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LEGISLATIVE AUDITOR GENERAL
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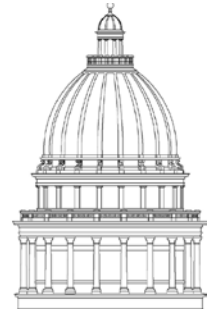
A Survey of Allegations Involving Utah State University's Anthropology Program

Under a university innovation grant program, Utah State University (USU) awarded \$80,400 to the Sociology, Social Work, and Anthropology Department (SSWA) to form a cultural resource management (CRM) enterprise named Utah State University Archaeological Services (USUAS). USU later created a licensing agreement with USUAS as a private firm. In the agreement, USU granted intellectual property rights in the field of cultural resource management in exchange for royalty payments equaling 5 percent of USUAS's annual gross revenue.

USU's decision to create USUAS as a private entity was poorly conceived in that it made avoiding conflicts of interest difficult. We found that conflicts of interest existed and persist between USU faculty and USUAS, and that USU managed those conflicts poorly. Statewide, some universities appear to have grant processes that are not in-line with state statute. In the case of USUAS, USU has not adequately ensured compliance with its licensing agreement. USU has also failed to adequately document the extent to which the arrangement has met the program's stated goals.

Survey Scope and Objectives

This audit was requested because of concerns with the relationship between USU and USUAS. Specifically, the questions we address in this survey are the following:



**USUAS is a private
cultural resource
management (CRM)
company formed by
USU anthropology
program faculty.**

- Is USU's anthropology program violating the employee ethics act, specifically with regard to conflicts of interest?
- Is USUAS inappropriately using USU resources?
- Do USU procurement practices comply with state law?
- Can related procurement statutes be strengthened?

USU's Decision to Create USUAS Was Poorly Conceived

USU funded USUAS's creation and supported giving most of the ownership of the company to members of the anthropology program's faculty. USUAS's model differed from other universities' CRM firms we sampled. Organizing USUAS with faculty as the owners made it difficult for them to avoid conflicts of interest.

USUAS's Model Differed from Those in Other Universities We Sampled

USU anthropology program faculty proposed USUAS to the university provost's innovation fund in 2006. The innovation fund's stated purpose was to move the university forward with bold, new initiatives. Funded initiatives could be designed to enhance and improve research, teaching, and/or service. Administrators of the innovation fund approved USUAS in 2007 and the anthropology program planned a start-up in 2009.

USUAS evolved differently from CRM models we found at other sampled universities. Other universities with associated CRM firms seem to have maintained those firms within the university. USUAS, although initially a part of the university, was later established as a private corporation owned by USU faculty. While records of those decisions are scarce, USU was supportive, if not the primary driver, of USUAS's business model.

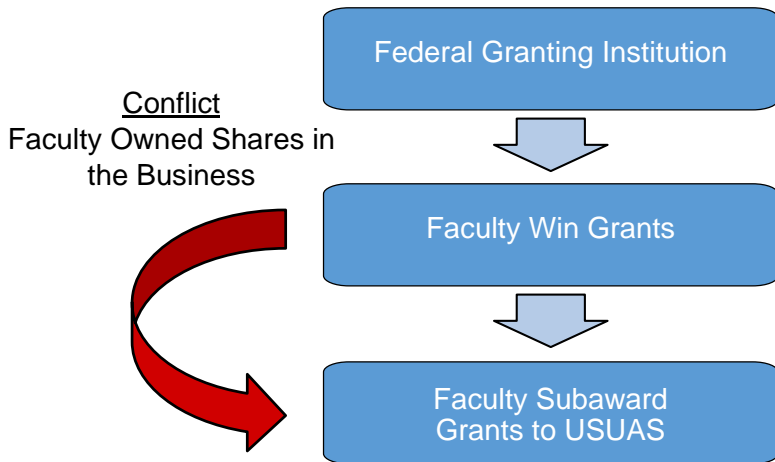
Faculty Ownership in USUAS Was Problematic

USUAS's structure was problematic for one main reason. Faculty ownership of the private company made it impossible for those faculty members to subaward work to the company without a conflict of

USUAS evolved differently from CRM models we found at other sampled universities.

interest. Figure 1 shows how USUAS's structure made avoiding conflicts of interest difficult.

Figure 1 USUAS Was Incorporated with Faculty as the Shareholders. Shareholding faculty could not subaward grants to USUAS without encountering a conflict of interest.



Source: Auditor generated.

The conflict of interest between faculty and USUAS should have been apparent even from the initial startup, but USU failed to prevent it. By approving USUAS as a private corporation with faculty as its owners, USU created a conflict of interest scenario that would cause difficulties for all parties moving forward.

Since USUAS's formation as a private company, USU administration and anthropology faculty have struggled to find solutions to manage their conflicts of interest. Initially, faculty of the anthropology program held majority ownership in the company. Eventually, all faculty with shares sold them to the company's director. Also during that time, the spouse of USUAS's director was hired as faculty in the anthropology program. USU officials began to recommend applying for the federal grants through the Spatial Data Collection, Analysis, and Visualization Lab Director (USUAS's Director's spouse) to mitigate conflicts of interest for the other faculty. Those solutions often inadequately addressed the issues inherent between anthropology faculty and USUAS.

Faculty conflicts of interest with USUAS made subawarding grants to USUAS problematic.

Significant Conflicts Exist and Were Not Managed Appropriately

The purpose of the Utah Public Officers' and Employees' Ethics Act (*Utah Code 67-16-2*) is to set standards of conduct in areas where actual or potential conflicts of interest exist between public duties and private interests. We found that conflicts of interest persisted between USU's anthropology program and USUAS, and those conflicts were not managed appropriately. USUAS also may have used USU resources inappropriately, although we found no evidence that USU students were inappropriately used to benefit USUAS. Allowing the use of the university's trademark in USUAS's name may also have been inappropriate.

Grant Processes Did Not Manage Conflicts of Interest Effectively

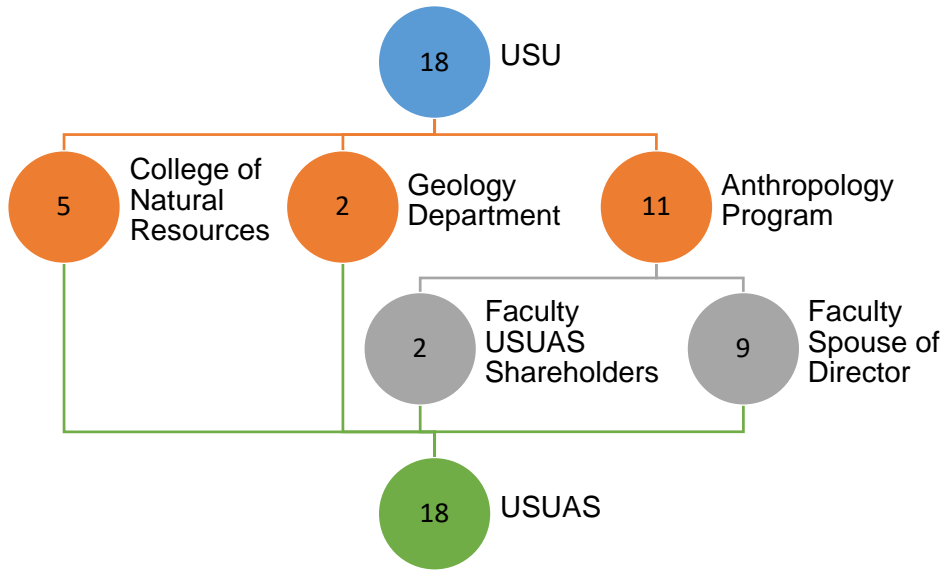
USU subawarded portions of 18 grants to USUAS, 11 from the anthropology program. Each of those 11 grants had an associated conflict of interest. While administration tried to mitigate the conflicts, their solutions were ineffective and poorly executed.

Grant Purchasing Conflicts Existed. Faculty with ownership in USUAS subawarded grant work to USUAS. Initially, most of USU's anthropology faculty had some financial interest in USUAS. Some of those faculty members engaged USUAS to do work while also owning shares in the company. While USU sought to manage the conflicts of interest between USU faculty and USUAS, the process failed to manage decisions to subaward work to USUAS.

USU has engaged USUAS to do work for 18 grants, 11 of which were through the anthropology program. Those 11 grants account for 44 percent of USU payments to USUAS. Figure 2 illustrates from which departments the grants to USUAS were distributed.

All grants through the anthropology program had poorly managed conflicts of interest.

Figure 2 USU Engaged USUAS in 18 Grant Subawards, 11 of which Were Through the Anthropology Program. All 11 of the grants involved conflicts of interest.



Source: USU grant records

All 11 grants through the anthropology program had financial conflicts of interest with USUAS. Two grants were initiated by faculty with ownership in the company, while the other nine grants were initiated by a faculty member who is married to USUAS’s director. We found no indication of conflicts of interest in the seven grants subawarded to USUAS from the College of Natural Resources and the Geology Department.

Based on records of discussions between faculty and administration, USU seemed to have difficulty identifying good solutions to the conflicts arising in grant proposals. Subsequently, they recommended that the spouse of USUAS’s director (who works in the anthropology program) be the person to apply for federal grants that had subawards to USUAS. Administration felt that process would keep USUAS shareholding faculty from subawarding grants to their own company. While the spouse of USUAS’s director did not have personal shares in the company, their relationship still constitutes as significant a conflict as being a shareholder in the company.

Since then, all the university’s faculty members have divested their shares in USUAS. Since this audit survey began, the university has also pushed to terminate its licensing agreement with USUAS.

Of the 18 grants with subawards to USUAS, 11 had conflicts of interest and 7 did not.

USU's Processes for Managing Conflicts of Interest Failed to Appropriately Manage the Conflicts Between the Anthropology Faculty and USUAS. The most significant problem was that in each case USU faculty had already selected USUAS for subawards in grant applications before engaging in a purchasing process through USU administration. According to records of internal discussions, different departments repeatedly accepted responsibility to provide controls to grant decisions involving USUAS. We found no documentation or indication that those controls adequately addressed conflicts of interest.

USU's Purchasing and Contract Services office typically handles procurements for the university. According to emails, the office recognized its role in mitigating conflicts of interest with USUAS. At least twice, the office committed to handle subawards to USUAS through its procurement processes. The Purchasing and Contract Services office was unable to provide documentation regarding a USUAS subaward procurement process. Further, the director told us that in the past they did not question subawards in grants as that was not in their area of responsibility. Given the significance of the conflict of interest, we believe USU should have ensured that some kind of acceptable procurement process took place.

The department head for the Sociology, Social Work, and Anthropology (SSWA) Department had also accepted responsibility to oversee all transactions between members of the anthropology faculty and USUAS. That oversight should have included decisions on whether to subaward portions of grants to USUAS, but we found no evidence of such oversight.

Both USU's purchasing office and the SSWA department head neglected to provide adequate controls on decisions to subaward grants to USUAS. USU internal documents indicate that faculty viewed USUAS (at least initially) as an extension of the university rather than a private corporation. In this regard, USU appears to have been looking for ways to justify and manage an already made decision, rather than to question and to provide adequate controls for the decision beforehand.

Because of time constraints we did not look at how funds were used once grants were in place, although we saw no indication that they might have been misused.

USU processes did not adequately manage conflicts of interest with USUAS.

USUAS May Have Had Inappropriate Access to USU Resources

Some USU resources have been used by USUAS. The extent to which the use is inappropriate is still unclear because USUAS's director partnered with the university to secure some of those resources.

Lack of Fees for USUAS to Use Lab Equipment May Be Inappropriate. In 2010, the anthropology program secured a grant to purchase equipment for the creation of an archaeology program lab and to hire a lab director. USUAS partnered with USU in applying for the grant and was named as a co-user of the equipment. Because USUAS's director is a research faculty member of the program, the director has full access to the equipment without paying any use fees.

Initially, USU ran the lab as a service center that could provide archaeology equipment and services. According to faculty, USU ended the center (and other service centers) because the centers became unsustainable. Currently, USU does not have a process for other private citizens or businesses to access the lab equipment, although faculty says that businesses are welcome to contact them.

Another complicating issue is that the lab grant application also included the USUAS director's spouse as the intended lab director. While that also constitutes a conflict of interest, according to one USU official, USU administration was well aware of the conflict and the anthropology program's intentions.

USUAS Held Board Meetings in USU Facilities. USUAS board members (faculty of the anthropology program) held at least some board meetings for the company in USU's facilities (the anthropology program conference room). One USU official described this kind of use as "incidental use." We were told the university does not prevent incidental use because the university sees a benefit in keeping faculty on campus and available for university needs. Even so, allowing USUAS's board to meet on campus does raise questions about university favoritism for one private venture over another.

USUAS has access to university resources through its partnership with USU in a 2010 grant.

USU administration agrees that allowing its name to be used by a private company is concerning.

USUAS's Inclusion of USU's Name Was Inappropriate

While faculty felt close ties between the university and USUAS, using the university's name appears inappropriate. Although USUAS was initiated by the university, it became a private company. Its name raises questions about USU's relationship to USUAS, and may lead some of the public to believe that USUAS is part of USU. That perception could raise legal issues if USU does nothing to separate itself from the company.

USU administration agrees the use of the name is concerning. The university has been negotiating to terminate its licensing agreement with USUAS and to have the company remove the university from its name.

We Found No Evidence of Inappropriate Student Use

We heard allegations that USU students were possibly being exploited to work for USUAS. We were unable to verify any of those complaints. Further, we found no indication that students were being inappropriately encouraged to perform services for USUAS. We did find that USU kept poor records of student conflict waivers.

Students working for USUAS should have completed conflict waivers. The forms outlined the students' rights and their options should any conflict arise from their educational activities and their work. While multiple students worked for USUAS, only one student had a conflict waiver on file.

None of our discussions or reviews uncovered anything to indicate inappropriate conflicts arising from students working for USUAS. We met with faculty and students and reviewed materials regarding internships requirements and opportunities. According to payroll records from USUAS, students appear to have been reasonably compensated for their work.

Some Utah Universities' Grant Processes Have Not Complied with Statute

State procurement law generally requires a government entity to use a competitive process when choosing a provider of a service or

item. USU did not use a competitive process when selecting USUAS to provide services under grants USU received. USU believed itself exempt from procurement code requirements because its grant applications identified USUAS as a provider of services under the grant. Discussions with the Office of Legislative Research and General Counsel and our analysis of state statute lead us to believe that USU and other state universities may be misinterpreting state procurement law relating to grants. USU administration expressed to us their intention to use procurement restrictions when identifying future private sector service providers for grants.

A procurement that is subject to Utah's procurement code is any acquisition of goods or services "through an expenditure of public funds." A procurement does not include a grant. *Utah Code 63G-6a-103(38)* defines a grant as follows:

"Grant" means an expenditure of public funds or other assistance, or an agreement to expend public funds or other assistance, for a public purpose authorized by law, *without acquiring a procurement item in exchange* (emphasis added).

This language indicates that, if a government entity essentially gives public money away without acquiring anything in exchange, it is a grant. Under these circumstances, the government entity is not required to use a competitive process to choose the recipient of the grant money. However, if a government entity receives a service through an expenditure of public funds – including funds received through a federal grant – that expenditure is not a grant and is subject to procurement code requirements. Some universities appear to be misinterpreting state statute to exempt from procurement requirements an expenditure of money from a federal grant.

USU's subawards to USUAS were not in line with state statute. Because USUAS provided services, which qualify as procurement items, these subawards should have gone through a statutorily acceptable procurement process.

USU faculty have told us that following procurement code requirements may be problematic. We were told that instituting more restrictive controls on the grant process would decrease the state's ability to secure grants. According to some faculty, federal research granting agencies want detailed budgets and information on what

University procurements under grants are still governed by state statute.

entities will be used to conduct research. If an applicant goes through a typical purchasing process, either the application will be too late (because of the time involved in putting something out to bid) or the application will be incomplete (because the researcher did not yet bid out the work.)

State procurement code may already address such issues by allowing public entities to prequalify companies. In such a way, an entity can identify qualified companies willing to provide services at an acceptable rate before a specific need arises. Prequalifying companies also mitigates conflicts of interest because a purchasing process has taken place and multiple companies can be prequalified and used. Further prequalification helps to create a more transparent process in which any qualifying company has an opportunity to participate in the selection process.

All other Utah public universities (except one) reported that their processes did not prevent grant applicants from sole sourcing subawards, although most of the universities said that such instances were very rare. USU and other universities should reassess their grant procurement processes to ensure they comply with statute.

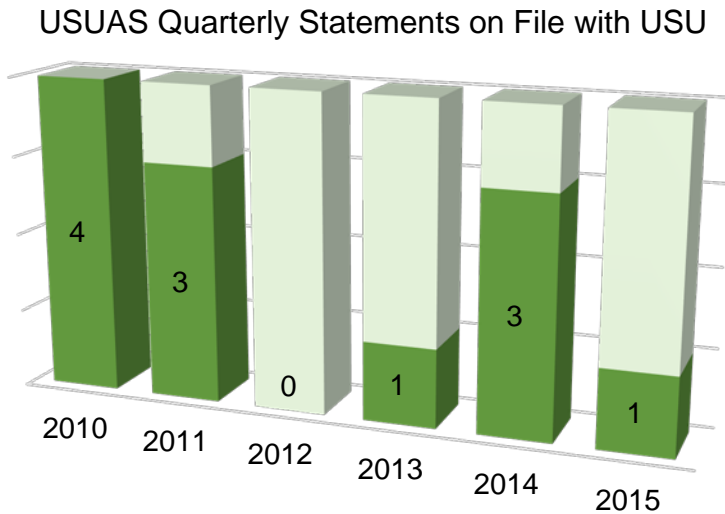
USU Has Not Adequately Ensured Compliance to the Licensing Agreement

USU's licensing agreement requires quarterly statements from USUAS showing its sales revenues. USU does not have record of all quarterly payments the university received. Also, in some cases, USUAS appears not to have sent quarterly statements as stipulated in the agreement. We found no evidence that USU followed up when the quarterly statements were sent inconsistently and did not exercise its right to audit USUAS to ensure compliance.

Figure 3 shows that USU maintained poor records of royalty statements from USUAS. USU had all 2010 quarterly statements (the first full year of USUAS operations.) USU could not provide all statements for the subsequent years. In all, USU was missing half (50 percent) of the expected statements.

Most Utah universities reported a lack of appropriate controls over grant procurements.

Figure 3 USU Kept Poor Documentation of USUAS Quarterly Statements. USU had documentation for only half of the expected quarterly statements.



Source: USU administration

USU also appears not to have ensured that USUAS submitted consistent statements as outlined in the licensing agreement. In 2014, USUAS sent statements for two quarters at once, indicating that at least one of the statements was not sent on time. In 2013 and 2015, USUAS appears to have sent one statement for the entire year, instead of quarterly statements. USU had no royalty statements on file for 2012.

Although USUAS quarterly statements were inconsistent, we have no evidence indicating that USU attempted to ensure the terms of the agreement were being met. USU officials cannot say they have done any work to identify whether the royalties received accurately reflect USUAS’s revenues. We did not do any work to determine the accuracy of USUAS’s royalty payments. Total royalties received amount to \$44,179 since the company began in 2009.

USU could not provide evidence that they worked to ensure compliance to the licensing agreement.

Whether USUAS Met Program Goals Is Unclear; Progress Was Poorly Tracked

Faculty intended USUAS to complement the anthropology program in two ways: (1) by providing internship, training, and employment opportunities to graduate students, and (2) by providing financial support for graduate assistantships. As discussed below,

faculty could not provide records of student involvement with USUAS and royalties have not yet exceeded USUAS's startup costs.

Some anthropology faculty reported that students have benefitted from training with USUAS, although no records have been kept to measure the extent of USUAS's impact on the program. Faculty initially reported that they expected USUAS to provide internship, training, and employment opportunities. Speaking to faculty during the audit, we were told that they kept no records of students working or training with USUAS. We were told that we would need to contact USUAS to determine the extent to which students have interned or worked for the company. We find it concerning that no effort has been made to track the impact of this program for which public money was spent.

Faculty also expected that USUAS would help support the anthropology program financially, but royalties have not yet exceeded the costs to start the company. Faculty applied for, and received, \$80,400 to use in forming USUAS. Since 2009, USU has received royalties from USUAS operations each year that totaled \$44,179. USU has yet to recover its investment in USUAS, but more concerning is USU's apparent lack of effort in ensuring that its royalty receipts are consistent and accurate.

USU has not yet recovered its total investment in USUAS.

Recommendations

1. We recommend that USU develop controls for addressing conflicts of interest before faculty apply for grants.
2. We recommend that USU evaluate the use of its name by private ventures and, where appropriate, pursue changes.
3. We recommend that USU revise its subaward practices for private entities to ensure compliance with Utah procurement code.
4. We recommend that when entering into licensing agreements, USU provides controls that include:
 - a. Enforcing compliance to its licensing agreements
 - b. Ensuring that the money spent is meeting its stated purpose

Agency Response

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December 12, 2016

Office of the Legislative Auditor General
W315 House Building, State Capitol Complex, W315
Salt Lake City, Utah 84114

RESPONSES TO SURVEY OF ALLEGATIONS INVOLVING UTAH STATE UNIVERSITY'S ANTHROPOLOGY PROGRAM

Utah State University appreciates the opportunity to respond to the Survey of Allegations Involving Utah State University's Anthropology Program report prepared by your office.

We appreciate the effort and professionalism exhibited by your team during the survey. Your auditors were diligent in their review and were willing to meet with University administrators and staff to obtain relevant information.

Attached are the University's responses to the recommendations.

If you have questions, please let me know.

Sincerely,



David T. Cowley
Vice President
for Business & Finance

Enclosures

Recommendation Response

1. *We recommend that USU develop controls for addressing conflicts of interest before faculty apply for grants.*

We concur with the recommendation. USU has introduced and will continue to implement the new faculty training module, "Research Financial and Administrative Systems Training" (RFAST), which discusses, among other topics, conditions that give rise to conflicts of interest ("COI"), and provides instructions concerning USU's COI disclosure system, as set forth in the COI Policy No. 307. A new procedure is also being introduced to strengthen existing systems so that financial interests currently identified through COI trigger events will include augmented scrutiny and action to assure appropriate management, reduction, or elimination of conflicts.

2. *We recommend that USU evaluate the use of its name by private ventures and, where appropriate, pursue changes.*

We concur with the recommendation. To ensure that USUAS no longer uses "USU" in its name, USU has initiated the termination of the USUAS License Agreement. This termination will require USUAS to change its name to no longer include "USU" or any other trademark of the University, thus eliminating future source or affiliation confusion. USU will also continue to monitor use of USU's name and other protected marks.

3. *We recommend that USU revise its subaward practices for private entities to ensure compliance with the Utah procurement code.*

We concur with the recommendation. USU is committed to complying with the Utah Procurement Code. Moving forward, USU will provide additional assessment and controls during the grant application and awarding processes to ensure that private entities are properly classified (e.g. subcontractor, subawardee) in keeping with the Utah Procurement Code.

4. *We recommend that when entering into licensing agreements, USU provides controls that include:*
 - a. *Enforcing compliance to its licensing agreements*
 - b. *Ensuring that the money spent is meeting its stated purposes.*

We concur with the recommendation. As part of a recent reorganization of the Division of Technology Transfer Services ("TTS"), USU has provided the following additional controls: (i) a new dedicated position to assist in TTS agreement compliance and (ii) the organization of a team comprising the TTS Director, the Research and Graduate Studies Financial Officer, a business service manager to provide additional oversight of royalty payments and licensee reporting.