



Office of Missouri State Auditor
Nicole Galloway, CPA

**Weigh in Motion
Contracts**



Findings in the audit of Weigh in Motion Contracts

Conflicts of Interest and Personal Financial Disclosures

Missouri State Highway Patrol (MSHP) and Missouri Department of Transportation (MoDOT) employees, who were also on the Heavy Vehicle Electronic License Plate, Inc. (HELP) Board, did not recuse themselves from preclearance and bypass discussions, and maintained questionable relationships with HELP representatives, including actively endorsing and promoting HELP to expand into other states, as well as actively steering other states and carriers away from HELP's competition.

Some MSHP and MoDOT employees made questionable statements in communications with HELP that cast doubt on their independence and showed preferential treatment toward HELP while participating in decisions regarding commercial vehicle preclearance and bypass services, including decisions involving HELP's competitor, Drivewyze.

Three MSHP and MoDOT employees involved in decisions related to Missouri's commercial vehicle preclearance and bypass services were subsequently hired by or contracted with HELP after their retirement from the state, casting further doubt on their independence. In addition, two of these former state employees were allowed to work directly with their former colleagues in violation of state law.

The MSHP and MoDOT lacked adequate policies and procedures to identify and address conflicts of interest and actions demonstrating a lack of independence.

In May 2017, the MSHP announced that an internal review was conducted and that its employees would no longer serve on the board of HELP, Inc. However, the internal review did not include a written report. There was no documentation of changes to MSHP's internal policies as a result of the internal review.

In November 2017, after the State Auditor's Office requested additional documentation and communications, MoDOT launched an internal review. In January, 2018, more communications were turned over that included additional information not originally disclosed. In February, 2018, MoDOT officials provided us information concerning the results of their investigation, which indicated MoDOT concluded communications between one current employee and HELP had violated MoDOT's rules of conduct and disciplinary action had been taken.

Employee personal financial disclosures required to be filed with the Missouri Ethics Commission were not accurate, requiring subsequent amendments.

Weaknesses in Implementation and Planning of Preclearance and Bypass Planning Services

Poor planning on the part of the MSHP and the MoDOT led to delays and inefficiencies in the implementation of a fair and comprehensive preclearance and bypass system.

The MSHP and MoDOT did not conduct a request for proposal (RFP) when a second vendor (i.e. Drivewyze) emerged in 2013 wanting to participate in

Missouri's preclearance and bypass program. Instead, in August 2014 the MSHP entered into a memorandum of understanding (MOU) to begin a pilot project to test Drivewyze's capabilities. However, the MOU with Drivewyze did not contain clear performance requirements or expectations. Specifically, the MOU did not require Drivewyze to have access to WIM data as part of the pilot project, and did not allow for the company to install its own sensors. The MOU also did not provide Drivewyze with any formalized expectations for what was required going forward. Access to WIM data was a significant and known issue when the MSHP entered into the MOU due to that data being owned by HELP in Missouri. In other states where both HELP and Drivewyze operate, the WIMs and WIM data is owned by the state, who provides the needed data to the bypass system vendors.

Communication and Retention Policies

Communication and retention policies of the MSHP and MoDOT need improvement. The MSHP has not developed policies and procedures to ensure its employees are aware of and comply with the record retention schedules approved by the Secretary of State's Office and identify business related communications (including personal email and text messages) that are required to be retained.

The current MoDOT Director of the Motor Carrier Services Division, violated MoDOT policy by using his personal email account to conduct official MoDOT business without approval. The MoDOT's policies and procedures do not require employees to identify business related communications (including personal email messages and text messages) that are required to be retained.

HELP Membership Dues

MoDOT's payment of membership dues for Missouri's private sector representative on the HELP board was not disclosed in their annual federal grant application and were not a prudent or necessary use of state or federal funds.

Due to the nature of this report, no rating has been provided.

Weigh in Motion Contracts

Table of Contents

State Auditor's Report	2
------------------------	---

Introduction	
Background	4
Scope and Methodology	6

Management Advisory Report - State Auditor's Findings	
1. Conflicts of Interest and Personal Financial Disclosures	7
2. Weaknesses in Implementation and Planning of Preclearance and Bypass Planning Services	29
3. Communication and Retention Policies	33
4. HELP Membership Dues.....	35

Organization and Statistical Information	36
<u>Appendixes</u>	
A Drivewyze Inc. Memorandum of Understanding	37
B Auditee Response - MoDOT	40
C Auditee Response - MSHP	44



NICOLE GALLOWAY, CPA **Missouri State Auditor**

Honorable Eric R. Greitens, Governor
and
Members of the General Assembly
and
Patrick McKenna, Director
Department of Transportation
and
Colonel Sandra K. Karsten, Superintendent
State Highway Patrol
Jefferson City, Missouri

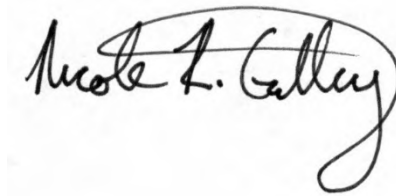
We have audited certain operations of the Department of Transportation and the State Highway Patrol related to weigh in motion contracts, in fulfillment of our duties under Chapter 29, RSMo. The scope of the audit included, but was not necessarily limited to, the year ended June 30, 2017. The objectives of our audit were to:

1. Evaluate the internal controls over significant management and financial functions related to weigh in motion contracts.
2. Evaluate compliance with certain legal provisions relevant to weigh in motion contracts.
3. Evaluate the economy and efficiency of certain management practices and operations related to weigh in motion contracts.

We conducted our audit in accordance with the standards applicable to performance audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform our audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides such a basis.

The accompanying Organization and Statistical Information is presented for informational purposes. This information was obtained from the management of these agencies and was not subjected to the procedures applied in our audit of the contracts.

For the areas audited, we identified (1) significant deficiencies in internal controls, (2) significant noncompliance with legal provisions, and (3) deficiencies in management practices and operations. The accompanying Management Advisory Report presents our findings arising from our audit of Weigh in Motion Contracts.

A handwritten signature in black ink that reads "Nicole R. Galloway". The signature is written in a cursive style with a large, looping flourish at the end of the name.

Nicole R. Galloway, CPA
State Auditor

The following auditors participated in the preparation of this report:

Director of Audits:	Robert E. Showers, CPA, CGAP
Audit Manager:	Pamela Allison, CPA
In-Charge Auditor:	Robert McArthur II
Audit Staff:	Valerie A. Dobson

Weigh in Motion Contracts

Introduction

Background

The Missouri Department of Transportation (MoDOT) is responsible for administering the Federal Motor Carrier Safety Assistance Program, which focuses on implementing monitoring tools to enforce commercial motor vehicle safety rules, regulations, and orders. The program's mission is to reduce crashes, injuries, and fatalities involving large trucks and buses. Additional enforcement and oversight is provided by the Missouri State Highway Patrol (MSHP) Commercial Vehicle Enforcement (CVE) inspectors located at both fixed and portable scale sites throughout the state. Each scale site is equipped with monitoring tools.

State and federal laws and regulations detail truck weight limit enforcement. The legal weight limits are in Sections 304.180 through 304.220, RSMo. Generally, trucks are restricted to a maximum weight of 80,000 pounds, a maximum single-axle weight of 20,000 pounds, and a maximum tandem-axle weight of 34,000 pounds. Section 304.235, RSMo requires all commercial motor vehicles to stop at an official weigh station, or to be identified through automated means approved by this state and determined to be in compliance without the necessity of stopping. These statutes provide some specific exceptions to these limits.

Missouri has the nation's 7th largest highway system. In 2016, commercial vehicle miles traveled across all MoDOT owned roadways totaled approximately 21.4 million miles daily and accounted for approximately 15 percent of all vehicle miles traveled.

Heavy Vehicle Electronic License Plate, Inc.

For more than 15 years, the MoDOT and MSHP have contracted with Heavy Vehicle Electronic License Plate, Inc. (HELP), a non-profit organization, to equip permanent scale locations with weigh in motion sensors (WIMs) and the company's preclearance service, PrePass. PrePass is an electronic screening program that allows subscribing carriers to be checked at highway speeds for safety, vehicle weight, and regulatory compliance using WIMs. Drivers of carriers subscribing to PrePass receive a green light signal (via transponder technology installed in the truck) to bypass the weigh station, if the truck is in compliance with size and weight requirements or if the weigh station is closed. HELP charges each subscribing carrier a fee for use of the PrePass service. Compliance criteria is established by the state and enforcement is performed by the MSHP utilizing information provided by the PrePass program.

In accordance with the contract, HELP owns all installed equipment (e.g. WIMs and monitoring tools) and all recorded raw data obtained from the sensors (including weight information). Missouri is the only state in the country using this arrangement to implement a bypass system (i.e. "Missouri Model"). In other states, the WIMs and weight information are owned by the state, and the states provide the weight information to bypass system vendors. HELP documentation indicates the company has invested more than \$21



Weigh in Motion Contracts Introduction

million in time and equipment in Missouri's bypass system. As of November 2017, Missouri has 19 permanent scale sites equipped with PrePass.

Board membership

Public and private sector individuals serve on HELP's Board of Directors (Board). From 2008 until April 2017, employees from the MSHP, MoDOT, and the Missouri Trucking Association (MTA), served on the board as follows:

- Colonel Bret Johnson (MSHP) began serving on HELP's Board in 2008. He was promoted from Major to Colonel in May 2015. He continued serving on the Board until August 2016 when he resigned from the HELP Board.
- Captain David Earney (MSHP) was selected by Colonel Johnson as his replacement on HELP's Board in August 2016, and served until his resignation from the Board in May 2017.
- Jan Skouby (former MoDOT Director of the Motor Carrier Services Division) began serving on HELP's Board in 2009 and continued serving until her retirement from MoDOT in October 2013.
- Scott Marion (current MoDOT Director of the Motor Carrier Services Division) served on the Board from November 2013 until his resignation from the Board in May 2017.
- Tom Crawford, MTA, served on the HELP Board as Missouri's private sector representative and had done so for several years.

Membership fees

Between fiscal years 2009 and 2017, MoDOT annually paid for one full and one associate membership with HELP. Full membership cost \$15,000, while associate membership cost \$7,500 per year, for a total of \$22,500 annually or \$7,500 per member. The full membership was for the MoDOT and MTA Board representatives and the associate membership was for the MSHP Board representative. The MoDOT and the MSHP shared and alternated the public sector board voting privileges. According to HELP, the annual membership dues covered the expenses for the representatives from the MoDOT, MSHP, and Missouri's private sector (MTA), to be on the board and attend various meetings.

Intelligent Imaging Systems, Inc.

In August 2014, the MSHP contracted with Intelligent Imaging Systems, Inc. (IIS, does business as Drivewyze) to operate a pilot program, which would provide a screening service similar to that provided by HELP. However, instead of using installed transponders, Drivewyze used cellular technology to communicate with the passing truck. The Drivewyze system also requires the use of WIMs and weight data. The MSHP, canceled the Drivewyze pilot program in May 2016 (effective August 2016).



Weigh in Motion Contracts Introduction

Request for proposal

In October 2016, despite the MSHP's recent cancellation of Drivewyze's pilot project and due to concerns of conflicts of interest, the MoDOT determined there was sufficient evidence Drivewyze could provide the same services as HELP and subsequently issued an RFP, "to allow a fair and competitive process for the potential vendors." Missouri issued a request for proposal (RFP) for a commercial motor vehicle electronic preclearance and bypass system (RFP #6-170315DR) in February 2017. Both HELP and Drivewyze received a notice of award in April 2017, and their related contracts were fully executed February 1, 2018. Each contract has a lifespan of 3 years; allowing future additional vendors to compete in the market through a similar future RFP process. However, any future vendors would be required to install their own WIMs and assume all installation costs similar to HELP and Drivewyze.

Scope and Methodology

On April 14, 2017, due to news reports of, and discussions with law enforcement about concerns over the nature of MoDOT and MSHP's relationship with HELP, the State Auditor's Office (SAO) began an investigation under Section 29.221, RSMo. Based on the SAO's review of initial documentation and communications provided, the SAO determined an audit into various aspects of the state's involvement with HELP was warranted.

To gain an understanding of various aspects of the state's commercial motor vehicle electronic preclearance and bypass system, we reviewed additional documents and communications, financial records, proposed legislation and the related fiscal notes; interviewed various personnel of the MoDOT and the MSHP, as well as certain external parties; and performed analysis of comparative data.

We obtained an understanding of the internal controls that are significant within the context of the audit objectives and assessed whether such controls have been properly designed and placed in operation. We obtained an understanding of legal provisions that are significant within the context of the audit objectives, and we assessed the risk that illegal acts, including fraud, and violations of contracts, grant agreements, or other legal provisions could occur. Based on that risk assessment, we designed and performed procedures to provide reasonable assurance of detecting instances of noncompliance significant to those provisions.

Weigh in Motion Contracts

Management Advisory Report

State Auditor's Findings

1. Conflicts of Interest and Personal Financial Disclosures

Missouri State Highway Patrol (MSHP) and Missouri Department of Transportation (MoDOT) employees were on the Heavy Vehicle Electronic License Plate, Inc. (HELP) Board, and maintained questionable relationships with HELP personnel, resulting in conflicts of interest. As a result of the conflicts, state employees showed preferential treatment toward HELP when another vendor for preclearance services attempted to enter the market. Neither the MSHP nor MoDOT took steps to evaluate and document whether their employee's membership on the HELP Board represented a potential conflict of interest. In addition, employee personal financial disclosures required to be filed with the Missouri Ethics Commission were not accurate, which reduced the transparency of their relationship with HELP.

Conflicts of interest

MSHP and MoDOT employees, who were also HELP board members, did not recuse themselves from preclearance and bypass discussions, and maintained questionable relationships with HELP representatives, including actively endorsing and promoting HELP to expand into other states, as well as actively steering other states and carriers away from HELP's competition. Serving on the HELP board in more than an advisory role represents a bias and lack of independence. In addition, former state employees who were subsequently employed by HELP were allowed to work directly with their former colleagues, which also creates a conflict of interest. Upon the emergence of additional vendors into the preclearance and bypass market, the MSHP and MoDOT did not establish procedures to monitor their employees activities for bias, lack of independence, and conflicts of interest.

Questionable state employee communications and actions

Some MSHP and MoDOT employees made questionable statements in communications with HELP that cast doubt on their independence and showed preferential treatment toward HELP while participating in decisions regarding commercial vehicle preclearance and bypass services, including decisions involving HELP's competitor, Drivewyze.

Three of these employees were members of the HELP Board of Directors (Board); Jan Skouby (former MoDOT Motor Carrier Services Director), Bret Johnson (former MSHP Major, then Colonel), and Scott Marion (current MoDOT Motor Carrier Services Director). Another MSHP employee, former Major Greg Kindle, also participated in decisions regarding these bypass services. A timeline of these communications, actions, and events is documented below:

- On March 11, 2011, Skouby is elected to HELP's Executive Committee.
- On September 1, 2011, Tom Crawford, MTA, emails Skouby, "Does the Drive Wyze [*sic*] deal fit in this discussion at all?" Skouby responds, "I don't think so - at least right now. The big difference is PrePass wants this as an add on to their current pricing package which means it's not available to non PrePass carriers - I hope this is addressed as new business models are developed."



Weigh in Motion Contracts
Management Advisory Report - State Auditor's Findings

- On March 20, 2012, Debbie Bax, MSHP Assistant Director - Commercial Vehicle Enforcement, received an email message from Gary Steinmetz, (employee of Xerox, Xerox was a business partner of HELP), that included an attachment regarding mobile app considerations and questions "that should be addressed by IIS [Drivewyze] if they try and push the phone app on the State. I know Jan [Skouby] wanted to test this. The same points will also apply to the system at Bloomsdale." Debbie forwarded this email and attachment to Captain Londell Jamerson, Sergeant Kevin Kelley, and Chief Commercial Vehicle Officer Neal Mager, but it is unclear if anyone at the MSHP asked these questions of Drivewyze.

The attachment included questions formulated by HELP officials that they wanted the MSHP to ask Drivewyze (HELP competitor) related to the value, integration, reliability, data integrity, security, safety, and legal issues of Drivewyze bypass service.

- On August 22, 2013, while at the HELP summer board meeting, Skouby emailed Kelly Ray (MoDOT) and Marion, "I am bringing some info home. Also, mark [sic] Dougherty [HELP] will be sending me some potential dates for us to meet with them and we need to include MSHP. See if we can implement. As an FYI, drivewyze [sic] ran out of money and just got a \$7.5 million infusion. Trying to partner with prepass. I believe it is to stay afloat, but being a bit underhanded."
- October 2013, Skouby retired from the MoDOT.
- On November 18, 2013, prior to an upcoming MSHP staff meeting planned to discuss the Drivewyze preclearance bypass system, David Bendor, IIS (Drivewyze), sent Colonel Repogle and Lt. Colonel Karsten, MSHP, a document highlighting the benefits of the Drivewyze system.
- On November 20, 2013, at 8:15 a.m., the Drivewyze benefits document was forwarded from Lt. Colonel Karsten to MSHP Majors Schmidt and Johnson. At 8:37 a.m., within 22 minutes of receiving the Drivewyze document, Major Johnson forwards it to Karen Rasumussen, President and CEO of HELP, indicating: "DrivewyZe [sic] is lobbying my colonel [sic] FYI! Can you have Mark [Doughty] or someone send me help [HELP] talking points?" Rasmussen subsequently responds "I will have something to you tomorrow. I can take every single point in their talking points and refute them. Almost all of it is bogus."

A few hours later, at 11:09 a.m. on November 20, 2013, Mark Doughty, Chief Operating Officer of HELP, emails Major Johnson, "Karen brought me up to speed on the recent DW [Drivewyze] pursuit of Missouri, so I thought I would share some recent activities with MoDOT. At MoDOT's



Weigh in Motion Contracts
Management Advisory Report - State Auditor's Findings

request PrePass completed a site survey and provided them with a proposal to remove ISS (aka DriveWyze) [sic] screening solution hardware and software from the Bloomfield [sic] site as it has not met their performance standards and they were dissatisfied with the support . . . I know that Karen [Rasmussen] is helping you out with some other information, but If there is any assistance I can provide let me know." Major Johnson then forwards the email message to MSHP Lieutenant Colonel Sandy Karsten, who then forwards it to Major Dale Schmidt's MSHP account. He responds from his personal email account "**We need to be cautious in listening to a competitor especially with us and MoDOT being on their board**" [emphasis added by the SAO]

- On November 21, 2013, Rasmussen provides a document highlighting the benefits the HELP bypass program to Major Johnson who responds "I think this will do it. My he [sic] colonel [sic] will follow my lead. I just needed some ammo! . . . I am leaving in the am [sic] for the MiZzou [sic] vs ole miss [sic] football game in Oxford Mississippi, Traveling with the Governor's staff. **This issue is not going anywhere if I can help it....**" [emphasis added by the SAO]
- On November 22, 2013, Rasmussen emails Major Johnson to provide information to be used against Drivewyze, "Bloomfield [sic] is the very installation that MODOT has asked us to rework, taking out the IIS [Drivewyze] equipment. Since I don't know if they have actually notified DW [Drivewyze] yet, but the so-called Smart Roadside [Drivewyze application] isn't very smart.....apparently. I didn't put in this in the talking points but you could sure mention it in the meeting."

The November 18 through 22, 2013 email messages are examples of communications that suggest bias and a lack of independence.

- On November 26, 2013, Rasmussen emails Major Johnson to gather information on internal MSHP meetings: "Anything you can share from the staff meeting re preclearance systems?" Major Johnson indicates the meeting was moved until the next Monday, but he will follow up with her.
- On December 5, 2013, Rasmussen emails Major Johnson to lobby him to call the Kansas Highway Patrol to dissuade that agency from using Drivewyze, "Sounds like our friends in Kansas are getting the full court press from DriveWyze [sic]. If you are so compelled, a call to Maj. Goodloe [Major Mark Goodloe, Kansas Highway Patrol] might be helpful. He hasn't asked me, but I can pull together the same type of report we provided to Missouri."



Weigh in Motion Contracts
Management Advisory Report - State Auditor's Findings

- On December 6, 2013, Major Johnson forwards Rasmussen's email message to Kansas State Highway Patrol Major Goodloe, another member of the HELP Board, indicating, "Call me later this morning if you get a chance, I don't have much other than the colonel [*sic*] was lobbied heavily by DriveWyze [*sic*] we chose to pass. Karen can prepare you some good talking points that is Kansas specific it [*sic*] that will HELP you.....no pun intended! Hope to see you soon brother."
- In May 2014, Jan Skouby (former MoDOT Director of the Motor Carrier Services Division) was hired by HELP as a regional director of Midwestern states.
- On June 17, 2014, Skouby, in her new role with HELP, emailed Major Johnson and 2 other MSHP representatives and Marion and another MoDOT representative that she is "fortunate to be able to represent HELP Inc. in Missouri. HELP Inc would like to work with you at the Bloomsdale facility to pilot the next generation of PrePass. . . ." This email message demonstrates that MoDOT did not have procedures in place to identify potential violations of state law as further described on page 25.
- On August 5, 2014, the MSHP entered into a pilot program with Drivewyze (see Appendix A). The pilot program MOU allowed Drivewyze to utilize GPS and web-based technology to provide the MSHP with a fully functional bypass program at no cost to the MSHP.
- On August 15, 2014, Marion responded to an email message from his former boss Skouby where he expresses concern over the MSHP being open to Drivewyze's proposals, and describes his desire to get someone other than Major Johnson from MSHP to come to HELP meetings so that person can hear more information about HELP's services. Marion stated to Skouby: "I mentioned to Tom Crawford [MTA] that Major Schmidt's [MSHP] replacement, Major Robinson [MSHP] was a very good guy and wants to learn quickly. My conversation with Tom was also about my concerns with the patrol's seemingly infatuation with DriveWyze [*sic*]. Tom agreed with me that Brett Johnson, who goes to HELP meetings, doesn't really work in the CMV area. Tom made some calls (he's on the Executive Board), and Major Robinson will be attending the HELP meeting with us, along with Brett. My hope is that Major Robinson can get the same assurance and confidence about HELP's new direction as I did after my first meeting."
- On August 26, 2014, Skouby and Kelly Ray are communicating regarding IIS equipment at the Bloomsdale weigh station, when Skouby tells Ray, "Actually, the roadside folks said to take down the IIS because they never use and it's laying in the counter." This email message further



Weigh in Motion Contracts
Management Advisory Report - State Auditor's Findings

demonstrates that MoDOT did not have procedures in place to identify potential violations of state law as further described on page 25.

- On October 15, 2014, the Drivewayze pilot program started.
- On December 1, 2014, Marion responded to a board update email message from Rasmussen, "Congrats on so many accomplishments. I'm guessing you've heard, but **Missouri is working with Jan [Skouby] to move forward with 360 SmartView. I hope having 360 right in the crossroads of the US in Missouri will spur other states and in turn, carriers to look to PrePass.**" [emphasis added by the SAO] Rasmussen replied "We are very excited about MO going for 360! Thanks, Scott [Marion], for all your support and enthusiasm. You are wonderful addition to our Board!" This email message demonstrates that MoDOT did not have procedures in place to identify potential violations of state law as further described on page 25, and also demonstrates the conflicts created by having state representatives on the HELP Board.
- On March 6, 2015, the HELP board adopted a release of information policy to ensure PrePass data and information was protected and released only under the provisions of HELP bylaws, policy, written agreements, and as required by law.
- On May 19, 2015, Colonel Johnson forwarded an email message to Major Greg Kindle that indicated a trucking company had called and said they appreciated the opportunity to participate in the Drivewayze Program and had received positive feedback from their drivers and wanted to pass that information along to the MSHP. Major Kindle responded "During our tour of the scale houses last week none of our employees like it or would recommend our continued participation." Colonel Johnson replied, "**Exactly. I'm the prepass guy.**" [emphasis added by the SAO]
- On June 1, 2015, Marion emailed officials at HELP with "confidential" documents ahead of a communication launch planned by MoDOT and the Missouri Highways and Transportation Commission (MHTC), and to discuss an upcoming presentation he is doing in Minnesota where he intends to promote HELP services to the Minnesota Transportation Department. "**Good afternoon HELP/PrePass friends! And I sincerely mean friends.**" [emphasis added by the SAO] I owe you all big-time for helping me and MoDOT out on such short notice. Our Missouri Highways and Transportation Commission Chairman, Steven Miller and myself are very appreciative and I can't wait to tell him about the benefits HELP has brought to Missouri. I've attached a couple of confidential documents that won't be officially released until after the noon press event this Wed., but I thought I'd risk getting fired to let you all have some idea of what this event is really all about. (I don't think they'd really fire



Weigh in Motion Contracts
Management Advisory Report - State Auditor's Findings

me!) . . . Karen [Rasmussen], on another note: I'm scheduled to speak June 17 at the Minnesota [MN] Truck Size and Weight Compliance Workshop. . . . **My instructions are to not 'sell PrePass' during my presentation, but I can use it as one of the examples that have brought us closer together here in Missouri, etc. I've had conversations with Terry [Maple, HELP] about our efforts to get PrePass into Minnesota and I assume I'll have the opportunity to talk more freely about the benefits during lunch and breaks, etc. I will follow up with you all after my trip. Maybe if I can help get them into PrePass I won't feel so bad about imposing on you all for my gig here in Missouri.**" [emphasis added by the SAO] Rasmussen replied "Scott [Marion] - You are most welcome and we appreciate the opportunity! I need to bring you (along with our HELP staff) up to date on MN. **Had dinner last night with MnDOT's Director of Operations and had a chance to tout what we do & how we do it. Lets talk later in the week after your event is over.**" Marion responded "**That would be very good and might help guide my conversations with them.**" [emphasis added by the SAO] I still think it's absurd and almost comical that a consultant is paying me¹ to tell grownups to get along. I have moved mountains for years with nothing but a dumb ass grin and sitting down and visiting with folks. I'm tempted to play a 30 second clip of Barney singing, "I love you, you love me...." and walk out of the room to try and demonstrate how fundamental being nice and cooperating is to humans, not to mention annoying purple dinosaurs! Thanks for everything Karen [Rasmussen]. Lars [Jacoby, HELP] has been a trooper during this fire drill event here in Missouri." This communication demonstrates the questionable relationship shared between MoDOT administration and HELP.

- On June 4, 2015, Marion emailed employees of HELP and PrePass thanking them for participating in the MoDOT/MHTC communication launch, adding "**Next project: getting Minnesota on board!**" [emphasis added by the SAO] Rasmussen replied "Scott [Marion]: We very much appreciate having the opportunity to participate and to support our ace HELP board member from Missouri! Are you free for a call tomorrow to discuss Minnesota?" Marion responded that he is available.
- On June 22, 2015, Marion emailed employees of HELP, as well as Crawford (MTA) about his presentation with Minnesota and openly discussed his efforts to sell the positive aspects of HELP to Minnesota officials and suggested HELP's next step in getting services started in the state: "**Hello "Best Public/Private/Partnership in the World" Friends,**

¹ Marion later clarified that he was not paid for additional services to present at the Minnesota event, but rather, his out-of-state travel expenses were covered by the organizer. His attendance at the Minnesota event was approved by MoDOT's Chief Financial Officer and he was on state time while in attendance.



Weigh in Motion Contracts
Management Advisory Report - State Auditor's Findings

I think there's encouraging news from Minnesota [MN]. [emphasis added by the SAO] . . . **From the one-on-one conversations I had with the MN folks last week, I got the distinct impression the DOT would like to do PrePass. The patrol group seemed to want to talk about DriveWyze [sic]. The patrol folks also had many misconceptions and frankly just plain wrong information about HELP/PrePass.** [emphasis added by the SAO] Such things as: "We don't like the fact you have to pay to belong to HELP and get PrePass" (I explained you don't have to pay to get PrePass, but belonging to HELP is very beneficial, gives you a voice, and their joint HELP membership could further the growth of their mutual relationship building efforts). "We don't like the fact that the state can't determine pull-in rates, criteria, etc. and you have to do what PrePass says" (I explained, that's not true. In Missouri, we obviously rely on HELP/PrePass expertise to guide us, but it is YOUR System and you make the decisions.) During the round table breakout sessions, they spoke of the need to have more effective, efficient enforcement. This played right into our wheel house and I and Dan Drexler, the MN FMCSA Administrator both spoke of the proven effectiveness of e-screening and by-pass capability. I spoke with Ted Coulianos [MnDOT] a couple of days after the meeting. He mentioned that after the workshop, he and a patrol person drove to some weigh stations. Ted said they felt like they needed to just go ahead and put PrePass at one site to get CVISN [Commercial Vehicle Information Systems and Networks] compliant. That was good news. Ted also mentioned that unfortunately, he was not the person who could make the final decision. Ted thought it would be a good idea if Karen [Rasmussen] or someone from HELP could come give a presentation to dispel some of the misconceptions with the MN patrol. I've visited with Karen about this and although Ted isn't the decision-maker, he is our contact to schedule future meetings to move things along. **I think it was a positive meeting for HELP's prospects.**" [emphasis added by the SAO] Rasmussen responded "Scott [Marion]: This is an all-encompassing and encouraging report! John Hausladen called requesting a follow-up call with us, also had good feedback on the meeting. Terry [Maple], Jan [Skouby], Mark [Doughty], Steve [Vaughn, HELP] and I have a call scheduled with him on 6/29. Will keep you informed. **Thank you for attending the meeting and for being such a great ambassador for HELP!**" [emphasis added by the SAO]

- On July 29, 2015, Marion emails Skouby, Colonel Johnson, Lt. Kevin Kelley, Captain David Earney (MSHP), and Tom Crawford (MTA). "I have put together some highlights of our accomplishments this past year for Missouri's Update at the Help, Inc. Board meeting . . . One more thing Jan [Skouby], **I guess one never gets over the supervisor/direct report relationship. You asked for this by Thursday morning and gosh darn I got it to you before the deadline boss!**" [emphasis added by the SAO]



Weigh in Motion Contracts
Management Advisory Report - State Auditor's Findings

This email message demonstrates the potential conflicts for Marion to be answering to his former supervisor and colleague.

- On August 7, 2015, Marion received a request from Christopher Oliver (Xerox) to provide a reference for HELP regarding an invitation for bid request from the state of Texas for an electronic clearance system. Marion replied "Thank you for asking and yes, I would very much like to be a reference for HELP/PrePass. Let me know if I need any coaching about special circumstances or concerns surrounding the Texas bid that would be helpful for me to emphasize if they contact me."
- From August 2015 until May 2016, the Drivewyze pilot program continued to operate without WIM data, and HELP continued to operate its PrePass bypass service.
- On May 4, 2016, Colonel Johnson sends a letter to Drivewyze providing written notification of the cancellation of the Drivewyze pilot project effective August 15, 2016. The letter provided no explanation of the reasons for the cancellation.
- On May 11, 2016, Skouby emailed Ryder (provider of transportation and supply chain management products), copying Rasmussen and Marion, and asking Marion to speak to a potential client, which he does. Marion's response suggests this call was a sales call to sell the client on the benefits of HELP. From Skouby: "Aaron [Ward, Ryder] and Teresa [Grandon, Ryder] - It was great talking with you at the IRP [International Registration Plan] Annual Meeting, and I agree there are lots of opportunities to help streamline your operations. I have asked our PrePass folks to contact you and discuss how our PrePass and PrePass tolling programs might be able to assist you. Also, we discussed the transfer of fees when you add a new vehicle and the ability to have a plate inventory. I know some states do provide this, and I am most familiar with Missouri. I have copied Scott Marion, MoDOT Motor Carrier Services Director. Scott is a great person to assist you with any questions you might have in this area." On May 12, 2016, Marion replied "Jan [Skouby], I wanted to let you know that I just got off the phone with Aaron [Ward]. We talked about the cost savings he could realize by registering his vehicles in one state, etc. but I also took the opportunity to tell him about PrePass, HELP. He mentioned the nightmare of getting thousands of tolling receipts, bills, every week, etc. I explained how HELP/PrePass is a first rate, beyond reproach public/private partnership, how we are governed and decisions are made, customer service focused, and if anyone could save him time and gain efficiencies, he should work with PrePass. I couldn't resist giving him a call. **I hope he and Ryder join the PrePass/HELP family.**" [emphasis added by the SAO] Skouby responded "You are the best!!!", then Rasmussen responded "Ditto, ditto, ditto!!!"



Weigh in Motion Contracts
Management Advisory Report - State Auditor's Findings

- On May 25, 2016, Heath (Drivewyze) emailed Major Greg Kindle, Captain Earney, and Lt. Kelley, all of the MSHP, and proposed installing computer monitors at weigh stations and providing onsite refresher training. He also indicated in the email message that the Attorney General's office was reviewing the state's WIM data access rights. Major Kindle responded, "At this time, the Missouri State Highway Patrol does not wish to move forward with the installation of the Drivewyze monitors at our sites."
- On June 6, 2016, at 8:06 a.m., Marion emailed Skouby contact information for Shaun Ryker, Prime Inc. (trucking industry carrier).
- On June 6, 2016, at 11:08 a.m., Skouby emailed Rasmussen, Dougherty (all from HELP), Crawford (MTA), and Marion (MoDOT). The communication provides information on how Marion took part in HELP's recruitment of another new client. From Skouby: "Mark [Doughty] and I spoke earlier regarding Prime Inc. possibly moving to Drive Wyze [*sic*], and this is what has transpired. Scott Marion called me early this morning to let me know Shaun Ryker, Prime, had contacted MoDOT and indicated they were looking into Drive Wyze [*sic*]. Scott [Marion] indicated he was going to call Shaun, and since I had worked with Shaun previously at Prime, I was also going to give him a call. I spoke with Tom Crawford [MTA] because wanted to be sure he is kept in the loop - Prime is one of MoTA's [MTA] big members. In my conversation with Shaun, he indicated Prime was wanting a smaller and more up-to date transponder. Harold Butterfield [HELP] had been to Prime and shown them the new transponder for tolls and PrePass, but it is really big. However, Shaun was not aware until he spoke with Scott [Marion] and subsequently me of the advantages PrePass offered - quality of the data, the breadth of our facilities...He also did not know until Scott [Marion] first shared that Drive Wyze [*sic*] would no longer be used in MO after August. We talked some about data quality, and Shaun indicated once their analytics were done, he would be in contact again to get a better understanding. Shaun did say Drive Wyze [*sic*] presented a very impressive package, but that could be misleading if states do not use it. As Mark and I discussed, it might be beneficial for our retention staff to touch bases with our Missouri carriers. . . . "

Later that day, Marion emailed Skouby, Doughty (HELP), Rasmussen (HELP), and Crawford (MTA), "Thank you so much for the recap and follow up Jan [Skouby]. I very much appreciate you taking my call so early this morning! I also shared some beliefs, understanding, and facts based on personal experience with Shaun."

- On June 7, 2016, at 7:54 a.m., Ryker (potential HELP client) emailed Tara Spencer an email for Marion, MoDOT, "Good Morning Scott



Weigh in Motion Contracts
Management Advisory Report - State Auditor's Findings

[Marion], In our conversation yesterday you mentioned another state that was told by Drivewyze that they were entering into an agreement with Prepass to use their WIM. Can you remind me which state that was? It seems like it was AL [Alabama] or MS [Mississippi], but I forgot to write it down. I assure you I won't mention you in any way during our conversation with Drivewyze. Also, Jan [Skouby] reached out to me yesterday regarding this also. I really do appreciate being able to get good information from people we trust." The email message was forwarded to Marion at 9:15 a.m., who replied at 9:48 a.m., "I called him."

- On June 7, 2016, at 11:14 a.m., Marion emailed Rasmussen, Skouby, Dougherty (all from HELP), and Crawford (MTA), "Shaun Ryker with Prime contacted me again today with some follow up questions. The conversation went fine, but no indication of their plans was apparent to me. I think he's just doing his due diligence to report up."
- On June 14, 2016, Marion responded to a question from Crawford (MTA) concerning a MoDOT Request for Proposal (RFP), then adds, ". . . You know you make me laugh. Any mention of PPP or P3 [Public Private Partnership] and you break out into hives! I do the same thing when the word Drivewyze is mentioned!"
- On July 13, 2016, Colonel Johnson receives an email message from Rasmussen (HELP) forwarding him information from her communications with Drivewyze to help MSHP's efforts to end the Drivewyze pilot project. From Rasmussen: "FYI, Brian [Heath] stated that MSHP's only issue with Drivewyze was not having the WIM data." Colonel Johnson forwards this email message to Major Kindle indicating, "Please have CVE [Commercial Vehicle Enforcement division] make me a list of issues we had with drivewyze [*sic*]" which resulted in an inter-office communication dated August 12, 2016.
- On July 14, 2016, Marion responded to an email message from Kelly Ray (MoDOT) who prepared a list of issues the department had with Drivewyze. Ray asked Marion to review the list before he sends it to Kevin Kelley (MSHP Lieutenant). **Marion's reply included, ". . . Let him know I'm trying to get the list from Karen [Rasmussen, HELP] of issues nationwide."** [emphasis added by the SAO]
- On July 26, 2016, Marion forwards an email message from Rasmussen concerning Drivewyze's actions in Missouri to his Motor Carrier Services staff indicating, "Hey Brain Trust, good morning! I encourage you to read Karen Rasmussen's, the CEO of HELP, Inc., email that went out to the entire Board of Directors of HELP. Now the entire nation of law enforcement, DOT officials, and private sector board members are aware of the actions that have occurred here in Missouri regarding Drivewyze."



Weigh in Motion Contracts
Management Advisory Report - State Auditor's Findings

This communication demonstrates Marion's bias towards HELP which could have influenced his staff.

- On August 2, 2016, at 12:09 p.m., Marion explains in an email message to Wunderlich, MoDOT's Government Relations Director the various ways Drivewyze did not perform what was required under the MOU, including not providing WIM data. However, the same email message states the Drivewyze current MOU would not allow the company to install WIM sensors. From Marion: "After nearly two years, the MSHP exercised their right under the MOU [Memorandum of Understanding] and notified Drivewyze [DW] that the agreement would end August 15, 2016. MoDOT was/is in full agreement with this decision. In several emails and letters both agencies have reiterated to Richard [McIntosh-Drivewyze's lobbyist] the August 15 still stands, in essence "Drivewyze, get out of MO. The patrol absolutely did not like the Drivewyze product, repeatedly told DW they needed weigh-in-motion data, which DW never produced. In 2 years DW never even provided computer monitors for the pilot sites. They only agreed to provide monitors after they were told about the MOU August 15 cancellation. . . . The old MOU will not work. It only allows the pilot program. To install scales like they want will require a completely new and totally different MOU. They can't just start installing stuff on state Right of Way without an agreement. Both agencies have also told them several times a "new" MOU will need to be done. And right now we have no desire to even consider it . . . Richard [McIntosh] and DW are just trying to bully their way back in. He keeps threatening to go to the Governor. We're at the point where I say, "Good luck with that". The patrol will have no problem explaining to the Gov(ernor)/staff what a disreputable company and poor value for the taxpayer DW is."
- On August 2, 2016, at 2:37 p.m., Marion emails McIntosh (Drivewyze's lobbyist) indicating, "I guess I should risk being blunt, but Drivwyze [*sic*] has been notified of the August 15 cancellation date of the pilot MOU. This fact has been reiterated on more than one occasion by both MoDOT and MSHP. As far as we're concerned that decision is final. . . . At this point, there will be no current or future MOU. . . . At the risk of being too blunt again, we feel like we've had 2 years of unfulfilled promises, expectations and performance from Drivewyze. The recent activity to get monitors and WIM data appears to us as a "now we have no choice" decision by Drivewyze. How can we reasonably expect to trust any actions now? Missouri first allowed the Drivewyze pilot previously as you said, to allow some competition, but unfortunately the pilot has not been good. Drivewyze did not perform for the citizens of Missouri. MoDOT and MSHP are confident we have made the correct decision to no longer have Drivewyze operate in Missouri as of August 15, 2016. And we are also confident this decision can be justified and defended."



Weigh in Motion Contracts
Management Advisory Report - State Auditor's Findings

At 2:43 p.m. Marion forwards the email message to Lt. Kelley indicating, "I hope I don't get called on the carpet for my reply, but gosh darn, this nonsense needs to end."

- On August 2, 2016, at 2:59 p.m., Major Kindle replied to McIntosh, indicating "I fully agree with Scott Marion's response. The MOU creating the pilot program with Drivewyze will be terminated effective August 15, 2016 as previously discussed. The performance of the Drivewyze program did not meet our needs and only after telling the folks at Drivewyze that we were terminating our involvement with their program did they try to become responsive to our requests. We had requested and been promised monitors for our scale houses for over a year with no progress. This type of service is unacceptable. Let me be clear, the monitors will not solve the overall unacceptable service from the folks from Drivewyze. This lack of responsiveness has created a trust issue that will not be easily remedied."
- On August 9, 2016, Shaun Ryker (Prime) emailed Tara Spencer (MoDOT), who forwarded the email message to Marion, "Good Afternoon. I hope everything is going good with you. We received a call from Omnitrac [offers innovative software and fleet management solutions serving the transportation sector] this morning asking where we are with Drivewyze. The first thing we told them was that we're waiting for August 15th before we considered it. They assured us Drivewyze will still be functional in MO. Do you have any updated information regarding the August 15th Deadline?"

Approximately 20 minutes later, Marion emailed Ryker "As of August 15, Drivewyze will not be operating in Missouri, regardless of what they may [*sic*] telling others. This has been communicated to them by the top folks at both MoDOT and the Patrol." Ryker replied "That's what I thought."

- On August 30, 2016, the MSHP sent Drivewyze a letter documenting reasons for cancelling the Pilot Program.
- On November 14, 2016, HELP, Drivewyze, and one other vendor are notified that MoDOT plans to issue an RFP for a commercial motor vehicle electronic preclearance and bypass system.



Weigh in Motion Contracts
Management Advisory Report - State Auditor's Findings

- On December 16, 2016, Marion emails Rasmussen and Crawford (MTA) notification of pre-filed legislation² and provides notes of issues within the bill he felt would harm HELP.
- On December 20, 2016, Major Kindle sent HELP his resume from his MSHP email account.
- On December 21, 2016, HELP emailed Major Kindle the job description for its Regional Director position.
- On January 10, 2017, Rasmussen notifies the MSHP that she plans to attend Colonel Johnson's retirement event and plans to make a presentation on behalf of the HELP Board.
- On January 12, 2017, Rasmussen sends an email message to the HELP Board encouraging board members to attend Colonel Johnson's retirement event.
- On January 16, 2017, Major Kindle interviews with HELP at the company's Phoenix, AZ, offices for the position of Regional Director.
- On January 17, 2017, after Kindle has applied and been interviewed for a position with HELP, Rasmussen emails Kindle asking for his input on a memo she is preparing for Missouri officials highlighting the benefits of HELP's involvement in the state. The email message stated: "It was good to talk with you yesterday and to get your input on the draft 'vehicle headway', Missouri PrePass stats and spreadsheet outlining HP [Highway Patrol] benefits of our system. We are in the process of incorporating your suggestions and will have final documents to you by midday. Per your request, I will also copy in Capt. Earney and Lt. Kelley. Thanks again. Will be back to you soon and look forward to seeing you Thursday for Bret's [Johnson] retirement event."

Later the same day Rasmussen emails the memo to Kindle, Captain Earney, and Lt. Kelley at the MSHP, and suggests it would be inappropriate for her to forward the document to MoDOT, but encourages MSHP officials to do so: "Attached is a spreadsheet with three tabs prepared for Missouri, outlining the benefits of HELP membership and PrePass for the DOT and for the Patrol, as well as a compilation of PrePass industry benefits. These are our collective thoughts, but feel free to utilize what is helpful and discard the rest. Because of the pending RFP,

²Senate Bill 198 was introduced on December 9, 2016 by State Senator Rob Schaaf, which provided regulations for weigh station and inspection site bypass services. House Bill 306 (same as Senate Bill 198) was introduced by State Representative T.J. Berry. Neither bill was enacted.



Weigh in Motion Contracts
Management Advisory Report - State Auditor's Findings

I have not forwarded this information to anyone at MoDOT, but any of you are welcome to forward it to them."

- On January 27, 2017, Rasmussen emailed Marion "talking points" to provide information in discussions with the legislature, for which Marion thanked them (including Mark Doughty, HELP). Rasmussen replied "Scott [Marion]: Stop the presses! What I sent you was a re-constituted version of the one I had nearly finished when we talked earlier today; then my computer ate it and I couldn't retrieve it no how! When I did this version, I left out one extremely important accomplishment that evolved directly out of the HELP Board: The development, testing and deployment of the mobile PrePass Roadside Solutions [PPRS], now available to HELP states and treated just like a new site application. You may want to add it. I was speaking with Mark following the demo they gave Rep. Berry at Kearney today and he said they discussed PPRS and – bingo! It hit me that I left it out of the talking points. Mark [Doughty] said that Lt. Kelley and Jan [Skouby] both did a great job of explaining the system and Rep. Berry listened and nodded a lot. At the end of the demo, he said "I have no problem with HELP's system.....", obviously inferring he's still hung up on the COI [Conflict of Interest] issue. Stay tuned....." Later Marion thanks Rasmussen "for doing the heavy lifting for me."
- On January 31, 2017, Marion emailed Rasmussen and Doughty from his personal email account making condescending and disparaging comments regarding Missouri's legislative process and indicates "this was just my manic way of trying to always see the lighter and absurd things we get the opportunity to be a part of. If I didn't look for the "funny", I'd be way more crazy than I am. Thanks for everything you do for us. I appreciate you and Karen's [Rasmussen] support and help more than I can express." Marion later forwarded this email message to his MoDOT email account.
- On February 1, 2017, Colonel Johnson retired from the MSHP. After his retirement, Colonel Johnson filed an Article of Organization with the Missouri Secretary of State's Office on February, 24, 2017, forming a consulting firm effective March 1, 2017. HELP contracted with Johnson's consulting firm in March 2017.
- Major Kindle retired from the MSHP on February 1, 2017, and was hired by HELP as a Regional Director in March 2017. His region does not include the state of Missouri and we identified no subsequent communications from Kindle to state employees.
- On February 3, 2017, MoDOT issued a RFP for a commercial motor vehicle electronic preclearance and bypass system (RFP #6-170315DR).



Weigh in Motion Contracts
Management Advisory Report - State Auditor's Findings

- On March 6, 2017, Marion emailed Rasmussen and Doughty asking for advice/guidance on an upcoming meeting he had with a member of the Legislature. He informs them about his and his Director's recent meetings with Senator Schaaf, then asks ". . . Do you all have any advice about how to approach the meeting with [Senator] Schatz and also any comments for me to stress about the attached chart? [The attached chart was a hand drawn flow chart of Missouri's commercial vehicle screening and enforcement process.] I still believe the House and Senate bills have little chance of being passed and may or may not even get to the floor for debate, but I do fear a possibility of an amendment being tacked onto other transportation related bills that would forbid us from being on the HELP board. **I don't think we can afford to be complacent.** [emphasis added by the SAO] Any help or advice you can provide for these questions would be much appreciated."
- On April 7, 2017 Rasmussen emailed MoDOT Director McKenna: "Several days ago, Drivewyze submitted a "proposal" to us through Sen. Schatz. The Executive Committee's [HELP] decision was made before the latest tactic - which was to provide a reporter with untruths and innuendos - so the chairman revised the letter this morning. It is being hand-delivered to Sen. Schatz today. Through all of this turmoil, I want to express thanks on behalf of HELP for your continued belief in the value of a public/private partnership whose sole mission is truck safety and infrastructure protection!" McKenna appropriately responded "**In the midst of an active procurement, I do not believe communications between us such as your email are appropriate.**" [emphasis added by the SAO]
- On April 10, 2017, both HELP and Drivewyze received a notice of award for a commercial motor vehicle electronic preclearance and bypass system (RFP #6-170315DR).
- On April 12, 2017, Marion forwarded Rasmussen an editorial regarding Missouri's ethical dilemma regarding truck weighing.
- On April 14, 2017, Rasmussen forwarded a link to a website and petition against Missouri legislation to the personal email account of Marion.
- On April 16, 2017, Marion notified Rasmussen that he needs to file an amended PFD (Personal Financial Disclosure) with the MEC and requests information on expenses paid directly by HELP for various board meetings. Also in the email message he commented that "I realize these machinations are becoming exhausting, . . ."
- On April 18, 2017, Rasmussen forwarded a link to an ad campaign against Missouri legislation to the personal email account of Marion.



Weigh in Motion Contracts
Management Advisory Report - State Auditor's Findings

- On May 10, 2017, Marion emailed Rasmussen from his personal email account "I am extremely disappointed about us having to resign from the board. I realize there are folks way above me in state government who felt this decision had to be made, but I just wish people would take more than a cursory look at the facts. I could write a thousand more words about what I'm thinking and feeling, but maybe I should save that for another time. Tom [Crawford, MTA] had to fight off another amendment today that would have granted DW [Drivewyze] access to HELP's WIMs. Further proof this had absolutely nothing to do with our membership in HELP but all about DW [Drivewyze] wanting a free ride. **While I hope to someday have a more formal role with HELP, I pledge to do everything I can communicate the facts about the good work and unquestioned ethics of HELP.** [emphasis added by the SAO] I can't even fathom how someone could make false accusations to the FBI about another person and tarnishing one's good name? But DW [Drivewyze] can and will stoop to even lower tactics I'm convinced . . . This is probably emotion talking, but I think aggressive action of some kind may be necessary to preserve, protect and grow HELP. I don't know if that means legal action or changing the structure and oversight of HELP? It will undoubtedly create additional expenses as similar situations happen in other states. I don't know exactly how, but it may be possible for me to take action now that I'm off the board. I look forward to speaking to you about any way I can help. **I value your friendship so much and please let the other board members know I will miss them and to stay diligent in their good work.** [emphasis added by the SAO] I would prefer for now that this email remain confidential, but at some point maybe I could write a letter of encouragement, etc. that could be read at a future board meeting? To say I'm a little despondent would be an understatement."
- On May 10, 2017, Chuck Gohring, National Interstate Risk Management, emailed Marion about Missouri no longer being represented on the HELP board. Marion replied "Chuck, You have no idea of the stuff I've endured and still going through. I'll have to call you soon to catch you up." Gohring responded "Well, if it made Transport Topics...I can only imagine. Stay Strong!" Marion replied "Let's just say I've learned email is not always the best way to communicate!"
- On June 5, 2017, Marion sends an email message from his personal email account to former Colonel Johnson, now contracted by HELP, providing information related to WIM installation times. This email message demonstrates that Johnson may have violated state law as further described on page 25.



Weigh in Motion Contracts
Management Advisory Report - State Auditor's Findings

- On June 6, 2017, Rasmussen emails Marion at his personal email account in response to his inquiry about accidents/congestion around WIM installations.
- On June 25, 2017, at 10:23 p.m., Marion emailed Jay Wunderlich and Roberta Broeker (all of MoDOT) with a WIM risk assessment he prepared, ". . . all of the talk about the safety hazards and inconvenience to the public when installing and working on WIMs, prompted me to pursue a Risk Assessment about this work zone activity. I thought this would be good to provide MoDOT and both bypass providers information and awareness of the safety risks they will encounter over the life of the contracts. I have not sent the attached documents to any one as of yet, . . ." Wunderlich thanked Marion for his work the next morning (June 26, 2017) at 7:35 a.m.
- On Sunday, June 25, 2017, at 10:44 p.m., approximately 21 minutes after informing Wunderlich and Broeker of the risk assessment and prior to receiving their acknowledgement and/or approval to forward, Marion emails Johnson, Rasmussen, Doughty (HELP), and Crawford (MTA) from his personal email account with MoDOT's WIM risk assessment concerning crashes at work zones involving WIM work. Marion indicates "I'm not naïve enough to say the work zones, no matter how small, are "safe places", but the risk assessment did show that the installation and maintenance of WIMs and other very similar types of work zones are one of the safest types of work we do. I have not shared the attached documents with anyone except for my boss Roberta Broeker and Jay Wunderlich, our Government Affairs guy. At the July 11 meeting that Rep. Berry has called, I plan to be quiet unless called upon because I consider the meeting a moot point since we have signed and executed agreements with both service providers. However, I will have this document with me as it dispels much of the talk about safety and inconvenience to the public. If asked, I plan to provide this to both bypass providers prior to WIM installation and maintenance work and anyone else interested, but you requested this information, so I'm sending it to you first." Subsequently, on July 6, 2017, Rasmussen requests from Marion the same MoDOT internal risk assessment he previously provided her on June 25, 2017. On July 7, 2017, Marion officially emails Rasmussen, from his state email account, that same document.

The information Marion provided to HELP in both the June 5 and June 25, 2017 email messages was only provided to HELP, and not both vendors involved in the legislation (despite Marion's comments otherwise). This information was provided in advance of an important meeting in the House Speaker's Office, on July 11, 2017, between members of HELP, Drivewyze, legislators, and members of MoDOT.



Weigh in Motion Contracts
Management Advisory Report - State Auditor's Findings

- On September 19, 2017, Katelyn Dwyer, American Association of Highway Transportation Officials, emailed various states to determine if they were using WIMs like the Idaho Transportation Department. Cheryl Ball, MoDOT, tells Marion she responded to Dwyer. Marion then responds himself to provide information about HELP and offers to provide contact information for HELP. From Marion: "Katelyn, Missouri uses WIMs at 19 of our weigh stations in combination with our no-cost bypass service provider PrePass and soon to be another provider Drivewyze. If you'd like to learn more feel free to give me a call. I would also suggest this website of HELP, Inc. the non-profit public/private group that provides the PrePass Services. <http://www.helpinc.us/> I could easily get you in touch with Karen Rasmussen the President and CEO of HELP, Inc. to learn more. . . ."

Conclusion

While both the MSHP and MoDOT did not initially perceive any conflict of interest with their employees being members on the HELP Board, it is clear from these communications that the relationships formed while working with HELP led to such conflicts. The communications show instances of bias and a lack of independence toward HELP. These communications also show that a MoDOT employee tasked with providing oversight to preclearance providers in the state maintained questionable relationships with HELP officials, and acted in an inappropriate capacity of promoting and selling the benefits of HELP to other states and to potential clients.

State employees subsequently employed by HELP

Three MSHP and MoDOT employees involved in decisions related to Missouri's commercial vehicle preclearance and bypass services were subsequently hired by or contracted with HELP after their retirement from the state; Jan Skouby (May 2014), Bret Johnson (March 2017), and Greg Kindle (March 2017), casting further doubt on their independence. In addition, two of these employees have had business related communications with Missouri while employed with HELP despite contrary statements made by Rasmussen, further demonstrating bias and lack of independence in decision making.

As previously noted, Major Greg Kindle actively solicited employment with HELP through his official MSHP email account on December 20, 2016 to which HELP replied the next day by emailing him the job description for its Regional Director position. We identified additional email messages, where Major Kindle made travel arrangements for his interview and conveyed his retirement plans with HELP through his official MSHP email account.

Major Kindle did not serve on the HELP Board, but was involved with maintaining the contract between MSHP and HELP (as previously noted) prior to his retirement. In addition, rather than abstaining from any involvement with HELP after soliciting employment and interviewing, Major Kindle continued corresponding with HELP regarding the firm's business in



Weigh in Motion Contracts
Management Advisory Report - State Auditor's Findings

Missouri and took no steps to formally notify in writing his employer of a possible conflict.

Communications with former state employees considered a conflict

Communications between state employees and their former colleagues now working for HELP put state employees in a position to be unduly influenced and would be considered a conflict of interest and a potential violation of state law. HELP officials recognized this conflict. In an email message to the HELP Board of Directors on April 7, 2017, Rasmussen indicated "We met with Bret [Johnson] after the Board meeting last month and asked him, through his Limited Liability Company, to take on a small consulting role specifically to assist Steve Vaughn [HELP] in representing HELP with the International Association of Chiefs of Police (IACP) and related organizations. Prior to executing a short-term consulting agreement, we sought legal guidance and concluded that, as a private citizen, Bret is free to do work for whomever he chooses. It is a natural fit for us given his knowledge of our organization and programs, as well as of commercial vehicle enforcement. Under our six-month agreement, he is prohibited by state law and by HELP's own conflict of interest standards from representing HELP in any way in Missouri. The same is true for Greg Kindle and Jan Skouby, both retired former Missouri state employees, neither of whom represent us in Missouri."

However, as previously noted in the email messages dated June 17, 2014, August 26, 2014, December 1, 2014, June 5, 2017, and June 25, 2017, both Skouby and Johnson have had business related communications with state employees involved in Missouri's commercial vehicle preclearance and bypass system since their retirement, which represents a conflict of interest and contradicts Rasmussen's statement and HELP's conflict of interest standards. In addition, email messages not included in the communications timeline dated June 26, 2014, August 15, 2014, October 29, 2014, April 29, 2015, July 29, 2015, and February 4, 2016, show Skouby had further influence on Missouri's commercial vehicle preclearance and bypass system.

Section 105.454.1(5) and (6), RSMo, prohibits employees from performing any service for consideration, during one year after termination of his or her office or employment, by which performance he or she attempts to influence a decision of any agency of the state, which he or she was an officer or employee or over which he or she had supervisory power, and prohibits employees from performing any service for any consideration for any person, firm or corporation after termination of his or her office or employment in relation to any case, decision, proceeding or application with respect to which he or she was directly concerned or in which he or she personally participated during the period of his or her service or employment.

Conflict of interest policies and procedures

The MSHP and MoDOT lack adequate policies and procedures to identify and address conflicts of interest and actions demonstrating a lack of



Weigh in Motion Contracts Management Advisory Report - State Auditor's Findings

independence. Neither the MSHP nor the MoDOT took steps to evaluate and document whether their employee's membership on the HELP Board represented a potential conflict of interest and actions taken, including communications demonstrated a lack of independence. Additionally, action was not taken by either MSHP or MoDOT to ensure former state employees now working for HELP were not influencing the decision making process. In addition, the MSHP and the MoDOT's policies do not require employees to report potential conflicts of interest and do not address procedures to monitor employees involvement to ensure compliance with the established policies.

The MSHP's Rules of Conduct for Employees, Section B, Prohibited Conduct, No. 3, indicates an employee will not engage in any activity in which there is a significant potential for conflict of interest or the appearance of a conflict of interest with the lawful duties of the employee. Conflict of interest is any activity that would tend to influence a decision, create a bias or prejudice, or create a gain or loss for any person or agency, which would favor one side or the other in conflict with the employee's official duties, or that conflicts with the accomplishment of the Patrol mission or goals.

MoDOT's Conflict of Interest Policy includes the following statements:

- Employees are expected to engage in activities that are compatible with the impartial and objective performance of their duties.
- Employees should avoid any activity which improperly influences or gives the appearance of improperly influencing the performance of their duties.
- Employees shall not participate in any proceeding or decision in which the employee's impartiality might be reasonably questioned due to the employee's personal or financial relationship with a participant in the preceding.

MoDOT internal documents suggest department officials did not believe their employees membership on the HELP Board of Directors was a conflict of interest; however, the content of some of the email messages previously noted and subsequent employment of 2 MSHP and one MoDOT employees cast doubt on their independence and show preferential treatment to HELP.

The lack of proper oversight and adequate conflict of interest policies allowed potential conflicts of interest to occur and caused a lack of independence that may harm public confidence in the MSHP and the MoDOT.



Weigh in Motion Contracts
Management Advisory Report - State Auditor's Findings

Internal reviews and management inquiries undertaken by MSHP and MoDOT

On May 10, 2017, the MSHP issued a news release indicating it provided the Attorney General's Office with all information from the "internal review," ordered by Colonel Sandra Karsten to look into the MSHP's involvement with the HELP Board. The news release indicated concerns were uncovered "with actions during the prior administration by individuals no longer employed by the Patrol."

However, during the course of our audit we asked the MSHP for additional information regarding this internal review, and MSHP officials indicated a formal written report was not completed and the results of this internal review were not documented. Their response to our inquiry follows:

"Regarding the internal review referenced in the May 10, 2017 news release, information related to the Patrol's service on the HELP, Inc. Board was reviewed. The Patrol had some concern regarding former Patrol employee(s) purportedly working for HELP, Inc. after retiring from the Patrol and was uncertain whether such concern was warranted. By May 10, 2017 separate, contractual relationships had been formed between the State of Missouri and Drivewyze and HELP, Inc., there was no further need for the Patrol to have a representative serve on the board of HELP, Inc. The Patrol provided to the AGO [Attorney General's Office] a copy of the records the Patrol had previously provided to the SAO."

While a MSHP employee resigned from the HELP Board of Directors on May 9, 2017, the MSHP did not document its internal review of employee actions or change its policies or procedures.

After various requests from our office for email messages and documents, the MoDOT provided information responsive to our requests in September and November 2017. Unbeknownst to the SAO, the MoDOT started an internal management inquiry of potential conflicts of interest in November 2017 to determine if any actions taken were inconsistent with department policy. MoDOT's internal review resulted in numerous additional email messages being provided to the SAO in December 2017. On January 3, 2018, after informing our MoDOT audit liaison we would be sending the department a management representation letter to confirm all documentation had been provided to the SAO, we were informed of MoDOT's internal inquiry and of the existence of additional email messages that would be relevant to our review. Subsequently, on January 19, 2018, MoDOT provided us a final submission of email messages completing our requests. MoDOT reviewed the email messages and conducted interviews completing their inquiry February 5, 2018. On February 7, 2018, MoDOT officials provided us information concerning the results of their investigation, which indicated MoDOT concluded communications between one current employee and HELP had violated MoDOT's rules of conduct and disciplinary action had been taken.



Weigh in Motion Contracts
Management Advisory Report - State Auditor's Findings

MoDOT updated its conflict of interest policy on February 1, 2017, to raise organizational attention to the issues of lobbying, acceptance of gifts, and impartiality in decision making. MoDOT officials also indicated they have expressed to their General Services Division, an organizational desire to generally have contracts and other agreements that are time specific in nature, rather than the open-ended time frame of the original Help, Inc. agreement, and to generally adhere to a 3-year time frame, with 2 optional one-year extensions.

Personal financial disclosures Employee personal financial disclosures (PFD) required to be filed with the Missouri Ethics Commission (MEC) were not accurate, requiring subsequent amendments.

- Colonel Bret Johnson failed to properly disclose his membership on the HELP Board, until amending his 2015 PFD in August 2016. In addition, Johnson never reported any expenses paid directly by HELP, or amended any of his PFDs prior to 2015. He was a member of the HELP Board between 2008 and 2016.
- Jan Skouby never disclosed her membership on the HELP Board, and only disclosed related 3rd party expenses in 2009. She was a member of the HELP Board between 2009 and 2013.
- Scott Marion initially failed to properly disclose his membership and 3rd party expenses paid by HELP on his 2014 and 2015 PFDs. In June 2017, he amended both of these PFDs to disclose his HELP Board membership and 3rd party expenses paid by HELP, and amended his 2016 PFD (filed in March 2017) for 3rd party expenses paid by HELP.

Section 105.485.2(7), RSMo, requires disclosure of the name and address of each not-for-profit corporation in which a person was a trustee at any time during the year covered by the statement, and for each such organization, a general description of the nature and purpose of the organization. In addition, Section 105.485.2(9), RSMo, requires the PFD statements contain lodging and travel expenses provided by any third party for expenses incurred outside the state of Missouri whether by gift or in relation to the duties of office of such official.

Conclusion

The involvement of MoDOT and MSHP employees on the HELP board, the content of their communications and close working relationships with HELP officials, and the subsequent employment of former state employees by HELP indicate significant conflicts of interest were present. In addition, incomplete and inaccurate reporting on PFDs did not provide adequate transparency of the relationships in place. The further lack of oversight and adequate conflict of interest policies may harm public confidence in the MSHP and the MoDOT.



Weigh in Motion Contracts
Management Advisory Report - State Auditor's Findings

Increased awareness of such relationships, and requiring conflicts of interest and/or situations which could present the appearance of a conflict of interest to be reported in writing would help provide transparency and full disclosure to the public.

Recommendation

The MSHP and MoDOT adopt written policies and procedures to review for potential conflicts of interest and revise their conflict of interest policies to require employees to disclose potential conflicts of interest and address procedures to monitor employees involvement to ensure compliance with established policies. The MSHP and MoDOT also need to better inform current and exiting employees regarding the requirements of Section 105.454.1(5) and (6), RSMo.

Auditee's Response

The MoDOT provided a written response. See Appendix B.

The MSHP provided a written response. See Appendix C.

2. Weaknesses in Implementation and Planning of Preclearance and Bypass Planning Services

Poor planning on the part of the MSHP and the MoDOT led to delays and inefficiencies in the implementation of a fair and comprehensive preclearance and bypass system.

The MSHP and MoDOT did not conduct a request for proposal (RFP) when a second vendor (i.e. Drivewyze) emerged in 2013 wanting to participate in Missouri's preclearance and bypass program. Instead, in August 2014 the MSHP entered into a memorandum of understanding (MOU) to begin a pilot project to test Drivewyze's capabilities. However, the MOU with Drivewyze did not contain clear performance requirements or expectations. Specifically, the MOU did not require Drivewyze to have access to WIM data as part of the pilot project, and did not allow for the company to install its own sensors. The MOU also did not provide Drivewyze with any formalized expectations for what was required going forward. Access to WIM data was a significant and known issue when the MSHP entered into the MOU due to that data being owned by HELP in Missouri. In other states where both HELP and Drivewyze operate, the WIMs and WIM data is owned by the state, who provides the needed data to the bypass system vendors.

Background on WIM data and agreements with HELP

Since 2002, the MSHP and MoDOT have contracted with HELP for the installation of WIMs and operation of Missouri's preclearance and bypass program. At the time the original agreement and subsequent 2005 agreement were executed, HELP was the only provider of these bypass services. The 2005 agreement provided no termination date, but states the parties could terminate the agreement for cause after 90 days of written notice. In addition, the 2005 agreement indicated:

"The Memorandum of Understanding does not create an exclusive relationship between the Commission and Patrol and HELP for providing



Weigh in Motion Contracts
Management Advisory Report - State Auditor's Findings

electronic screening services. HELP agrees that if one or more similar site systems are, or become available, the Commission and Patrol have the option of entering into similar agreement(s) that may include providing equal right of access to site components provided or funded by the Commission and Patrol, except that such use shall not interfere with HELP-provided equipment or operations. Such additional site system would have no right to use, share or interfere with the components provided or funded by HELP, including HELP owned transponders, although HELP would have the option of reaching an agreement with any other provider under which equipment provided or funded by HELP could be shared."

The above language allows HELP to control if any other potential vendors, such as Drivewyze, can access the WIM data from their scales, and does not leave the MoDOT any option to obtain such data in the future, if necessary. By not ensuring future access to the WIM data, MoDOT created a significant barrier to entry for any additional preclearance service vendors wishing to provide such service in the state.

Drivewyze pilot project

The MSHP entered into a MOU with Drivewyze in August 2014 to establish a pilot project to implement the company's system. MSHP officials indicated they entered into the pilot project with Drivewyze because company representatives stated they could provide a "fully functional bypass program." However, based on email messages in calendar years 2012 and 2013, agency management knew prior to the execution of the pilot project that HELP and Drivewyze had previously failed to execute an agreement to share WIM data at the Bloomsdale weigh station, and the Drivewyze pilot program would also lack WIM data, or at a minimum, have difficulties getting access to the data from a competitor. For example:

- On May 28, 2014, Marion noted in an email message to Lieutenant Kelley and Captain Earney, MSHP, and other MoDOT employees, that Drivewyze cannot capture WIM data because Drivewyze has not reached an agreement with PrePass "on sharing/linking systems and data, etc. So far, my discussions with the PrePass folks haven't produced much, but I'm hopeful this may be possible in the future."

This concern was reiterated during the performance of the pilot project as evidenced in the following email message:

- On October 7, 2015, Marion noted in an email message to Captain Earney and Lieutenant Kelly, MSHP, "I've read and reread and had our legal folks review our MOU with PrePass and it clearly says the only way another company can hook into PrePass provided equipment is for the other company and PrePass to reach an agreement. DriveWyze's [*sic*] issue is with PrePass, not MoDOT or the MSHP."



Weigh in Motion Contracts
Management Advisory Report - State Auditor's Findings

Cancellation of the
Drivewyze pilot project

Drivewyze was notified in May 2016 by the MSHP, that the Drivewyze pilot was being canceled in August 2016. The MSHP canceled the project due to the lack of access to existing WIM data and a lack of action related to installation of other assets necessary to implement the firm's preclearance and bypass system. However, due to a lack of clear performance expectations being documented in the MOU, the MSHP did not have clear criteria to evaluate Drivewyze's performance on the pilot project. As a result, MSHP did not have a clear basis to cancel the pilot project, and initially failed to clearly communicate to Drivewyze in writing the reasons for the cancellation of the project.

A letter to Drivewyze dated May 4, 2016, and signed by Colonel Johnson only indicated "This correspondence serves as the Missouri State Highway Patrol's written notification of the cancellation of the agreement with Drivewyze, Inc., effective August 15, 2016."

Formal written communication explaining why the pilot project was canceled was not provided to Drivewyze by the MSHP until August 2016, when the MSHP sent a letter to Drivewyze indicating the company had not provided weigh in motion data for commercial vehicles as part of the bypass screening process or the necessary monitors for automated identification.

It is unclear why the MSHP failed to formally communicate concerns with Drivewyze during the pilot program because internal communications between the MSHP and MoDOT concerning the pilot project's performance, were evidenced in the following email messages:

- On April 13, 2015, Kelly Ray, MoDOT, asks Lieutenant Kelley, "When are you guys planning on letting IIS [Drivewyze] know we're pulling the plug? They've asked Scott [Marion] for WIM data to plug into Drivewyze. We don't want to answer until they know."

Lieutenant Kelley responds, "How can they get WIM data if PrePass doesn't allow it? Can they get WIM data?"

Kelly Ray indicates, "They can't get it unless we battle with PrePass or simply tell IIS [Drivewyze] it's between them and PrePass but there's no sense going down that path if we're not keeping Drivewyze."

Lieutenant Kelley replies, "The reason we had decided not to keep them as far as a bypass system was two-fold. No WIM data was the biggest issue. The other reason was the need for separate computer screens to view the bypasses. **If they did that, I think we would have to be fair and keep them. Your thoughts??**" [emphasis added by the SAO]



Weigh in Motion Contracts Management Advisory Report - State Auditor's Findings

Kelly Ray replies, "I know we should always be fair, but I also know how much PrePass has invested in our state. If IIS [Drivewyze] wants to provide their equipment and cut a deal with PrePass for the weights, I have no problem at all. If they expect us to provide the weight data, I'm not sure Scott [Marion] is willing to pursue. I need to talk to him in the morning. If you get a chance, you might want to see how much they're willing to provide in equipment and if they're willing to strike a deal with PrePass for the data."

Further, while the pilot project MOU indicated Drivewyze would provide MSHP "a fully functional bypass program," it did not specifically require Drivewyze to provide weigh in motion data for commercial vehicles or monitors for automated identification (the 2 reasons for the cancellation). According to MSHP officials, these items were determined to be necessary during the operation of the pilot project and verbally communicated to Drivewyze officials. However, statements made in email messages on August 2, 2016, indicate Drivewyze could not take steps to provide weigh in motion data unless the company's competitor provided the information (unlikely to occur) or a new MOU was entered as follows:

- Marion indicated, "The old MOU will not work. It only allows the pilot program. To install scales like they want will require a completely new and totally different MOU. They can't just start installing stuff on state Right of Way without an agreement. Both agencies have also told them several times a "new" MOU will need to be done."

In effect, MSHP entered into a MOU with Drivewyze to implement a pilot project and allowed that project to continue for 2 years even though they strongly suspected Drivewyze would not be able to acquire WIM data from HELP, and knowing that the existing MOU would not allow Drivewyze to install its own WIM sensors.

RFP for preclearance and
bypass services

In October 2016, due to concerns of conflicts of interest, the MoDOT determined an RFP should be issued and subsequently issued an RFP in February 2017, to allow a fair and competitive process for the potential preclearance and bypass service providers. Both HELP and Drivewyze received notices of award in April 2017, and their related contracts were fully executed February 1, 2018. However, the new RFP requires both vendors to install WIMs at their own cost and weight information is owned by each vendor, which may limit future competition. If another vendor wants to enter the market in the future, the firm will also have to install additional WIMs in the roadways to obtain the required weight information.

Conclusion

Poor planning by the MoDOT and MSHP resulted in significant delays and inefficiencies in the implementation of a fair and comprehensive preclearance and bypass services. MoDOT and MSHP's agreement with HELP did not



Weigh in Motion Contracts
Management Advisory Report - State Auditor's Findings

allow the state access to WIM data, and the initial MOU with Drivewyze did not provide the vendor with clear expectations of performance, which led to misunderstandings as to what was expected and uncertainty in the reasons for the cancellation. Written communications are needed to avoid misunderstandings and aid the MSHP in the event the handling of the agreement is questioned. In addition, written communication would assist the vendor in understanding the need for improved performance and the reason decisions were made.

Recommendation

The MSHP and MoDOT ensure adequate planning is performed to evaluate changes in competition for program services and consider the need to rebid those services. The MSHP should also perform formal evaluations of pilot projects and ensure future contracts or agreements include clear performance expectations.

Auditee's Response

The MoDOT provided a written response. See Appendix B.

The MSHP provided a written response. See Appendix C.

3. Communication and Retention Policies

Communication and retention policies of the MSHP and MoDOT need improvement.

MSHP policies

The MSHP has not developed policies and procedures to (1) ensure its employees are aware of and comply with the record retention schedules approved by the Secretary of State's (SOS) office and (2) identify business related communications (including personal email and text messages) that are required to be retained in accordance with record retention schedules approved by the SOS. Neither issue is clearly addressed in the MSHP's Information Systems Security policy.

The MSHP does not require retention of business communications via text message, and as a result, the MSHP may not comply with record retention schedules approved by the SOS. The only record of the text message communication were the text messages available for our review on the phones of the employees.

During our review of correspondence related to the weigh in motion contracts, we found evidence that Colonel Johnson communicated via text message with a Drivewyze representative in November 2016. In addition, MoDOT provided us communications with Captain Earney via text message sent from Captain Earney's personal cell phone concerning the RFP and various news articles. Neither Colonel Johnson nor Captain Earney's text messages nor their content were retained by the MSHP.



Weigh in Motion Contracts
Management Advisory Report - State Auditor's Findings

MoDOT policies

Scott Marion, current MoDOT Director of the Motor Carrier Services Division, violated MoDOT policy by using his personal email account to conduct official MoDOT business without approval. In addition, the MoDOT's policies and procedures do not require employees to identify business related communications (including personal email messages and text messages) to be retained in accordance with record retention schedules approved by the SOS.

As noted in MAR finding number 1, Marion used his personal email account to conduct state business with HELP. Marion started using his personal email account more frequently to correspond with HELP after the weigh station bypass industry came under scrutiny in late 2016.

MoDOT personnel policy No. 2503, titled Communication and Information Systems, indicates department email accounts have been provided to conduct department business and use of any other email account (i.e. personal) to do so is strictly prohibited unless approved by Information Systems management. MoDOT officials indicated Marion was not granted such approval.

In addition, the MoDOT does not require retention of business communications via text message and as a result, the MoDOT may not comply with record retention schedules approved by the SOS. The only record of the text message communication were the text messages available for our review on the phones of the employees.

Conclusion

While the Office of Administration maintains an email message archiving system that retains state agency email messages forever, use of personal email messages to correspond directly to a non-state entity is not archived. In addition, because agency policies do not adequately address retention of business related communications, we cannot be certain we were provided all such communications related to the weigh in motion contracts.

Improper methods of communication could create legal liability, cause the loss or destruction of records, create unacceptable positions for employees, and harm the public's confidence in these agencies. Both agencies are expected to abide by the record retention schedules approved by the SOS. Without clear, specific, and adequate retention policies, there may be inconsistencies in the understanding and implementation of records retention and accessibility.

Recommendation

The MSHP should establish communication and retention policies in accordance with the record retention schedules approved by the Secretary of State's office. The MoDOT should ensure personnel policies are followed regarding use and approval of personal email accounts and ensure its retention policies abide with the record retention schedules approved by the Secretary of State's office for nontransitory communications.



Weigh in Motion Contracts
Management Advisory Report - State Auditor's Findings

Auditee's Response

The MoDOT provided a written response. See Appendix B.

The MSHP provided a written response. See Appendix C.

**4. HELP Membership
Dues**

MoDOT's payment of membership dues for Missouri's private sector representative on the HELP board was not disclosed in grant funding applications and not a prudent or necessary use of state or federal funds.

As noted in the Background section, annual membership dues totaling \$22,500 were paid by MoDOT for Missouri's 3 representatives (\$7,500 per member). The United States Department of Transportation (USDOT), Federal Motor Carrier Safety Administration's (FMCSA), Commercial Vehicle Information Systems and Networks program grant provided for a 50 percent reimbursement of HELP dues. However, payment of the MTA (private sector) representative's dues were not disclosed in the MoDOT's annual application for this funding.

In December 2016 (after the weigh in motion contracts came under scrutiny), the USDOT, FMCSA's Grants Management Office, determined that membership dues used to pay for private sector representation on the HELP Board would no longer be considered an eligible expense. Similarly, state funds should not have been used to pay for the portion of the other 50 percent of the private sector representative's membership dues.

As of May 2017, Missouri's state representatives on the HELP board have resigned due to the appearance of a conflict of interest and membership dues are no longer paid to HELP.

Recommendation

In the future, the MoDOT should refrain from paying membership dues of a private sector representative.

Auditee's Response

The MoDOT provided a written response. See Appendix B.

Weigh in Motion Contracts

Organization and Statistical Information

Administering the Federal Motor Carrier Safety Assistance Program is the responsibility of the Missouri Department of Transportation (MoDOT). The program focuses on the development and implementation of tools to enforce commercial motor vehicle safety rules, regulations, and orders.

The MoDOT is responsible for coordinating the planning and construction of new scale facilities. Directed by the Support Service Bureau of the Missouri State Highway Patrol (MSHP), the Commercial Vehicle Enforcement Division (CVE) enforces all applicable federal and state rules, regulations, and statutes, related to commercial vehicle axle, gross, and licensed weight compliance.

Missouri has 113 CVE Officers/Inspectors located at 21 fixed scale sites and 18 portable scales throughout the state enforcing vehicle weight regulations. Fixed, or permanent, scale facilities are located along the Interstate or U.S. highways. Portable scales move throughout the state assigned to bypassing routes or within metropolitan commercial zones. Though permanent facilities are constructed by MoDOT, both the MSHP and MoDOT share maintenance responsibilities.

Weigh in Motion Contracts

Drivewyze Inc. Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING

BETWEEN

Drivewyze Inc.

AND

Missouri State Highway Patrol

This non-binding MEMORANDUM OF UNDERSTANDING (MOU) is hereby made and entered into by and between Drivewyze Inc. ("Drivewyze") and the Missouri State Highway Patrol ("Agency").

A. PURPOSE:

The purpose of this MOU is to describe the participation of both parties in the **Drivewyze™** bypass program. This non-binding MOU discusses the participation of both parties with respect to the roles and benefits related to each party involved in the bypass program:

B. STATEMENT OF MUTUAL BENEFIT AND INTERESTS:

The bypass program will utilize GPS and web-based technology to provide the Agency with a fully functional bypass program. The bypass service and supporting technology is supplied at no cost to the Agency and is fully supported by carrier subscription fees collected by Drivewyze Inc. The **Drivewyze** technology delivers a complete commercial motor vehicle (CMV) bypass program to the State.

The **Drivewyze** technology includes a mobile device application that turns a standard in-cab hardware technologies (ie. tablet/smartphone/EOBR/ELD) into a 'smart transponder'. The bypass program also includes the **Drivewyze** Smart Roadside screening interface for enforcement staff, allowing the setup, operation and complete control of the **Drivewyze** program at a State level.

C. ROLES

The roles of both Agency and **Drivewyze** are described in this MOU.

During typical **Drivewyze** operations, the Agency shall:

- a. Work with **Drivewyze** to establish the bypass program, policies and operational framework for implementing the bypass program including:

Drivewyze is a trademark of Drivewyze Inc.



Weigh in Motion Contracts
Drivewyze Inc. Memorandum of Understanding

- a. Approval of all sites within the State where **Drivewyze** will be active.
- b. The Agency controlled bypass criteria used to evaluate bypass requests.
- c. Provide any required approvals for Drivewyze to access government information systems on behalf of the Agency for the sole purpose of providing safety and credential related information to support the bypass program.
- b. Have no obligation to bypass vehicles that do not qualify for bypass privileges as laid out in the Agency's Bypass Program operations and policy documents.
 - a. The Agency is free at any time to change the business rules governing bypass
 - b. The Agency can vary the random report rates from 0-100%
 - c. The Agency can cancel bypass operations for any carrier as it sees fit.
- c. Allow a vehicle that meets the Agency's bypass requirements to bypass a weigh station or inspection site, and treat the event as a legal bypass event.
- d. Direct frontline Agency staff members to utilize **Drivewyze** at any weigh station sites approved for bypass operations.
- e. Support the collection of any technical or operational feedback on the driver or screening interface and system performance through meetings and customer service calls in order to help improve the **Drivewyze** technology.
- f. Not be responsible for any information obtained by **Drivewyze**.
- g. Not be under any legal obligations whatsoever to **Drivewyze** or industry participants.

During typical operations, Drivewyze shall:

- a. Market and enroll drivers into the **Drivewyze** program.
- b. Provide **Drivewyze** bypass device application to drivers that enroll.
- c. Provide training to the Agency administration and frontline operators.

Drivewyze is a trademark of Drivewyze Inc.



Weigh in Motion Contracts
Drivewyze Inc. Memorandum of Understanding

- d. Provide training to the drivers and carriers.
- e. Provide the Agency with online access to the Smart Roadside Inspection System screening interface in order to view **Drivewyze** vehicle events.
- f. Provide system access and use at no cost to the Agency.
- g. Provide technical and system support services free of charge to the State and industry participants.
- h. Provide the Agency with monthly field reports presenting details of the previous month. Real time reports are also available.

D. This agreement will remain in effect indefinitely from the date of signing or until either party notifies the other that the agreement is cancelled. Either party may cancel the agreement at any time with 90 days written notice to the other party.

Signatures

Drivewyze Inc.

Date August 5/14

Missouri State Highway Patrol

Date 8-5-14

Drivewyze is a trademark of Drivewyze Inc.

Weigh in Motion Contracts Auditee Response - MoDOT

PATRICK K. MCKENNA
Director

PAMELA J. HARLAN
Secretary to Commission

RICH TIEMEYER
Chief Counsel



Chief Counsel's Office
105 West Capitol Avenue
P.O. Box 270
Jefferson City, MO 65102
(573) 751-7454
Fax (573) 526-4408

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION

April 13, 2018

The Honorable Nicole Galloway
State Auditor
State Auditor's Office
Room 121, State Capitol Building
Jefferson City, MO 65101

Dear Madam Galloway:

Attached please find the Missouri Department of Transportation (**MoDOT**) response to the Weigh in Motion Contract Review Audit Report.

(1) Conflicts of Interest and Personal Financial Disclosures

DEPARTMENT RESPONSE:

(A) Background: In the Motor Carrier Safety Improvement Act of 1999, the Federal Motor Carrier Safety Administration was tasked to provide federal funds to states to create a new commercial motor vehicle (CMV) enforcement technology that would allow pre-approved CMVs to bypass weigh stations, which would increase safety on interstate highways. In 1999, the Missouri Legislature amended section 304.235, RSMo (which had previously required all CMVs to stop at a weigh station) to authorize CMVs to bypass a weigh station if the CMV is identified through new automated technology to be in compliance with state weigh limit laws.

When researching the creation of an electronic bypass system in Missouri, MoDOT considered building its own electronic bypass system. In 2002, after significant research and consideration that showed MoDOT's pursuit of its own state-owned system would require a significant investment of state funds to build and then upgrade and maintain such system, MoDOT elected to save Missouri's limited public funds and executed a contract with the only provider capable of building such a system at the time, HELP, Inc. **As the auditor notes in this report, HELP, Inc. has estimated its costs to build the preclearance system in Missouri at \$21 million, costs which otherwise would have been paid by Missouri taxpayers.**

HELP, Inc.'s electronic bypass system is a great example of the State of Missouri working with private entities to create a system that has had significant benefits to the Missouri economy and the trucking industry, without requiring Missouri and MoDOT to pay these costs.

Our mission is to provide a world-class transportation experience that delights our customers and promotes a prosperous Missouri.



Weigh in Motion Contracts
Auditee Response - MoDOT

(B) Benefits: The Missouri economy and trucking industry have received significant benefits from the electronic preclearance weigh station bypass system that authorizes CMVs to bypass weigh stations upon electronic verification of the CMV's compliance with federal and state weight limits and authority to operate. In 2017, HELP, Inc. estimated its Missouri Pre-Pass electronic bypass system has saved 2,543,202 hours in CMV operations; saved 12,207,367 gallons of fuel; and saved \$223,233,076 in CMV operating costs in Missouri. These costs do not include the unknown, but significant, safety savings in reduced congestion and traffic incidents due to the elimination of lines of CMVs on interstate highways having to physically pull in at weigh stations. Also, the electronic bypass system has extended the life of Missouri's interstate weigh station scales by authorizing CMVs that comply with federal and state weight limits to bypass the scales and the Missouri State Highway Patrol concentrating enforcement on higher-risk carriers. By eliminating over half of the trucks that cross the scales, it effectively has doubled the weigh scales' life.

(C) Improper Communications: While there has been significant benefit for the Missouri economy since implementation of HELP, Inc.'s CMV electronic preclearance system in Missouri, MoDOT agrees there were communications by a MoDOT employee that shows a bias towards MoDOT's vendor. The emails show the MoDOT employee's involvement on HELP, Inc.'s board was used to market HELP, Inc. MoDOT has already taken several steps to correct this situation.

1. Competitive Procurement: First, in October 2016, MoDOT decided to conduct a competitive procurement to determine if any firms, in addition to HELP, Inc., could successfully provide electronic weigh station bypass services. When MoDOT initially contracted with HELP, Inc. (first in 2002, later amended in 2005), HELP, Inc. was the only provider for these services.

MoDOT's General Services division researched 50 state websites to identify electronic bypass service providers who may be able to provide these services. States were contacted if the information was not readily available on the website. Also, MoDOT engaged a representative from the Federal Highway Administration and the Missouri Office of Administration Information Technology Services division to serve on the Evaluation Team and excluded staff from its Motor Carrier Services division on such Team in order to ensure an objective review of the proposals received. A procurement like this is unusual because MoDOT knew these services would not result in an outlay of taxpayer dollars.

2. Board Withdrawal: Second, MoDOT withdrew its membership from HELP, Inc.'s board of directors on May 9, 2017. As noted above, public/private membership on the board served the state of Missouri well as MoDOT was able to test new applications and vote on new technologies for HELP's possible investment in Missouri. Over a third of the states continue to be members of HELP, Inc.'s board, usually consisting of the state department of transportation or the state police / highway patrol. Nevertheless, MoDOT determined the relationship with HELP, Inc. through participation as a board member was no longer desired, and therefore decided to remove our employee from the board.

3. Internal Review: Third, MoDOT conducted an internal review of the actions and communications of our employee who previously served on HELP, Inc.'s board and determined that the employee's actions warranted discipline.

(D) Personal Financial Disclosure Statements: MoDOT recognizes its former employees did not properly disclose their membership on HELP, Inc.'s board in required personal financial disclosure statement (PFDS) while employed with MoDOT, although one of the employee's statements was later corrected. MoDOT agrees it must improve its education of current employees who are subject to the



Weigh in Motion Contracts
Auditee Response - MoDOT

section 105.485 PFDS requirement to correctly complete a PFDS, which will increase MoDOT's transparency regarding its relationships with other boards, commissions and committees.

(E) Potential Statutory Violations: The State Auditor cites some emails to conclude MoDOT did not have procedures in place to identify potential state law violations in section 105.454.1(5) and (6).

While MoDOT cannot confirm that these emails show a potential violation of section 105.454.1(5) and 105.454.1(6), MoDOT will provide information to its **current** employees in regard to these statutory prohibitions on future post-MoDOT employment. Such information will better assist our current employees in their post-employment careers.

(F) Requisite Action: MoDOT will take the following steps:

1. Conduct an inventory of the boards, commissions, committees, etc. on which current MoDOT employees serve to determine if potential conflicts of interest exist as well as whether PFDS are required to be filed;
2. Revise MoDOT policy to require our employees to annually disclose service on boards, commissions, committees, etc., and review the disclosures for potential conflicts of interest and filing of PFDS;
3. Revise MoDOT policy to identify the MoDOT staff required to file PFDS as required by sections 105.483 and 105.485 RSMo; and
4. Revise MoDOT policy to include information on section 105.454.1(5) and (6), RSMo.

MoDOT will accomplish these steps by December 31, 2018.

(2) Weaknesses in Implementation and Planning of Preclearance and ByPass Planning Services

MoDOT could have realized earlier that evolving technology may have created additional vendors for this service. Again, because MoDOT and Missouri paid nothing for HELP, Inc.'s weigh station electronic bypass services, the concept of additional competition didn't surface as quickly as it would have if state funds were paying for it. The fact the service was provided at no cost to the state was likely a major factor in the original open-ended contract term.

MoDOT has already addressed the issues raised here. It has directed staff to develop procurement and contract documents that cover a period not to exceed three years, with no more than two, optional, one-year extensions, which addresses the open-ended duration of the amended 2005 contract with HELP, Inc. MoDOT believes this change should ensure procurements of services occur regularly and will detect more quickly changes in technology or other circumstances.

(3) Communication and Retention Policies

MoDOT agrees that it will conduct an employee refresher communication on the requirement by MoDOT policy for employees to obtain pre-approval from specifically designated Information Systems management staff in order for an employee to use a personal email account. MoDOT agrees it will develop specific retention policies that are consistent with the Secretary of State's Office retention schedule related to nontransitory communications that occur by text.

We will complete these steps by December 31, 2018.



Weigh in Motion Contracts
Auditee Response - MoDOT

(4) **HELP Membership Dues**

Federal law authorized federal funds to be used to reimburse the payment of HELP, Inc.'s dues. Missouri's public/private membership on HELP, Inc.'s board served the state of Missouri well to test new applications and vote on new technologies for possible investment in Missouri. We no longer pay these dues, so this issue is resolved.

Thank you for allowing MoDOT the opportunity to prepare and submit this Response.

Sincerely,

Patrick McKenna
Director

Enclosure

cc: Pamela Harlan-cs
Rich Tiemeyer-cc

Weigh in Motion Contracts Auditee Response - MSHP



Department of Public Safety
MISSOURI STATE HIGHWAY PATROL
Colonel Sandra K. Karsten, Superintendent



An
Internationally
Accredited
Agency
Eric R. Greitens
Governor
Charles A. (Drew) Juden
Director

April 17, 2018

Missouri State Auditor's Office
Truman State Office Building
Post Office Box 869
Jefferson City, MO 65102

Re: Missouri State Highway Patrol response to Missouri State Auditor Office review of Weigh in Motion Contract

- 1. The Missouri State Highway Patrol has strong and comprehensive policies that address conflicts of interest, and the Patrol regularly trains its employees on its policies.**

The Missouri State Highway Patrol ("MSHP") has strong and comprehensive policies and procedures in place that address conflicts of interest. Existing policies require all MSHP employees to report and avoid potential conflicts of interest. In addition, MSHP adheres to Executive Order 92-04 (the code of conduct for state employees) and the Law Enforcement Code of Ethics (an internationally recognized code of conduct for law enforcement officers). MSHP General Orders 26-02 (which prohibits conduct unbecoming of Patrol employees) and 52-01 (which requires all Patrol employees to report misconduct) provide further guidance to MSHP employees. The Patrol also provides its employees with regular ethics training that reinforces its rigorous standards. These policies were in place at all times covered by this report.

Additionally, after assuming the duties of Superintendent on February 1, 2017, Colonel Sandra K. Karsten directed a thorough review of MSHP's affiliation with HELP, Inc. The MSHP completed its review in May 2017. The MSHP's review uncovered concerns with actions during the prior administration by individuals no longer employed by MSHP. Following this review, MSHP removed its member from the HELP, Inc. Board. MSHP has provided all information from its internal review to the Missouri Attorney General and the Missouri State Auditor.

As an accredited full-service law enforcement agency, the MSHP routinely conducts reviews to ensure policies and procedures are up-to-date. Moving forward, MSHP will provide additional training to all employees on identifying, preventing, and reporting conflicts of interest. In addition, all MSHP employees will be provided a copy of Section 105.454, RSMo, to ensure MSHP employees know their legal obligations.

GENERAL HEADQUARTERS
P.O. Box 568, Jefferson City, MO 65102-0568
Telephone: 573-751-3313 - FAX: 573-751-9419
Dedicated to Service and Protection
www.mshp.dps.missouri.gov - V/TDD: 573-751-3313



Weigh in Motion Contracts
Auditee Response - MSHP

April 17, 2018
Missouri State Auditor's Office
-2

2. The Missouri State Highway Patrol identified and resolved to fix weaknesses in the planning and implementation of preclearance and bypass services.

After Drivewyze informed MSHP that it could provide a fully functioning weigh-in-motion (WIM) system, MSHP in August 2014 signed an agreement provided by Drivewyze to utilize such a system. As noted in the report, MSHP trusted Drivewyze would successfully complete its pilot program. It was MSHP's responsibility to monitor any WIM system data in order to enforce Missouri law.

Ultimately, Drivewyze failed to produce a fully-functioning WIM system as promised. As a result, MSHP terminated the Drivewyze pilot program pursuant to the agreement's terms. In 2017, Drivewyze reentered the Missouri market following an open procurement. Both HELP, Inc. and Drivewyze are now providing services at no cost to Missouri.

3. The Missouri State Highway Patrol ensures its adherence to communication and retention policies under Missouri law.

The MSHP has adopted records retention policies in accordance with standards created by the Secretary of State. The MSHP acknowledges the recommendations of the SAO's MAR, and will ensure compliance with applicable retention policies.

4. The Missouri State Highway Patrol had no issue relating to HELP, Inc. membership dues.

The MSHP has reviewed the SAO's findings in this section. The concerns regarding HELP, Inc. membership dues were not directed at MSHP.

Conclusion: The Missouri State Highway Patrol takes action to maintain public trust.

The MSHP strives to avoid even the perception of a conflict of interest. The MSHP cooperated fully in this audit of weigh in motion contracts. All information held by MSHP and current employees was made available to the SAO. The MSHP remains committed to meeting the highest standards of ethics and transparency.

Sincerely,

A handwritten signature in cursive script that reads "Sandra K. Karsten".

SANDRA K. KARSTEN, Colonel
Superintendent