



UTAH STATE BOARD OF EDUCATION

Internal Audit Department

Audit Brief

ProStart (21-01)

Scope and Objective

The Utah State Board of Education (Board or USBE) approved an audit of the ProStart program with the stated objective to determine whether funds are being used in accordance with the terms of the contract and consistent with applicable regulatory provisions. Based on an initial risk assessment, the audit scope is for the period July 2018 to September 2020. The audit reviewed all expenditures within the scope of the audit to ensure costs were allowable.

Background

The Board contracted with the Utah Restaurant Association Foundation (URAF) to administer the ProStart program funded by the Legislature. As currently devised, local education agencies (LEAs) can opt to participate in ProStart, one of multiple culinary arts programs supported by the USBE.

Findings and Observations

Key Findings, URAF

- **Contracting Parties**
Although the legal contract to provide the ProStart program is between the URAF and the USBE, in practice the URAF provides few if any services to the USBE. It appears the Utah State Restaurant Association (Association) is providing the services and financial accounts.
- **URAF Documentation**
The URAF invoices lack contractually required elements and are not supported by timely and accurate documentation. The USBE reimbursed the URAF for 786 expenses totaling \$650,758.91; all 786 (100%) reimbursed expenses lacked appropriate documentation.
- **Travel Reimbursements**
One of five (20%) invoices had expenses with incorrectly calculated per diem rates, which resulted in an overpayment to URAF of \$1,114.27, depending on method of calculation. Documentation does not reflect that upon receiving the overpayment the URAF reimbursed the teachers and students who traveled, rather the URAF kept the amount overpaid.
- **URAF Program Invoicing**
The URAF submitted the same invoice, totaling \$139.98, to both the USBE and Department of Workforce Services (DWS). DWS paid for the expense on May 3, 2019; the USBE paid for the expense on August 7, 2019.
- **Maintenance of Financial Records**
The URAF did not maintain all records necessary to properly account for its payments.

- Subcontracts
Although the URAF relies on external entities (i.e., the Association, chefs) to achieve the contract objectives, it does not use formal agreements.

A common **Cause** of all findings in this section is that URAF's internal control system is not sufficient to ensure accuracy, timeliness, compliance, and documentation to justify requests for reimbursement.

The **Effect** of the findings is an increased risk of fraud, waste, and abuse of public education funds, as well as a decrease in efficiency for both the URAF and the USBE. Furthermore, all reimbursed costs within the scope of the audit, totaling \$650,758.91, are questioned.

Recommendations include 1) the URAF should review its internal control system to ensure all system components have been considered, documented, and implemented; 2) the URAF should obtain a System and Organization Controls Report to provide assurance the new internal control system is operational and effective; 3) the URAF should ensure financial integrity by establishing financial accounts separate from the Association; and 4) as determined by the Board, URAF should repay disallowed costs.

Key Findings, USBE

- Internal Controls
The USBE has not adequately assessed risk related to program objectives and roles and responsibilities of the contracting parties and program beneficiaries (e.g., students, teachers). Lacking a risk assessment, the USBE has not adequately designed and implemented necessary control activities, such as policies, procedures, and processes, to reasonably mitigate errors, nonconformance, or the misuse of public funds.
- Contract Adherence
Although the URAF and the USBE have a contract, contract provisions are inconsistently interpreted and applied.

Causes for the findings may include 1) the cost to implement the internal control system needed to provide adequate oversight of the current reimbursement structure outweighed the perceived benefit; and 2) a lack of understanding of how internal control systems ensure accountability and efficiency as program roles and responsibilities, with necessary policies, procedures and staff training were not effectively or comprehensively designed by the Legislature and/or the USBE.

The **Effect** of the findings is non-compliance, miscalculations, and reimbursement made based on inadequate documentation.

Recommendations include 1) considering disallowance of inappropriately reimbursed funds and seeking repayment and/or withholding future funds from the URAF, consistent with the contract, until inappropriately reimbursed funds have been fully recovered; and 2) working with the Legislature as necessary to restructure the flow of ProStart funds so the USBE can utilize its established internal control system to award the culinary art program funds to LEAs who can then contract with the URAF, or another appropriate entity, to provide needed services. If the flow of funds is not restructured, a comprehensive internal control system for the program should be designed, implemented, and incorporated into the contract, to mitigate identified risks and non-compliance, and enhance accountability.

Management Responses and Auditor Concluding Remarks

See Section IV, Section VI, and Appendix C of the report.



Utah State Board of Education
Internal Audit Department

ProStart

21-01

Report No. 21-01

ProStart

November 4, 2021

Audit Performed by:

Chief Audit Executive Debbie Davis, CPA

Audit Manager Kevin John, CFE

Auditor Samuel Allan, CIA

Auditor Ian Fitch

November 4, 2021

Chair Mark Huntsman
Utah State Board of Education
250 East 500 South
Salt Lake City, UT 84111

Dear Chair Huntsman,

On May 7, 2020, in accordance with The Bylaws of the Utah State Board of Education (Board), the Board authorized the Internal Audit Department (IA) to perform an audit of the ProStart Culinary Arts program funding. IA started the audit in October of 2020 when resources became available. IA obtained relevant documentation from the staff of the Utah State Board of Education (USBE) and the Utah Restaurant Association Foundation (URAF) and performed the following procedures:

1. Gained an understanding, through research and inquiry, of applicable laws and regulations, policies and procedures, and contractual terms and conditions,
2. Reviewed and analyzed expenses for potential non-compliance, fraud, waste, and/or abuse, and
3. Assessed performance under the current funding system.

We have identified the procedures performed during the audit; the conclusions from those procedures are included in this report with suggestions for improvement.

Internal audits are conducted in conformance with the current International Standards for the Professional Practice of Internal Auditing, consistent with Utah Code Annotated and Utah Administrative Code.

By its nature, this report focuses on exceptions, weaknesses, and non-compliance. This focus should not be understood to mean the USBE and the URAF processes reviewed do not demonstrate various strengths and accomplishments. We appreciate the courtesy and assistance extended to us by the staff of the URAF and the USBE during the audit. A response to the audit was provided by the URAF and the USBE and both are included within the report.

This report is intended solely for the information and use of the URAF and the USBE. However, pursuant to Utah Code 63G-2 Government Records Access Management Act, this report is a public record, and its distribution is not limited. If you have any questions, please contact me at (801) 538-7639.

Chair Huntsman
Page 2
November 4, 2021

Sincerely,

A handwritten signature in cursive script that reads "Deborah Davis". The signature is written in black ink on a white background.

Deborah Davis, CPA
Chief Audit Executive, Utah State Board of Education

cc: Members of the Utah State Board of Education (USBE)
Sydnee Dickson, State Superintendent of Public Instruction, USBE
Patty Norman, Deputy Superintendent of Student Achievement, USBE
Angie Stallings, Deputy Superintendent of Policy, USBE
Scott Jones, Deputy Superintendent of Operations, USBE
Melva Sine, Executive Director, URAF

Contents

I. Background, Scope, and Objective	6
II. General Report Information	7
III. Findings and Observations, URAF.....	8
A. Findings, URAF	8
1. Contracting Parties.....	8
2. URAF Documentation	9
3. Travel Reimbursements	12
4. URAF Program Invoicing	13
5. Maintenance of Financial Records.....	14
6. Subcontracts	15
B. Observations, URAF	15
1. Inventory.....	15
2. Checks Written to Individuals at Schools.....	16
3. Personal Benefit.....	16
IV. Management Response, URAF	17
V. Findings and Observations, USBE.....	32
A. Findings, USBE	32
1. Internal Controls.....	32
2. Contract Adherence	34
B. Observations, USBE.....	36
1. Tax Exemption.....	36
2. Contract Accuracy	36
VI. Management Response, USBE	38
VII. Appendices	43
Appendix A – Criteria.....	44
Appendix B – Total Questioned Costs	52
Appendix C – Auditor Concluding Remarks.....	53

I. Background, Scope, and Objective

The Compendium of Budget Information (COBI) outlines that the ProStart Culinary Arts program (ProStart) was initially funded by the Legislature in the 2007 General Session, allocating approximately \$100,000 in one-time funds. Since 2007, several changes have occurred including, 1) the transition from one-time funds to one-time and ongoing funds, 2) the separation of oversight of the program (i.e., ProStart governed by the USBE and the TeenChef Pro program governed by the Governor’s Office of Economic Development), and 3) the funding amount. From fiscal year 2016 to 2020, education funding for ProStart has remained consistent, with the Legislature appropriating \$403,100 of ongoing education funds annually to the USBE.

The Utah State Board of Education (USBE) contracted with the Utah Restaurant Association Foundation (URAF) to administer the ProStart program funded by the Legislature. Although ProStart is referred to as a program, ProStart is as much a curriculum as it is a program. As currently devised, local education agencies (LEAs) can opt to participate in ProStart, one of multiple culinary arts programs supported by the USBE. LEAs who elect to participate in the ProStart culinary arts program can potentially access a portion of the \$403,100 appropriated by incurring costs (e.g., buying textbooks, assessments, supplies, travel) and submitting those costs to the URAF for reimbursement. The URAF then seeks reimbursement for incurred expenses (e.g., administrative costs, reimbursements made to LEAs) from the USBE (i.e., the pass-through entity with the fiduciary responsibility to ensure funds are used appropriately).

In July of 2018, the Office of the Legislative Auditor General (OLAG) released *A Performance Audit of Selected Public Education Initiative Programs*. One of the initiative programs reviewed as part of the audit was ProStart. The OLAG identified that “while enrollment has decreased, the funding for the ProStart initiative has increased over time, resulting in a 133 percent increase in the cost per student.” The audit also identified “a lack of controls” resulting in inconsistent invoice reimbursement. The audit recommended a Legislative review of the ProStart funding level, better USBE oversight to include establishing cost categories and adequate justification for each expense, and the application of state per-diem rates to all activities.

In March of 2020, the Office of the State Auditor (OSA) issued a *Management Letter* to the State Superintendent of Public Education notifying the USBE of a limited review of expenses (i.e., sample of expenses from May 2019 – July 2019) related to the ProStart program. As outlined in the letter, the OSA identified several concerns, including, travel expenses misrepresenting the nature of the travel, risk of misappropriation of funds due to contractor invoicing practices, and potential USBE internal control weaknesses (i.e., inadequate supporting documentation). The OSA recommended the USBE “evaluate the risk factors noted in this letter and consider further analysis of the contract with [URAF].”

In the May 7, 2020 Board meeting, the Utah State Board of Education (Board) approved an audit of the ProStart program with the stated objective to determine whether funds are being used in accordance with the terms of the contract and consistent with applicable regulatory provisions. Based on an initial risk assessment, the audit scope is for the period July 2018 through September 2020. The audit reviewed all expenses within the scope of the audit to ensure costs were allowable.

II. General Report Information

Findings and observations are included in this report. Findings are specific to the scope of this audit and in general relate to nonconformity. Observations are statements of fact that were identified during the review, but either lack criteria to result in nonconformance or fall outside of the scope of the audit; therefore, the work necessary to arrive at a finding was not conducted. Findings and observations have been assigned in separate sections of the report based on the entity (i.e., the URAF or the USBE) to which the findings and observations apply.

All findings are presented using the following five elements:

1. **Criteria:** What should happen (e.g., code, statute, best practices)?
2. **Condition:** What is happening?
3. **Cause:** Why did the Condition happen?
4. **Effect:** What is the impact? Why should you care?
5. **Recommendation:** What action could be considered to resolve the Cause?

Audit findings may result in Questioned Costs. The Internal Audit Department uses the definition of Questioned Cost from the Code of Federal Regulations (2 CFR 200.1) revised for applicability at the state level.

Questioned Cost means a cost that is questioned by the auditor because of an audit finding:

- (1) Which resulted from a violation or possible violation of a statute, regulation, or the terms and conditions of a [State] award;*
- (2) Where the costs, at the time of the audit, are not supported by adequate documentation; or*
- (3) Where the costs incurred appear unreasonable and do not reflect the actions a prudent person would take in the circumstances.*

Questioned costs are not disallowed (i.e., required to be repaid) until confirmed by the Board. Total questioned costs are reported in **Appendix B**.

III. Findings and Observations, URAF

A. Findings, URAF

1. Contracting Parties

Criteria:

Contract USBE190024MA

Section 1 Contracting Parties:

This contract is between the Utah State Board of Education, referred to as the State Entity or USBE, and the following contractor: Utah Restaurant Association Foundation.

Condition: Although the legal contract to provide the ProStart program is between the URAF and the USBE, in practice the URAF provides few, if any, services to the USBE. It appears the Utah State Restaurant Association (Association) is providing the services as evidenced by the following:

- i. 664 of 665 (99.8%) checks reviewed were issued from an Association-owned account. The remaining one check was a cashier's check and could not be associated with an account. Of the 665 checks reviewed:
 - a. 459 (69%) checks had the URAF's name on the check,
 - b. 150 (23%) checks had the Association's name, and
 - c. 56 (8%) check images were not available for review, but the check number appeared on an Association-owned bank statement.
- ii. 22 (100%) warrants (i.e., checks) issued by the USBE to the URAF were deposited into an Association-owned bank account.
- iii. 100% of URAF employee salaries were allegedly paid by the Association. However, given the same employees are employed by both organizations there is no way to know for what they were paid.
- iv. 99 credit card purchases were reviewed for card ownership: 27 (27%) were made using an Association credit card. The other 72 (73%) were made using the Executive Director's personal credit card. Any reimbursement to the Executive Director was made by the Association.
- v. 162 of 165 (98%) receipts and/or invoices submitted by the URAF as documentation for requested reimbursements, totaling \$232,670.28, identify the Association as the paying entity, not URAF.
- vi. Five of 26 (19%) invoices received by the USBE, totaling \$141,049.43, were sent from the Association, not the URAF.

Cause: Potential causes include:

- i. Given the ProStart program is financed on a reimbursement basis, the non-profit URAF may have required initial funding from another source.
- ii. The URAF and the Association are two separate legal entities directed by the same individual.
- iii. A weak internal control system; for example, see **III.A.2-6** for details.

Effect: Potential effects include:

- i. Lack of transparency leading to less accountability and a greater risk of fraud, waste, and/or abuse.
- ii. As two separate legal entities are using the same accounts to provide similar services, there is a significant chance for comingling of funds. Given that URAF is a 501(c)(3) organization, and the Association is a 501(c)(6), each with different missions and legally allowed activities, there is a risk of a comingling of funds leading to an improper use of funds.

Recommendation: The URAF should review its internal control system to ensure all system components have been considered, documented, and implemented. The URAF should ensure financial integrity by establishing financial accounts separate from the Association.

To provide additional assurance to the USBE regarding its internal control environment and accounting of taxpayer funds, the URAF should consider contracting to receive a System and Organization Controls (SOC) report, the results of which could be shared with the USBE.

2. URAF Documentation

Criteria: See the following sections of **Appendix A:**

I. **Contract USBE190024MA**

Section 7

Attachment A:

- 1 DEFINITIONS
 - 1.11 "Procurement Item"
- 3 LAWS AND REGULATIONS
- 4 RECORDS ADMINISTRATION
- 23 INVOICING
- 38 TRAVEL COSTS

Attachment B Scope of Work FY2019:

- D. Project Management

Attachment C Budget FY2019

- A. Budget
- B. Invoicing b. and e.

II. Utah Administrative Code

R25-7-10 Reimbursement for Transportation (effective March 10, 2020 – present)

IV. Utah Code Annotated

76-6-401 Definitions (Enacted by Chapter 196, 1973 General Session)

76-6-405 Theft by Deception (Amended by Chapter 156, 2012 General Session)

76-10-1801 Communications Fraud – Elements – Penalties (Amended by Chapter 193, 2010 General Session)

Condition: The URAF invoices lack contractually required elements and are not supported by timely and accurate documentation. Specifically, the following was noted:

- i. During the period audited, the URAF submitted 26 invoices with 856 expenses. The USBE reimbursed the URAF for 786 expenses, all 786 (100%) reimbursed expenses lacked appropriate documentation (see **III.A.1** and **V.A.1 Effect i.a**, for additional details).

Questioned Costs		
Description	Expenses	Total
Reimbursed	786	\$ 650,758.91
Questioned Costs	786	\$ 650,758.91

- ii. 510 of 856 (60%) expenses, totaling \$326,839.02, were not submitted within 30 days of delivery of the Procurement Item.
- iii. Four of 20 (20%) mileage reimbursement requests lacked start and/or end addresses and maps; however, the USBE followed up and was able to obtain the required documentation for three of the four (75%) requests.
- iv. Of the 26 invoices:
 - a. Five (19%) did not include an invoice date.
 - b. Five (19%) did not include an email address as part of the URAF contact information.
 - c. Four (15%) did not contain an authorized signature.
 - d. One (4%) used an invoice number that was previously used; the invoices with the same number were submitted at different times and contained different information.
 - e. Twenty-two (85%) did not have the correct contract number listed.
 - f. Twenty-five (96%) did not include a description for goods or services for which payment was requested.
 - g. Twenty-five (96%) failed to include dates goods or services were provided, though the dates were able to be found in the supporting documentation.

- v. Eight of nine (89%) invoices that included requests for reimbursements related to presentations did not include full presentation information (i.e., location, subject, number of attendees, instructor/facilitator) on the invoice but did include it in the supporting documentation.

Cause: Causes may include:

- i. The URAF relies heavily upon the USBE to determine what is and is not an allowable expense, including how to properly document and support an expense. This indicates a lack of understanding of contract terms and requirements.
- ii. The URAF system of internal control is inadequate; in particular, control activities are not sufficient or comprehensive to ensure documentation is sufficient or accurate to justify requests for reimbursement.
- iii. There are limited consequences to URAF for nonconformance.
- iv. See also **III.A.5** on Maintenance of Financial Records.

Effect: Increased risk of fraud, waste, or abuse of public education funds. There is also a decrease in efficiency for both the URAF and the USBE. The USBE is required to spend additional time and effort trying to reconcile the supporting documentation to the invoices, including requesting missing documentation. LEAs may be left waiting to receive reimbursement from URAF for incurred costs. Examples of practices that show inefficiency and increased potential for fraud, waste, and abuse, include the following:

- i. 368 checks originally submitted by the URAF as proof of payment were reviewed to gain an understanding of the timeline of when checks were being processed. Of the 368 checks,
 - a. 329 checks had identifiable issue dates and dates of cancellation. The 329 checks took over 49 days on average to process and 124 took 60 days or more.
 - b. 28 (9%) of the cancelled checks were reimbursed by the USBE an average of 23 days before being processed by a financial institution. The USBE essentially prepaid the expense, which is contrary to the intent of the contract and common practice. The reimbursed value of the checks was \$21,296.03. This is significant given the USBE took 68 days on average to reimburse the URAF submitted invoices. On average, the 28 checks took 104 days from the date on the check to the date the check was processed by a financial institution.
- ii. See **III.A.1** for additional examples.

Recommendations:

- i. As determined by the Board, and in accordance with the contract, the URAF should repay disallowed costs for expenses that were inappropriately reimbursed. See **Appendix B** for Total Questioned Costs.
- ii. The URAF should review contract provisions regarding use of funds, invoicing, documentation, and reimbursement to ensure the provisions are comprehensive and clear; amendments to the contract may be requested as considered necessary.
- iii. See also the recommendation in **III.A.1**.

3. Travel Reimbursements

Criteria: See the following sections of **Appendix A:**

I. Contract USBE190024MA

Attachment A:

38 TRAVEL COSTS

Attachment B: Scope of Work FY2019

B. Goals/Objectives

II. Utah Administrative Code

R25-7-6 Reimbursement for Meals. (effective June 21, 2018 – September 21, 2018)

III. State Division of Finance Accounting Policies and Procedures

FIACCT 10-02-03 B. Calculation of Meal Reimbursements (effective July 1, 1994, revised July 1, 2018 to present)

Condition: One of five (20%) invoices had expenses with incorrectly calculated per diem rates, which resulted in an overpayment to URAF of \$1,114.27, depending on method of calculation (see **V.A.1 Effect iii.c** for details). The overpayment was intended to ensure travelers were properly paid for meals during travel; however, the overpayment was inconsistent with the reimbursement request.

Furthermore, documentation does not reflect that upon receiving the overpayment the URAF reimbursed the teachers and students who traveled, rather the URAF kept the amount overpaid.

Cause: The URAF system of internal control is insufficient to ensure that expense amounts requested for reimbursement are accurate and calculated in compliance with required regulations and contract terms and conditions.

Effect: LEAs, teachers, and/or students may shoulder financial costs that should be covered by the ProStart funding. Additionally, invoice processing time increases when documentation is inaccurate and insufficient. Finally, given the URAF is a non-profit, retaining the overpayment could be considered incurring a profit, which could have other implications outside the scope of this audit.

Recommendation:

- i. As determined by the Board, and in accordance with the contract, the URAF should repay disallowed costs for expenses that were inappropriately reimbursed. See **Appendix B** for Total Questioned Costs.
- ii. The URAF should review its internal control system to ensure control activity components have been sufficiently documented and implemented. Control activity components, such as entity and program accounting and invoice calculations, along with sufficient staff training, are essential to a fully effective internal control system.

4. URAF Program Invoicing

Criteria: See the following sections of **Appendix A:**

I. Contract USBE190024MA

Section 7 Documents incorporated into this Contract by reference but not attached

Attachment A:

- 1 DEFINITIONS
 - 1.11 "Procurement Item"
- 3 LAWS AND REGULATIONS
- 23 INVOICING

IV. Utah Code Annotated

76-6-401 Definitions (Enacted by Chapter 196, 1973 General Session)

76-6-405 Theft by Deception (Amended by Chapter 156, 2012 General Session)

76-10-1801 Communications Fraud – Elements – Penalties (Amended by Chapter 193, 2010 General Session)

Condition: The URAF submitted the same invoice, totaling \$139.98, to both the USBE and Department of Workforce Services (DWS). DWS paid for the expense on May 3, 2019; the USBE paid for the expense on August 7, 2019.

Cause: The URAF system of internal control is insufficient to ensure that expenses and reimbursements are tracked accurately and required records are maintained. Also see **III.A.2** and **III.A.5**.

Effect: Abuse of taxpayer funds; however, the invoicing practice poses a significant risk of fraud.

Recommendations:

- i. As determined by the Board, and in accordance with the contract, the URAF should repay disallowed costs for expenses that were inappropriately reimbursed. See **Appendix B** for Total Questioned Costs.
- ii. The URAF should review its internal control system to ensure control activity components have been sufficiently documented and implemented. Control activity components, such as funds tracking, invoicing, and sufficient staff training, are essential to a fully effective internal control system.

5. Maintenance of Financial Records

Criteria: See the following sections of **Appendix A:**

I. Contract USBE190024MA

Attachment A:

4 RECORDS ADMINISTRATION

Condition: The URAF did not maintain or supervise the maintenance of all records necessary to properly account for the contractor's payments. Also see **III.A.1 and 2**

Cause: Causes may include the following:

- i. The URAF relies on financial (i.e., banking) institutions to maintain supporting documentation (i.e., proof of payment).
- ii. The URAF system of internal control is inadequate to ensure compliance with the records administration requirement.
- iii. The URAF did not incur the costs as stated; instead, it relied upon the Association to incur and document costs. See **III.A.1** for additional details.

Effect: Increased risk of improper payments, potentially requiring a repayment of funds to the USBE.

Recommendation: The URAF should review its internal control system to ensure control activity and information and communication components, particularly policies and procedures related to documentation and record retention, have been sufficiently documented and implemented; including training of staff, as necessary.

The URAF should consider implementing a system to ensure adequate supporting documentation for all reimbursed costs are maintained or supervised per the required duration in the contract.

6. Subcontracts

Criteria: See the following sections of **Appendix A:**

I. Contract USBE190024MA

Attachment A:

1 DEFINITIONS

1.5 "Contractor"

1.17 "Subcontractor"

4 RECORDS ADMINISTRATION

9 CONTRACTOR RESPONSIBILITY

Condition: Although the URAF relies on external entities (i.e., the Association, chefs) to achieve the stated objectives of the contract, the URAF does not use formal agreements; instead, it relies on informal agreements for necessary services and financing.

Cause: The URAF system of internal control, particularly the control environment and risk assessment components, is inadequate to ensure compliance with the contractor and subcontractor requirements. See **III.A.1** for an example.

Effect: Informal agreements increase the risk of noncompliance with the USBE-URAF Contract (see **III.A.1** for an example), and potentially the Internal Revenue Code.

Recommendation: The URAF should review its internal control system to ensure its control environment, risk assessment, and control activity components, particularly roles and responsibilities of the URAF and those individuals and entities they subcontract with, have been sufficiently documented and implemented. The URAF should formally contract with identified subcontractors, incorporating the requirements of the USBE/URAF Contract, to ensure services comply with the requirements of the contract.

B. Observations, URAF

1. Inventory

Condition: At least one of 26 (4%) invoices had supplies purchased with ProStart funds shipped directly to an individual's home, not the LEA. The cost of the supplies totaled \$358.01. Although not illegal, the practice increases the risk the supply will not be used for its intended educational purpose.

Additionally, we noted that there are no inventory controls over purchased program equipment; equipment is allegedly tracked and stored by a subcontractor with whom there is no formal agreement. Equipment reportedly may be donated to LEA programs without documentation. The practice is highly

susceptible to fraud, waste, and abuse at both the URAF and LEA level. The URAF should consider implementing effective inventory and subcontracting controls to ensure equipment and supplies are properly tracked to safeguard assets procured with taxpayer funds.

2. Checks Written to Individuals at Schools

Condition: The URAF routinely pays teachers directly instead of sending payment to the school or LEA. This practice is questionable as it increases the risk of misappropriation of funds and requires additional work to transfer the funds to the school and/or LEA. Furthermore, the practice of accepting program funds directly may place a teacher at risk of being in violation of school policies and procedures related to cash handling.

A better, more efficient practice would be to issue checks to the legal entity to which the funds are due. However, given the issue falls outside the scope of the audit, there remains additional questions related to whether the LEA is aware that teachers are being paid directly or whether there is potential for costs being reimbursed by the URAF to also be reimbursed by the LEA or school.

3. Personal Benefit

Condition: During the review of the original invoices, several purchases were identified that were made using personal credit cards. In at least six instances, those purchases appear to have resulted in the credit card holder receiving personal rewards (e.g., 5% back on ink, paper, etc.). Given the purchases were reimbursed using ProStart funds, we question if it is appropriate for an individual to accrue rewards as opposed to the program from which the funds are derived.

A better, more efficient and effective practice to ensure ProStart funds, and any associated incentives or rewards, are applied to public education, would be for URAF to incur the cost directly without using an individual's funds to procure goods or services.

IV. Management Response, URAF

URAF's Management Response begins on the following page.

**UTAH RESTAURANT ASSOCIATION FOUNDATION
MANAGEMENT RESPONSE
INTRODUCTION**

The Utah Restaurant Association Foundation (“URAF”) is a small, non-profit organization that administers the ProStart Program (the “ProStart Program”) in Utah. The ProStart Program is a nationwide program for high school students that provides training in the culinary arts and food service industry. The ProStart Program is unique in that it connects industry experts and the classroom together to provide the best learning experience educating students and preparing them for career opportunities in the food service industry. Consistent with that model, in Utah, the URAF works with a variety of chefs, restaurant managers and teachers throughout the state of Utah to educate interested high school students in all facets of the restaurant and food service industry

The ProStart Program was first administered in Utah by the Utah Restaurant Association (“URA”) without any public funds. After a few years, in 2000, the URAF was formed as a non-profit organization, allowing private donors to obtain tax benefits when supporting the ProStart Program. Then, starting in 2007 and each year since, the Utah Legislature (the “Legislature”) has allocated state funds to the ProStart Program.

With the support of the Legislature, the URAF has managed and administered the ProStart Program for twenty years. And it has done so with little funding being spent on administration. The URAF has not hired accountants or a large staff to oversee its operations. It typically receives about \$60,000 a year to administer the ProStart Program. That money is primarily spent on staff who spend whatever time is necessary to coordinate and oversee the ProStart Program. All of the other funds are used to cover the costs of the ProStart Program, including the amounts paid to teachers, chefs, restaurant managers and other industry experts to help teach and train the students.

Since 2008, the Utah State Board of Education (the “USBE”) has entered into contracts (collectively, the “ProStart Contracts”) with the URAF to administer the ProStart Program. Those contracts require the URAF to first incur the costs of the program and thereafter to submit invoices for reimbursement. Accordingly, the URAF has submitted invoices for each month’s services. Those invoices itemized the costs and expenses incurred and provided appropriate back up information. Importantly, each of the URAF’s invoices have been carefully reviewed by the USBE Staff (the “Staff”), which at times requested additional information and gave instructions on the information the URAF was required to submit and the amounts it could be reimbursed.

Because it is a small non-profit entity, paid on a reimbursement basis, the URAF lacked the funds necessary to pay upfront the costs or expenses of the ProStart Program. When that occurred, the URA would pay certain expenses and loan money to the URAF, which repaid the URA (without interest) after it was reimbursed by the USBE.¹ This has benefitted the URAF by allowing it to run the ProStart Program without incurring finance charges from a line of credit or formal lender.

¹ Copies of reimbursement checks from the URAF to the URA during the relevant time period were submitted to the Auditors.

On May 7, 2020, the USBE approved an audit of the ProStart Program for the period of July 2018 through September 2020. See Audit at 6. The scope of the Audit was “whether funds are being used in accordance with the terms of the contract and consistent with applicable regulatory provisions.” *Id.* The Auditors reviewed 786 expenses, totaling \$650,758.91, that were reimbursed during the Audit time period. The URAF cooperated completely with the Audit.

After completing the Audit, the Auditors made six conclusions:

1. Although the legal contract for the ProStart Program is between the URAF and the USBE, in practice, the URA provides the services.
2. The URAF invoices lacked contractually required elements and are not supported by timely and accurate documentation.
3. One of five invoices seeking travel reimbursements incorrectly calculated the per diem rates, resulting in an overpayment of \$1,114.27.
4. One of the 786 expenses, totaling \$139.98, was submitted to both the USBE and Department of Workforce Services (DWS).
5. The URAF did not maintain all records necessary to account for its payments.
6. The URAF does not use formal agreements with its subcontractors.

Id. at 1-2. Based on these “findings,” the Auditors “questioned” \$650,758.91—all of the costs reimbursed to URAF during the time period. While the documents prove that the questioned funds were spent on administration, teachers, chefs, supplies and students associated with the ProStart Program and the Auditors only specifically identified \$1,254.25 (.2%) that had been incorrectly reimbursed, the Auditors “questioned” 100% of the expenses.

The URAF acknowledges that it has made technical errors and appreciates the Auditors efforts in identifying areas of improvements. It has begun implementing and will continue implementing the Auditor’s suggestions and will promptly repay the \$1,254.25 the Auditors specifically identified. But every dollar of the questioned funds was spent on the ProStart Program and should not be questioned. Either way, the URAF should not be required to repay anything other than the \$1,254.25.

The facts and documents demonstrate that:

1. The URAF is both the contracting party and the party that oversees the ProStart Program. When the URAF was created, a bank account at Zions Bank was created to manage funds for the ProStart Program (the “Zions Account”). Unfortunately, a mistake was made, and the account was inadvertently opened in the name of the URA. Despite that mistake, the URAF has had exclusive use and operation of the Zions Account. All money deposited in and expenses paid from the Zions Account were done on behalf of the URAF. The technical error made long ago is not be a basis for questioning all of the ProStart expenses.

2. While the invoices submitted by the URAF had minor errors (e.g., date or contract number), they itemized the expenses and contained supporting documents. Indeed, each of the invoices was reviewed by USBE Staff (which did not identify any of the deficiencies now identified by the Auditors) to ensure that the documentation was complete. Errors made in the date or contract number on the invoices should not be a basis for questioning any of the ProStart Program expenses. And, even if it was, the URAF should not be required to repay

reimbursed funds because of minor errors that went unnoticed by the USBE Staff and had no impact on the use of the funds.

3. While the URAF made a mistake on two invoices totaling \$1,254.25 (.2%), the other expenses were proper and correctly documented. Those two errors should not be a basis for questioning or requiring repayment of the other expenses.

In short, the URAF appreciates the Auditors work and recommendations for changes to its procedures. It has taken the Audit seriously and already begun modifying its procedures to ensure best practices. But the money it received (except for the \$1,254.25) was spent on the ProStart Program and should not have been questioned. Either way, the URAF should not be required to repay those amounts.

BACKGROUND

The ProStart Program

1. The ProStart Program began in Utah in 1996. Two high school teachers heard about the program in other states and believed Utah students could benefit from an education in the culinary arts. Those teachers contacted the URA and asked it to participate in the program.

2. The next year, the URA conducted extensive research on the program, developed a customized curriculum and met with teachers to pilot the program in Utah. Without public support or funding, the URA partnered with several companies to raise funds, identify personnel, and start the program.

3. Over the following years, the ProStart Program grew immensely. Thirty-six high schools, with hundreds of students participated each year. Throughout that time, the URA financed and administered the program without public funds. The USBE continually praised the ProStart program as a successful example of an “industry/education partnership.” Teachers and students attributed the success of the program to the broad-based involvement of the restaurant industry, including, chefs, restaurant managers, and restaurant owners.

4. In 2000, the URAF was formed as a non-profit entity, allowing private donors to obtain tax benefits when supporting the ProStart Program. To manage ProStart funds, the URAF opened the Zions Account, which was inadvertently opened in the URA name. Despite that mistake, in practice, the URAF has had exclusive use of the Zions Account. The name on the checks from the Zions Account was the “Utah Restaurant Association Foundation,” and all funds deposited into and spent from the Zions Account were done so on behalf of the URAF. The URA has maintained and continues to maintain separate accounts at Chase Bank (collectively, the “Chase Accounts”).

5. In 2007, the Education Appropriations Committee of the Legislature reviewed the ProStart curriculum, met with teachers and students, and concluded that the program provided a valuable service to Utah’s students, teachers, schools, and restaurant industry. Accordingly, the Legislature funded the ProStart Program with an initial appropriation of \$100,000. That \$100,000 was appropriated to the Davis County School District, which oversaw operation of the program. The Davis County School District gave the \$100,000 to the URAF, which provided quarterly reports and a final accounting of the program expenses.

6. With the support of the Legislature, the ProStart program continued to grow and participation increased rapidly. Accordingly, the Legislature continued to increase the annual appropriations.

7. Beginning in 2008, the URAF entered into the ProStart Contracts with the USBE and became an independent contractor, running the ProStart Program with the support and oversight of the USBE. While the Legislature allocates the funds for the ProStart Program, the ProStart Contracts run on a reimbursement basis. The URAF sends invoices with documentation for expenses incurred. In turn, the USBE reviews the invoices to ensure proper documentation and reimburses the URAF the amount the USBE deems appropriate.

8. Over the years, the USBE Staff that reviewed URAF's invoices, changed and required different supporting documentation and information. For its part, the URAF has always tried to comply with the changing requests, provided the documentation that was requested and never challenged the USBE Staff's reimbursement decisions.

9. With respect to invoicing, the ProStart Contracts provide:

21. **INVOICING:** Contractor will submit invoices within thirty (30) days of Contractor's performance of the Services to the State Entity. The contract number shall be listed on all invoices, freight tickets, and correspondence relating to this Contract. The prices paid by the State Entity will be those prices listed in this Contract, unless Contractor offers a prompt payment discount within its Proposal or on its invoice. The State Entity has the right to adjust or return any invoice reflecting incorrect pricing.

10. Likewise, with respect to reviewing the URAF's performance and paying the invoices, the contracts provide:

20. **ACCEPTANCE AND REJECTION:** The State Entity shall have thirty (30) days after the performance of the Services to perform an inspection of the Services to determine whether the Services conform to the standards specified in the Solicitation and this Contract prior to acceptance of the Services by the State Entity.

If Contractor delivers nonconforming Services, the State Entity may, at its option and at Contractor's expense: (i) return the Services for a full refund; (ii) require Contractor to promptly correct or reperform the nonconforming Services subject to the terms of this Contract; or (iii) obtain replacement Services from another source, subject to Contractor being responsible for any cover costs.

22. **PAYMENT:** Payments are to be made within thirty (30) days after a correct invoice is received. All payments to Contractor will be remitted by mail, electronic funds transfer, or the State of Utah's Purchasing Card (major credit card). If payment has not been made after sixty (60) days from the date a correct invoice is received by the State Entity, then interest may be added by Contractor as prescribed in the Utah Prompt Payment Act. The acceptance by Contractor of final payment, without a written protest filed with the State Entity within ten (10) business days of receipt of final payment, shall release the State Entity and the State of Utah from all claims and all liability to the Contractor. The State Entity's payment for the Services shall not be deemed an acceptance of the Services and is without prejudice to any and all claims that the State Entity or the State of Utah may have against Contractor. The State of Utah and the State Entity will not allow the Contractor to charge end users electronic payment fees of any kind.

11. During the Audit period, from July 2018 through September 2020, URAF submitted the following invoices:

Inv. No.	Month of Services	Invoice Date	Amount Invoiced
#07312018	July 2018	Sept 19, 2018	\$4,695.48
#08312018	Aug 2018	Sept 19, 2018	\$42,989.20
#092818	Sept 2018	Oct 19, 2019	\$28,479.58

#10312018	Oct 2018	Nov 27, 2018	\$66,665.12
#11302018	Nov 2018	Dec 2018	\$9,080.12
#123118	Dec 2018	Jan 31, 2019	\$29,279.77
	Jan 2019	Mar 1, 2019	\$5,879.89
#02282019	Feb 2019	Apr 1, 2019	\$35,909.60
#03312019	Mar 2019	June 5, 2019	\$17,402.24
#04302019	Apr 2019	June 12, 2019	\$30,235.43
#05302019	May 2019	June 18, 2019	\$30,288.86
#06302019	June 2019	July 9, 2019	\$44,618.43
	July 2019	Aug 28, 2019	
#08302019	Aug 2019	Sept 27, 2019	\$48,466.49
#9302019	Sept 2019	Oct 21, 2019	\$24,999.97
#10312019	Oct 2019	Nov 25, 2019	\$70,842.36
#11302019	Nov 2019	Jan 27, 2020	\$11,911.81
#12312019	Dec 2019	Jan 27, 2020	\$5,869.48
#01312020	Jan 2020	Apr 22, 2020	\$8,557.07
#02-28-2020	Feb 2020	Apr 22, 2020	\$9,668.61
#03312018	Mar 2020	Apr 22, 2020	\$56,947.06
#04302020	Apr 2020	June 17, 2020	\$7,600.60
#05302020	May 2020	June 17, 2020	\$6,543.90
#06302020	June 2020	July 10, 2020	\$12,683.19
#07312020	July 2020 ²	Nov 9, 2020	\$4,500.00
#08312020	Aug 2020	Nov 9, 2020	\$5,500.00
#09302020	Sept 2020	Nov 10, 2020	\$18,796.61

12. Each invoice included an itemization of the expenses, with copies of supporting documentation, including receipts and checks. They also submitted maps and attendance lists, identifying the individuals who attended the various events and their travel arrangements.

13. Each of the invoices were reviewed by USBE Staff, which occasionally asked for additional documentation or information. The URAF was only reimbursed after USBE Staff had carefully reviewed the invoices and was satisfied with the supporting documentation.

14. As a non-profit organization, the URAF has very little excess funds. It is only reimbursed for costs incurred and, consequently, does not have significant reserves. Consequently, at times, the URAF has had to rely on assistance from the URA. For example, the URA has paid expenses for the URAF and loaned money to the URAF while it waited for reimbursement from the USBE.

RESPONSE TO AUDIT FINDINGS

The stated objective of the audit was “to determine whether funds are being used in accordance with the terms of the contract and consistent with the applicable regulatory provisions.” See Audit Br. at

² Invoices in July, August and September 2020 were delayed because the USBE told the URAF that the ProStart Program had been cut as a result of COVID. The Legislature ultimately allocated funds and the Program was completed during the 2020/2021 school year.

1. While the Audit was approved in May 2020, the time period for the audit was from July 2018 through September 2020. *Id.* In the Audit, the Auditors reviewed 786 expenses totaling \$650,758.92. After that review, the Auditors made six findings

1. Contracting Parties – Although the legal contract to provide the ProStart program is between the URAF and the USBE, in practice the URAF provides few if any services to the USBE. It appears the Utah State Restaurant Association (Association) is providing the services and financial accounts.
2. URAF Documentation – The URAF invoices lack contractually required elements and are not supported by timely and accurate documentation. The USBE reimbursed the URAF for 786 expenses totaling \$650,758.91; all 786 (100%) reimbursed expenses lacked appropriate documentation.
3. Travel Reimbursements – One of five (20%) invoices had expenses with incorrectly calculated per diem rates, which resulted in an overpayment to URAF of \$1,114.27, depending on method of calculation. Documentation does not reflect that upon receiving the overpayment the URAF reimbursed the teachers and students who traveled, rather the URAF kept the amount overpaid.
4. URAF Program Invoicing – The URAF submitted the same invoice, totaling \$139.98, to both the USBE and Department of Workforce Services (DWS). DWS paid for the expense on May 3, 2019; the USBE paid for the expense on August 7, 2019.
5. Maintenance of Financial Records – The URAF did not maintain all records necessary to properly account for its payments.
6. Subcontracts – Although the URAF relies on external entities (i.e., the Association, chefs) to achieve the contract objectives, it does not use formal agreements.

Id. at 1-2. Based on these findings, the Auditors “questioned” \$650,758.91—all of the costs reimbursed to URAF during the time period.

I. All the Funds Were Spent on the ProStart Program as Intended by the Legislature.

The purpose of the Audit was to “determine whether the funds **are being used** in accordance with the terms of the contract and consistent with applicable regulatory provisions.” Audit Br. at 1 (emphasis added). While the Auditors express concerns about which entity is providing the services, URAF’s documentation and the timing and numbering of URAF’s invoices, they do not identify any funds that were used on anything other than ProStart Program. The Legislature allocates funds each year for the ProStart Program and, as the Auditors implicitly recognize, all of the allocated funds were used on the ProStart Program. Indeed, the URAF has actually spent more on the ProStart Program than it has been reimbursed.

After reviewing 786 expenses during the audit period, the auditors identified just two specific transactions where they believe the URAF was incorrectly reimbursed. First, they claim that in one invoice, the URAF incorrectly calculated the per diem rates, resulting in an overpayment of \$1,114.27. Second, they claim that the URAF submitted the same invoice (for \$139.98) to the USBE and the Department of Workforce services. In other words, after reviewing 27 invoices, with 786 expenses totaling \$650,758.91, the Auditors identified travel expenses in 1 invoice (3%), 1 expense in another invoice (3%) and a total of \$1,254.25 (.2%) that was incorrectly reimbursed.

To be clear, all of the funds received from the Legislature were used on the ProStart Program. The ProStart administrators have not taken any funds, other than the amount allocated to them for administration under the ProStart Contracts. However, rather than dispute this issue, the URAF will repay \$1,254.25, the amount specifically identified by the Auditors as having been misused.

II. The URAF Provides the ProStart Services.

In their first Finding, the Auditors state that “[a]lthough the legal contract to provide the ProStart program is between the URAF and the USBE, in practice the URAF provides few, if any, services to the USBE. It appears the Utah Restaurant Association (Association) is providing the services.” Audit at 8. The Auditors support this finding with six claims: (1) 664 of 665 of the checks were issued from an account owned by the URA; (2) all of the reimbursement checks from the USBE were deposited into an account owned by the URA; (3) all of the URAF employees were paid by the Association; (4) 27% of the credit card purchases were made with a URA credit card; (5) 98% of the receipts or invoices submitted with the URAF’s invoices identified URA as the paying entity; and (6) 19% of the invoices were sent by the URA, not URAF. None of these assertions supports the Auditors first Finding.

1. The Checks Were Issued from a URAF Account.

As set forth above, after the URAF was formed, the Zions Bank Account was opened. At that time, a mistake was made and the account was opened in the name of the “Utah Restaurant Association” instead of the “Utah Restaurant Association Foundation.” That was a mistake. However, in practice, the Zions Account has been used exclusively by the URAF for ProStart revenue and expenses. The URA has had no interest in or use of the Zions Account. The funds deposited and expended from the Zions Account were done on behalf of the URAF, which administered the ProStart Program during the audit period.³ Moreover, since the Auditors identified this issue in March 2021, the URAF has opened a new account and now uses that account exclusively for all ProStart revenue and expenses.

The mistake in opening the Zions Account is not a basis for questioning all of the 786 expenses and should not be the basis for requiring repayment of any reimbursed funds.

2. The Reimbursement Checks Were Deposited into the URAF Account.

All of the reimbursement checks from the USBE were placed in the Zions Account, which as explained above, was always intended to be and, in practice, always has been a URAF account. Thus, all of the reimbursement checks were deposited into a URAF account.

In any event, the bank account the funds were deposited into is not a basis for questioning the funds and should not be a basis for requiring repayment of any reimbursed funds.

3. The URAF Workers were Paid by the URAF When Working for the URAF.

Contrary to the Auditors’ finding, when individuals work for the URAF, they are paid by the URAF. The URAF is a small, non-profit entity with no full-time employees. To maximize the funds going to students, the URAF charges a relatively small amount (\$60,000 per year) for administration. Thus, as the Auditors recognized, URAF administrators also work for the URA. The URAF administrators are paid

³ The URA has used the Chase Accounts.

by the URAF for the services they provide to the URAF and are paid by the URA for the services they provide to the URA.

There are and have been times when the URAF was waiting for reimbursement from the USBE and did not have the funds to pay its administrators' salaries. On those occasions, the URA loaned money to the URAF to pay the administrators. The URAF repaid those amounts (without interest) after being reimbursed by the USBE.⁴

The fact that the URA loaned money to the URAF to pay salaries for its administrators is not a basis for questioning all of the ProStart expenses and should not be the basis for requiring repayment of any funds.

4. The URAF was Responsible for All Appropriate Credit Card Purchases.

The Auditors next point out that 27% of the credit card charges were made on a URA credit card and 73% of the credit card charges were made with the URAF Executive Director's credit card, which was reimbursed by the URA. See Audit at 8. As explained previously, the URAF is a small, non-profit entity, which has very little reserve funds. The ProStart Contracts require the URAF to incur the costs before seeking reimbursement. At times, it has taken months to be reimbursed by the USBE. While waiting for those funds, the URA has loaned money to and paid expenses on behalf of the URAF. The URA has used its credit cards to pay certain expenses and has reimbursed the URAF Executive Director and other vendors when the URAF lacked the funds. But it was the URAF that was incurring and ultimately responsible for those costs once it was reimbursed by the USBE.

There is nothing in the ProStart Contracts that prohibits the URAF from obtaining short-term loans from the URA or anyone else. Likewise, there is nothing in the ProStart Contracts that prohibits the URA from using its credit card to pay expenses and/or reimburse the URAF Executive Director, while the URAF is waiting for reimbursement funds from the USBE. Thus, the fact that the URA loaned money to the URAF by paying expenses with its credit card or reimbursing the URAF Executive Director is not a basis for questioning all of the ProStart expenses and should not be the basis for requiring repayment of any funds.

5. The Payee of Invoices Is Irrelevant.

The Auditors next pointed out that certain invoices and receipts submitted by the URAF for reimbursement identified the URA as the paying entity. There may be various reasons for that. Some of the vendors may have provided services to the URA when it operated the ProStart Program and failed to change their invoices when the URAF was created and assumed control. Others may have made a mistake on the invoice – shortening the name from “Utah Restaurant Association Foundation” to “Utah Restaurant Association.” Whatever the reasons, the name on the invoice does not change the fact that the URAF is and was the entity administering the ProStart Program. The URAF identifies potential vendors, selects the vendors, orders the goods and services and is responsible for paying for the goods and services. While vendors may use an incorrect name, the URAF ordered and was ultimately responsible for paying for the goods.

⁴ Copies of reimbursement checks from the URAF to the URA during the relevant time period were submitted to the Auditors.

There is nothing in the ProStart contract that requires a specific name on the invoices from vendors. Thus, this is not a basis for questioning any funds and should not be a basis for requiring repayment of any reimbursed expenses.

6. Almost All of the Invoices Were Sent by URAF.

As the Auditors recognized, the vast majority (over 80%) of the invoices sent to the USBE identified the URAF as the party submitting the invoice. There were a couple of invoices that were inadvertently sent on URA letterhead. That was a mistake. Neither the URAF nor USBE Staff identified that issue. And the money reimbursed from the USBE was paid into the Zions Account, which was used exclusively by the URAF.

An inadvertent error in the letterhead used on a couple of invoices is not a basis for questioning use of the funds and should not be the basis for requiring repayment of any reimbursed funds.

SUMMARY OF MANAGEMENT RESPONSE: There was a technical error made many years ago when the Zions Account was opened and, because of cashflow shortages, the URA has paid expenses on behalf of the URAF while it waited for reimbursement from the USBE. But the name on the Zions Account and short-term loans from the URA does not change the fact that the URAF is the contracting party and administered the ProStart Program. Among other things, the URAF organized the events, communicated with teachers, arranged the presentations, and oversaw the training. And, most importantly, the URAF was responsible for paying the expenses and seeking reimbursement from the USBE.

None of the issues identified by the Auditors justifies questioning or demanding a return of all reimbursed funds. The fact is, all of the funds were all used on the ProStart Program as intended by the Legislature. The name on the Zions Account, the name on invoices and the name on the credit cards does not change that fact. Consequently, the Auditors should not have questioned and the URAF should not be require to repay any of the reimbursed funds.

III. The URAF's Invoices Contained the Necessary Information.

The Auditors next found that the invoices submitted by the URAF lacked contractually required elements and were not supported by timely and accurate documentation. *See* Audit at 10. Specifically, they found that (1) all 786 reimbursed expenses “lacked appropriate documentation;” (2) “510 of 856 (60%) expenses, totaling \$326,839.02 were not submitted within 30 days of delivery of the Procurement Item;” (3) “four of 20 (20%) mileage reimbursement requests lacked start and/or end addresses and maps, however, the USBE followed up and was able to obtain the required documentation for three of the four (75%) requests;” and (4) the invoices were missing certain information. While the Auditors make these statements, they provide no support. They do not identify the specific invoices or the missing documentation. Moreover, none of these conclusions support a finding that the funds are not being used on the ProStart Program as intended by the Legislature. Accordingly, none of these findings are a basis for requiring repayment of the reimbursed expenses.

1. URAF Submitted Documentation of the Expenses.

Each of the URAF invoices contained an itemization of the expenses and supporting documentation. Indeed, each of the invoices were carefully reviewed by USBE Staff to ensure proper

documentation before reimbursement. At times, the URAF worked with USBE Staff and submitted additional documentation before the amounts were reimbursed. Despite that, without any specification or even examples, the Auditors concluded that 786 out of 786 of the expenses lacked “appropriate” documentation. But the Auditors do not say what documentation was missing for any of the 786 expenses, making responding impossible. It is impractical to submit all of the supporting documents for the URAF’s invoices with this management response. The URAF will, however, submit the supporting documentation and is willing to go through each expense and the documentation with the Auditors, the Audit Committee and/or the USBE to demonstrate that all appropriate documentation has been submitted. In the interim, the URAF invites the Auditors to identify what documentation was missing for each of the 786 expenses.

2. The USBE Reimbursed the URAF Invoices Even Though Some Were Submitted After Thirty Days.

The Auditors point out that some of the invoices were submitted more than thirty days after delivery of the procured items. Audit at 10.⁵ As explained above, the URAF is a small, non-profit organization with a small administrative team. At times, the time commitment of overseeing and coordinating the program required significant time and the URAF was unable to prepare and submit monthly invoices within thirty days. Despite that, the USBE Staff reviewed, approved and reimbursed those invoices. The fact that a few invoices were submitted outside thirty days does not mean the funds were misused or that they should be questioned or repaid.

3. The URAF Submitted Travel Reimbursement Information.

The Auditors point out that 4 of the 20 (20%) mileage reimbursement requests did not originally have start and end addresses, but that the URAF subsequently submitted start and end addresses for 3 of those 4. See Audit at 10. In other words, according to the Auditors, the URAF submitted start and end addresses for 19 of 20 (95%) of the mileage reimbursement requests. The Auditors do not identify which mileage request is lacking the start and end address. If they do so, the URAF will submit a start and end address for that invoice. The URAF is also willing to repay the mileage reimbursement for that one reimbursement request. More importantly, the URAF has created a new procedure for submitting invoices that ensures future reimbursement requests include both a start and end address that meets the USBE’s requirement.⁶

4. The URAF Invoices Contained the Necessary Information.

The Auditors next point out that some of the invoices were missing a date (5), an email address (5), an authorized signature (5), a unique invoice number (1), the correct contract number (22), and/or a description of or the dates the goods or services were provided (25). See Audit at 10. The URAF acknowledges that there were some minor technical issues with some of the invoices. None of those technical issues demonstrates that any funds were misused or justify requiring reimbursement of all of the reimbursed amounts. The necessary information for reimbursement of the invoices was submitted.

⁵ The USBE Staff also often exceed the thirty days it had to review and reimburse URAF’s invoices.

⁶ The Auditors conclude that “[t]here are limited consequences to URAF for nonconformance.” They are incorrect. The URAF tries to comply with the USBE’s requirements because it expedites reimbursement of the funds. USBE Staff has been slow in reviewing and raising concerns with the URAF’s invoices. This has created significant financial challenges for the URAF. Thus, while the URAF eventually receives most of the reimbursement funds, the delay from nonconformity or otherwise causes the URAF serious consequences.

The USBE knew the date the invoices were submitted, have the URAF's email, did not request a signature on the four invoices, knew the contract number and got a description and date for the goods and services provided in the materials submitted with the invoices.

The URAF has modified its procedure to ensure that this technical information is provided in the future. These technical errors are not a basis for questioning whether the funds were properly spent on ProStart expenses and should not be a basis for requiring repayment.

5. The Requests for Reimbursement for Presentations Included the Presentation Information in the Supporting Documentation.

The Auditors next state that "eight of nine (89%) invoices that included requests for reimbursements related to presentations do not include full presentation information (i.e., location, subject, number of attendees, instructor/facilitator) on the invoice but did include it in the supporting documentation." *See* Audit at 11 (emphasis added). The Auditors do not identify what information was missing. Moreover, there is nothing in the ProStart Contract that requires the URAF include all of that information in the invoice. Even if it did, as the Auditors acknowledge, the information was included in the supporting materials. Thus, the USBE had the necessary information before reimbursing the URAF. The fact that the information was in the supporting documents and not in the invoice is not a basis for questioning the expenses and certainly should not be a basis for requiring repayment of any reimbursed funds.⁷

SUMMARY OF MANAGEMENT RESPONSE: Each of the URAF's invoices was carefully reviewed and approved by USBE Staff. Indeed, as the Auditors noted, it took the USBE Staff an average of 68 days to review and reimburse the URAF's invoices. Thus, while the URAF's invoices had some technical issues, all of the information (including documents) necessary for reimbursement was provided. Any technical issue is not a basis for requiring repayment of all reimbursed expenses.

More importantly, as recommended by the Auditors, the URAF has reviewed the "contract provisions regarding use of funds, invoicing, documentation, and reimbursement to ensure the provisions are comprehensive and clear." *See* Audit at 12. The URAF has also instituted clear procedures to ensure that invoices going forward contain the technical information identified by the Auditors.⁸

IV. Travel Reimbursements

After reviewing 786 reimbursed expenses totaling \$650,758.91, the Auditors identified one travel reimbursement invoice and determined that the per diem rates had been incorrectly calculated, resulting in an overpayment to the URAF of \$1,114.27 (or .17% of reimbursed expenses). *See* Audit at

⁷ The Auditors concluded that "[t]he URAF relies heavily upon the USBE to determine what is and is not an allowable expense, including how to properly document and support an expense. This indicates a lack of understanding of contract terms and requirements." Audit at 11. The URAF disagrees. The URAF reviews the ProStart Contracts every year. Having gone through this procedure for over a decade, the URAF understands the contracts and what is reimbursable. But the USBE Staff person that reviews the invoices has changed and, at times, the USBE's interpretation of what is reimbursable has changed. While the URAF has disagreed with the USBE's reimbursement decisions, it has accepted the USBE's decision to avoid unnecessary conflict or disputes.

⁸ The Auditors inexplicably express concern over the amount of time that service providers take in cashing the URAF's checks. *See* Audit at 11. Apparently, the check recipients took over 49 days to cash their checks and 124 of the checks took 60 or more days. *Id.* The URAF has no control over how long it takes individuals to cash their checks.

12. This invoice covers costs incurred by students and teachers in attending an out-of-state event. Before invoicing for the event, the URAF asked whether the state per diem was calculated on a per meal or per day basis. It was told to calculate it on a per meal basis, which it did. After submitting the invoice, the URAF was told it could submit the per diem on a per day basis, which increased the reimbursement amount. Thus, the USBE recalculated the invoice and reimbursed the higher amount. For its part, the URAF had already reimbursed the students and teachers the full amount they incurred (even though it only sought reimbursement of the lesser amount invoiced to the USBE). Thus, it did not need to send a separate subsequent reimbursement after the USBE Staff recalculated the per diem amount. The URAF did not keep the overpayment as suggested by the Auditors.

Ultimately, it was USBE Staff's inconsistent instructions and recalculation of the per diem amount that led to the over payment. But it has never been the URAF's intention to be reimbursed more than allowed. Accordingly, it will repay the \$1,114.27 amount.

Moreover, as recommended by the Auditors, the URAF has reviewed "its internal control system to ensure control activity components have been sufficiently documented and implemented." See Audit at 13. The URAF has also implemented new control procedures to ensure that it conducts appropriate accounting and correctly calculates invoices.

V. URAF Program Invoicing

Out of 786 reimbursed expenses totaling \$650,758.91, the Auditors identified 1 (.1%) expense for \$139.98 (.02%) that was submitted to and reimbursed by both the USBE and DWS. See Audit at 13. This was a mistake. Fortunately, it has only happened once in 786 expenses or .1% of the time and for a very small amount .02% of the reimbursed expenses. It was never the URAF's intention to be reimbursed twice. And the URAF will reimburse the USBE the full \$139.98.

Far from suggesting that the URAF's program invoicing is flawed, the fact that this only happened once out of 786 times and only for \$139.98 out of \$650,758.91 demonstrates that the URAF's program invoicing procedures are proper and successful.

VI. Maintenance of Financial Records

The Auditors conclude that the URAF did not maintain the records necessary to properly account for contractors' payments. See Audit at 14. In support of that conclusion, the Auditors stated that (1) the URAF relies on its banking institutions to maintain proof of payment; (2) the URAF's system of internal control does not ensure compliance with the records administration requirement; and (3) the URA – not the URAF – incurs the costs. See *id.* The Auditors are incorrect.

The URAF Maintains Proper Accounting Records. The only records that the Auditors identify that the URAF does not maintain are copies of cancelled checks. While the URAF has changed its policies and now makes copies of checks when it pays vendors, there is nothing in the ProStart Contracts or GAAP or GAAS accounting procedures that requires that the URAF maintain copies of all checks. The URAF had and continues to have access to all checks with Zions Bank. And the URAF was able to obtain copies of all of the checks requested by the Auditors. Thus, this is not and cannot be a basis for questioning the reimbursed expenses.

The URAF Maintained Records of All Expenses. While the Auditors claim that the URAF's internal control system failed to comply with the records administration requirements, they fail to explain how. Moreover, every one of the URAF's reimbursement requests was carefully reviewed by USBE Staff and approved for reimbursement. The URAF has those records and will submit them to the Auditors, the Audit Committee and/or the USBE. Those records show that the URAF has maintained records documenting each expense. Indeed, that is what the USBE Staff concluded each time that they agreed to reimburse the URAF.

The URA Paid Expenses on Behalf of and Loaned Money to the URAF When it Was Waiting for Reimbursement from the USBE. The Auditors again point out that the URA, loaned money to and paid expenses on behalf of the URAF while it was waiting for reimbursement from the USBE. That fact does not demonstrate that the URAF failed to maintain proper records. To the contrary, as set forth above, the URAF maintained the necessary records. Moreover, contrary to the Auditor's suggestion, the URAF did incur the cost. While it borrowed money from the URA to pay the cost, it was the URAF that was legally responsible. Thus, it incurred the cost, not the URA.

VII. SubContractors

Lastly, the Auditors point out that the URAF does not use formal written subcontractor agreements with the chefs, teachers and other service providers that assist in the ProStart Program. See Audit at 15. The fact is, the URAF uses scores of individual chefs, teachers, restaurant managers and others to teach and train the ProStart students. While they are paid relatively small amounts, those service providers are invested in the ProStart program and the students and participate largely as a service. In the 20 years of the ProStart program, the URAF has never required written subcontracts and has never had problems with its service providers.

Moreover, contrary to the Auditor's suggestion, the ProStart Contract does not require that the URAF have written subcontracts. Despite that, the URAF is preparing and will in the future have each of the service providers sign a short-written subcontract that incorporates the State of Utah Standard Terms and Conditions.

While the URAF has not required Subcontracts, the funds were spent consistent with the ProStart Contracts and this is not a basis for questioning all of the reimbursed expenses.

VIII. Response to the Auditor's Observations

At the end of the Audit, the Auditors include three "Observations:" (1) in 1 of the 26 invoices (4%) the URAF had the purchased supplies shipped to the subcontractor's home instead of to the LEA; (2) the URAF pays teachers directly instead of to the LEAs; and (3) some of the expenses were paid with personal credit cards, resulting in some personal benefits (e.g., 5% back on ink, paper, etc.). While the URAF appreciates the Auditor's observations, their concerns are misplaced.

Some of the URAF service providers are teachers who assist in teaching and training outside of their school employment. In those circumstances, the URAF sends inventory to and pays the individual teachers directly. As the Auditors note, there is nothing in the ProStart Contract that prohibits the URAF from shipping inventory to the individual subcontractors or paying teachers for participating in the

ProStart program during their personal time. Likewise, the URAF is unaware of anything that prohibits the teachers from working with or being paid by the URAF for services outside of their normal work.

Similarly, as described above, the URAF is a small entity without significant cash reserves. As a result, the URAF has at times relied on the URA and/or individuals to pay expenses. On occasion, some individuals pay expenses with their credit cards and may obtain some minor personal benefits. The URAF does not believe these benefits are significant. The URAF is unaware of anything in the ProStart Contracts that prohibits reimbursing individuals for costs they paid using their individual credit cards. In any event, to resolve this issue, the URAF is obtaining a credit card and will use it to make payments in the future.

V. Findings and Observations, USBE

A. Findings, USBE

1. Internal Controls

Criteria: See the following sections of **Appendix A:**

III. State Division of Finance Accounting Policies and Procedures

FIACCT 20-00.00 Internal Control Program

Condition: The USBE has not adequately assessed risk related to program objectives, roles, and responsibilities of the contracting parties and program beneficiaries (e.g., students, teachers). Lacking a risk assessment, the USBE has not adequately designed and implemented necessary control activities, such as policies, procedures, and processes, to reasonably mitigate errors, nonconformance, or the misuse of public funds.

Cause: Causes may include:

- i. The cost to implement the internal control system needed to provide adequate oversight of the current reimbursement structure, which includes the USBE, the URAF, LEAs, and other subcontractors or vendors and program beneficiaries, outweighed the perceived benefit.
- ii. A lack of understanding of how internal control systems ensure accountability.
 - a. Program roles and responsibilities, with necessary policies, procedures and staff training were not effectively or comprehensively designed by the Legislature and/or the USBE to ensure program efficiency and accountability.

Effect: Increased risk of errors, noncompliance, fraud, waste, and/or abuse. Specific findings of errors and noncompliance identified during the audit include items listed below, which were reviewed in consideration of Criteria in **Appendix A:**

- i. Reimbursement based on Inadequate Documentation:
 - a. The 26 invoices submitted by the URAF for reimbursement included 856 expenses. Of the 856 expenses, the USBE reimbursed 786 (92%) expenses, deeming the other 70 expenses ineligible for reimbursement. The approved reimbursement amount for the 786 expenses totaled \$650,759.49; however, the amount reimbursed was \$650,758.91 (see **V.A.1 Effect iii.a**). All 786 expenses reimbursed by the USBE lacked appropriate documentation, see **III.A.1** and **2**.
 - b. The USBE accepted six invoices from one entity (i.e., URAF vs. Association) and reimbursed another entity without identifying or rectifying the error, see **III.A.1**.

- ii. Noncompliance:
 - a. 94 of 164 reimbursed hotel (57%) transactions were not booked in accordance with contract requirements.
 - 1. 70 transactions, totaling \$6,832.00, were for hotel costs where the traveler's home base was within 50 miles to the hotel.
 - 2. 24 transactions, totaling \$2,354.39, were for hotel costs where the traveler's home-base address was not provided to the USBE.
 - b. Six travel costs included gratuity. Two of the six (33%) included gratuity that exceeded the allowed amount; the gratuity overpayment totaled \$83.56.
 - c. One warrant was issued to the Association based on an expired contract but should have been made to the URAF.
 - d. See **V.A.2** for additional examples.

- iii. Miscalculations:
 - a. Six of 26 invoices (23%) were miscalculated, resulting in a \$0.58 underpayment. Although the total miscalculation amount was immaterial, the rate of error is of concern.
 - b. Using the current version of Google Maps, 12 of 19 (63%) personal mileage costs appear to have been incorrectly reimbursed totaling an underpayment to the URAF of \$121.38.
 - c. One of five (20%) invoices had expenses with incorrectly calculated per diem rates, which resulted in a minimum overpayment to URAF of \$368.97. However, whether per diem was even an appropriate method of reimbursement is questionable. There is a lack of evidence that 1) the URAF incurred the costs associated with the per diem, 2) that schools requested per diem as opposed to exact costs, and 3) evidence students received a per diem amount; therefore, it appears the actual overpayment to the URAF totals \$1,114.27. See **III.A.3** for additional concerns related to this matter.
 - d. The URAF listed one expense twice on the same invoice. The error was not identified by the USBE and was subsequently paid twice, an overpayment to URAF of \$99.44.

Recommendations: The Board should consider:

- i. Disallowing inappropriately reimbursed funds and seeking repayment and/or withholding future funds from the URAF, consistent with the contract, until inappropriately reimbursed funds have been fully recovered. See **Appendix B** for Total Questioned Costs.

- ii. Working with the Legislature as necessary to restructure the flow of ProStart funds so the USBE can utilize its established internal control system to award the culinary art program funds to LEAs who can then contract with the URAF, or another appropriate entity, to provide needed services. The change in the flow of funding could potentially mitigate financial and oversight risks, increase the efficiency and accuracy of the disbursement of funds, and minimize administrative costs at the USBE, URAF, and LEAs.
 - a. If the flow of funds is not restructured, a comprehensive internal control system for the program should be designed, implemented, and incorporated into the contract, to

mitigate identified risks and non-compliance, and enhance accountability. USBE staff should be trained on internal control system components.

- b. To provide additional assurance regarding the URAF internal control environment and accounting of taxpayer funds, the USBE should consider revising the contract to require the URAF to regularly provide a System and Organization Controls (SOC) report.
- iii. Recommending the Legislature enact a new state statute to include provisions/remedies related to false claims such as the federal government has (i.e., False Claims Act), to help ensure accountability for state funds.

2. Contract Adherence

Criteria: See the following sections of **Appendix A:**

I. Contract USBE190024MA

Attachment A:

- 23 INVOICING
- 38 TRAVEL COSTS

Attachment B: Scope of Work FY2019

- B. Goals/Objectives
- C. Deliverables/Timeline
- D. Project Management [same provision also applies to FY2020]

Amendment 1, Attachment C Budget FY2019 and FY2020

- A. Budget

II. Utah Administrative Code

- R25-7-4 Eligible Expenses. (effective June 21, 2018 – September 21, 2018)*
- R25-7-5 Approvals. (effective June 21, 2018 – September 21, 2018)*
- R25-7-5 Approvals. (effective September 21, 2018 – July 1, 2019)*
- R25-7-10 Reimbursement for Transportation (effective July 2019)*

III. State Division of Finance Accounting Policies and Procedures

- FIACCT 10-02.00 (effective July 1, 1994, revised October 28, 2020)*
- FIACCT 10-04.00 Group Gatherings (effective July 1, 2007, revised November 1, 2017)*
- FIACCT 10-04.00 Travel – Group Gatherings, Policy (effective July 1, 2007, revised July 1, 2019)*

Condition: Although the URAF and the USBE have a contract, contract provisions are inconsistently interpreted and applied. Specific examples of loose adherence to the contract include the following:

- i. The USBE does not hold the URAF accountable for invoice submission requirements (i.e., monthly or within 30 days), allowing the URAF to submit invoices at their leisure and/or

requiring the URAF to submit invoices inconsistent to the contractual terms. See **III.A.2 Condition ii** for details.

- ii. Five invoices had meal reimbursements, one (20%) of the five invoices had meal expenses that qualified for a flat allowance (i.e., per diem) and should not have needed a receipt for reimbursement, yet the USBE did not reimburse the meal expenses because the receipt provided was not itemized. This error resulted in an underpayment to the URAF totaling \$20.88 (i.e., the requested reimbursement amount).
- iii. Seventeen of the 18 (94%) invoices with travel expenses, had travel expenses that were not pre-approved. The unapproved travel costs resulted in a total reimbursement of \$58,332.01.
- iv. The USBE appears to have required rates inconsistent and/or unsupported with the terms and conditions of the contract. For example, the USBE:
 - a. Directed the URAF to use a rate of up to a \$25 per hour for all their subcontractors, and
 - b. Reimbursed mileage inconsistent with R25-7.
- v. Eleven out of 11 (100%) events that cost more than \$1,000, that were reviewed, did not have a completed Group Gathering Authorization form and document approvals. The eleven events totaled \$34,497.37.
- vi. Two of nine (22%) budget categories for FY 2019 were exceeded by a total of \$49,549.17. The 'Administration' category was \$1,320.63 over budget, and the 'Competition Reimbursements and School Needs' category was \$48,228.51 over budget; however, the total FY2019 budget was not exceeded.
- vii. One of nine (11%) budget categories for FY 2020 was exceeded. The 'Regional – State Competitions' category was \$5,520.49 over budget; however, the total FY2020 budget was not exceeded.
- viii. One of 18 (6%) invoices with travel had expenses for an individual who took the place of a different traveler at the last minute; the FI-5 was not updated to reflect the change.

Cause: The ProStart program's objectives have not been clearly identified; therefore, a risk assessment has not been completed, nor have necessary control activities been established (see **V.A.1 Condition**) to mitigate confusion and noncompliance. The following examples are used to demonstrate the stated Cause.

- i. There is a lack of clarity on application of contract requirements. Attachment A of the contract requires travel costs to be paid according to the rules and rates of Utah Administrative code R25-7 and Attachment B requires the URAF to follow state financial policies; however, little additional clarification is provided to limit which portions of both regulations are intended to be followed. Therefore, it appears the USBE is unsure whether the URAF should be held to R25-7

and state policy in their entirety or just parts. Likewise, the URAF appears to heavily rely on the USBE to interpret and ensure the URAF's adherence to the contract.

- ii. Budget categories in Attachment C of the contract (see **Appendix A**) are understood differently by USBE staff; some staff view the category amounts as estimates while others view the category amounts as limits.

Effect: Lack of accountability for use of taxpayer funds, which could potentially deprive students of opportunities at the expense of administrative costs.

Recommendation: See Recommendations for **V.A.1**.

B. Observations, USBE

1. Tax Exemption

Condition:

Attachment A.17 Sales Tax Exemption of Contract # USBE190024MA states, The Procurement Item(s) under this Contract will be paid for from the State Entity's funds and used in the exercise of the State Entity's essential functions as a state of Utah entity. Upon request, the State Entity will provide Contractor with its sales tax exemption number. It is Contractor's responsibility to request the State Entity's sales tax exemption number. It also is Contractor's sole responsibility to ascertain whether any tax deduction or benefits apply to any aspect of this Contract.

Although URAF's contract does not require the use of the State Entity's sales tax exemption number, it does inform the URAF of the ability to use the number to potentially obtain tax deductions or benefits, placing the responsibility to request the number upon the URAF.

Given limited public education funds, it would seem prudent to reduce costs as much as practical. \$1,545.44 of Utah state tax was paid by URAF/Association and its contracted staff, which could have been avoided. The USBE should consider updating terms and conditions of the contract to require the use of the State Entity's tax exemption number, or the URAF's tax exempt number, so taxpayer dollars are used more effectively for students rather than for taxes. Furthermore, the USBE should consider not refunding URAF for state sales tax, given they can use a tax exemption number to avoid the cost but have elected otherwise.

2. Contract Accuracy

Condition: During a review of the contract, the following errors were identified and should be rectified at the USBE's earliest convenience, if not already addressed:

- i. Contract # USBE190024MA Amendment 1, **Attachment C**: Budget for FY 2019 Amended & FY 2020 assign and report a total budgeted dollar amount of \$403,100, with that amount in both years being allocated to specific budget categories. However, for both years, when the amounts per budget categories are summed, they total \$403,000, a difference of \$100.

- ii. **A.43** in the contract reads: “ERRORS AND OMISSIONS: Contractor shall not take advantage of any errors or omissions in this Contract. The Contractor must promptly notify LEA of any errors or omissions that are discovered.” This reference to LEA is despite the fact that no LEA is party to the contract. This should state “USBE” rather than “LEA.”

VI. Management Response, USBE

USBE's Management Response begins on the following page.

August 30, 2021

Kevin John
Deputy Audit Executive
Internal Audit, Utah State Board of Education
250 East 500 South SLC, Utah 84114-4200

Dear Mr. John:

I am writing in response to your request regarding the USBE ProStart Audit findings. Below you will find responses to the Audit.

Recommendations

- 1) considering disallowance of inappropriately reimbursed funds and seeking repayment and/or withholding future funds from the URAF, consistent with the contract, until inappropriately reimbursed funds have been fully recovered;**

- 2) working with the Legislature as necessary to restructure the flow of ProStart funds so the USBE can utilize its established internal control system to award the culinary art program funds to LEAs who can then contract with the URAF, or another appropriate entity, to provide needed services. If the flow of funds is not restructured, a comprehensive internal control system for the program should be designed, implemented, and incorporated into the contract, to mitigate identified risks and non-compliance, and enhance accountability.**
 - a. If the flow of funds is not restructured, a comprehensive internal control system for the program should be designed, implemented, and incorporated into the contract, to mitigate identified risks and non-compliance, and enhance accountability. USBE staff should be trained on internal control system components.**
 - b. To provide additional assurance regarding the URAF internal control environment and accounting of taxpayer funds, the USBE should consider revising the contract to require the URAF to regularly provide a System and Organization Controls (SOC) report.**

3) Recommending the Legislature enact a new state statute to include provisions/remedies related to false claims such as the federal government has (i.e., False Claims Act), to help ensure accountability for state funds.

Due to the items identified in the USBE audit, CTE staff are supportive of the Board pursuing all or any combination of the recommendations provided by Internal Audit. Explanations on item findings that may help the Board make an informed decision are found below.

Recommendation Comments:

1. USBE has sufficient staff and resources to carry out recommendation #1. We can either disallow inappropriately reimbursed funds and seek repayment and/or withhold future funds from the URAF, consistent with the contract, until inappropriately reimbursed funds have been fully recovered.
2. Due to the vendor being named in legislation (HB1 line 301 in 2018 General Session appropriated funds for “ProStart”, see also Utah Code 63G-6a- 802, which authorizes sole source when there is only “one source for the procurement item”), the contract between URAF and USBE did not go through the traditional competitive process. When a vendor is named in legislation and is a sole source, this increases the risk significantly, for example, the entity is placed at a disadvantage when it comes to the negotiation of terms and conditions, cost, the deliverables, and if the vendor is not willing to negotiate or accept the requirements, then there will not be a contract, where in a competitive process, the entity can move to the next vendor to negotiate a best value and obtain the best solution for the entity (see generally Administrative Rule R33-8-101a). Public procurement best practices indicate that as complexity and risk/ uncertainty increase, a competitive process is the preferred approach (see *Sourcing in the Public Sector*, Second Edition, Pettijohn and Babich, 10-11; see also *State and Local Government Procurement: A Practical Guide*, 3rd Edition, NASPO, 34)

The purpose of public procurement is to ensure transparency, ensure fair and equitable treatment of all persons who participate, provide increased economy, and foster effective broad-based competition (see Utah Code 63G-6a-102). Like in private procurement, there are various procurement risks that accompany any expenditure of public funds. These risks are often identified as Proposal Risk, Surety Risk, Contract Risk, Schedule Risk, Performance Risk, and Price Risk. (*Sourcing in the Public Sector p 10-11. State and Local Government Procurement 81-83*) Each solicitation is different and has

its own set of challenges and risks. The Purchasing Staff has addressed these risks in a variety of ways. In competitive processes, we require vendors to respond to various questions to determine whether a vendor is responsible (capable of performing under the contract). These types of questions we ask vendors include identification of debarment and suspension, claims of non-performance, any pending litigation for the entity or its principals, conflicts of interest with USBE, tax liens, etc.

Group 2: Acceptance of Prerequisites				Manage Group	Delete Selected Questions
#	Question Text	Conditional Upon	Response Type		<input type="checkbox"/>
2.1	Is Offeror presently or has Offeror ever been debarred, suspended, proposed for debarment, or declared ineligible by any governmental department or agency, whether international, national, state, or local? ★	-	Yes/No	Edit	<input type="checkbox"/>
2.2	If you answered yes to the question above, upload a statement regarding your debarment or suspension.	-	File Upload	Edit	<input type="checkbox"/>
2.3	List of all claims of non-performance or breach by customers in excess of \$5,000, including all pending litigation matters (including civil, criminal, or appellate) or criminal convictions in the past 5 years for the company and all principals. - Attach Additional Information in Supplier Attachments as necessary. ★	-	Text (Multi-Line)	Edit	<input type="checkbox"/>
2.4	Offeror acknowledges that it must acquire and maintain all applicable federal, state, and local licenses before the contract is entered into. Licenses must be maintained throughout the entire contract period. Persons doing business as an Individual, Association, Partnership, Corporation, or otherwise shall be registered with the Utah State Division of Corporations and Commercial Code. NOTE: Forms and information on registration may be obtained by calling (801) 530-4849 or toll free at 877-526-3994, or by accessing: www.commerce.utah.gov. ★	-	Yes/No	Edit	<input type="checkbox"/>
2.5	Does the Offeror have a known conflict of interest with any individual at the Utah State Board of Education? If Yes, you must submit a Conflict of Interest form. ★	-	Yes/No	Edit	<input type="checkbox"/>
2.6	Upload Conflict of Interest form here.	-	File Upload	Edit	<input type="checkbox"/>
2.7	Offeror acknowledges that it has uploaded a document providing a point-by-point response to the following prerequisites: the mandatory minimum requirements prerequisite, the technical requirements prerequisite, and any other prerequisite that required a document to be uploaded. ★	-	Yes/No	Edit	<input type="checkbox"/>
2.8	The Utah State Board of Education is an educational procurement unit. In the event that an Offeror offers pricing discounts for educational entities that result in lower pricing than what is generally offered to other governmental entities, please submit a cost proposal including the educational discount. Offeror acknowledges that it has read and understands this question. ★	-	Yes/No	Edit	<input type="checkbox"/>
2.9	Does Offeror have an outstanding tax lien in the State of Utah? If yes, Offeror must provide a statement regarding its debarment or suspension. ★	-	Yes/No	Edit	<input type="checkbox"/>
2.10	Is Offeror an employee of the State of Utah? If yes, then Offeror must submit a dual employment form signed by Offeror's manager at the State of Utah. ★	-	Yes/No	Edit	<input type="checkbox"/>
2.11	In accordance with Utah Statute 63G-27-101, effective May 5, 2021, vendors contracting with the State to provide a good or service, including supplies, information technology, or construction services must certify they are not currently engaged in a boycott of the State of Israel and agrees not to engage in a boycott of the State of Israel for the duration of the contract (if awarded). Offeror is providing this certification in accordance with state law by selecting "Yes" to this question. ★	-	Yes/No	Edit	<input type="checkbox"/>
2.12	If an Offeror submits a proposal that contains information claimed to be confidential or protected, the Offeror MUST submit two separate proposals: one redacted version for public release, with all protected business confidential information either blacked-out or removed, clearly marked as "Redacted Version"; and one non-redacted version for evaluation purposes clearly marked as "Protected Business Confidential." Upload your confidentiality form and redacted proposal here. If none, upload confidentiality form indicating none. ★	-	File Upload	Edit	<input type="checkbox"/>

USBE staff will utilize the information identified in the audit to appropriately develop internal control processes to account for and address identified risks for legislatively identified vendors. USBE staff will implement these when the current contract expires and a new contract is entered into. For the current situation, USBE will work to incorporate the following actions into the FY22 contract amendment (which must be mutually agreed upon with URAF) to mitigate risks identified in the audit until the above noted internal control process has been developed (see Contract Administration in the Public Sector, second edition, Wright, Davidson, p17-8).

- Require a SOC report to be completed annually under the contract
- Require audited financial statements

- Clearly identify that all reimbursements must be submitted from URAF not URA and all documentation must indicate that URAF has made payment and is seeking reimbursements
- Require URAF to show separate banking accounts for URAF/ payment from URAF bank accounts

Reimbursements for FY22 contract will follow these refined policies and procedures as developed.

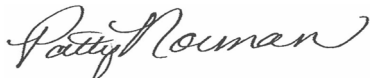
Update the contract to clearly identify reimbursement categories:

- Travel- what is allowed, what documents are required for reimbursement (e.g., map with start and ending addresses)
- Rates-- Per diem (flat rates vs actual cost); mileage (higher rate, not employee)
- Gratuities
- Tax
- Required flow downs for subcontracts (reimbursement requirements, per diem, travel, etc.)
- Identify disposition of property purchased with contract funds

3. USBE CTE and Financial Operations will ensure that staff are trained in the internal control processes and contract requirements. In addition, the Board may choose to work with the legislature to enact a new state statute that includes provisions/remedies related to false claims such as the federal government has (i.e., False Claims Act), to help ensure accountability for state funds. Such an act would be utilized by USBE staff to remedy situations where vendors submit false claims.

Please let us know if you have any additional questions.

Sincerely,



Patty Norman
Deputy Superintendent of Student Achievement

VII. Appendices

Appendix A – Criteria

Appendix B – Total Questioned Costs

Appendix C – Auditor Concluding Remarks

Appendix A – Criteria

The first element of a finding is Criteria. Criteria establishes what is required by code, statute, best practice, contract terms and conditions, etc. The following is a list of Criteria relevant to findings included in the audit report.

I. Contract USBE190024MA

7. Documents Incorporated into this Contract by Reference but not Attached:

- a. All other governmental laws, regulations, or actions applicable to the goods and/or services authorized by this contract.

Attachment A: State of Utah Standard Terms and Conditions for Goods and Services

1 DEFINITIONS:

- 1.5. “Contractor” means the individual or entity delivering the Procurement Item identified in this Contract. The term “Contractor” shall include Contractor’s agents, officers, employees, and partners.
- 1.11. “Procurement Item” means a supply, a service, construction, or technology that Contractor is required to deliver to the State Entity under this Contract.
- 1.17. “Subcontractors” means a person under contract with a contractor or another subcontractor to provide services or labor as provided herein or for design or construction, including a trade contractor or specialty contractor.

3 LAWS AND REGULATIONS: At all times during this Contract, Contractor and all Procurement Items delivered and/or performed under this Contract will comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements.

4 RECORDS ADMINISTRATION: Contractor shall maintain or supervise the maintenance of all records necessary to properly account for Contractor’s performance and the payments made by the State Entity to Contractor under this Contract. These records shall be retained by Contractor for at least six (6) years after final payment, or until all audits initiated within the six (6) years have been completed, whichever is later.

9 CONTRACTOR RESPONSIBILITY: Contractor is solely responsible for fulfilling the Contract, with responsibility for all Procurement Items delivered and/or performed as stated in the Contract. Contractor shall be the sole point of contact regarding all contractual matters. Contractor must incorporate Contractor’s responsibilities under this Contract into every subcontract with its Subcontractors that will provide the Procurement Item(s) to the State Entity under this Contract. Moreover, Contractor is responsible for its Subcontractors compliance under this Contract.

23 INVOICING: Contractor will submit invoices within thirty (30) days of the delivery date of the Procurement Item(s) to USBE. The Contract number shall be listed on all invoices, freight tickets,

and correspondence relating to this Contract. The prices paid by the USBE will be equal to or lower than the prices listed in this Contract. USBE has the right to adjust or return any invoice reflecting incorrect pricing.

38 TRAVEL COSTS: If travel expenses are permitted by the Solicitation, then all travel costs associated with the delivery of Services under this Contract will be paid according to the rules and per diem rates found in the Utah Administrative Code R25-7. Invoices containing travel costs outside of these rates will be returned to Contractor for correction.

Attachment B: Scope of Work FY2019

B. Goals/Objectives

The Utah Restaurant Association Foundation will follow state financial policies and administer the ProStart program and provide invoices to the Utah State Board of Education to deliver to the URA Foundation the appropriation provided by the Utah State Legislature for the ProStart Program.

C. Deliverables/Timeline

The Utah Restaurant Association Foundation will be responsible for the ProStart program and will use whatever staff is required to deliver the following... Other Activities 2. Support teachers in acquiring and maintaining their ServSafe certification.

D. Project Management [same provision is also applicable to FY2020]

1. Any changes or deviations from the agreement must be agreed to in writing through a proper amendment to the agreement.”

Amendment 1, Attachment C: Budget FY2019 [and FY2020]

A. Budget

Total Budget for Agreement: \$403,100.00.

The table below combines the tables in the contract for FY2019 and FY2020.

	FY 2019	FY2020
ADMINISTRATION	\$ 54,900	\$ 54,900
Administration of ProStart Program in Utah to include: staff, cell phones, printing, copies, transportation including all travel for all staff as necessary (airline/mileage/car rental), meals, accommodations, computer upgrades, website upgrades and maintenance, software, equipment purchases and maintenance, accounting, legislative presentations and meals, special events, and professional expenses as required for any Administrative training. Meal costs will be reimbursed based on Utah state per diem guidelines of \$14/lunch and \$19/dinner.		
EXPERT RESOURCES	\$ 9,000	\$ 10,000
Mentor chefs, industry experts, demonstrations, products for demonstration, travel and meals. Meal costs will be reimbursed based on Utah state per diem guidelines of \$14/lunch and \$19/dinner.		
TEACHER TRAINING	\$ 38,000	\$ 44,000
Transportation/ Accommodations/Meals/Expert Resources/Demonstrations Facilities/Instructional materials using all mediums (print, DVD's, filming, editing, posting, and the purchase of any equipment required), Boot Camp new teacher training as needed. Meal costs will be reimbursed based on Utah state per diem guidelines of \$14/lunch and \$19/dinner.		
STUDENT TRAINING	\$ 46,100	\$ 40,000
Expert demonstrations - Job Opportunities - Continuing Education. Industry mentoring, Uniforms, Registration Fees, Host Location Fees, Finals Testing Fees, DVD filming editing, DVD copies, internet posting, Workplace Safety Training, Webpage and maintenance, equipment purchase, food safety training to include industry developed ServSafe food safety manager training, ServSafe food handlers, ServSafe allergen to include training materials and testing. Meal costs will be reimbursed based on Utah state per diem guidelines of \$14/lunch and \$19/dinner.		
REGIONAL - STATE COMPETITIONS	\$ 65,500	\$ 65,600
Host Location/Meals/Judges/Awards Banquet/Filming, Editing, and DVD to include equipment (both rental and purchase), internet posting, prizes, trophies, plaques, and other awards, transportation, hotel, meals, uniforms for regional and state competitions. Meal costs will be reimbursed based on Utah state per diem guidelines of \$14/lunch and \$19/dinner.		
NATIONAL COMPETITION	\$ 43,500	\$ 43,500
All expense paid trip to National Finals for the Management Team and Culinary Team state winners to include: air fare, hotel, meals, car rental, mileage, registration fees, uniforms, Chef Mentors, Staff, ProStart teachers, skills training, Out of State Experts, equipment, shipping & handling, freight fees. Meal costs will be reimbursed based on Utah state per diem guidelines of \$14/lunch and \$19/dinner.		
SCHOOL PARTICIPATION FEE	\$ 45,000	\$ 49,000
Reimbursement for ProStart competition supplies including but not limited to \$1,000.00 per ProStart program, per competition in Utah high schools. Signed contract from the schools required. Must be full curriculum including giving the ProStart final exam. Must participate in competitions and attend all teacher and student trainings. Fee can be used for ProStart programs only.		
COMPETITION REIMBURSEMENTS AND SCHOOL NEEDS	\$ 101,000	\$ 96,000
ProStart classrooms will receive supplies for their program to meet the needs of the classroom. Items that will be provided to ProStart programs are: culinary tools of the trade, curriculum, knife kits, thermometers, uniforms, small wares, speed racks, skills training books, videos, food safety certification and testing supplies and other items as requested and resources are available.		
Total FY19 [FY20] ProStart Projected Costs	\$ 403,100	\$ 403,100

B. Invoicing

b. Invoices shall include the following:

- i. Contractor Name
- ii. Uniquely identifiable invoice number
- iii. Invoice date
- iv. Contract number
- v. Recipient Entity's contact information (phone number and email address)
- vi. Contractor's authorized signature

- vii. Date(s) goods/services were provided
- viii. Description of goods and/or services for which payment is requested
- ix. Description of presentations, including location, subject, number of attendees, instructor/facilitator.
- x. Dollar amount requested.

e. To obtain payment for the goods and/or services authorized by this agreement, contractor shall submit the itemized invoice together with supporting documentation of work performed.

II. Utah Administrative Code

R25-7-4 Eligible Expenses. (effective June 21, 2018 – September 21, 2018)

- (2) Requests for reimbursement must be accompanied by original receipts for all expenses except those for which flat allowance amounts are established.

R25-7-5 Approvals. (effective June 21, 2018 – September 21, 2018)

- (1) For insurance purposes, all state business travel, whether reimbursed by the state or not, must have prior approval by an appropriate authority. This also includes non-state employees where the state is paying for the travel expenses.
- (2) Both in-state and out-of-state travel must be approved by the Executive Director or designee. The approval of in-state travel reimbursement forms may be considered as documentation of prior approval for in-state travel. Prior approval for out-of-state travel should be documented on form FI5 - "Request for Out-of-State Travel Authorization".

R25-7-5 Approvals. (effective September 21, 2018 – July 1, 2019)

- (1) For insurance purposes, all state business travel, whether reimbursed by the state or not, must have prior approval by an appropriate authority. This also includes non-state employees where the state is paying for the travel expenses.
- (2) Both in-state and out-of-state travel must be approved by the Executive Director or designee. The approval of in-state travel reimbursement forms may be considered as documentation of prior approval for in-state travel. Prior approval for out-of-state travel should be documented on form FI5 - "Request for Out-of-State Travel Authorization".

R25-7-6 Reimbursement for Meals. (effective June 21, 2018 – September 21, 2018)

- (3)(a) The daily travel meal allowance for in-state travel is \$43.00 and is computed according to the rates listed in the following table.

TABLE 1
In-State Travel Meal Allowances

Meals	Rate
Breakfast	\$10.00
Lunch	\$14.00
Dinner	\$19.00
Total	\$43.00

- (b) The daily travel meal allowance for out-of-state travel is \$46.00 and is computed according to the rates listed in the following table.

TABLE 2
Out-of-State Travel Meal Allowances

Meals	Rate
Breakfast	\$10.00
Lunch	\$14.00
Dinner	\$22.00
Total	\$46.00

- (4) When traveling to a Tier II premium location (Atlanta, Baltimore, Boston, Dallas, Los Angeles, San Diego, and Washington, DC), the traveler may choose to accept the per diem rate for out-of-state travel (as shown above) or to be reimbursed at the actual meal cost, with original receipts, up to \$59 per day.
- (a) The traveler will qualify for premium rates on the day the travel begins and/or the day the travel ends only if the trip is of sufficient duration to qualify for all meals on that day.
- Tier II Location
- (i) If breakfast is provided deduct \$13, leaving a premium allowance for lunch and dinner of actual up to \$46.
- (ii) If lunch is provided deduct \$17, leaving a premium allowance for breakfast and dinner of actual up to \$42.
- (iii) If dinner is provided deduct \$29, leaving a premium allowance for breakfast and lunch of actual up to \$30.
- (c) The traveler must use the same method of reimbursement for an entire day.
- (d) Actual meal cost includes tips.

R25-7-8 Reimbursement for Lodging (effective March 10, 2020 –February 23, 2021)

- (3) State employees traveling less than 50 miles from their home base are not entitled to lodging reimbursement. Miles are calculated from either the departure home-base or from the destination to the traveler's home-base. The traveler may leave from one home-base and return to a different home-base. For example, if the traveler leaves from their residence, then the home-base for departure calculations is their residence.

R25-7-9 Reimbursement for Incidentals (effective June 21, 2018 – September 21, 2018)

- (1) Travelers will be reimbursed for actual out-of-pocket costs for incidental items such as baggage tips, transportation costs, maid service, and bellman. Gratuities/tips for various services such as taxi/shuttle, assistance with baggage, maid service, and bellman, may be reimbursed up to a combined maximum of \$5.00 per day.
- (b) No other gratuities will be reimbursed.

R25-7-9 Reimbursement for Incidentals (effective September 21, 2018 – July 1, 2019)

(2)(d) Gratuities/Tips for ground transportation (taxi/shuttle/rideshare) will be reimbursed up to the greater of \$5 or 18% for each ride. Gratuities/Tips must be shown on an original receipt.

R25-7-10 Reimbursement for Transportation (effective March 10, 2020 –February 23, 2021) states,

(3)(f) Mileage will be computed using Mapquest or other generally accepted map/route planning website, or from the latest official state road map and will be limited to the most economical, usually traveled routes.

R25-7-10 Reimbursement for Transportation (effective July 1, 2019 – March 10, 2020)

(3)(b) Reimbursement for a private vehicle will be at the rate of 38 cents per mile or 58 cents per mile if a state vehicle is not available to the employee.

(i) To determine which rate to use, the traveler must first determine if their department has an agency vehicle (long-term leased vehicle from Fleet Operations) that meets their needs and is reasonably available for the trip (does not apply to special purpose vehicles). If reasonably available, the employee should use an agency vehicle. If an agency vehicle that meets their needs is not reasonably available, the agency may approve the traveler to use either a daily pool fleet vehicle or a private vehicle. If a daily pool fleet vehicle is not reasonably available, the traveler may be reimbursed at 58 cents per mile.

III. State Division of Finance Accounting Policies and Procedures

The USBE follows the Utah Division of Finance Accounting Policies and Procedures (FIACCT).

FIACCT 10-02.00 Reimbursement – General Policies (effective July 1, 1994, revised October 28, 2020, emphasis in the original)

B. Prior Approval – For insurance purposes, all travel on state business, whether reimbursed by the State or not, must have PRIOR APPROVAL by an appropriate authority. **This also includes non-state employees where the State is paying for travel expenses.**

FIACCT 10-02-03 B. Calculation of Meal Reimbursements (effective July 1, 1994, revised July 1, 2018 to present)

1. The Day the Travel Begins – The meal reimbursement the traveler is entitled to is determined by the time of day the traveler leaves their home-base. (Travelers living on the Wasatch front are allowed 1 to 2 hours’ time for travel and reporting for boarding prior to the scheduled departure time. Travelers may be required to be at the airport earlier to go through security.)

	1 st Quarter	2 nd Quarter	3 rd Quarter	4 th Quarter
	A.M.	A.M.	P.M.	P.M.
	12:01 – 6:00	6:00 – 12:00	12:01 – 6:00	6:01 – 12:00
	*B, L, D	*L, D	*D	* No Meals
In-State	\$45.00	\$34.00	\$20.00	-0-
Out-of State	\$50.00	\$37.00	\$23.00	-0-

*B=Breakfast, L=Lunch, D=Dinner

FIACCT 10-04.00 Group Gatherings (effective July 1, 2007, revised July 1, 2019)

Definitions: Group Gatherings: Includes state-sponsored conferences, training sessions, board meetings, management retreats, and service award gathers.

Policy

- A. If the estimated cost of the state sponsored group gathering is more than \$1,000, agencies must complete a Group Gathering Authorization, form FI 58, to document the estimated costs and approvals. The executive director or designee, and the head budget officer of the department must approve the acquisition of the state-sponsored group gathering accommodations by signing the form FI 58, regardless of the type of funds being used to fund the group gathering.

- E. If the facility selected by the agency does NOT accept state per diem rates for food and/or lodging, then the following policy applies:
 - 1. If the total cost of the group gathering is estimated to be \$1,000 or less, the agency may select the best source without seeking competitive bids. Justification in writing must be provided to and approved by the executive director or designee.
 - 2. If the total cost of the group gathering is estimated to cost from \$1,000.01 to \$5,000 then the agency must get two, preferably three bids from other comparable facilities and select the facility with the lowest bid. If the agency cannot get more than one bid then the agency must obtain approval from the State Travel Office.
 - 3. If the total cost is estimated to be greater than \$5,000 then the State Travel Office will conduct the procurement. The State Travel Office must approve these gatherings.

FIACCT 20-00.00 Internal Control Program (effective March 1, 2012, revised July 1, 2017)

Policy:

- A. Agencies must establish and maintain sound internal controls based on the five components of internal control.

3. Control Activities

Control activities are the policies and procedures that help ensure management directives are carried out, helping to ensure that necessary actions are taken to address risks to achievement of the entity's objectives. Control activities include procedures such as approvals, verifications, reconciliations, security of assets, and segregation of duties...

IV. Utah Code Annotated

76-6-401 Definitions (Enacted by Chapter 196, 1973 General Session)

For the purposes of this part:

- (1) "Property" means anything of value, including real estate, tangible and intangible personal property, captured or domestic animals and birds, written instruments or other writings representing or embodying rights concerning real or personal property, labor, services, or otherwise containing anything of value to the owner, commodities of a public utility nature such as telecommunications, gas, electricity, steam, or water, and trade secrets, meaning

the whole or any portion of any scientific or technical information, design, process, procedure, formula or invention which the owner thereof intends to be available only to persons selected by him.

- (5) "Deception" occurs when a person intentionally:
- (a) Creates or confirms by words or conduct an impression of law or fact that is false and that the actor does not believe to be true and that is likely to affect the judgment of another in the transaction; or
 - (b) Fails to correct a false impression of law or fact that the actor previously created or confirmed by words or conduct that is likely to affect the judgment of another and that the actor does not now believe to be true

76-6-405 Theft by Deception (Amended by Chapter 156, 2012 General Session)

- (2)(a) A person commits theft if the person obtains or exercises control over property of another person:
- (i) by deception; and
 - (ii) with a purpose to deprive the other person of property.

76-10-1801 Communications Fraud – Elements – Penalties (Amended by Chapter 193, 2010 General Session)

- (1) Any person who has devised any scheme or artifice to defraud another or to obtain from another money, property, or anything of value by means of false or fraudulent pretenses, representations, promises, or material omissions, and who communicates directly or indirectly with any person by any means for the purpose of executing or concealing the scheme or artifice is guilty of:
- (a) a class B misdemeanor when the value of the property, money, or thing obtained or sought to be obtained is less than \$500;
 - (b) a class A misdemeanor when the value of the property, money, or thing obtained or sought to be obtained is or exceeds \$500 but is less than \$1,500;
 - (c) a third degree felony when the value of the property, money, or thing obtained or sought to be obtained is or exceeds \$1,500 but is less than \$5,000;
 - (d) a second degree felony when the value of the property, money, or thing obtained or sought to be obtained is or exceeds \$5,000...
- (7) A person may not be convicted under this section unless the pretenses, representations, promises, or material omissions made or omitted were made or omitted intentionally, knowingly, or with a reckless disregard for the truth.

Appendix B – Total Questioned Costs

Section II provides general information regarding why an expense, or a cost, may be questioned.

Total Questioned Costs from the findings in the report (see **Section III** and **V**) are reflected in the table below. Questioned Costs consider both under and overpayments. Some costs are questioned for multiple reasons; however, the questioned amount cannot exceed the amount paid on an individual basis or in total.

As demonstrated in the table below, all costs included within the scope of the audit were ultimately questioned.

Questioned Costs		
Description	Expenses	Total
Reimbursed	786	\$ 650,758.91
Questioned Costs	786	\$ 650,758.91

Appendix C

Auditor's Concluding Remarks

Based on the response provided by Utah Restaurant Association Foundation (URAF); it appears that questions still remain. See **IV Management Response, URAF (Response)**. Therefore, the following are concluding remarks, in no particular order, by the Internal Audit Department to ensure elements of the Report are clearly understood.

- A. **Internal Control Environment:** The URAF Response states, “The URAF has not hired accountants or a large staff to oversee its operations” (see **Introduction**). Multiple times throughout the URAF Response, they admit to mistakes, inadvertent errors, and technical errors in the administration of the ProStart Program. The Response itself reflects errors as well (e.g., see **F. Contracting Entities, M. URAF Invoices**). Since 2018, the ProStart Program has been audited by the Office of the Legislative Auditor General, the Office of the State Auditor, and now the Utah State Board of Education Internal Audit Department. Each audit has identified risks and internal control weaknesses (see **I, III.A.2, & V.A.1**). The results of the three audits are evidence of the detriment of the URAF decision not to hire competent administration to ensure accountability of taxpayer funds to achieve the objectives of the ProStart Program.
- B. **Documentation:** The URAF Response, states “the Auditors do not say what documentation was missing for any of the 786 expenses, making responding impossible. It is impractical to submit all of the supporting documents for the URAF's invoices with this management response” (see **Response to Audit Findings III.1**). Internal Audit concurs that not all specifics have been provided in the Report because it is impractical; however, all specifics were previously provided to the URAF.

The URAF has had multiple opportunities, as outlined below, to respond to the specific details prior to Internal Audit issuing the Report. Throughout the audit process the URAF was invited to respond and clarify as necessary to mitigate the finding.

On October 21, 2020, Internal Audit requested from the USBE all documentation submitted by the URAF to the USBE for reimbursement. Internal Audit also requested documentation from the URAF related to reimbursed expenses several times, including:

- January 5, 2021
- January 19, 2021
- March 3, 2021

On April 20, 2021, a copy of the preliminary draft audit report and a list of outstanding costs, inclusive of why the costs were outstanding, were provided to the URAF. In response to the list of outstanding costs, the URAF provided additional supporting documentation for review. Internal Audit considered all additional information that was provided.

On April 29, 2021, an exit conference was conducted via video conference. All questions raised by the URAF were answered and details were provided as requested.

Finally, as late as September 9, 2021, the URAF asked for clarity and documentation in preparation of their management response; Internal Audit provided the requested information.

- C. **Maintenance of Financial Records:** The URAF Response states, “The Auditors conclude that the URAF did not maintain the records necessary to properly account for contractors’ payments;” then presents three statements from the Report as support for the conclusion; and ends with, “The Auditors are incorrect” (see **Response to Audit Findings VI**).

The Report (see **III.A.5**) shows that the three statements referred to by the URAF are possible Causes (i.e., possible explanations of why the Condition occurred), not evidence to support the Condition. Furthermore, the Condition refers to **III.A.1 & 2** in the Report as examples, or evidence, of the Condition.

In the same section, the URAF also states that “The only records that the Auditors identify that the URAF does not maintain are copies of cancelled checks,” and “The URAF had and continues to have access to all checks with Zions Bank.” To the contrary, as stated in the Condition (see **III.A.5**), “The URAF did not maintain or supervise maintenance of all records necessary...” The Condition also points to **III.A.1 & 2** which provide examples of the types of records not maintained, including canceled checks (i.e., proof of payment; see **E. Use of Funds**) totaling \$66,863.25, which the URAF did not provide.

- D. **Repayment of Funds:** As stated in the Report (see **II. General Report Information**), Internal Audit may question costs for several reasons; however, disallowing costs, which would result in a repayment of funds, is “determined by the Board” and is recommended to be done “in accordance with the contract” (see **III.A.2 Recommendation i**). The Board’s consideration of questioned costs has not yet occurred.

Costs questioned by Internal Audit are identified by finding; generally stated in the finding Condition and/or Recommendation (see **II. General Report Information**). Not all Conditions result in questioned costs. More complex Conditions may have multiple Recommendations; not all Recommendations pertain to all aspects of the Condition.

Therefore, when the URAF states that a finding element “should not be the basis for requiring repayment of any funds,” (e.g., see **Response to Audit Findings II.3**) as was stated multiple times in the Response, the URAF is not addressing the concerns within the Report—which is the intended purpose of a management response—but an undetermined potential corrective action that is under the Board’s purview.

- E. **Use of Funds:** In the Response URAF states that “the Auditors implicitly recognize all of the allocated funds were used on the ProStart Program” (see **Response to Audit Findings I**). To the contrary, the Report explicitly questions 100% of the funds reimbursed (see **Appendix B – Total**

Questioned Costs) due to a lack of appropriate documentation and other reasons; specific examples are included within the table below. Other examples can be found within the Report.

Finding Reference	Finding Title	Description	Questioned Cost
III.A.2.Condition.i	URAF Documentation	Unverified expenses - No proof of payment was provided	\$66,863.25
III.A.2.Condition.i	URAF Documentation	Alternative supporting documentation - Original documentation was a dummy check, alternative payment documentation matches vendor and amount	\$63,295.55
III.A.2.Condition.i	URAF Documentation	URAF salaries - Reimbursements for administrative costs supported only by Association documentation	\$97,800.00
III.A.2.Condition.i	URAF Documentation	Other URAF expenses supported only by Association documentation (excludes salaries)	\$388,296.24
III.A.3.Condition	Travel Reimbursements	Per diem overpayment	\$1,114.27
III.A.4.Condition	URAF Program Invoicing	Duplicate payment - Paid by another agency	\$139.98
V.A.1.Effect.ii.a.1	Internal Controls	Traveler lived within 50 miles of hotel	\$6,832.00
V.A.1.Effect.ii.a.2	Internal Controls	Traveler's home base unknown	\$2,354.39
V.A.1.Effect.ii.b	Internal Controls	Gratuity overpayment	\$83.56
V.A.1.Effect.iii.d	Internal Controls	Duplicate payment - Same payment paid twice by USBE	\$99.44

F. **Contracting Entities:** The table below shows the legal entities the Utah State Board of Education (USBE) contracted with to administer the ProStart program since fiscal year 2014; contracts prior to fiscal year 2014 were not reviewed as part of the audit.

Contractor	Contract Period
Utah Restaurant Association (Association)	7/15/2013 - 6/30/2018
Utah Restaurant Association Foundation (URAF)	7/20/2018 - 6/30/2023

The table reflects that the URAF statement in the Response, “Since 2008, the Utah State Board of Education (the “USBE”) has entered into contracts (collectively, the “ProStart Contracts”) with the URAF to administer the ProStart Program” (**Introduction**), is not accurate. Even the URAF stated that “Some of the vendors may have provided services to the [Association] when it operated the ProStart Program and failed to change their invoices when the URAF was created and assumed control” (see **Response to Audit Findings II.5**). The URAF statement is also

evidence of the issue raised in **III.A.1** of the Report that the two parties (i.e., URAF and the Association) are being conflated instead of being treated as two separate legal entities.

- G. **Bank Accounts:** The URAF Response (see **Background 4**) states, “To manage ProStart funds, the URAF opened the Zions Account, which was inadvertently opened in the [Association’s] name. Despite that mistake, in practice, the URAF has had exclusive use of the Zions Account. The name on the checks from the Zions Account was the “Utah Restaurant Association Foundation,” and all funds deposited into and spent from the Zions Account were done so on behalf of the URAF. The [Association] has maintained and continues to maintain separate accounts at Chase Bank (collectively, the “Chase Accounts”).”

Following the exit conference on April 29, 2021, the URAF provided an explanation regarding the various bank accounts used by the URAF and the Association. In the explanation, the URAF identified five accounts, inclusive of routing and account numbers, two of which allegedly belonged to the URAF.

URAF Disclosed Accounts	
Entity Reportedly Using the Account	Financial Institution
URAF	Zions Bank
URAF	Zions Bank
Association	Zions Bank
Association	Chase Bank
Association	Chase Bank

The URAF included in the explanation that the Association-owned “Zions Account” is the “account all payments made to the [URAF] have been deposited into and the account from which all URAF checks have been sent from.” However, as noted in the Report, the ProStart Program was not “exclusively” funded using one bank account.

A review of the documentation during the audit revealed that not all accounts that were used were disclosed by the URAF. There was one other undisclosed Zions account owned by the Association; the documentation provided indicated it was used extensively as proof of payment for the ProStart Program. .

- i. **Checks:** As stated in the Report, “664 of 665 (99.8%) checks provided to Internal Audit by the URAF were issued from an Association-owned account” (see **III.A.1 Condition i**); the one remaining check was a cashier’s check. These 665 checks were provided by the URAF as proof of payment for ProStart Program expenses requested for reimbursement from the USBE. After reviewing the 664 checks (i.e., excluding the cashier’s check), 446 could potentially be tied to URAF reimbursement requests; 218 could not.

The table below provides further detail regarding the 446 checks reviewed during the audit. As noted in the Report, there was no one bank account that was used exclusively for the ProStart Program.

Account	Number of Checks	% of Total
Association-owned Zions Account used “exclusively” by or “on behalf of” URAF	160	36%
Association-owned Undisclosed Account	229	51%
Two Other Association-owned Accounts	57	13%
Totals	446	100%

ii. **Deposits:** The Response states, “All of the reimbursement checks from the USBE were placed in the [disclosed Association-owned] Zions Account” (see **Response to Audit Findings II.2**). This is contrary to the Report, which states, “22 (100%) warrants (i.e., checks) issued by the USBE to the URAF were deposited into an Association-owned bank account” (see **III.A.1. Condition ii**), but not necessarily the disclosed Association-owned “Zions Account.” The table below provides further detail of the Association-owned accounts where the funds were deposited.

Account	Number of Checks	% of Total
Association-owned Zions Account used on behalf of URAF	13	59%
Association-owned Undisclosed Account	9	41%
Totals	22	100%

The entity that uses a bank account must be the entity that owns the account. In this case, whether the URAF’s use of an Association-owned bank account was a mistake, as outlined in the Response, or intentional, is unknown. What is known, is that at least four Association-owned accounts (three disclosed, one undisclosed) were used to issue checks and/or make deposits related to the ProStart Program.

H. **Vendor Invoices:** Given the ProStart Program is funded on a reimbursement basis, it is the responsibility of the URAF to provide evidence that a cost has been incurred (i.e., proof of payment) prior to reimbursement. There are several ways proof of payment can be established, including; receipts, invoices, canceled checks, credit card statements, etc.

Adequate proof of payment consists of several components that must be documented to ensure the cost is allowable, such as; who, what, when, how much, etc. In the case of who, if an invoice is used to demonstrate a payment was made, the invoice must include the names of the parties entering into the agreement (i.e, payor and payee), in addition to the other stated components; otherwise, the invoice cannot be used to establish who incurred the cost. When supported by

additional documentation such as a canceled check belonging to the entity, the two documents together can satisfy the required proof of payment.

Given 100% of the financial transactions for the ProStart Program were done using Association-owned accounts, the payor on the invoices was crucial in determining whether the URAF incurred a cost. However, similar to the financial accounts, 98% of receipts and invoices identified the Association as the paying entity (see **III.A.1 Condition v**). Therefore, URAF's position that the "Payee [sic] of invoices is irrelevant," (see **Response to Audit Findings II.5**) is misguided and misleading. Since the URAF was not able to document costs incurred, the costs were questioned.

Additionally, inadequate invoicing practices increase the risk of fraud, waste, and abuse; especially given the Association and URAF may have other contracts to provide similar services with other government or nongovernment entities. The Report contains an example of these risks (see **III.A.4**). The URAF suggests billing multiple entities for the same cost "Only happened once out of 786 times and only for \$139.98" (see **Response to Audit Findings V**) while also acknowledging the objective of the audit was not to verify whether fraud was occurring (see **Introduction** – reiteration of the audit scope). An additional audit would need to be prioritized, preferably by an entity that has the authority to review all activity, to verify the accuracy of the URAF's statement.

- I. **Loans:** In the Response, the URAF states on numerous occasions that the Association provided short-term loans to the URAF, which they subsequently repaid. One specific example in the Response states, "the [Association] loaned money to the URAF by paying expenses with its credit card or reimbursing the Executive Director" (see **Response to Audit Findings II.4**). This statement alludes to the informal nature of the loan agreements between the entities. The statements in the Response regarding the short-term loans also indicate the funds were not loaned to the URAF to make payment for its own incurred costs, rather the Association was acting on behalf of the URAF (i.e., the URAF was a shell administrator of the ProStart Program for financial purposes).

Additionally, in the Response, the URAF states, "There is nothing in the ProStart Contracts that prohibits the URAF from obtaining short-term loans from the [Association] or anyone else" (see **Response to Audit Findings II.4**). Evidence of loans was not provided; however, evidence the Association was acting on behalf of the URAF was.

The USBE and URAF contract (Contract# USBE190024MA) Attachment A.1. Definitions 27 Assignment states, the "Contractor may not assign, sell, transfer, subcontract or sublet rights, or delegate any right or obligation under this Contract, in whole or in part, without the prior written approval of the State Entity." Just like the loans, evidence of prior written approval to delegate obligations of the contract was not provided.

However, Internal Audit did identify seven checks, totaling \$165,309.38 where the payee was the Association. As the table below reflects, all seven checks were issued from Association-owned accounts. Whether the checks represent the repayment of unofficial loans between

separate legal entities, the URAF reimbursing the Association for contracted work, the Association transferring funds between accounts, or something else—Internal Audit could not determine with certainty.

Account	Number of Checks	% of Total
Association-owned Zions Account used on behalf of URAF	1	14%
Association-owned Undisclosed Account	6	86%
Totals	7	100%

J. **Payroll:** The Response states, “Contrary to the Auditors’ finding, when individuals work for the URAF, they are paid by the URAF” (see **Response to Audit Findings II.3**). Internal Audit reviewed original checks provided to the USBE that were issued by the URAF to individuals being paid for providing administrative costs; in most cases, (44 out of 46 or 96%) the checks never cleared a financial institution (i.e., they were dummy checks). Checks that did clear were from an Association-owned account.

Given the lack of canceled checks (i.e., checks being processed by a financial institution) evidencing that the URAF paid employees; Internal Audit requested additional supporting documentation to ensure administrative costs were actually paid to staff. As evidence, the URAF provided:

- Form W2 Wage and Tax Statements that showed the employees in question were paid by the Association, and
- New checks issued from Chase Accounts, which the Response indicates are owned by the Association.

As was concluded in the Report (see **III.A.1**), payment by the Association to Association employees does not prove that “The URAF workers were paid by the URAF when working for the URAF.”

K. **Credit Cards:** As reported (see **III.A.1 Condition iv**), all credit card purchases were made using an Association credit card or the Executive Director’s personal credit card. In the Response, URAF claims that “it was the URAF that was incurring and ultimately responsible for [credit card] costs once it was reimbursed by the USBE” (see **Response to Audit Findings II.4**). Furthermore the Response states: “there is nothing in the ProStart Contracts that prohibits the [Association] from using its credit card to pay expenses and/or reimburse the URAF Executive Director” (see **Response to Audit Findings II.4**).

We concur that the ProStart contract does not prohibit the Association from using its credit card to pay expenses and/or reimburse the URAF Executive Director; this is because the contract is with the Contractor (i.e., the URAF) and not the Association. Furthermore, the latter statement indicating the Association is incurring the costs (i.e., “using its credit card to pay expenses

and/or reimburse the URAF Executive Director”) contradicts the first statement stating that it “was the URAF that was incurring...costs.”

- L. **Per Diem:** With regards to the travel reimbursement overpayment, the Response states, “For its part, the URAF had already reimbursed the students and teachers the full amount they incurred (even though it only sought reimbursement of the lesser amount invoiced to the USBE.)” and “The URAF did not keep the overpayment as suggested by the Auditors” (see **Response to Audit Findings IV**). On January 19 and March 3, 2021, Internal Audit requested evidence from the URAF that the difference (i.e., \$1,114.27) between the amount incurred and the amount reimbursed, which was due to the travelers, was paid to the travelers. No evidence was provided that the travelers were reimbursed the full per diem amount reimbursed to the URAF. Therefore, the overpayment retained by the URAF was questioned. The URAF agreed in its Response to repay the amount though they contend the finding.

- M. **URAF Invoices:** In the Response (see **Background 11**), the URAF provides a table of invoices with amounts submitted within the scope of the audit. The table below reflects the actual invoice, with amounts, that was reviewed by the USBE (i.e., some invoices were submitted multiple times with varying amounts), the amount reimbursed, and the differences between the columns.

Invoice #	A. URAF Reported Amount (see IV Response)	B. Actual Invoice Amount Reviewed for Approval	C. Invoice Amount Paid by the USBE	Difference; =A-B	Difference; =B-C
07312018	\$4,695.48	\$4,695.48	\$4,695.48	\$0.00	\$0.00
08312018	\$42,989.20	\$42,989.20	\$42,989.20	\$0.00	\$0.00
092818	\$28,479.58	\$28,479.58	\$28,479.58	\$0.00	\$0.00
10312018	\$66,665.12	\$66,665.12	\$67,660.12	\$0.00	-\$995.00
11302018	\$9,080.12	\$9,080.12	\$9,096.47	\$0.00	-\$16.35
123118	\$29,279.77	\$29,279.77	\$29,016.72	\$0.00	\$263.05
02282019	\$5,879.89	\$5,879.89	\$5,924.82	\$0.00	-\$44.93
02282019	\$35,909.60	\$35,909.60	\$35,909.60	\$0.00	\$0.00
03312019	\$17,402.24	\$17,402.24	\$22,991.52	\$0.00	-\$5,589.28
04302019	\$30,235.43	\$30,235.43	\$30,427.84	\$0.00	-\$192.41
05302019	\$30,288.86	\$30,288.26	\$28,185.65	\$0.60	\$2,102.61
06302019	\$44,618.43	\$44,618.43	\$40,477.93	\$0.00	\$4,140.50
07312019		\$30,720.30	\$30,890.11	-\$30,720.30	-\$169.81
08302019	\$48,466.49	\$48,466.49	\$48,462.33	\$0.00	\$4.16
9302019	\$24,999.97	\$24,999.97	\$24,982.41	\$0.00	\$17.56
10312019	\$70,842.36	\$70,842.36	\$68,842.36	\$0.00	\$2,000.00
11302019	\$11,911.81	\$11,940.19	\$11,849.81	-\$28.38	\$90.38
12312019	\$5,869.48	\$5,869.48	\$5,856.98	\$0.00	\$12.50
01312020	\$8,557.07	\$8,557.07	\$8,557.07	\$0.00	\$0.00
02-28-2020	\$9,668.61	\$9,668.61	\$9,628.32	\$0.00	\$40.29
03312018	\$56,947.06	\$59,270.06	\$58,277.28	-\$2,323.00	\$992.78
04302020	\$7,600.60	\$7,930.00	\$7,930.60	-\$329.40	-\$0.60
05302020	\$6,543.90	\$6,543.90	\$6,543.90	\$0.00	\$0.00
06302020	\$12,683.19	\$12,683.19	\$12,683.19	\$0.00	\$0.00
07312020	\$4,500.00	\$4,500.00	\$4,500.00	\$0.00	\$0.00
08312020	\$5,500.00	\$5,899.70	\$5,899.62	-\$399.70	\$0.08
09302020	Included by URAF but not included in the audit scope				
Totals	\$619,614.26	\$653,414.44	\$650,758.91	-\$33,800.18	\$2,655.53
Absolute Sum				\$33,801.38	\$16,672.29
Total # of Errors				6	18

As noted, six of the 26 (23%) invoices provided in the Response, are incorrect and 18 of the 26 (69%) actual invoices were adjusted by the USBE prior to reimbursement.