria but have not provided the required annual report and IRS Form 990. We recommend the BPC and BMSS coordinate to establish clear roles and responsibilities for collecting and reviewing annual reports regarding total executive leadership compensation and other documentation from entities that meet the criteria outlined in EO 20-44 and maintain records to evidence compliance.

Purpose, Scope, and Methodology

The purpose of this engagement was to review Department compliance with EO 20-44, Section 4.

The scope of this review included the Department's actions in response to EO 20-44, Section 4 for the period of July 1, 2022 – May 31, 2023.

The methodology included:

- Reviewing EO 20-44 and additional guidance;
- Reviewing applicable Department policies, procedures, reports, and forms;
- Reviewing the EO 20-44 Section 4 Attestation Request form;
- Reviewing annual reports and IRS Form 990 for specialty license plate recipient organizations;
- Reviewing a sample of contracts and solicitations; and
- Interviewing applicable Department staff.

Office of Inspector General



Distribution, Statement of Accordance, and Project Team

Distribution

Dave Kerner, Executive Director
Robert Kynoch, Deputy Executive Director
Jennifer Langston, Chief of Staff
Kevin Bailey, Division Director of Administrative Services
Stephanie Duhart, Chief Administrative Officer, Division of Motorist Services
Mark Hernandez, Bureau Chief of Purchasing and Contracts
Doane Rohr, Bureau Chief of Motorist Services Support

Melinda M. Miguel, Chief Inspector General
Sherrill F. Norman, Auditor General

Statement of Accordance

Section 20.055, Florida Statutes, requires the Florida Department of Highway Safety and Motor Vehicles' Inspector General to review, evaluate, and report on policies, plans, procedures, accounting, financial, and other operations of the Department and to recommend improvements.

Project Team

Engagement conducted by:
Kim Butler, Auditor

Under the supervision of:
Erin Mook, Audit Director

Approved by:


Mike Stacy, Inspector General