

STATE PROCUREMENT PROCESS II



**Report #C17-01
February 2017**

EXECUTIVE SUMMARY

State Procurement Process II

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Establishing criteria for solicitation waiver eligibility will help protect the state from potential legal issues resulting from lack of consistency and transparency when approving solicitation waivers. The Purchasing Division Administrator is authorized to approve solicitation waivers for contracts he determines are not adapted to competitive selection. However, except for professional services, there are no established criteria to guide him. Without established criteria, there is a potential for different determinations on similar contracts and lack transparency for solicitation waiver approvals.

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Including established criteria for solicitation waiver eligibility in statute, regulation, or the State Administrative Manual (SAM) will increase the authority and transparency of solicitation waiver approvals. With the exception professional services, there are no criteria in statute, regulation, or SAM.

Include Requirements in SAM for Supporting Documentation and Agency Head Authorization.....page 4

Including requirements in SAM for agencies to provide supporting documentation with the solicitation waiver and requiring agency heads to authorize the waiver will increase the efficiency of the approval process and ensure agency heads are knowledgeable about the waivers. Agencies do not always include supporting documentation with solicitation waivers. When this occurs, the Purchasing Division must obtain the documentation, which can be time consuming. The solicitation waiver requires the signature of the agency head. However, some waivers were signed by mid-level management. In these instances, agency heads may not be knowledgeable of these waivers.

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Modifying Nevada Administrative Code (NAC) to authorize the Purchasing Administrator (administrator) to approve solicitation waivers for commodity purchases not adapted to competitive selection will enhance efficiency for agencies by allowing them to forgo the competitive selection process of obtaining multiple bids. NAC only allows the administrator to approve solicitation waivers for service contracts only. Similar to contracts for services, agencies may need solicitation waivers for commodity purchases not adapted to competitive selection as only one practical source exists. Other states we surveyed allow solicitation waivers for services and commodities.

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Tracking expenditures made to vendors allows the Purchasing Division (division) to determine the amount of business the vendor is receiving from the state. Knowing the amount of business can assist the division in deciding which vendors to offer mandatory MSAs, which will encourage vendors to offer lower pricing. The division does not have sufficient expenditure data to determine the amount of business the vendor is receiving from the state

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INTRODUCTION

As part of our program to audit state contracts, we conducted an audit of the state's processes for solicitation waivers and master service agreements. The audit's scope and methodology, and acknowledgments are included in Appendix A.

Our audit focused on the following objectives:

- ✓ Can the state improve the solicitation waiver process?
- ✓ Can the state improve the master service agreement procurement and management processes?

Purchasing Division Response and Implementation Plans

We provided draft copies of this report to the Department of Administration and Purchasing Division officials for their review and comments. Their comments have been considered in the preparation of this report and are included in Appendix B. In their responses, they accepted our recommendations. Appendix C includes a timetable to implement our recommendations.

NRS 353A.090 specifies within six months after the final report is issued to the Executive Branch Audit Committee, the Administrator of the Division of Internal Audits shall evaluate the steps the Purchasing Division has taken to implement the recommendations and shall determine whether the steps are achieving the desired results. The administrator shall report the six month follow-up results to the committee and department officials.

The following report contains our findings, conclusions, and recommendations.

Can the State Improve the Solicitation Waiver Process?

The state can improve the solicitation waiver process by:

- Establishing criteria for solicitation waiver eligibility;
- Including criteria in legislation or the State Administrative Manual;
- Including requirements for supporting documentation and agency head authorization for solicitation waivers in the State Administrative Manual; and
- Modifying Nevada Administrative Code to authorize the Purchasing Administrator to approve solicitation waivers for commodities.

Establishing and including criteria for solicitation waiver eligibility in statute, regulation, or the State Administrative Manual (SAM) will help protect the state from potential legal issues by increasing consistency, accountability, authority, and transparency of the solicitation waiver approval process.

Including requirements for supporting documentation in SAM to justify the solicitation waiver will increase the efficiency of the approval process by reducing the necessity for the Purchasing Division (division) to obtain the documentation. Additionally, including requirements for agency head authorization for the solicitation waiver will ensure they are knowledgeable of the waiver.

Modifying Nevada Administrative Code (NAC) to authorize the Purchasing Administrator (administrator) to approve solicitation waivers for commodity purchases will enhance efficiency for agencies by allowing them to forgo the competitive selection process.

Establish Criteria for Solicitation Waiver Eligibility

The division should establish criteria to identify contracts eligible for solicitation waivers. Established criteria will help protect the state from potential legal issues resulting from a lack of consistency, accountability, authority, and transparency when approving solicitation waivers which permit agencies to forgo the competitive selection process.¹

¹ NRS 333 and NAC 333 require agencies to obtain multiple bids or conduct a formal request for proposal to ensure contracts and commodity purchases are executed fairly and under competitive selection.

Agencies May Need Solicitation Waivers

Agencies may need solicitation waivers when the competitive selection process is not practical as only one source exists for what they need. Waivers may be necessary for contracts involving unique features or qualifications, such as proprietary products, warranty issues, and integration. For example modification to an existing computerized system which may only be performed by the original vendor as the system is proprietary, or purchasing replacement parts which may void a warranty or will not integrate with the existing equipment.

The competitive selection process is often time consuming and can take up to a year to complete. Utilizing the competitive selection process when only one source exists results in an inefficient use of state resources, unnecessary delays in delivering essential services to the public, and potential consequences from not meeting mandated deadlines.

Lack of Waiver Criteria May Result in Legal Issues

With the exception of professional services, criteria identifying contracts eligible for solicitation waivers does not exist.² Without established criteria there is a potential for legal issues from vendor protests resulting from different determinations on similar contracts and lack of authority, accountability, and transparency of solicitation waiver approvals.

NAC 333.150 authorizes the administrator to determine if a contract, by its nature, is not adapted to be awarded by competitive selection and eligible for a solicitation waiver. The administrator can approve a solicitation waiver based on his determination; however, except for professional services, there are no established criteria to guide him. In fiscal year 2016, solicitation waivers were approved for 61 contracts totaling over \$59 million.³

Nevada Local Governments Have Established Criteria

Nevada local governments have established criteria for solicitation waiver eligibility.⁴ Local governments have established general criteria, such as professional services, and specific criteria, such as commercial advertising within a recreational facility operated by a county fair and recreation board.

² Per NAC 333.150, professional services include an expert witness, professional engineer, registered architect, attorney, and accountant.

³ Includes one large contract amendment for \$45 million between the Department of Health and Human Services and HP Enterprise Services, LLC due to the modernization of the Medicare Management Information System. The second largest contract is \$2.1 million.

⁴ Per NRS 332 local governments include counties, cities, towns, school districts, and other specifically noted political subdivisions.

Other Entities Have Established Criteria

Other states and universities have established criteria for solicitation waiver eligibility (see Appendix D). Criteria are noted in various legislation or policies.

Include Criteria in Legislation or SAM

The division should include established criteria in statute, regulation, or SAM to improve the authority and transparency of the division's approvals to waive the competitive selection process on certain contracts. Including the established criteria in statute, regulation, or SAM would increase authority of the division's approvals. Transparency would also be increased as statutes and regulations require legislative approval, and SAM changes require Board of Examiner (BOE) approval, all of which involve some type of public vetting.

Other Entities Include Criteria in Statute

We noted eleven states that include criteria in statute (see Appendix D). Additionally, Nevada local governments include criteria in statute.

Include Requirements in SAM for Supporting Documentation and Agency Head Authorization

The division should include requirements in SAM for agencies to provide supporting documentation with the solicitation waiver and agency heads to authorize the solicitation waiver by signature.⁵ This will increase the efficiency of the approval process by reducing the necessity for the division to obtain the documentation and ensure agency heads are knowledgeable of the solicitation waiver.

Agencies Not Providing Supporting Documentation Justifying Solicitation Waivers

The division represents agencies do not always provide supporting documentation with the solicitation waiver. When this occurs, the division must obtain the documentation, which can be time consuming. Supporting documentation may include: results of internet searches, patents, copyrights, and various quotes showing one vendor is significantly less costly than the others.

⁵ The solicitation waiver requires the signature of the head of the using agency. Per NRS 333.020, using agencies means all officers, departments, institutions, boards, commissions, and other agencies in the Executive Branch.

Agencies Not Complying with Requirement for Agency Head Authorization

The solicitation waiver requires the signature of the agency head. However, some have been signed by mid-level management.⁶ When this occurs, the agency head may not be as knowledgeable as they should be of the solicitation waiver, which would forgo the state's competitive selection requirements. Additionally, many of these contracts require BOE approval where agency heads may be questioned for additional information.

Other Entities Require Agency Head Signature on Waivers

Clark and Washoe counties require agency heads to sign the solicitation waiver. This ensures agency heads are knowledgeable of the solicitation waiver.

Modify NAC to Allow Waivers for Commodities

The division should modify NAC to authorize the administrator to approve waivers for commodity purchases, which by their nature are not adapted to competitive selection. This will enhance efficiency for agencies by allowing them to forgo the time consuming competitive selection process upon approval from the administrator. Previous recommendations regarding established criteria and solicitation waiver requirements should apply to waivers for commodities.

NAC Only Allows Waivers for Service Contracts

NAC 333.150 authorizes the administrator to determine if a service contract, by its nature, is not adapted to be awarded by competitive selection and eligible for a solicitation waiver. It does not address commodity purchases, such as copyrighted materials, technology hardware, heavy equipment, automotive parts, and certain mechanical parts that are only available from one vendor. Similar to contracts for services, agencies may need solicitation waivers for commodity purchases not adapted to competitive selection as only one practical source exists.

Other Entities Allow Waivers for Commodity Purchases

Nevada local counties and other states allow waivers for commodity purchases (see Appendix D). These entities have established criteria in statute for commodity purchase solicitation waivers combined with those for service contract solicitation waivers.

Conclusion

⁶ Solicitation waivers were signed by administrative service officers, administrators, deputy directors and other mid-level management positions.

Establishing and including criteria in statute, regulation, or SAM will help protect the state from potential legal issues by increasing consistency, accountability, authority, and transparency of the solicitation waiver approval process. Including requirements in SAM for agencies to provide supporting documentation and agency heads to authorize the solicitation waiver by signature will improve the efficiency of approvals and ensure agency heads are knowledgeable of the waiver. Modifying NAC to authorize the administrator to approve waivers for commodity purchases will enhance efficiency for agencies by allowing them to forgo the competitive selection process.

Recommendations

1. Establish criteria for solicitation waiver eligibility.
2. Include criteria in legislation or SAM.
3. Include supporting documentation and agency head authorization requirements in SAM.
4. Modify NAC to allow waivers for commodities.

Can the State Improve Master Service Agreement Procurement and Management Processes?

The state can improve the master service agreement (MSA) procurement and management processes by:

- Tracking expenditures made to vendors.

This will allow the division to negotiate lower costs by offering mandatory MSAs to vendors who receive a significant amount of business from the state.

Track Expenditures Made to Vendors

The division should track expenditures made to vendors to negotiate lower costs for the state. By tracking expenditures made to vendors the division can determine the amount of business the vendor is receiving from the state. Knowing the amount of business can assist the division in deciding which vendors to offer mandatory MSAs, which will encourage vendors to offer lower pricing.⁷

Division Does Not Have Complete Expenditure Data

The division represents it does not have complete data on expenditures made to vendors. The division only obtains data from vendors who are obligated to report expenditures to the state. In general, only some MSA vendors are obligated to report expenditures. These include vendors for IT consulting, moving services, police radar parts, and printing services.

State Accounting System Tracks Expenditures to Vendors

The state's accounting system tracks total expenditures when determining which vendors are subject to IRS form 1099 reporting.⁸ The system could potentially be used to obtain expenditure data for vendors. The division could use expenditure data to determine which vendors receive a significant amount of business from the state when offering vendors mandatory MSAs.

⁷ Mandatory contracts require agencies use only the selected vendor.

⁸ The state is required to submit annual form 1099s to vendors and the IRS for any non-corporate vendors receiving at least \$600 during the year.

Other States Have Expenditure Tracking Systems

Other states have systems that track expenditures made to vendors (see Appendix D). States represent they use automated procurement systems to track expenditures which allow them to determine agency use and spending amounts, enterprise need, and types of items purchased. This information can be used to offer vendors mandatory MSAs.

Automated Procurement Systems Have Other Benefits

In addition to tracking expenditures, automated procurement systems allow states to create a one stop marketplace for agencies to purchase goods and services. The system provides a more efficient procurement process by automating workflow and approvals, receipt of bids and proposals, requisitions and purchase orders, and awarding contracts.

Automation results in the reduction of procurement paper work and administrative support, faster order processing times, and reduced overhead and processing costs. Automated systems also provide more visibility and transparency of the state's procurement activities for the public.

Division Requested Approval for Purchasing eProcurement

The division has requested approval to purchase an eProcurement system in the next biennium, which will fully automate the procurement of goods and services statewide. The state is currently considering purchasing a new Enterprise Resource Planning (ERP) system. The division represents the eProcurement system would integrate into a modern day ERP system.

Conclusion

Tracking expenditures will allow the division to negotiate lower costs by offering mandatory MSAs to vendors who receive a significant amount of business from the state.

Recommendation

5. Track expenditures made to vendors.

Appendix A

Scope and Methodology, Acknowledgements

Scope and Methodology

We began the audit in July 2016. In the course of our work, we interviewed staff from the following agencies: Department of Administration, Purchasing Division and Enterprise Information Technology Services, and various other state agencies. We reviewed Nevada Revised Statutes, Nevada Administrative Code, State Administrative Manual, the Purchasing Division's contract documents and instructions, and current state contracts. We surveyed other states to gain an understanding of their contract procurement processes. We concluded field work and testing in December 2016.

We conducted our audit in conformance with the *International Standards for the Professional Practice of Internal Auditing*.

Acknowledgements

We express appreciation to all the agencies that provided information on the state's contract procurement process for their cooperation and assistance throughout the audit.

Contributors to this report included:

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Appendix B

Purchasing Division Response and Implementation Plan

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Administrator

STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
Purchasing Division

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January 11, 2017

MEMORANDUM

To: Steve Weinberger | Administrator | Internal Audits Division

From: Jeffrey Haag, Administrator
Nevada Department of Administration - Purchasing Division

CC: Patrick Cates | Director | Department of Administration
Lee-Ann Easton | Deputy Director | Department of Administration

Subject: Purchasing Response Executive Branch Audit | Solicitation Waiver & MSA

State Purchasing Division in coordination with the Department of Administration appreciates the opportunity to respond to Governors Finance Office audit recommendations. We agree with the recommendations and will work as outlined below to implement the recommendations over the next 12 months.

Internal Audit Recommendation #1

1. Establish Criteria for Solicitation Waiver Eligibility

Division Response

Purchasing Division agrees with the recommendation of establishing criteria for solicitation waivers. In order to deliver on this recommendation we will research current criteria established for Nevada local government, criteria used by other State Governments and local government entities. Proper evaluation and development of criteria will take 6 months and will be in place by August of 2017.

Internal Audit Recommendation #2

2. Include criteria in legislation or SAM

Division Response

Purchasing agrees with the recommendation to have criteria for solicitation waivers reduced to policy. The criteria will be established in coordination with Office of the Attorney General. It is the recommendation of the division to establish the criteria and publish in the State Procurement/Contracting manual which will be referenced in SAM. As recommended in Audit C16-01 we are currently developing the Procurement Manual and it will be ready for circulation by August of 2017 and will include the Solicitation Wavier criteria.

Internal Audit Recommendation #3

3. Include supporting documentation and agency head authorization requirements in SAM.

Division Response

Purchasing agrees with the recommendation to require specific supporting documentation and require authorization from the Department Head. As with the solicitation waiver criteria it's the division recommendation to publish these requirements in the States Procurement/Contracting Manual as required in Audit C16-01. The manual is currently in development and will be published in August of 2017 with the requirements outlined in recommendation #3.

Internal Audit Recommendation #4

4. Modify NAC to allow waivers for commodities.

Division Response

Purchasing agrees with the recommendation to modify NAC to allow waivers of commodities. Given the pending legislative session the division will work with OAG to modify NAC by December 2017.

Can the State Improve Master Service Agreement Procurement and Management Processes?

Internal Audit Recommendation #5

5. Tracking expenditures made to vendors.

Division Response

Purchasing agrees with the recommendation to track expenditures made to vendors. As outlined in the audit report current ability to appropriately track state spend with individual vendors is limited. As a result the division is pursuing a new technology initiative that will automate our completely manual process while providing the analytics we need to comply with the recommendation and better leverage the States spend. There is a pending BDR that will allow us to pay for the system. Pending passage we anticipate the system to be up and running by December 2017. Business intelligence will be available up on roll out of the solution.

Thank you for the opportunity to respond to this Audit. We look forward to complying with the recommendation over the course of the next year.

Regards,

Jeffrey Haag
Administrator State Purchasing

Appendix C

Timetable for Implementing Audit Recommendations

In consultation with the Purchasing Division (division), the Division of Internal Audits categorized the five recommendations contained within this report into implementation time frames (i.e., *Category 1* – less than six months; *Category 2* – more than six months). The division should begin taking steps to implement all recommendations as soon as possible. The target completion dates are incorporated from Appendix B.

Category 1: Recommendations with an anticipated implementation period of less than six months.

<u>Recommendations</u>	<u>Time Frame</u>
1. Establish criteria for solicitation waiver eligibility. (page 6)	Aug 2017
2. Include criteria in legislation or Sam. (page 6)	Aug 2017
3. Include supporting documentation and agency head authorization requirements in SAM. (page 6)	Aug 2017

Category 2: Recommendation with an anticipated implementation period exceeding six months.

<u>Recommendation</u>	<u>Time Frame</u>
4. Modify NAC to allow waivers for commodities. (page 6)	Dec 2017
5. Track expenditures made to vendors. (page 8)	Dec 2017

The Division of Internal Audits shall evaluate the action taken by the division concerning report recommendations within six months from the issuance of this report. The Division of Internal Audits must report the results of its evaluation to the committee and Department of Administration officials.

Appendix D

Entities Surveyed

Entities with Criteria for Solicitation Waiver Eligibility

Alaska, Idaho, Florida, Minnesota, University of California San Diego, Northwestern University, Penn State, Rutgers University, Stanford University, and University of Louisville.

Entities With Criteria in Statute

Alaska, Alabama, Arkansas, Arizona, Florida, Kansas, North Dakota, Oregon, Pennsylvania, South Dakota, and Washington.

Entities Which Allow Waivers for Commodity Purchases

Clark County, Washoe County, Alaska, Alabama, Arkansas, Arizona, Florida, Idaho, Kansas, Minnesota, North Dakota, Oregon, Pennsylvania, South Dakota, and Washington.

States With Expenditure Tracking Systems

Alabama, Alaska, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia, and Wisconsin.⁹

⁹ Per National Association of State Procurement Officials' 2016 State Procurement Practices Survey Results, these states use an eProcurement or ERP system.