

Mendocino County Promotional Contract and Review of Responses to the 2000–2001 Report

A review of responses to the 2000–2001 Grand Jury report on the Mendocino County Promotional Alliance (Alliance) raises a number of questions about financial accountability and contract performance by the Alliance and contract management by the County Administrator's Office and the Board of Supervisors (BOS).

Method of Investigation

The Grand Jury interviewed the Alliance director, former Alliance employees, the County Auditor-Controller, the County Administrative Officer (CAO), the County Economic Development Coordinator, and the Assistant District Attorney. The Grand Jury visited the Alliance office. The Grand Jury reviewed the BOS and Alliance responses to the 2000–2001 Grand Jury Final Report "Mendocino County Promotional Alliance," Alliance Reviewed Annual Financial Statements 1998-2001, Alliance quarterly billings (including Balance Sheets and Profit and Loss Statements) submitted to the CAO's office, the contract between the County and the Alliance (Contract), documents filed in the Superior Court regarding a Grand Jury subpoena to the Alliance, and the four CAO files containing correspondence and documents concerning the Alliance.

Background Information

The County funded the Mendocino County Promotional Alliance, Inc., doing business as the Mendocino County Alliance, to promote agriculture and tourism in Mendocino County.

The Alliance is promoting lodging and wine almost exclusively. (See Comment at the end for more details.)

The responses to the 2000–2001 Grand Jury report "Mendocino County Alliance" presented the picture that the BOS was on top of the way the Alliance spent the public funds, approximately one-half million dollars, indicating that the County received quarterly financial and activity reports and complete annual reports. The report implied that the Alliance was doing a great job and that there was no need for change.

The Grand Jury determined that it would be in the public's interest to determine what information the County did receive and how that information was evaluated.

Review of 2000–2001 BOS Reponses

Findings

1. The BOS response to Finding 1 states in part: “The County does expect the Alliance to solicit contributions from the business community to be pooled with County funds.”

The Alliance response stated in part: “Private sector participants provide significant in-kind and cash resources as well.”

The Alliance has not provided information to the County to quantify private-sector participation and whether through cash or in-kind contributions.

According to the Notes to Financial Statements September 30, 2001, the value of Donated Materials and Services included as contributions in the financial statements and corresponding expenses for year are as follows:

Exhibits and Special Events	\$10,430
Media, Trade and Publicity	20,743
Travel and Education	<u>138</u>
Total	\$31,311

In the Financial Statements for the year ended September 30, 2001, the Certified Public Accountant (CPA) states that the Alliance did not maintain records in order to value donated services, which is required by generally accepted accounting principles.

The 2001–2002 Contract Item 2 now requires the Contractor to be “responsible to provide documentation of no less than \$59,270 in non-public source cash matching funds.” The third quarterly billings for the contract do not provide this documentation.

2. Finding 2 reported the lack of a line item budget or accounting of expenditures.

The BOS response agreed, stating: “Alliance does provide, at the end of each quarter, a summary report of activities and a financial statement including an income and expense report to the County.”

The Grand Jury requested these reports from the BOS and received a response from the Clerk of the Board that stated: “No such documents have been presented to the Board of Supervisors.”

The Alliance submits quarterly billing and accompanying reports to the CAO’s office. The CAO reviews the reports and approves payments. The BOS never sees the financial records or reports.

3. The response to Finding 2 also stated that at the end of the contract year “the Alliance is required to obtain the services of a Certified Public

Accountant to conduct a complete financial review of all books and records of the Alliance.... This requirement is usually cost prohibitive with minor funding requests.”

The Contract Item 8.A. states: “Contractor shall, at the end of the term of this Agreement, engage the services of a Certified Public Accountant for the purpose of conducting a complete financial review of all books and records of CONTRACTOR which pertain to services performed by CONTRACTOR under the terms of this agreement.” The 1999–2000 CPA review cost \$300, which was paid in 2000–2001. The cost of the 2000–2001 CPA review was not available because this year the Alliance is not presenting a line item Profit and Loss statement quarterly to the County.

According to the CPA report, the Financial Review only ensures that the information is presented in general accounting principles format. The CPA does not perform an audit, which is suggested by “conduct a complete financial review of all books and records.”

On December 6, 2001, The Economic Development Coordinator wrote a note to the CAO, which states: “I would like to ask _____[the County Auditor-Controller] to assist me in the review of this...[The Financial Statements for the year ended September 30, 2001]. Would that be appropriate?” The CAO’s response was “Yes.” The Economic Development Coordinator did have the Auditor-Controller review the Financial Statements.

4. Recommendation D stated: “Any promotional contract have measures for return on investment...and an exact line item accounting method quarterly.”

The Board responded: “This recommendation would undermine purposeful public policy established by the Board.”

The Grand Jury requested of the BOS what “purposeful public policy” meant and received the response from the CAO that it was used in recognition of California Government Code §31000, as publicly recognized in the preamble of the Contract, Government Code §15364.50(d), and a speech by the California Governor. None of those documents addressed return on investment or accounting methods.

Nevertheless, the County applied for and received a \$35,000 block grant, federal funds granted by the State for economic development purposes, to do research on a method of determining return on investment in the promotion of lodging and wine in the county. (The County Economic Development Coordinator stated the study is in response to the Grand Jury recommendation.) The request for proposal was advertised in May 2002; the County will hire an independent contractor to fulfill the terms of the proposal.

Review of 2000–2001

Income and Operating Expenses

The following information is from the “Mendocino County Promotional Alliance Inc. Profit and Loss” for October 2000 through September 2001. Net loss was \$43,343.30.

Findings

5. The Alliance received \$421,000 from the County for the contract period, November 1, 2000 through September 30, 2001.
6. The Alliance total income from all sources was \$466,465.04: \$3,458.49 in Interest income and \$42,006.55 in Private income. However, six of the sub-accounts (Bounty Trade Show, MV Mendocino, Coupon Book, Crab & Wine, Wine & Mushroom, and State Fair) show income totaling \$37,463.46. The expenses for these six items totaled \$88,471.93 leaving a net loss for those items of \$51,008.47.
7. No specific information is provided on the Profit and Loss regarding the source of the “Other Private Income.”
8. Staff expense, including salaries, payroll taxes, health and workers compensation insurance, and retirement total \$191,637.21. In addition to staff, the Alliance paid professionals for the following: Legal, \$3,592.23; Accounting, \$300; Bookkeeping, \$3,925.00; and Information Systems, \$2,825.00.
9. Occupancy and office expense, including rent, utilities, telephone, office supplies, postage, janitorial, and equipment total \$36,628.48. The Alliance shares office space with another private alliance that pays \$250 per month directly to the landlord (according to the notes in the Reviewed Financial Statement), but the responsibility for utilities, maintenance, liability insurance, and janitorial services is not explained. It appears that the Alliance may be supporting the other private alliance with unreported goods and services.
10. Redwood Empire Association (REA) dues are \$12,000. The County does not have answers to the following questions: Why is this money going through the Alliance contract instead of being paid directly by the County? Who decided the amount? Did the County fund the REA before funding the Alliance? What expertise does the Alliance have that requires this funding be channeled through them? What does REA do to justify the \$12,000? How does that differ from the Alliance’s job?

Documents, including Alliance minutes and memo’s from the Alliance director, reviewed at the CAO’s office, indicate that the Alliance director has an active role in the REA and has been serving on a “Transition Committee.” The director has written many documents and memos

proposing considerable reform for the REA with the possibility of having a board of directors that includes at least one county supervisor from each of the participating counties.

11. Internet costs totaled \$35,484.40. The costs included ISP Fees, Internet Promo Fees, Domain Names, Allied Site Costs, Site Content Development, Lodging Availability, and the major account, Management Contract for \$30,000.00. The Grand Jury was unable to examine this contract to determine services provided.

The Alliance maintains three web sites: goMendo.com, goMendo.net, and goMendo.org. The only one actually used for promotion is goMendo.com. One site, goMendo.net, only gives information regarding the interactions between the Grand Jury and the Alliance. The site for internal use, goMendo.org, purports to be for connecting Alliance members with a number of links, but the not all links are active.

In comparison with the costs for Internet services in a neighboring county's visitors' bureau, the costs for these services are excessive.

12. Alliance minutes show other expenses not included on the Profit and Loss. Minutes for the August 9, 2001 meeting state: "In exchange for listing them [telephone yellow pages] in our printed materials, MCA will receive ads on the front cover of the Lake/Mendocino directory, a yellow-page display ad and a display ad in the winery/attractions section of the directory. Value of the ads is approximately \$15,000." Ultimately the cover ad appeared as a self-serving front-page ad promoting the Alliance and not the County.

Exchanges of services should have been reported as income and expenses on the Alliance's financial statements.

The Grand Jury could not determine if the Alliance has made other such arrangements on behalf of the County.

The County and the Contract

Findings

13. The Contract Item 8.2. states: "CONTRACTOR agrees to maintain and to provide to COUNTY access during normal business hours to, and the right to examine, all records including, but not limited to: general ledger, personnel records, payroll records, canceled checks, revenue and expenditure records and related documents and records, to assure proper accounting of funds and performance of contract Agreement in accordance with instructions provided by COUNTY."

The CAO's office did not know what these instructions were.

Contract Item 8.C. states: "COUNTY and/or its appropriate audit agency shall have the right to audit and inspect any books and records of the

CONTRACTOR which pertain to services rendered under the terms of this Agreement.”

The CAO’s office has no records of County officials inspecting Alliance books and records. After receiving the third quarterly report on April 24, 2002, the County Economic Development Coordinator reviewed the general ledger. He told the Grand Jury that he was a generalist and did not have the expertise or recall to provide specific information. In the past, the CAO’s office has relied on information presented by the Alliance to formulate recommendations for the BOS.

Even though the Alliance director wrote publicly that he has invited the Grand Jury to come to the Alliance office, the November 1, 2001, letter stated: “Let’s discuss what you’d like to know. We’ll see if we can provide it to you.”

In May 2002, the Alliance offered access to their office, and the Alliance would determine what records could be available, but the Alliance director has not confirmed an appointment, or that the bookkeeper would be available.

On June 4, 2002, the CAO proposed that the BOS form an ad hoc committee consisting of the CAO, County Auditor-Controller, and two Supervisors, who would inspect the records. The Grand Jury has requested that three Grand Jurors be included on the committee and participate in the inspection. No information has been received regarding the request or the date of inspection.

14. The Contract, Item 9 requires the Alliance to file copies of its business license with the Board of Supervisors and the County Administrative Office. On June 11, 2002, copies of the license had not been filed.
15. The Contract, Item 11 states: “Contractor, at its expense, shall secure and maintain at all times during the entire period of performance of this Agreement, insurance as set forth below with insurance companies acceptable to the COUNTY for COUNTY’S protection, its elected or appointed officials, employees and volunteers, CONTRACTOR and subcontractor from any and all claims which may arise from operations under this Agreement....”

“CONTRACTOR shall not commence work, nor shall CONTRACTOR allow employees or subcontractors or anyone to commence work contemplated through this Agreement until all insurance required hereunder has been submitted to and accepted by COUNTY. Failure to submit proof of insurance as required herein may result in awarding said Agreement to another bidder.”

Grand Jury attempts to obtain copies of insurance policies by subpoena were unsuccessful.

When the Grand Jury reviewed CAO office files in May 2002, no copies of insurance policies or information that indicated a review were in the files. No one from the County had reviewed the insurance coverage. The Alliance had obviously commenced work, in breach of the Contract. On June 11, 2002, the Economic Development Coordinator stated that he had just requested copies of the policies from the Alliance.

Relationship of the County and the Alliance

The Alliance purports to be the official Mendocino County source of visitor information. According to communications between the Alliance and the CAO's office, Alliance drafted its responses to the 2000–2001 Grand Jury report in collaboration with the CAO's office, which drafted responses for the BOS. At the same time the Alliance professes independence and that it has only a contractual relationship with the County.

The Contract Item 13 specifies the "Relationship of Parties" and states: "It is expressly understood that this is an Agreement by and between two independent contractors and that it is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship whatsoever other than that of independent contractor."

And the insurance requirement provision states: "Failure to submit proof of insurance as required herein may result in awarding said Agreement to another bidder."

Findings

16. The Contract Item 2 states the Contractor is to "develop and implement a comprehensive program as attached hereto as Exhibit 'A' which will promote and foster increased tourism in Mendocino County and which will promote and foster the marketing of agricultural products which are produced in Mendocino County."

The County is contracting for promotional services from what appears from other contract language to be a self-sufficient entity. Language in the Contract states, "Contractor shall be financially liable for funding the expenses associated with the review process described above" and "CONTRACTOR shall be financially responsible for all audit exceptions resulting during the performance of this Agreement."

In reality, the Alliance could not function internally (office space, utilities, insurance, office equipment, accounting, legal fees, .org & .net web sites) without the County contract funding. In addition to funding promotion, the County is also funding the entity itself.

17. Alliance January 17, 2002 minutes report that property insurance coverage was raised to cover the costs of a new computer, scanners, and fax machines. A newspaper reported that \$22,000 had been spent on

equipment. The equipment is most likely a necessary expense to perform marketing tasks; however, at the conclusion of the Contract, who owns the property purchased with County funds? The Contract makes no provision for this scenario.

18. The Alliance response to the 2000–2001 Grand Jury report was included with the BOS response. The Alliance collaborated with the CAO’s office in preparing the report, exchanged memos and drafts with the Economic Development Coordinator, and then had the approval of the Alliance Board of Directors. Rather than write an independent report, as separate agencies have done in the past, the Alliance referred continuously to the “County” report, agreeing or adding more verbiage. The response was issued just like the responses of County departments.
19. The August 6, 2001 memo, “Grand Jury Response,” from the Alliance director to the County Economic Coordinator contained suggestions for changes in the draft County response. Why was the CAO’s office getting input for the BOS response from the Alliance?
20. When collaborating on the response to the 2000–2001 Grand Jury report, the Alliance director wrote about the relation between the County and the Alliance in a memo to the Economic Development Coordinator, stating: “If the core defense is that this is just a contract between the County and a specialized supplier of marketing and promotional services, then you open yourself to the line of reasoning that says ‘Then put it out to bid if it’s just a contract.’ But the Alliance provides far more of substance than only the services. It is a dialogue—dare I say ‘public-private partnership’—between the County (sic) with its public economic goals and the industries that have to act to secure those goals.”
21. The BOS has attempted to exercise a significant degree of control over MCA. Last years MCA Task Force and resulting BOS workshop show that the BOS had specific tasks that the Alliance was supposed to do and that the Alliance was attempting to address the BOS concerns.
22. The BOS requested that a representative of the CAO’s office be included on the Alliance Board of Directors to increase the quality of reporting and accountability to the County.

October 6, 2000, the Alliance director wrote a memo titled “Are you sure?” to the CAO regarding the CAO’s involvement as an Alliance director. The CAO requested an opinion from County Counsel. October 9, 2000, County Counsel replied: “My advice is to keep at arms length if you can. I don’t see a legal conflict of interest issue, but there may be a perception created which could cause a questioning of any independent advice you may be asked to give to the BOS with respect to County/Alliance issues.”

The Alliance amended its bylaws to allow for the addition of the CAO on the Board of Directors.

23. In documents filed in Superior Court, the Assistant District Attorney wrote: “The County exercises considerable control over the Alliance as their chief financial partner. The Alliance is an extension of the County department of promotion headed by the CAO, and the CAO seat on the Alliance Board of Directors serves to cement the relationship between the Alliance and the County. The promotional activities are in fact County functions and the County’s budgetary allocation is an investment for which the Alliance must account for its expenditures and return on such investment. This unique relationship transcends that of independent contractors thereby creating an entrustment of public funds and fiduciary duties.” The Superior Court ruled that the laws governing the Grand Jury do not countenance this argument.

Recommendations

- F. BOS require quarterly documenting of non-public source cash matching funds. (Finding 1)
- G. BOS require the CAO to submit Financial Statements to the Board. (Finding 2)
- H. As part of the contract, BOS require an independent financial audit. (Finding 3)
- I. BOS include language that will include Grand Jury access in any future contracts that require County access to information. (Findings 1–23)
- J. BOS continue to require the Alliance to develop methods for measuring return on investment. (Finding 4)
- K. BOS ensure that controls, monitoring, and auditing procedures are specified in any promotional contract and that the County personnel responsible for contract oversight provide that oversight. (Findings 1–16)
- L. BOS determine the amount of County funding, if any, for the Redwood Empire Association and pay those funds directly to the organization. (Finding 10)
- M. BOS include, in any contract, provisions for County property ownership when the County has provided the funds to purchase the property. (Finding 16)
- N. BOS define the relationship between the County and the Alliance, and instruct the CAO to write its own response to the Grand Jury report. (Findings 18 & 19)

Comment: Additional Information on Why the Alliance Promotes Only Lodging and Wine

A September 1, 2000 Alliance memo on file in the CAO’s office, “Proposed Committees and Task Forces for Fiscal Year 2000–2001,” stated regarding the “Agriculture and Food Processing Committee”:

A basic theory of the Alliance is that Alliance staff will not organize a sector—identify who the firms are, what their products are, where they are distributed, determine and represent what that sector’s positions and interest are, and to facilitate participation in Alliance programs. The sectors are supposed to do that for themselves. Alliance staff is supposed to organize overall marketing programs and incorporate sectors that are already organized into those programs. Staff can’t organize sectors for two reasons. First, MCA does not have the money to fund such an effort, and second, think of all the unorganized sectors that may want to participate in MCA—food processing and agriculture, attractions, arts, restaurants, etc. If MCA staff were to organize one sector, why wouldn’t we organize them all? That would be an overwhelming burden.

The Joint Study focused on Tourism and Ag. Ag and Food Processing is more than wine. While a major strategic agreement was to focus initially on coastal tourism and wine as the sectors that can most easily increase jobs, incomes and tax base, tourism to the other parts of the county and promotion of non-wine food products are supposed to be a part of the Alliance’s programs.

The Organizing Board didn’t want to see the various food processing and agricultural business cut out of participation in the Alliance. But there was no private sector association like MCLA or MWA that was organizing those sectors to participate in the Alliance’s marketing programs. Therefore, the Farm Bureau and Farm Advisor agreed to use the staffs and resources of their respective organizations to perform the organizing function for these sectors. But this committee has never gotten off the ground.

[A local grocery manager] has proposed that a program be organized that will feature an “end aisle” display for Mendocino products to be distributed in Northern California. This program can additionally be a very effective communication tool for our overall “Mendocino message,” can specifically promote our food and wine events, and might be an effective cross marketing tool with wine. [Manager] is willing to have [his market] play a role in that distribution system. But what he needs is for the food processors to be organized. MCA Staff does not have the time to do that.

The first year of the contract with the County the Alliance marketed a variety of Mendocino County food products at an exhibit in Chicago.

Response Required

Mendocino County Board of Supervisors

Mendocino County Auditor-Controller (Findings 1, 3, 5–17;
Recommendation C)

Recommendation Implementation Schedule