

**FLORIDA BOARD OF GOVERNORS
STATE UNIVERSITY SYSTEM OF FLORIDA
November 5, 2008**

SUBJECT: Board of Governors Operational Audit - Findings and Response

PROPOSED BOARD ACTION

Discuss the findings of the Board of Governors Operational Audit by the Florida Auditor General for the fiscal year ended June 30, 2007 and selected actions taken through February 29, 2008.

AUTHORITY FOR BOARD OF GOVERNORS ACTION

Article IX, Section 7, Constitution of the State of Florida

BACKGROUND INFORMATION

The Auditor General's initial audit of the Board of Governors Operations focused on the management of programs and other selected administrative matters. Through staff interviews, examination of various records and transactions, events and conditions during the specified period, the Auditor General's Report identified three findings or areas of improvement.

The BOG response to these findings is included at the end of the Auditor General's Report.

Supporting Documentation Included: Auditor General's Report and BOG Responses

Facilitators/Presenters: Mr. Derry Harper, Inspector General and Director of Compliance



AUDITOR GENERAL

DAVID W. MARTIN, CPA



BOARD OF GOVERNORS

Operational Audit

SUMMARY

Our operational audit for the fiscal year ended June 30, 2007, and selected actions taken through February 29, 2008, disclosed the following:

Finding No. 1: The Board of Governors had not adopted rules requiring that State universities follow the provisions of Chapter 1013, Florida Statutes.

Finding No. 2: The Board of Governors did not adequately document that universities met eligibility criteria prior to making awards. The Board of Governors also did not obtain expenditure reports from the universities to document how Program funds were spent.

Finding No. 3: The Board of Governors did not require the submission of written verification to document that nonuniversity matching funds were received before granting Research and Economic Development Investment Program awards.

BACKGROUND

Pursuant to Section 7(d), Article IX of the State Constitution, the Board of Governors (BOG) has the duty to operate, regulate, control, and be fully responsible for the management of the State University System. The BOG consists of 17 members. The Governor appoints 14 citizen members subject to confirmation by the Senate; the Commissioner of Education; the chair of the advisory council of faculty senates, or the equivalent; and the President of the Florida student association, or the equivalent. These members serve staggered terms of

seven years. Members who served during the audit period are listed in Appendix A of this report.

The BOG establishes the powers and duties of the University Boards of Trustees. The Trustees are responsible for setting policies for the Universities, which provides governance in accordance with State law and BOGs' Regulations.

The Chancellor of the State University System during the audit period was Dr. Mark B. Rosenberg.

Status of Constitutional Authority

Rulemaking. Effective July 1, 2007, Chapter 2007-217, Laws of Florida, revised Section 120.52, Florida Statutes, to define "agency" to include both the BOG and a state university board of trustees when acting pursuant to statutory authority derived from the Legislature, and revised Sections 1001.706 and 1001.74, Florida Statutes, to require the BOG and university boards, respectively, to adopt rules pursuant to Chapter 120 when acting pursuant to statutory authority derived from the Legislature. The BOG is therefore required to adopt, amend, and repeal rules for functions not within BOG's constitutional purview pursuant to the provisions of Sections 120.536(1) and 120.54, Florida Statutes. Section 120.54(1)(a), Florida Statutes, provides that each agency statement, defined as a rule by Section 120.52, Florida Statutes, shall be adopted by the rulemaking procedure provided by Section 120.54, Florida Statutes, as soon as feasible and practicable.

Prior to July 1, 2007, the BOG had approved a Regulation Development Procedure for the state university boards of trustees and a Regulation Development Procedure for the Florida BOG. These procedures provide a process by which the BOG and the universities should adopt, amend, and repeal rules. Our review of these Regulation Development Procedures disclosed that these procedures do not address all applicable parts required by Section 120.54, Florida Statutes. For example, Section 120.54(2)(a), Florida Statutes, states that "...agencies shall provide notice of the development of proposed rules by publication of a notice of rule development in the Florida Administrative Weekly..." and Section 120.54(8), Florida Statutes, states that "In all rulemaking proceedings the agency shall compile a rulemaking record." However, neither of the Regulation Development Procedures addresses these two requirements. The BOG had not, subsequent to July 1, 2007, amended these procedures or rules to include all provisions of Chapter 120, Florida Statutes.

BOG staff indicated that it is the BOG's opinion it has acted, at all times, in compliance with the Florida Constitution and the regulation development process established pursuant to its constitutional authority. According to the BOG, as a constitutionally created and empowered entity, its authority to adopt rules flows directly from the Florida Constitution and the BOG considers this position to have been upheld by the First District Court of Appeals in *NAACP, Inc. v. Board of Regents*, 876 So. 2d 636 (Fla. 1st DCA 2004). The basis for the conclusion reached by the First District Court of Appeals was that the BOG, in exercising its constitutional authority to adopt rules, is not subject to the Administrative Procedure Act (Chapter 120, Florida Statutes). In addition, it is the opinion of the BOG that, based on the express language of Sections 120.52(1)(b)3. and 1001.706(1)(b), Florida Statutes, the Administrative Procedures Act is only applicable to the BOG when it is acting pursuant to statutory authority derived from the Legislature.

The applicability of the Administrative Procedures Act to the BOG and university board of trustees is the subject of a declaratory judgment action currently pending in the Second Judicial Circuit seeking to hold the provisions of Section 1001.706(1)(b), Florida Statutes, unconstitutional. The resolution and impact of these legal matters and any actions required by the BOG will be reviewed in subsequent audits.

Tuition and Fees. Section 1001.705(1)(c), Florida Statutes, identifies the establishment of tuition and fees as a legislative responsibility. Section 1009.24, Florida Statutes, provides that undergraduate tuition shall be established annually in the General Appropriations Act, and that the BOG, or the BOG's designee, may establish tuition for graduate and professional programs, and out-of-state fees for all programs. The above-described Regulation Development Procedure for State University Boards of Trustees requires regulations pertaining to student tuition and fees, admissions, and articulation be approved by the BOG prior to becoming effective. On June 22, 2006, the BOG delegated its authority to set tuition and out-of-state fees for the 2006-07 academic year to the university boards of trustees for undergraduate tuition; certain graduate, graduate professional, and nonresident tuition; and out-of-state fees. Our tests disclosed that undergraduate tuition and fees set by the state university boards of trustees were within the limits provided in the General Appropriations Act.

We were advised by BOG management that by maintaining legislative authority over the establishment of tuition, Sections 1001.705(1)(c) and 1009.24, Florida Statutes, prevent the BOG from implementing measures in the exercise of its constitutional authority to ensure the well-planned operation of the State University System. BOG management also believe that Section 1001.74, Florida Statutes, prevents the BOG from delegating additional authority to the university boards of trustees in areas where the Legislature has prohibited the university board of trustees from acting. These include charging

additional fees not specifically authorized by law, charging tuition and fees in any amount not set by the Legislature, and transferring student fees to university direct-support organizations.

The constitutionality of the above-cited statutes' provisions is also the subject of challenge in the declaratory judgment action currently pending in the Second Judicial Circuit. The resolution and impact of these legal matters and any actions required by the BOG will be reviewed in subsequent audits.

FINDINGS AND RECOMMENDATIONS

Finding No. 1: Educational Facilities

Section 1013.02, Florida Statutes, provides that State and local officials are authorized to cooperate in establishing and maintaining educational plants that will provide for public educational needs, and that the BOG shall adopt rules pursuant to Sections 120.536(1) and 120.54, Florida Statutes, to implement the provisions of Chapter 1013, Florida Statutes, for State universities.

Our review disclosed that the BOG, as part of its oversight responsibility had not adopted rules to implement the provisions of Chapter 1013, Florida Statutes, for State universities. For example, provisions should encompass periodic inspections of educational facilities and ancillary plant. Developing such rules would provide State universities with guidance to implement a comprehensive program of safety and sanitation for the protection of occupants of public educational and ancillary plants.

Recommendation: The BOG should review provisions of Chapter 1013, Florida Statutes, and adopt rules to provide guidance to State universities.

Finding No. 2: 21st Century World Class Scholars Program

Section 1004.226, Florida Statutes, established the 21st Century World Class Scholars Program (Program) to

develop the State's capabilities in science and high-technology research. Section 1004.226(5)(c), Florida Statutes, provides for minimum eligibility criteria for universities to receive awards under the Program. Section 1004.226(5)(e), Florida Statutes, provides that, upon verification by the BOG that a state university has met the criteria for a 21st Century World Class Scholar, the BOG shall release matching funds to the State university. This Section further provides that the funds shall be used for the purpose of recruiting a 21st Century World Class Scholar and shall be expended according to an expenditure plan approved by the BOG.

The BOG's Research and Economic Development Committee developed eligibility criteria in accordance with Section 1004.226(5)(c), Florida Statutes, that were included in the request for proposals for the awards. During the 2006-07 fiscal year, the BOG received 26 proposals from six universities that were evaluated and used to make 16 awards totaling \$20 million to five of the universities. BOG personnel advised us that all submission materials were reviewed against the adopted criteria at public meetings of the BOG's Research and Economic Development Committee. The BOG provided the final ranking and approval of the awards; however, documentation of the basis upon which the final rankings were determined (such as scoring sheets for each category of criteria) were not retained. In the absence of such documentation, BOG records do not evidence the basis upon which the BOG made these awards.

The proposals submitted by the universities included an expenditure plan, which was approved by the BOG when the award was approved. However, the BOG had not established procedures to monitor expenditure of the funds, such as requiring universities to submit expenditure reports. Although Section 1004.226, Florida Statutes, does not require the BOG to monitor program expenditures, monitoring expenditures to ensure compliance with the approved expenditure plan would provide the

BOG with additional assurance that Program funds were spent for intended purposes.

Recommendation: In future awards, the BOG should document the basis for its ranking of awards prior to making 21st Century World Class Scholars Program awards. In addition, the BOG should obtain Program expenditure reports from universities to ensure awarded funds were spent for the purpose of recruiting a 21st Century World Class Scholar.

Finding No. 3: Research and Economic Development Investment Program

Section 1004.635(2), Florida Statutes, creates the State University System Research and Economic Development Investment Program (Program) to provide matching funds to eligible institutions to construct and acquire cutting-edge, state-of-the-art science and engineering research facilities and specialized equipment to support research programs, foster economic development, and accelerate Florida's innovation economy. The Program is to be administered by the BOG.

Section 1004.635(4), Florida Statutes, requires that funds appropriated for the State University System Research and Economic Development Investment Program shall be used by the BOG to match funds raised by an eligible university from nonuniversity sources on a one-time, dollar-for-dollar basis. The BOG disbursed four Program awards totaling \$45 million to three eligible universities during the 2006-07 fiscal year.

To request Program funds, BOG procedures require universities to submit written verification of the amount of nonuniversity matching funds received, the source of those funds, and the university's plan for utilizing the funds. The procedures also provide that the nonuniversity matching funds received be documented by a copy of the check or other appropriate documentation, or verification by a certified public accountant that matching funds have

been received; and that Program funds be released after receipt, review, and approval of this information. Our review of the four awards disclosed that documentation for nonuniversity matching funds for two awards was not adequate as follows:

- Support for one award, totaling \$13.25 million, was an e-mail from the University of Florida rather than written verification containing the specified documentation. According to BOG personnel, the term written extends to intentional, official, and specific notification by media including electronic mail from an appropriate official. However, the BOG's written procedures appear to contemplate a higher level of assurance, such as a copy of a check, to support the nonuniversity matching funds. Without proper documentation or verification, the BOG cannot be assured that the University of Florida had received eligible matching funds.

Upon further review with the BOG and the University of Florida, we noted that this award, is being matched by moneys the University has received from the Federal government as reimbursement for indirect costs associated with Federal research and development and other grant programs. As noted above, Section 1004.635(4), Florida Statutes, requires that funds shall be raised by an eligible university from nonuniversity sources on a one-time, dollar-for-dollar basis. Since moneys received for indirect costs are used to reimburse the University for expenses it has typically incurred using university sources of funding, approval of these indirect cost reimbursements by the BOG as matching does not appear to meet the intent of the statutory requirement that moneys should be "from nonuniversity sources on a one-time dollar-for-dollar basis."

- Disbursement of a \$10 million award was based on an agreement between the University of Florida and a nonprofit organization that provides that the nonprofit organization is to "...match the amount of the University funding through payment of approximately the same amount for salary, benefits, and supplies (and related costs in accordance with National Institute of Health grant guidelines)..." The BOG disbursed the \$10 million to the University of Florida in one payment on February 13, 2007. The agreement did not require that the match be on a dollar-for-dollar amount, contrary to Section 1004.635(4), Florida Statutes. Additionally, the agreement allowed for the matching funds to be provided over an unspecified period of time, rather than a cash match at the time of the award. Because the time period for receiving the matching funds is not specified, it is not apparent how the BOG could verify that the required matching funds were received at the time the award was made to the University. Although the agreement requires that the nonprofit organization maintain records of expenditures paid from University funding and matching funding adequate for audit, the agreement did not require that the University obtain these records and provide documentation to the BOG to document that the matching requirement was subsequently met. Under these conditions, the BOG is not able to verify that the matching requirements are met and would, therefore, not be able to require the return of moneys if it is determined that the matching of funds is not made.

Furthermore, the BOG procedures do not require that institutions receiving Program funds submit expenditure reports showing how the Research and Economic Development Investment Program moneys were spent. Although Section 1004.635, Florida

Statutes, does not require monitoring of Program expenditures by the BOG, expenditure monitoring would provide the BOG with additional assurances that Program funds were spent according to the terms of the award.

Recommendation: The BOG should ensure that adequate documentation is obtained from universities evidencing matching funds received from nonuniversity sources as required by Section 1004.635(4), Florida Statutes. Also, the BOG should establish procedures to obtain expenditure reports from the universities to document that Program funds are spent for the purposes authorized by Section 1004.635(2), Florida Statutes.

OBJECTIVES, SCOPE, AND METHODOLOGY

Our audit focused on the management of programs and other selected administrative matters. The overall objectives of the operational audit were:

- To obtain an understanding and make overall judgments as to whether the Board's internal controls promoted and encouraged compliance with applicable laws, administrative rules, regulations, contracts, and grant agreements; the economic, efficient, and effective operation of the BOG; the reliability of records and reports; and the safeguarding of assets.
- To evaluate management's performance in achieving compliance with applicable laws, administrative rules, regulations, contracts, and grant agreements; the economic and efficient operation of the BOG; the reliability of records and reports; and the safeguarding of assets.
- To identify statutory and fiscal changes that may be recommended to the Legislature pursuant to Section 11.45(7)(h), Florida Statutes.

We conducted this audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Our audit included examinations of various records and transactions (as well as events and conditions) occurring during the period July 2006 through June 2007, and selected actions through February 2008. In conducting our audit we:

- Interviewed selected BOG staff.
 - Obtained an understanding of internal control and observed, documented, and tested the effectiveness of key processes and procedures.
 - Determined whether the BOG implemented procedures to comply with rulemaking procedures prescribed by Sections 120.536(1) and 120.54, Florida Statutes, for the BOG and university board of trustees.
 - Determined whether the BOG established adequate procedures to ensure that universities reported annual expenditures to the BOG for university institutes and centers.
 - Determined whether the BOG implemented procedures to ensure that university board of trustee members were appointed pursuant to applicable laws.
 - Determined whether procedures had been established to provide for the implementation of state university system performance standards as required by Section 1008.31(1), Florida Statutes.
- Reviewed procedures to determine if tuition and fees were established in accordance with Section 1009.24(3), Florida Statutes.
 - Examined documentation of program awards for the Research and Economic Development Investment Program funds and the 21st Century World Class Scholars funds to determine compliance with restrictions on the use of these funds.
 - Evaluated the appropriateness of the role and responsibilities of the BOG's audit committee.
 - Reviewed policies and procedures regarding the implementation of provisions of Chapter 1013, Florida Statutes, for universities in their construction and inspection of educational facilities.

PRIOR AUDIT FINDINGS

This was our initial audit of the Board of Governors.

AUTHORITY

Section 11.45, Florida Statutes, requires that the Auditor General conduct an operational audit of each State agency on a biennial basis. Pursuant to the provisions of Section 11.45, Florida Statutes, I have directed that this report be prepared to present the results of our operational audit.



David W. Martin, CPA
Auditor General

MANAGEMENT RESPONSE

The Board of Governors' response is included as Appendix B of this report.

To promote accountability and improvement in government operations, the Auditor General makes operational audits of the programs, activities, and functions of governmental entities.

This audit was coordinated by Richard E. Givens, CPA, and supervised by Cheryl B. Pueschel, CPA. Please address inquiries regarding this report to James R. Stultz, CPA, Audit Manager, via e-mail at jimstultz@aud.state.fl.us or by telephone at (850) 922-2263.

This report and other audit reports prepared by the Auditor General can be obtained on our Web site at www.myflorida.com/audgen; by telephone at (850) 487-9024; or by mail at G74 Claude Pepper Building, 111 West Madison Street, Tallahassee, Florida 32399-1450.

APPENDIX A
FLORIDA BOARD OF GOVERNORS

Members of the Florida Board of Governors who served during the 2006-07 fiscal year are listed below:

Board Member

Carolyn K. Roberts, Chair
Sheila M. McDevitt, Vice-Chair
Jorge Arrizurieta to 6-20-07 (1)
Jeanine Blomberg from 3-01-07 (2)
Dr. Arlen F. Chase from 8-01-06 (3)
John H. Dasburg
Dr. Akshay Desai to 1-25-07
Ann W. Duncan
Charles B. Edwards
Frank Harrison to 5-31-07 (4)
Dr. J. Stanley Marshall
Frank Martin
Ryan Moseley from 6-01-07 (4)
Margaret Lynn Pappas
Ava L. Parker
Dr. Martha Pelaez to 7-31-06 (3)
Tico Perez
Gus A. Stavros from 1-26-07
John W. Temple
John Winn to 2-28-07 (2)
Dr. Zachariah P. Zachariah

Notes: (1) Position was vacant from June 21, 2007, to June 30, 2007.
(2) Commissioner of Education.
(3) Chair of the Advisory Council of Faculty Senates.
(4) Chair of the Florida Student Association (equivalent to Florida Student Association president referred to in Article IX, Section 7(d) of the State Constitution).

APPENDIX B
MANAGEMENT RESPONSE



FLORIDA BOARD OF GOVERNORS

325 West Gaines Street - Suite 1614 - Tallahassee, Florida - 32399-0400
(850) 245-0466 - www.flbog.edu

October 6, 2008

Mr. David W. Martin
Auditor General
State of Florida
G74 Claude Pepper Building
111 West Madison Street
Tallahassee, FL 32399-1450

Dear Mr. Martin:

Enclosed is the final response to the Board of Governors preliminary and tentative operational audit findings for the fiscal year ended June 30, 2007 and selected actions taken through February 29, 2008. Please contact me if I can be of further assistance.

Sincerely yours,

Mark B. Rosenberg
Chancellor

MBR/lc

Enclosure: Responses to Preliminary & Tentative Audit Findings,
Operational Audit

Cc: Sheila McDevitt, Chair, Board of Governors
Carolyn Roberts, Former Chair, Board of Governors
Audit Committee, Board of Governors
Derry Harper, Inspector General & Director of Compliance, Board of Governors

**Board of Governors
Responses to Preliminary & Tentative Audit Findings
Operational Audit
For Fiscal Year Ended June 30, 2007 and
Selected Actions Taken Through February 29, 2008**

Finding No. 1: Educational Facilities

Finding Summary: The Board of Governors has not adopted rules to implement chapter 1013, Florida Statutes, for state universities pursuant to the rulemaking requirements of the Administrative Procedure Act.

Recommendation: The Board of Governors should review provisions of chapter 1013, Florida Statutes, and adopt rules to provide guidance to state universities.

Board of Governors' Response: Chapter 1013, enacted prior to the creation of the Board of Governors, provides a statutory framework for the use, management, planning, construction, and funding of educational facilities. At the Board of Governors' initial meeting in 2003, the Board adopted Board of Regents rules that provided guidance to the universities in many of the areas addressed in chapter 1013. Additionally, the Board is actively engaged in a comprehensive review of those rules, which were subsequently readopted as regulations, to ensure that they are consistent with the current delegation of authority to university boards of trustees and best practices in the use, management, planning, and construction of educational facilities.

Pursuant to this comprehensive review, numerous regulations have been amended to date including, but not limited to, regulations relating to naming of buildings, razing of buildings, action required prior to capital outlay appropriation, public announcement and qualification procedure, certification and competitive selection of architects/engineers, public announcement and qualification procedures, and remittance of capital improvement and building fees. Among those regulations under development is the establishment of a comprehensive program of safety and sanitation for the protection of occupants of educational facilities and ancillary plants. With regard to safety and sanitation, each university has long-established, comprehensive health and safety departments and university policies in place to ensure the health and safety of all occupants of university facilities. Accordingly, the Board has and is continuing to provide state universities with guidance in the form of regulations concerning the use, management, planning, and construction of educational facilities.

Board of Governors
Responses to Preliminary & Tentative Audit Findings
Operational Audit
For Fiscal Year Ended June 30, 2007 and
Selected Actions Taken Through February 29, 2008

With respect to the recommendation that the Board adopt rules pursuant to the requirements of the Administrative Procedure Act, the Board's authority to adopt rules flows directly from the Constitution. As such, the Board's regulatory authority is not dependent upon a grant of legislative authority and therefore not subject to the requirements of the Administrative Procedure Act. This conclusion was confirmed by First District Court of Appeal in *NAACP, Inc. v. Florida Board of Regents*, 876 So. 2d 636 (Fla. 1st DCA 2004). Subsequent to that opinion, the Board of Governors adopted separate, but parallel, regulation development procedures for the university boards of trustees and the Board of Governors to utilize in promulgating regulations. Notwithstanding, in 2007, legislation was enacted requiring the Board of Governors and the university boards of trustees to adopt rules pursuant to the Administrative Procedure Act when acting pursuant to authority derived from the Legislature. The Board of Governors is currently seeking a declaration from the Second Judicial Circuit Court as to whether that legislation is constitutional as noted on page 2 of the Preliminary and Tentative Findings.

Responsible Auditee: Chris Kinsley, Director, Finance and Facilities

Finding No. 2: 21st Century World Class Scholars Program

Finding Summary: The Board of Governors did not retain documentation, such as scoring sheets, reflecting the basis upon which final awards were made to universities under the 21st Century World Class Scholars Program. Additionally, the Board of Governors has not established procedures to monitor the expenditure of funds awarded under this Program which, while not required under the statute creating the Program, would provide the Board of Governors with additional assurance that the Program funds were spent for intended purposes.

Recommendation: In future awards, the Board of Governors should document the basis for its ranking of awards prior to making 21st Century World Class Scholars Program awards. In addition, the Board of Governors should obtain Program expenditure reports from universities to ensure that the awarded funds are spent for the purpose of recruiting a 21st Century World Class Scholar.

**Board of Governors
Responses to Preliminary & Tentative Audit Findings
Operational Audit
For Fiscal Year Ended June 30, 2007 and
Selected Actions Taken Through February 29, 2008**

Board of Governors' Response: The 21st Century World Class Scholars Program created under section 1004.226(5), Florida Statutes, is a state matching program designed to attract scholars whose research in science and technology would develop or enhance the State's capabilities in those research areas. To receive state matching funds under the Program, state universities were required to meet the eligibility requirements adopted by the Board of Governors and to raise a minimum of \$1 million for recruiting a 21st Century World Class Scholar, which would be matched with state funds on a one-to-one basis. The submissions received from universities in response to this Program were reviewed against the adopted criteria by the Board of Governors' Research and Economic Development Committee during public meetings of that committee. Subsequently, a summary of the committee's recommendations were presented to the Board of Governors for approval at a recorded public meeting. In the event any additional monies are appropriated for this Program, the Board will take all necessary steps to ensure that appropriate written documentation is created, utilized and retained to demonstrate the process for Board action under this Program.

With respect to monitoring the expenditures made under the Program to ensure that the funds are spent for the purpose of recruiting a World Class Scholar, the Board will establish a procedure to obtain expenditure reports from the participating universities for the duration of this Program. In addition, the Board will utilize the annual report required by section 1004.226(9), Florida Statutes, as a monitoring mechanism, together with the expenditure plans that were submitted by the universities at the time they applied for state matching funds under the Program, for ensuring that the state funds, together with the private funds committed by the universities, are spent to recruit 21st Century World Class Scholars.

Responsible Auditee: R. E. LeMon, Associate Vice Chancellor

Finding No. 3: Research and Economic Development Investment Program

Finding Summary: Documentation for two of the four awards made to state universities under the Research and Economic Development Investment

Board of Governors
Responses to Preliminary & Tentative Audit Findings
Operational Audit
For Fiscal Year Ended June 30, 2007 and
Selected Actions Taken Through February 29, 2008

Program was not adequate, the Board of Governors does not require participating universities to submit expenditure reports showing how the funds are spent, and one award was matched with a funding source that does not appear to meet the intent of the statute which requires funds to be derived from a nonuniversity source on a one-time dollar-for-dollar basis.

Recommendation: The Board of Governors should ensure that adequate documentation is obtained from universities evidencing matching funds received from nonuniversity sources as required by section 1004.635(4), Florida Statutes. Also, the Board of Governors should establish procedures to obtain expenditure reports from the universities to document that Program funds are spent for the purposes authorized by section 1004.635(2), Florida Statutes.

Board of Governors' Response: Documentation for the two awards at issue consisted of: (a) written verification received from the University of Florida's Vice President of Research in the form of an email advising that nonuniversity matching funds were on hand in the case of one award; and in the case of the other award, (b) receipt of a signed, written funding agreement between the University of Florida and a nonprofit research corporation that provided for an in-kind match consisting of salary, benefits, laboratory equipment, and supplies.

The announced procedure for requesting state matching funds under this Program included the submission of written verification of the amount of nonuniversity funds to be used as a match from each participating university. Electronic correspondence is standard Board of Governors' practice and, as such, is an acceptable means of receiving or transmitting official communications. The term "written" has been interpreted to extend to intentional, official, and specific notification by media including electronic mail from an appropriate university official. Because the email in question was transmitted directly by the University of Florida's Vice President of Research on behalf of the President of the university, and contained sufficient information reflecting that the funds to be matched were derived from a nonuniversity source, it was recognized as an official verification from the University of Florida and deemed sufficient for receipt of matching funds under the Program.

Likewise, receipt of a signed funding agreement between the University of Florida and a nonprofit research corporation providing for an in-kind match of nonuniversity funds from the research corporation to pay for

Board of Governors
Responses to Preliminary & Tentative Audit Findings
Operational Audit
For Fiscal Year Ended June 30, 2007 and
Selected Actions Taken Through February 29, 2008

joint faculty salaries, benefits, laboratory equipment, and supplies was deemed sufficient to support a state match under the Program. The Board will, however, evaluate its current procedures to determine if documentation requirements should be revised and, if necessary, make appropriate changes to Board procedures.

With regard to monitoring expenditures, under the agreement, the nonprofit research corporation is required to maintain records of expenditures for both university and nonuniversity funding for audit purposes, and is also required to provide the University of Florida written confirmation of the expenditure of both university and nonuniversity funds by September 30 of each year. Although the agreement does not require the University of Florida to provide documentation to the Board of Governors of the expenditure of university and nonuniversity funds, the Board of Governors will establish a procedure requiring all universities participating in this Program to provide quarterly expenditure reports to document that Program funds are spent for the purposes authorized in section 1004.635, Florida Statutes.

Finally, with respect to the use of indirect cost funds received from the federal government in conjunction with federal contracts and grants, section 1004.22(5), Florida Statutes, allows for any surplus indirect cost funds to be used to support other research or sponsored training programs in any area of the university. According to the University of Florida, the indirect cost funds used to support the state match constituted surplus funds that had accumulated in the university's sponsored research master account. We have concluded, therefore, that the funds submitted by the University of Florida for purposes of obtaining a state match under the Research and Economic Development Investment Program were appropriate. Notwithstanding, the Board will consult with the Legislature to seek additional guidance whether surplus indirect cost funds constitute an appropriate source of funds to support a future state match under this Program.

Responsible Auditees: Tim Jones, Chief Financial Officer; R. E. LeMon, Associate Vice Chancellor

