

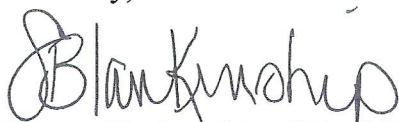
January 30, 2018

Tribal Council
The Eastern Band of Cherokee Indians
Cherokee, NC 28719

The Office of Internal Audit and Ethics ("OIAE") retained KPMG LLP ("KPMG") to conduct a forensic audit of the Executive Offices and Finance for the period October 2015 through May 2017 at the request of Tribal Council. The investigation focused on allegations related to concerns with contracting with third parties, obtaining Business Committee approval, and conflicts of interest. KPMG completed its field work relative to the allegations which included an independent and objective review of all pertinent documents, emails, video recordings, and interviews with select individuals. The results of KPMG's forensic audit found non-compliance with contract policies and procedures and potential personal conflicts.

An overview of the forensic audit can be found in the attached report prepared by KPMG. The cooperation and assistance of Tribal personnel is acknowledged and appreciated. OIAE and KPMG can be available to further discuss the content of this report if requested.

Sincerely,



Sharon Blankenship, CIA, CGAP, CFE
Chief Audit and Ethics Executive

cc: Savannah Ferguson, Audit and Ethics Committee Chair
Justin Eason, Tribal Prosecutor



**Eastern Band of Cherokee Indians
Forensic Audit of the Executive Offices and Finance
Executive Summary**

Background

On August 4, 2017, the Eastern Band of Cherokee Indians (“EBCI”) Office of Internal Audit (“OIA”) engaged KPMG to provide a Forensic Audit of the Executive Offices and Finance for the period of October 2015 through May 2017 (“period of review”). The investigation focused on allegations related to concerns with contracting with third parties, obtaining Business Committee approval, and conflicts of interest during Patrick Lambert’s tenure as the Principal Chief (“Chief”).

Summary of Findings

80% of the single transactions selected by KPMG with a value greater than \$5,000 that did not have an appropriate contract or approvals were classified as non-compliant.

- If a single transaction from KPMG’s sample was less than \$5,000, but related to: a) similar work performed within a five-month timeframe by the same vendor; or b) a contract greater than \$5,000, these transactions were combined and 100% of the transactions were non-compliant.

60% of the single transactions greater than \$50,000 without evidence that Business Committee approval was obtained were classified as non-compliant.

- If a single transaction from KPMG’s sample was less than \$50,000, but related to: a) similar work performed within a five-month timeframe by the same vendor; or b) a contract greater than \$50,000, these transactions were combined and 91% were non-compliant.

Refer to the details in the ‘Sample Transaction Findings’ section of this report.

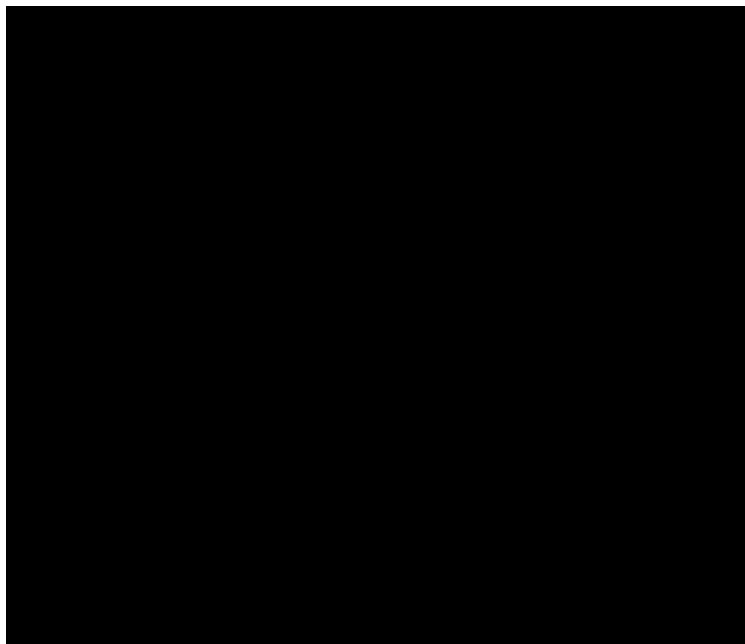
Should new information become available to KPMG, this report and its findings are subject to change and/or modification.

Procedures Performed

KPMG participated in an initial debrief with OIA to discuss the allegations raised within EBCI related to the Executive Offices and Finance. KPMG developed a preliminary scope and workplan for the investigation for review by OIA. Based on additional data obtained through interviews and further consultation with OIA, the plan was amended with KPMG and OIA mutually agreeing to proceed. The scope and workplan would be updated as new information was identified. Following the discussion, KPMG requested documentation for purposes of understanding the background of the allegations, identifying individuals to interview and selecting a preliminary sample of transactions to review.

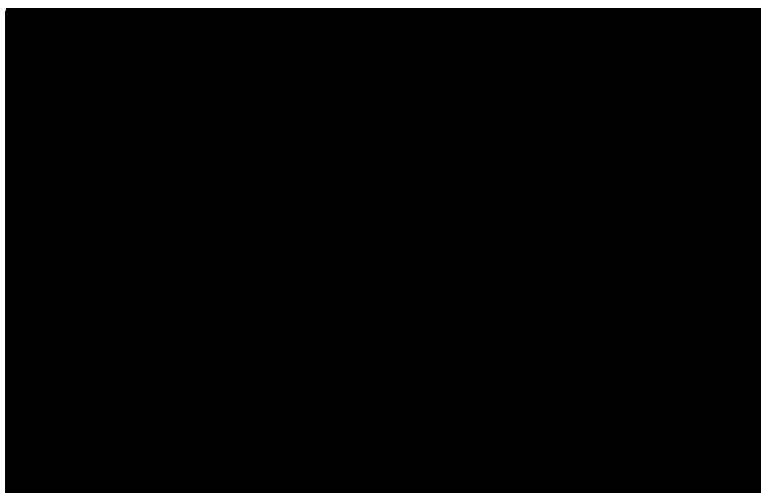
Interviews

KPMG conducted a series of interviews with personnel identified within EBCI. The following employees were interviewed by KPMG:



Corporate Intelligence

KPMG performed corporate intelligence searches on certain entities and individuals identified during the interviews and document review. The parameters of the searches included residency, affiliation with related parties, corporate affiliations and credit history. KPMG performed background checks on the following parties:



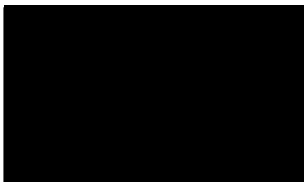
Forensic Technology

KPMG provided Forensic Technology services which included identifying, collecting, processing, loading and review of emails from ArcMail¹. KPMG worked with Cody Long, Server Administrator (“Administrator”), to preserve the emails from ArcMail for the following employees:



KPMG provided the Administrator with the email export process for purposes of extracting the data. For each custodian, messages were exported that contained the employee’s email address in the following fields: ‘From’, ‘To’, ‘CC’, ‘BCC’. KPMG obtained and reviewed data logs provided by the Administrator to confirm the export process was complete. Those logs were used to perform additional data integrity checks once the emails were received by KPMG. A Secure File Transfer Protocol (“SFTP”) server was established to transfer the files to the KPMG investigation team.

KPMG collected 238,944 EML files² for the seven custodians. KPMG applied the date range of “October 1, 2015 through May 31 2017” along with the search terms created by KPMG. 41,076 documents were loaded into the review platform for the following custodians review:



Contract and Business Committee Policies

According to the Office of the Attorney General Contract Policies and Procedures - Writing the Contract, Section Three states “You need to write a contract if you are purchasing:

- a) Services;
- b) Custom made goods;
- c) Goods costing over \$5000;
- d) Goods requiring special warranties; or

¹ ArcMail is the organization’s journaling system that captures all incoming and outgoing emails.

² An EML file is an email message which may also contain an e-mail attachment that was sent along with the message.

- e) Whenever the vendor requires a contract.

The Office of the Attorney General Contract Policies and Procedures—Business Committee Approval states “All contracts over \$50,000 must be approved by the Business Committee prior to attaining the Chief’s signature. The contracting program must present the contract to the Business Committee at one of its meetings and provide the Committee with additional information if asked. A pre-printed Business Committee Approval Form must accompany the contract on which the members can sign their approval.”

Sample Transaction Findings

In accordance with the policies and procedures listed above, KPMG’s document review focused on determining whether transactions were supported by a properly executed and approved contract, when required, determining whether Business Committee approval was obtained for transactions valued at \$50,000 or more, and identifying any suspicious or anomalous documentation.

Based on the information gathered during the interviews; corporate intelligence searches; discussions with OIA personnel and data analysis performed by KPMG, 62 transactions and 10 contracts were selected for subsequent testing.

To specifically examine whether appropriate contract approval (including an actual contract) and Business Committee approval accompanied transactions, KPMG judgmentally selected 62 transactions from the ‘EBCI Paid Invoice Oct 2015 – May 2017’ file provided by OIA. The criteria used to select the sample was based upon the following:

- Knowledge of vendors obtained from interviews;
- review of the payment register and contract lists obtained from OIA;
- large dollar transactions; and
- political and educational contributions.

Transactions Requiring Contracts

Single transactions selected by KPMG with a value greater than \$5,000 that did not have an appropriate contract or approvals were classified as non-compliant. If a single transaction contained evidence of services performed prior to the contract execution date, the entire transaction was classified as non-compliant. OIA informed KPMG that a contract initiated by the Executive Office is not required to have program manager, division director or deputy officer approval. KPMG identified approximately 80% of the transactions that required a contract non-compliant. Refer to the detailed findings in Appendix 1.

If a single transaction from KPMG’s sample was less than \$5,000, but related to: a) similar work performed within a five-month timeframe by the same vendor; or b) a contract greater than \$5,000, these transactions were combined to determine whether they were in compliance with the Office of the Attorney General Contract Policies and Procedures. If, in combination with the related transaction or contract, the value of the transactions exceeded \$5,000 and the appropriate contract or contract approvals were missing, the transactions were classified as non-compliant.

KPMG identified 15 transactions which met these requirements. KPMG determined that the 15 transactions identified were non-compliant with the contracting requirements. Refer to the detailed findings in Appendix 2.

Transactions Requiring Business Committee Approval

KPMG examined the transactions to determine whether Business Committee approval was obtained for transactions valued greater than \$50,000. If a single transaction was greater than \$50,000 and no evidence existed indicating that Business Committee approval was obtained, it was classified as non-compliant. KPMG identified approximately 60% of the transactions that required Business Committee approval non-compliant. Refer to the detailed findings in Appendix 3.

The sample population included a portion of single transactions that were less than \$50,000, but related to: a) similar work performed within a five-month timeframe by the same vendor; or b) a contract greater than \$50,000. For purposes of our analysis, these transactions were combined to determine compliance with the Office of the Attorney General Contract Policies and Procedures. If, in combination with the related transaction or contract, the value of the transactions were greater than \$50,000 and Business Committee approval was missing, the transactions were classified as non-compliant. KPMG determined that approximately 91% of these transactions were non-compliant with the Business Committee approval requirements. Refer to the detailed findings in Appendix 4.

Sneed, Robertson and Associates, Inc. ("SRA")

KPMG noted the SRA contract 1600277 was initially signed on November 6, 2015 for \$62,000. Based on Office of the Attorney General Contract Policies and Procedures it should have received Business Committee approval. KPMG confirmed the approval was not obtained. On November 9, 2015, the contract was amended to reflect an increase to \$628,306. The documentation revealed that Business Committee approval was obtained for the amendment. There was one SRA transaction which KPMG selected that contained work completed prior to receiving Business Committee approval. This transaction was classified as non-compliant.

KPMG identified an email from Erik Sneed to Teresa (teremcco@nc-chokeee.com) in which Erik Sneed explained the discrepancy between the two contracts (Erik Sneed later forwarded the email to Sage Dunston and Danny Davis). In the email to Teresa, Mr. Sneed stated:

"The history of this project is that the Chief initially approved a kick-off agreement for \$62,000 on 11-6-2015 anticipating carrying it to Business Committee on November 9th. The purchasing team in Finance (Gerri Grady) keyed that contract into Munis as #1600277. Within the following couple of days, a final GMP price was determined for the project, and on 11/9/2015 the Chief carried the total contract (value of \$628,306) into Business Committee for approval instead. Because of the duplicate agreements that were being circulated, Gerri reflected the original proposed contract value on the document – and additionally retained the original contract # of 1600277 as a matter of convenience. Technically we never formally executed the \$62,000 contract, since within days we approved the combined larger contract value of

\$628,306. No work was undertaken prior to formal approval from Business Committee, and in fact the first pay application for the project was not processed until 12/1/2015 – well after the approval date.”³

The Application for Payment from SRA for the ‘Executive Office Remodel’ dated November 29, 2015 for \$37,500, included a ‘Preconstruction’ line item for \$8,150.64. Based on the support provided, Studio 15 completed this work between the dates of October 13, 2015 and November 6, 2015 for the project ‘EBCI – Executive Office Remodel’.

Contracts and Business Committee Approval Related to Donations

KPMG identified 13 transactions from the sample that related to political and educational donations. The Office of the Attorney General Contract Policies and Procedures do not provide guidance as whether these transactions require a contract. The total dollar value of the 13 transactions is \$284,800. Refer to the detailed findings at Appendix 5.

KPMG identified two transactions from the sample that related to political and educational donations which should require Business Committee approval. The total dollar value of these two transactions is \$100,000. Refer to the detailed findings at Appendix 6.

Additional Contract Review Findings

KPMG identified an additional ten contracts to review. The items were selected based on their large dollar amounts and based on vendors identified through the interview process. These contracts were selected from the ‘Contracts October 2015 – May 2017’ file received from OIA. Contracts individually valued greater than \$5,000 that did not have the appropriate contract approval were classified as non-compliant. Approximately 44% of these contracts were missing the appropriate contracting approvals (see Appendix 7). If a single transaction from the sample was greater than \$50,000 and no evidence indicating Business Committee approval was obtained, the contracts were classified as non-compliant. Approximately 13% of the additional contracts reviewed were missing the appropriate Business Committee approvals (see Appendix 8).

Personal Conflict Findings

Cloninger, Barbour, Searson & Jones, PLLC

KPMG reviewed the invoices received from OIA related to Cloninger, Barbour, Searson & Jones, PLLC (“Cloninger, Barbour, Searson & Jones”). Cloninger, Barbour, Searson & Jones is a law firm based in Asheville, NC that provided legal services to EBCI. Concerns were expressed to OIA that the services performed may have been personal in nature on behalf of the Chief and not for the benefit of EBCI.

KPMG identified 19 line items amounting to approximately \$9,113 that appear to be unrelated to the services performed on behalf of EBCI. The work was billed prior to Patrick Lambert taking office (see Appendix 9). Based on the analysis performed of the initial support OIA received

³ Exhibit 1

from Cloninger, Barbour, Searson & Jones, KPMG is unable to determine whether the services provided for Patrick Lambert were personal in nature following his appointment as Chief. OIA requested additional supporting detail from Cloninger, Barbour, Searson & Jones which has not been received as of the date of this report.

KPMG identified emails that suggest Scott Jones of Cloninger, Barbour, Searson & Jones provided services to Patrick Lambert that may have been personal in nature. On October 29, 2015, Scott Jones drafted a memo to Patrick Lambert in which he stated:

*"On a somewhat related note, I also think the Chief needs to be able (under some circumstances) to hire (likely from the outside) his own counsel. The hiring of the counsel would be handled in coordination with the AG, but the counsel would be for the Chief as needed."*⁴

On November 2, 2015, in a memo to Patrick Lambert titled 'EBCI legal needs assessment', Scott Jones wrote that the most important hires are a "good counsel to the chief". He goes on to say that:

*"I also believe you as the Chief need "your own lawyer." The Attorney General works for you and reports to you; and you will have most of your legal needs met through the AG's office. As I suggested to you when we discussed a potential role for me to play, I do not believe this needs to be a full-time position. However, as in the federal and state systems, I believe the Chief needs a counsel. Whether it is me or someone else, I see this position being filled by an outside lawyer under a retainer type of agreement or a lawyer who is a part-time EBCI employee. In either case, the lawyer would be someone who could also assist in litigation matters as needed."*⁵

On November 17, 2015, Scott Jones emailed Patrick Lambert and said:

*"As I have worked more on the legal services issues I have thought some more about a potential longer term role for me in the system. I am enjoying what I am doing now, but have a couple of ideas that I think could be better for the EBCI and for my practice."*⁶

Scott Jones attached a memo titled 'proposal to serve as counsel to the Chief' in which Scott Jones "suggests how he might fit into the role of Counsel to the Chief."⁷ Patrick Lambert responded On November 21, 2015 and said:

*"Thank you for your proposal and I am very interested in pursuing some type of agreement along the lines described. Let's talk more soon."*⁸

On November 10, 2015, Scott Jones emailed Patrick Lambert and wrote:

"When you get a chance, let me know where to send the bill for September and October. I have a detailed bill but can also do a one-line services rendered bill. The detailed bill will in some

⁴ Exhibit 2

⁵ Exhibit 3

⁶ Exhibit 4

⁷ Exhibit 5

⁸ Exhibit 6

places have a description of what we talked about, and I thought you might not want that going to accounting.”⁹

On May 19, 2017, Megan Yates sent an email to Erik Sneed which said:

“I know that we have been told in the past not to question requisitions that come from the Executive Office; however, a requisition for Cloninger, Barbour, Searson & Jones was just paid a few days ago and the amount was for around \$28,000. Now I have received a call from Steph this morning asking that I approve this one ASAP and this one is for around \$52,000? I don’t feel comfortable approving this. Could you please provide a directive as to how to move forward?”

Erik Sneed then replied and told Megan Yates:

“We reviewed this yesterday and confirmed that it is acceptable. Please approve and proceed.”

Megan Yates replied:

*“Yes sir.”*¹⁰

Executive Office Demolition

KPMG received a file from OIA titled ‘Facility Mgt – Executive Office Demo’ related to work performed by EBCI’s facility management group. The file included time records, names, dates, project descriptions and hours related to each project. KPMG reviewed the time records and identified work that appeared to relate to the Executive Offices. The project descriptions related to ‘Council House’ or ‘Principal Chief’s Office’ amounted to approximately 700 hours between October 12, 2015 and December 8, 2015 (see Appendix 10). KPMG was unable to determine if any of these hours were duplicative of the work performed by SRA for the demolition of the Executive Offices. The support provided for both EBCI’s facility management group and SRA was general in nature.

KPMG identified emails in which the Tribal Employment Rights Office (“TERO”) held discussions regarding SRA and Studio 15’s TERO qualifications. Erik Sneed emailed Patrick Lambert on June 14, 2016 and wrote:

“While the Board did not choose to remove our certifications entirely, the add-certifications we requested the Fall of 2015 for General Contracting and Architecture were denied under the grounds that my political appointment creates a legal issue that prevents them from approval.”

Erik Sneed goes on to say:

*“We have obviously invested significant time, effort and resources into our business and need to maintain these certifications for our future success. This is clearly pushing us into a difficult corner and we will need to come to terms soon with how to handle.”*¹¹

⁹ Exhibit 7

¹⁰ Exhibit 8

¹¹ Exhibit 9

Mara Nelson, TERO manager, sent Erik Sneed a letter which denied SRA and Studio 15's add-on applications based on Section 92-12B of the preference law. Section 92-12B states that "certification is prohibited if it would promote violation of Tribal law including, but not limited to, violations of section 117-45¹², Cherokee Code, which prohibits elected officials, program directors, executive staff employees and immediate family members from participating in the award of or benefiting from contracts with the Tribe." Section 117-45(d), Code of Conduct further states that "(n)o elected official, program director or any member of their immediate family, shall enter into any contract for services or goods with any Tribal entity, enterprise or program for the purpose of either receiving or providing services or goods. This provision shall not apply to such persons qualifying for housing benefits from the Qualla Housing Authority or for medical benefits from the Indian Health Service or other programs available to all Tribal members."¹³ Erik Sneed emailed Patrick Lambert on July 19, 2016 with a drafted "Executive Order/Memorandum" which would reverse the decision of the TERO board in relation to the TERO certifications.¹⁴

¹² According to OIA, 117-45 was amended on July 28, 2016.

¹³ Exhibit 10

¹⁴ Exhibit 11

Recommendations

Contracting

- EBCI should consider implementing oversight over the contracts that are initiated by the Executive Office. The prescribed signatures should be required, regardless of the individual who initiated the contract.
- If the Executive Office initiates a contract, EBCI should consider adding an additional level of approval for those contracts.
- EBCI should consider creating appropriate contracting requirements and approvals related to donations. Currently, there is not a policy in place addressing donations.
- EBCI should consider updating the Office of Attorney General Contract Policies and Procedures to provide more clarity as to when a contract is required.

Business Committee Approval Requirements

- EBCI should consider revising the requirements for Business Committee approval for those contracts initiated by the Executive Office. Current policy requires five out of eight signatures to obtain Business Committee approval which includes the Chief and the Vice-Chief. The policy should be revised to require additional signatures or controls for contracts initiated by the Executive Office in order to obtain majority for Business Committee approval.
- EBCI should consider adding stipulations that require tribal programs to receive Business Committee approval for contracts initiated for the same party when combined over a 5-month period, exceed \$50,000. This would discourage tribal programs from creating multiple contracts below the \$50,000 threshold to avoid obtaining Business Committee approval.

Vendors

- EBCI should consider implementing a more comprehensive vendor vetting process to ensure vendors are qualified and to minimize potential conflicts of interest are present.

Conflicts of Interest

- EBCI should consider whether the Tribe can seek reimbursement for the work performed by SRA and Studio 15 due to Section 92-12B of the preference law, regardless of when the contract was signed and when Erik Sneed took office.
- EBCI should consider whether EBCI should seek reimbursement for the work performed by Cloninger, Barbour, Searson & Jones prior to the date Patrick Lambert was sworn in as Chief.
- EBCI has requested additional support related to the invoices provided by Cloninger, Barbour, Searson & Jones. KPMG recommends that EBCI or a qualified vendor review the support provided to determine whether the services performed by Cloninger, Barbour, Searson & Jones for Patrick Lambert that was personal in nature.