

# STATE PROCUREMENT PROCESS I



Report # C16-01  
June 2016

<b>EXECUTIVE SUMMARY</b> <b>State Procurement Process I</b>
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**Introduction**.....page 1

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**Objective: Can the State’s Contract Procurement Process be Improved?**

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**Require Approval of RFPs**.....page 5

Requiring approval of request for proposals (RFPs) prior to solicitation will protect the state from undue risks, unforeseen liabilities and vendor nonperformance. Additionally, this will ensure vendors are aware of all specific requirements to be included in the contract and can decrease the need for negotiations with selected vendors. There are no requirements for RFP terms and conditions to be approved by appropriate staff prior to solicitation. In the event the Office of the Attorney General (OAG) or Enterprise Information Technology Services (EITS) believes additional requirements not included in the RFP are needed in the contract, the state must negotiate with the vendor or cancel the RFP. Negotiations or cancellations can result in additional costs to the state.

**Develop a Multi-Step Award Process**.....page 6

Developing a multi-step award process will allow the state to negotiate with multiple vendors before awarding the contract. Negotiating with multiple vendors places the state in a stronger position to ensure the best value and reduces costs associated with consecutive negotiations or creating a new RFP. The state only negotiates with the selected vendor; if negotiations are unsuccessful the state must either negotiate with the next highest scoring vendor or cancel the RFP, resulting in additional costs to the state.

**Develop Guidelines for Attorney General’s Review**.....page 7

Developing guidelines for RFP and contract reviews performed by Deputy Attorney Generals (DAGs) will ensure consistency and help protect the state. There are inconsistencies in the reviews performed by DAGs. DAGs’ reviews range from ensuring the approved template has been used to a full review of all terms and conditions. When DAGs do not completely review all terms and conditions there is greater possibility the state could be exposed to unnecessary risks and unforeseen liabilities.

**Develop Checklist for Agencies to Use to Reconcile Contract Summary Forms to Contracts**.....page 9

Developing a checklist for agencies to use to reconcile contract summary forms to contracts will ensure all pertinent information is provided to the Board of Examiners (BOE) and clerk to help them make informed decisions. Agencies are required to prepare contract summary forms that summarize pertinent contract information. Contract summary forms and contracts are submitted to the Budget Division. However, only the contract summary form is submitted to BOE members for their review and

consideration of contract approval. Accordingly, pertinent information omitted from the contract summary form is not provided to the BOE.

**Update Risk Management’s Insurance Manual.....page 10**

Updating the Risk Management Division’s (RM) insurance manual will ensure contracts include adequate coverage to protect the state from potential liabilities arising from evolving risks. RM’s insurance manual has not been updated since March 2007.

**Approve Insurance Coverages in RFPs and Contracts.....;.....page 11**

Requiring RM to approve insurance coverages for RFP and contracts will help ensure the state is sufficiently protected. Agencies are required to consult RM to ensure sufficient insurance coverage is included in the contract; however, RM’s recommendations are not binding on the agency, which may expose the state to potential liabilities.

**Develop Guidelines for EITS Review and Technology Investment Requirements (TIR).....page 11**

Developing guidelines for EITS reviews of RFPs, contracts, and TIR requirements will ensure RFP and contract reviews protect the security and integrity of state data from unnecessary risks. Moreover, guidelines for TIR requirements would ensure projects conform to current state IT infrastructure, technical standards, and enterprise initiatives. EITS’ reviews are not comprehensive and specifications in TIRs are not compared to technical specifications in contracts. Additionally, inconsistencies exist regarding when an additional TIR will be required if contracts are modified.

**Replace SAM with Comprehensive Contract Procurement Manual.....page 13**

Replacing the State Administrative Manual (SAM) with a comprehensive contract procurement manual will ensure an efficient and consistent contract procurement process. The state has guidelines for the contract procurement process in Nevada Revised Statutes, Nevada Administrative Code, SAM, and on the Purchasing Division’s website, but there is no comprehensive contract procurement manual.

**Create a Central Contract Unit.....page 14**

Creating a central contract unit will ensure reviews of RFPs and contracts are consistent and help protect the state. This could also expedite the contract procurement process. There are inconsistent reviews regarding contract language, insurance requirements, and specifications in IT contracts. Additionally, reviews are often performed by multiple agencies and may not be done simultaneously, extending the time required to complete RFPs and contracts, resulting in additional costs to the state.

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**Appendix A** .....page 15

Department of Administration/Office of the Attorney General  
Response and Implementation Plans

**Appendix B**.....page 20

Timetable for Implementing Audit Recommendations

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# INTRODUCTION

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The 2015 Nevada State Legislature approved two new Executive Branch Auditor positions in the Governor's Finance Office, Division of Internal Audits to audit state contracts. The audits are intended to provide recommendations to improve the state's contract procurement and management processes.

This is our first report of the new state's contract audit program. This audit focuses on the state's contract procurement process.

## **Nevada's Contract Procurement Process**

Legislation guiding Nevada's contract procurement process was adopted in 1963 under Nevada Revised Statute (NRS) 333. The statute authorizes the Administrator of the Purchasing Division (division) to designate methods for procuring contracts. The procurement process begins with contract solicitation. The most commonly used methods are the informal solicitation and the formal solicitation.

### **Procurements Using Informal Solicitations**

Informal solicitations are used for contracts less than \$25,000. Agencies wishing to enter into contracts must contact at least three potential vendors. Vendors must be informed of the contract's scope of work, insurance requirements and deadlines for accepting bids. Agencies may contract with the lowest responsible vendor.<sup>1</sup>

All contracts must be signed by the agency head, the agency's Deputy Attorney General (DAG), and the vendor. Contracts over \$2,000 and less than \$25,000 must also be signed by the clerk of the Board of Examiners (BOE).<sup>2</sup> Our audit did not address procurements using informal solicitations as these contract amounts are immaterial with respect to all contracts issued by the state.

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<sup>1</sup> A responsible vendor has the wherewithal to deliver the goods/services.

<sup>2</sup> The Director of the Governor's Finance Office/State Budget Director serves as the clerk of the BOE.

## Procurements Using Formal Solicitations

Contracts \$25,000 and over require a formal solicitation using a request for proposal (RFP), which is a written document listing the requirements and specifications of a contract to be awarded by competitive selection. The RFP must include an overview of the project, a detailed scope of work, insurance requirements, along with a description of information to be provided by the vendor. Agencies are responsible for ensuring the RFP contains all pertinent information required for the scope of work, insurance, and other terms.

RFPs for contracts \$100,000 and over are facilitated by the division. The division ensures agencies comply with applicable state purchasing guidelines.

### Advertising the RFP

Upon approval by the agency head, the RFP is advertised in a newspaper of general circulation and the division's website.<sup>3</sup> Additional notifications are sent to vendors registered with the division and may also be sent to other vendors per agencies' request.

### Proposal Evaluation and Contract Award

Interested vendors submit proposals, which are scored based on pre-established criteria. NRS 333.335 requires proposals be evaluated by a committee or agency head; however, committees are almost always used. The committee selects the highest scoring vendor. If the vendor expressed exceptions or assumptions to the RFP, these must be negotiated.<sup>4</sup> Negotiations are usually handled by the agency; however, may involve their DAG and the division if needed. Upon successful negotiations the contract is awarded.

### Contract Approval

Contracts \$25,000 but less than \$50,000 require approval of the vendor, agency head, DAG, and clerk of the BOE. In addition, contracts \$50,000 and above require approval of the BOE.

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<sup>3</sup> The division specifies the Las Vegas Review Journal and Reno Gazette Journal as newspapers of general circulation.

<sup>4</sup> Exceptions occur when a vendor objects to a contract term or condition. Assumptions occur when a vendor takes for granted a term or condition in the contract without proof. For example, ambiguity when payments occur, type of currency, or exchange rates.

## Objective and Scope

Our audit focused on the following objective:

- ✓ Can the state's contract procurement process be improved?

We began the audit in January 2016. In the course of our work, we interviewed staff from the following agencies: Governor's Finance Office - Budget Division; Department of Administration - Purchasing Division, Risk Management Division, and Enterprise Information Technology Services; Office of the Attorney General; and the Office of the State Controller. We reviewed Nevada Revised Statutes (NRS), Nevada Administrative Code (NAC), State Administrative Manual (SAM), 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 May 2016.

We performed our audit in accordance with the *Standards for the Professional Practice of Internal Auditing*.

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:

Vita Ozoude, CMA, CGMA, CPA, MBA  
Executive Branch Audit Manager

Catherine Brekken, CPA  
Executive Branch Auditor

Jaynalynn Seley, MBA  
Executive Branch Auditor

**Department of Administration  
Office of the Attorney General  
Response and Implementation Plans**

We provided draft copies of this report to the Department of Administration (D of A) and Office of the Attorney General (OAG) for review and comments. Their comments have been considered in the preparation of this report and are included in Appendix A. In their responses, they accepted our recommendations. Appendix B 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 these agencies have 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 agencies' officials.

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



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## **Can the State's Contract Procurement Process be Improved?**

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The state's contract procurement process can be improved by:

- Requiring approval of RFPs (D of A);
- Developing a multi-step award process (D of A);
- Developing guidelines for Attorney General's review (OAG);
- Developing a checklist for agencies to use to reconcile contract summary forms to contracts (D of A);
- Updating Risk Management's insurance manual (D of A);
- Approving insurance coverages in RFPs and contracts (D of A);
- Developing guidelines for Enterprise Information Technology Services reviews and technology investment request requirements (D of A);
- Replacing SAM with a comprehensive contract procurement manual (D of A); and
- Creating a central contract unit (D of A).

Our review of the state's contract procurement process revealed a lack of consistent and effective reviews of RFPs and contracts. Enhancing existing reviews of RFPs and contracts meeting pre-established criteria would improve the state's contract procurement process.<sup>5</sup> This would ensure RFPs and contracts are developed in a manner which protects the state from undue risks, unforeseen liabilities, and nonperformance by vendors.

### **Require Approval of RFPs**

The Purchasing Division (division) should require RFPs be approved prior to solicitation. RFPs should be approved by appropriate staff, including representatives of the OAG, the division, and Enterprise Information Technology Services (EITS) prior to solicitation. This will ensure terms and conditions in the RFP protect the state. Additionally, this will ensure vendors are aware of all specific requirements to be included in the contract and can decrease the need for negotiations with selected vendors.

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<sup>5</sup> Pre-established criteria may include dollar amount, technical complexity, and risk to the state from goods or services using hazardous materials or sensitive information.

## **No Approval Required for RFPs Prior to Solicitation**

There are no requirements for RFP terms and conditions to be approved by appropriate staff prior to solicitation. In the event the OAG or EITS believes additional requirements not included in the RFP are needed in the contract, the state must negotiate with the vendor or cancel the RFP. Negotiations or cancellations can result in additional costs to the state.

## **Other States Approve RFPs Prior to Solicitation**

We noted other states approve RFPs prior to solicitation.<sup>6</sup> These states represent it is easier to resolve technical, legal, and/or insurance problems in the solicitation process prior to writing the contract. Approving the RFP prior to solicitation will ensure vendors are aware of all specific requirements included in the contract.

## **Recommendation**

1. Require approval of RFPs.

## **Develop a Multi-Step Award Process**

The division should develop a multi-step award process allowing for negotiations with multiple responsible vendors. Negotiations with multiple vendors would ensure the best value for the state and reduce costs associated with the award process.

## **Nevada Only Negotiates With the Selected Vendor**

In Nevada, negotiations occur when a vendor selected by the evaluation committee takes an exception and/or assumption to the RFP requirements. If negotiations are successful or not required, the selected vendor is awarded the contract. However, if unsuccessful, the state must either negotiate with the next highest scoring vendor or cancel the RFP. This can result in higher costs to the state.

Negotiating simultaneously with multiple vendors affords strong leverage, which ensures the best value for the state. Additionally, this would reduce costs associated with consecutive negotiations or creating a new RFP.

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<sup>6</sup> Arizona, Colorado, Idaho, Montana, and Oregon.

## **Other States Use a Multi-Step Award Process**

We noted other states use a multi-step award process.<sup>7</sup> Vendors submit technical proposals which are scored by an evaluation committee. The committee selects multiple responsible vendors best suited for the scope of work. The selected vendors then submit cost proposals which are scored by the committee. Negotiations occur simultaneously with the vendors as to cost, price, specifications, performance, or other terms to achieve the best value. After negotiations, vendors are instructed to submit best and final offers (BAFO), which include all negotiated items. The BAFOs are evaluated by the committee and the vendor with the most advantageous proposal to the state is awarded the contract.

New Mexico represents, “the BAFO step has produced some truly amazing results over the years saving the state literally millions of dollars.” Additionally New Mexico states this is the only step in the process where the vendor is given an opportunity to amend their proposal.

The multi-step award process allows for negotiations with multiple vendors prior to being selected, placing the state in a stronger position of leverage and would reduce costs associated with consecutive negotiations or creating a new RFP.

## **Recommendation**

2. Develop a multi-step award process.

## **Develop Guidelines for Attorney General’s Review**

The OAG should develop guidelines for RFP and contract reviews performed by DAGs. This would ensure reviews are consistent and adequate protections for the state are included.

## **Reviews are Inconsistent**

Inconsistencies exist regarding the reviews performed by the DAGs. Agencies’ represent DAGs’ reviews range from simply ensuring the approved template is used to a full review of all terms and conditions. When DAGs do not completely review all terms and conditions, the possibility is greater the state could be exposed to unnecessary risks and unforeseen liabilities.

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<sup>7</sup> Arizona, New Mexico, and Texas.

Additionally, inconsistencies may occur due to different levels of experience or expertise. OAG staff represent some DAGs may not be familiar with the agency they are assigned to. We noted one instance where DAGs had different interpretations of contract wording. This may limit the DAGs' ability to perform an effective review of a contract.

Reviews may also be inconsistent due to confusion between NAC and SAM requirements regarding the use of the state's approved contract template.<sup>8</sup> SAM 0324 states agencies should use the state's approved contract template; however, NAC 333.150 only states the contracts must conform to the form, terms, and conditions prescribed by the OAG. While most agencies are under the impression using the contract template is mandatory, that may not be the case depending on their individual DAG's interpretation.

For example, an agency did not use the state's approved contract template for a helicopter lease purchase agreement. The agency used the vendor's contract form. The DAG approved the form pursuant to NAC 333.150; however, SAM states agencies should use the state's approved contract template.

#### **Other States Define Legal Review**

We noted other states specifically identify guidelines for legal review.<sup>9</sup> These guidelines include reviewing contracts for language that may result in: limited contractor liability, states assuming liabilities beyond their control, contingent liabilities against the states, and modification of the states' standard terms and conditions.

The OAG has developed a Virtual Transaction Unit which includes OAG attorneys involved with contract review, approval, or negotiating responsibilities. This unit provides a forum to share issues, seek help from other subject matter experts, exchange ideas and create guidelines for a standard review process. Additionally, the OAG has developed training and guidelines for DAGs involved in the contract process.

Developing guidelines would ensure reviews are consistent and adequate protections for the state are included in RFPs and contracts.

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<sup>8</sup> The division has a contract template for agencies to use which has been approved by the OAG.

<sup>9</sup> California, Colorado, and New Mexico.

## **Recommendation**

3. Develop guidelines for Attorney General's review.

### **Develop Checklist for Agencies to Use to Reconcile Contract Summary Forms to Contracts**

The division should develop a checklist, in consultation with the GFO and OAG, to be used by agencies to reconcile contract summary forms to the terms and information in the contract. This will ensure all pertinent information is included on the contract summary form and BOE members are provided with sufficient information to make informed decisions.

#### **Contract Summary Forms May Not Include All Costs**

Agencies prepare a contract summary form which summarizes pertinent contract terms and information. The contract summary form and the contract are submitted to the Budget Division. Only the contract summary form is submitted to the BOE members for their review and consideration of contract approval.

We reviewed the contract summary form for the original Controller's debt collection system contract dated August 4, 2014, and the amendment dated November 20, 2015. The contract summary forms did not include annual maintenance fees beyond the first year and additional license fees required if the state's accounts receivable balance exceeds predetermined thresholds. Therefore, the total contract and amendment costs presented to the BOE members did not reflect the total potential cost to the state.

Developing a checklist will ensure all pertinent information is included on the contract summary form and BOE members are provided with sufficient information to make informed decisions.

## **Recommendation**

4. Develop a checklist to be used by agencies to reconcile contract summary forms to contracts.

## **Update Risk Management's Insurance Manual**

The Risk Management Division (RM) should update the insurance manual to address evolving risks, such as cyber risk. This will ensure contracts include insurance that adequately covers and protects the state from potential liabilities arising from system breaches.

### **Insurance Manual Not Updated Since 2007**

RM's insurance manual has not been updated since March 2007, and may not address evolving risks, such as cyber risk. Agencies with contracts involving new risks occurring since 2007, and contracts involving systems which maintain personally identifiable information (PII) cannot use the insurance manual to determine appropriate insurance requirements. Failure of a vendor to carry sufficient insurance coverage to address evolving risks could result in financial liability for the state. Moreover, failure of a vendor to carry sufficient cyber risk insurance coverage could have a negative impact on Nevada taxpayers resulting from inadvertent exposure of PII. Consequently, this could result in financial liability and negative publicity for the state due to a system breach.

### **RM Updated Manual for Cyber Risk**

On May 23, 2016, RM updated their insurance manual to include cyber risk coverage. RM represents the insurance manual will be updated periodically to address evolving risks.

Updating the insurance manual will ensure contracts include insurance that adequately covers and protects the state from potential liabilities arising from evolving risks.

## **Recommendation**

5. Update Risk Management's insurance manual.

## **Approve Insurance Coverages in RFPs and Contracts**

RM should approve insurance coverages in RFPs and contracts to ensure they sufficiently protect the state.

### **No Review for Sufficient Insurance Coverages**

Pursuant to NAC 333.150, agencies are responsible for consulting RM, either through using the insurance manual or contacting RM directly, to ensure vendors have or obtain sufficient insurance coverages for the scope of work being performed on the contract. However, RM recommendations are not binding on the using agency entering into the contract. Additionally, there is no subsequent review of contracts to ensure vendors are required to obtain sufficient insurance coverage. Consequently, contracts may not include insurance coverages recommended by RM. This may expose the state to potential liabilities.

For example, the Controller's debt collection system contract does not contain sufficient coverage for cyber risks. Requiring RM to approve insurance coverages may have prevented the lack of cyber risk coverage, and the agency could have negotiated with the vendor to obtain appropriate coverage.

RM approving insurance coverages in RFPs and contracts will ensure they sufficiently protect the state.

## **Recommendation**

6. Approve insurance coverages in RFPs and contracts.

## **Develop Guidelines for EITS Reviews and TIR Requirements**

Enterprise Information Technology Services (EITS) should develop guidelines for reviews of RFPs and contracts, and technology investment requests (TIR) requirements. This would ensure RFP and contract reviews are comprehensive and protect the security and integrity of data generated by and under the control of the state from unnecessary risks and liabilities. Additionally, guidelines for TIR requirements would ensure projects conform to current state IT infrastructure, technical standards, and enterprise initiatives.

### **EITS' Reviews Not Comprehensive**

Per SAM 1626, contracts with IT components require review and approval by EITS. Reviews performed by EITS are limited to ensuring a TIR was completed for contracts \$50,000 or more. EITS does not compare the contract to the TIR.

By not performing comprehensive reviews of contracts and comparing them to specifications in the TIR, the state could be exposed to unnecessary risks and projects may not conform to statewide infrastructure and enterprise initiatives.

### Agencies Rely on EITS' Expertise

Agencies rely on EITS to review specifications in contracts to ensure systems protect the security and integrity of data generated by and under control of the state, and perform as intended. This protects the state from potential costs due to system breaches, expensive maintenance, and lack of performance.

The Controller's debt collection system did not meet state security standards regarding PII. A comprehensive EITS review of all IT contracts could identify potential PII issues.

### Inconsistent Requirements for Additional TIRS

Inconsistencies exist regarding when an additional TIR will be required if contracts are modified. For example, the TIR for the Controller's debt collection system was written and approved in 2008 for a system costing \$200,000, using XBRL which was never purchased.<sup>10</sup> The Controller's Office subsequently entered into a contract to create a debt collections system in 2014 for \$1.8 million which does not use XBRL. Although this system is significantly different in price and technical specifications, the Controller's Office represents they were informed by EITS no additional TIR was necessary.

### Other States Have Guidelines For Reviewing IT Contracts

We noted other states have guidelines for reviewing IT contracts prior to approval.<sup>11</sup> IT contracts meeting certain criteria, such as dollar thresholds or complexity, require a strategic plan and business justification be submitted to their IT departments for review. The strategic plan is reviewed to ensure the contract is consistent with the agency's IT goals and objectives, as well as statewide strategies and enterprise initiatives. The business justification is reviewed to ensure it includes a specific time period for development, resource requirements, associated technologies, costs for both the implementation and ongoing operational lifecycle, and risks associated with the project.

Additionally, the Budget Instructions for the 2017-2019 biennium include a requirement that an agency update their TIR if the project schedule, budget, or scope changes by more than five percent from what is currently approved.

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<sup>10</sup> XBRL – eXtensible Business Reporting Language is a standard developed to improve the way in which financial data is communicated.

<sup>11</sup> Arizona, New Mexico, and North Dakota.



Developing guidelines for reviews of RFPs and contracts, and TIR requirements will ensure RFP and contract reviews protect the security and integrity of state data from unnecessary risks. Additionally, this would ensure the project conforms to current state IT infrastructure, technical standards, and enterprise initiatives.

## **Recommendation**

7. Develop guidelines for Enterprise Information Technology Services reviews and TIR requirements.

## **Replace SAM with Comprehensive Contract Procurement Manual**

The division should replace SAM with a comprehensive contract procurement manual that provides complete procedures for implementing requirements of NRS and NAC. Developing a comprehensive manual will ensure an efficient and consistent contract procurement process.

### **No Contract Manual to Help Agencies**

SAM does not provide comprehensive guidance for agencies to implement the requirements of NRS and NAC. Agencies must consult NRS, NAC, SAM, and the division's website for contract procurement guidance.

### **Other States Use Contract Manuals**

Other states have comprehensive contract manuals to guide their agencies in the contract procurement process.<sup>12</sup> The use of these manuals ensures agencies follow consistent contract procurement processes.

Replacing SAM guidance with a comprehensive manual will ensure an efficient and consistent contract procurement process.

## **Recommendation**

8. Replace SAM with a comprehensive contract procurement manual.

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<sup>12</sup> Arizona, California, Colorado, Idaho, Montana, New Mexico, South Dakota, Texas, and Wyoming.

## **Create a Central Contract Unit**

The state should create a central contract unit to review RFPs and contracts meeting pre-established criteria. This will ensure RFP and contract reviews are consistent and protect the state.

### **Reviews are Inconsistent**

We noted concerns in the procurement process regarding contract language, insurance requirements, and specifications in IT contracts. We also noted concerns regarding the length of time required to complete RFPs and contracts.

There are no consistent reviews of these areas, leaving the state exposed to undue risks, unforeseen liabilities, and nonperformance by vendors. Additionally, reviews are often performed by multiple agencies, such as the OAG, the division, and EITS. Consequently, reviews may not be performed concurrently extending the time required to complete RFPs and contracts.

### **Colorado Uses a Central Contracts Unit**

Colorado uses a central contracts unit (unit) whose staff review and approve contracts considered to be high risk. Colorado defines high risk contracts as those that involve, in part, dangerous activities, financing by third parties, hazardous materials, IT systems, and debt collection. The unit is staffed with attorneys with expertise in contracts and insurance. The unit also represents they have access to other subject matter experts to consult with if needed. Additionally, the unit assists agencies with low risk contracts and offers training to all levels of state personnel. The unit represents agencies value their consulting and training because it helps agencies develop contracts with fewer issues.

Creating a central contract unit to review all RFPs and contracts meeting pre-established criteria would provide consistency and alleviate potential exposure to undue risks, unforeseen liabilities, and nonperformance by vendors. Additionally, this could expedite the contract procurement process.

## **Recommendation**

9. Create a central contract unit.

# Appendix A

## Department of Administration Office of the Attorney General Response and Implementation Plans

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Brian Sandoval  
Governor



Patrick Cates  
Director  
LeeAnn Easton  
Deputy Director

STATE OF NEVADA  
DEPARTMENT OF ADMINISTRATION  
DIRECTOR'S OFFICE  
515 E. Musser Street, Room 300 | Carson City, NV 89701  
Phone: (775) 684-0299 | [www.admin.nv.gov](http://www.admin.nv.gov) | Fax: (775) 684-0298

### MEMORANDUM

DATE: June 7, 2016  
TO: Steve Weinberger, Administrator,  
Governor's Finance Office, Division of Internal Audits  
FROM: Patrick Cates, Director   
RE: Response to Executive Audit Report

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Thank you for the opportunity for the Department of Administration (D of A) to be a part of the audit on Nevada's contract procurement process. As always, you and your staff were thoughtful, thorough, and professional. I appreciate the opportunity to provide a response to your recommendations. In general, The D of A agrees with your recommendations and looks forward to working with the Division of Internal Audits and the Office of the Attorney General (OAG).

#### **Recommendation #1: Require approval of RFPs.**

**Response:** D of A agrees with the recommendation to require approval of all RFPs, including those between \$25,000 and \$100,000 which are currently administered by agencies. The Purchasing Division will be the lead agency to develop a plan within the next 6 months for the review and approval of all RFPs in coordination with the Enterprise IT Services Division (EITS), The Risk Management Division (RM), the OAG, and the Governor's Finance Office (GFO) to be implemented in the next 18 months.

In order to implement this recommendation, we will need to conduct an analysis of the number of RFPs conducted by agencies between \$25,000 and \$100,000 and evaluating current processes and staffing levels to accommodate the additional review. This function could also be performed by the Central Contract Unit recommended in this audit report. Additionally, changes may be needed to NRS, NAC, and the State Administrative Manual to implement this recommendation.

#### **Recommendation #2: Develop a multi-step award process.**

**Response:** D of A agrees with recommendation to have the Purchasing Division develop policies for a multi-step award process. In order to accomplish this recommendation at a minimum we will need to review and revise NAC 333.165 and ensure appropriate resources to

effectively negotiate contract terms to include staff training as well as the involvement of the Office of the Attorney General, subject matter experts from the agencies involved, EITS, and RM as needed. Implementation of this recommendation should be achieved no later than the end of December 2016.

**Recommendation #3: Develop guidelines for Attorney General's review.**

**Response:** Although this recommendation is specific to the OAG, the D of A welcomes an expanded role with clear guidelines for OAG review of RFPs and contracts. The Purchasing Division is eager to assist the OAG in development of these guidelines with the assistance of EITS and RM. The D of A believes close coordination with the OAG is essential to the successful implementation of this recommendation.

**Recommendation #4: Develop a checklist to be used by agencies to reconcile contract summary forms to contracts.**

**Response:** The D of A agrees with the recommendation to develop a checklist in consultation with the GFO and OAG to ensure contract summaries reconcile with the terms and conditions of the contract. The checklist should be incorporated into a new contract procurement manual. The Purchasing Division will take the lead on developing this checklist with anticipated implementation no later than the end of December 2016.

**Recommendation #5: Update Risk Management's insurance manual.**

**Response:** The *Insurance Requirements for Contracts Manual* was recently updated and it is posted on the Risk Management Division's website: <http://risk.nv.gov/Contracts/CR/>. It will be periodically updated in the future. This recommendation can be considered fully implemented.

RM has been working closely with State Purchasing and other agencies since 2011 to include cyber liability provisions within contracts on a case by case basis. RM continues to balance the need to protect the State from the contracting risks vs. *the costs associated with inclusion of insurance requirements*. Most vendors view any insurance requirement as an additional expense that they have to absorb as part of the contract or a cost they need to offset by passing it back to the contracting agency. Insurance costs continue to be the common "obstacle" agencies cite when contracting. However, RM has the ability to waive insurance coverage on a case by case basis depending on the contract's scope of work.

**Recommendation #6: Approve insurance coverages in RFPs and contracts.**

**Response:** The D of A agrees with this recommendation. However, RM currently has only part of one position assigned to cover insurance reviews for RFPs and contracts. To ensure the timely processing of RFPs and contracts and maintain acceptable levels of customer service to other agencies, additional staffing resources will be needed for RM. Additionally, requirements should be developed in NAC and SAM. Due to the need for additional resources, full implementation will take a minimum of 18 months.

**Recommendation #7: Develop guidelines for Enterprise Information Technology Services reviews and TIR requirements.**

**Response:** The D of A agrees with this recommendation. EITS will create and document the guidelines for contract reviews that require EITS expertise in a checklist format. EITS will update and document the TIR requirements so they complement the new guidelines created for contract reviews. The guidelines can be developed no later than the end of December 2016. However, EITS lacks existing staffing resources to perform these reviews. Adding additional resources through the biennial budget process may push back full implementation of this recommendation until October 2017.

**Recommendation #8: Replace SAM with a comprehensive contract procurement manual.**

**Response:** The D of A agrees with this recommendation. Currently, State Purchasing has a contract manual; however, it has not been updated in over a decade. In April of 2016 the division began to update the manual with a goal to have a comprehensive Procurement Manual with specific sections for RFPs and contracting. The division is also developing significant changes to its training and contract manager certification to go along with the new manual. Full implementation of this recommendation is anticipated no later than July 2017.

**Recommendation #9: Create a central contract unit.**

**Response:** The D of A agrees with this recommendation. A central contract unit will ensure solicitations and contract reviews are consistent and protect the state. It is the recommendation of the D of A that this unit be created within State Purchasing as a branch unit of the OAG. Integration with State Purchasing will ensure a complete continuum of customer service for agencies for the administration of the contract procurement process. The unit can be started by reallocating existing Purchasing Division personnel to create a dedicated Deputy Attorney General during the current biennium with implementation no later than January 2017. However, to adequately meet the workload for all contracts and procurements, further reorganizations and staffing resources may need to be requested through the biennial budget process. The D of A will work closely with the OAG and the GFO on this recommendation which may require 18 months for full implementation.



RECEIVED

MAY 25 2016

DIVISION OF INTERNAL AUDITS

STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL  
100 North Carson Street  
Carson City, Nevada 89701-4717

ADAM PAUL LAXALT  
*Attorney General*

May 23, 2016

WESLEY K. DUNCAN  
*First Assistant Attorney General*

NICHOLAS A. TRUTANICH  
*First Assistant Attorney General*

Steve Weinberger, CPA  
Administrator  
Division of Internal Audits  
209 E. Musser Street – Suite 302  
Carson City, NV 89701-4298

Re: Draft Audit of State Contract Procurement Process

Dear Mr. Weinberger:

The Office of the Attorney General (OAG) is in receipt of your May 18<sup>th</sup> correspondence and draft audit of the State contract procurement process. As we discussed in the May 20<sup>th</sup> exit conference with representatives of the Governor's Finance Office and the Department of Administration, the OAG is requested to respond to recommendation nos. 3 and 6 only, and responds as follows:

**Recommendation No. 3 – Develop guidelines for Attorney General's review**

Response – The OAG accepts this recommendation.

Recommended time for implementation – Implementation ongoing.

Explanation – The OAG has recently implemented several measures to improve OAG review of contracts pursuant to NRS 333.700(6). Specifically:

- The OAG has instituted regular CLE training on state contracting that is mandatory for all Deputy Attorneys General (DAGs) that review contracts for state clients; the most recent presentation was on April 5 and 32 DAGs were in attendance;
- The OAG has developed and distributed written practice guidelines for contract review by DAGs (copy attached);
- The OAG has established a Virtual Transactional Unit under my supervision, comprised of contracting specialists across all divisions; this Unit works to proactively identify and address legal issues in the contracting process and to review and revise standard terms in the model form contract documents as necessary.

Steve Weinberger, CPA  
May 23, 2016  
Page 2 of 2

In addition, the OAG is more closely scrutinizing contracts that are scheduled to come before the Board of Examiners (BOE) and working closely with the Budget Division to ensure that potential issues are addressed before any BOE consideration. Finally, the OAG is collaborating with the Governor's Finance Office and the Department of Administration on a comprehensive revision of the BOE's contracting policies (set forth in chapter 0300 of the State Administrative Manual) to improve the consistency, efficiency and effectiveness of the contract procurement process.

**Recommendation No. 6 – Review contracts for appropriate insurance coverages**

Response – The OAG does not accept this recommendation.

Recommended time for implementation – Not applicable.

Explanation – Contract insurance requirements are within the purview of the State Risk Manager, not the OAG. However, the scope of OAG review does include confirmation that an insurance schedule specifying insurance coverages and limits has been included in each contract.

If I can be of any further assistance, please do not hesitate to contact me at 775-684-1201 or [bkandt@ag.nv.gov](mailto:bkandt@ag.nv.gov).

Sincerely,

ADAM PAUL LAXALT  
Attorney General

By: 

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Brett Karndt  
Chief Deputy Attorney General  
100 North Carson Street  
Carson City, NV 89701-4717  
Telephone: (775) 684-1201

WBK/klr

Encl. As Stated

cc: Jim Wells, Director, Governor's Finance Office  
Patrick Cates, Director, Department of Administration  
Jeffrey Haag, Administrator, Purchasing Division

## Appendix B

### Timetable for Implementing Audit Recommendations

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In consultation with the Department of Administration and Office of the Attorney General, the Division of Internal Audits categorized the nine recommendations contained within this report into two separate implementation time frames (i.e., *Category 1* – less than six months; *Category 2* – more than six months). These agencies should begin taking steps to implement all recommendations as soon as possible. The agencies' target completion dates are incorporated from Appendix A.

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

<u>Recommendations</u>	<u>Time Frame</u>
2. Develop a multi-step award process. (page 7)	Dec 2016
3. Develop guidelines for Attorney General's review. (page 9)	Dec 2016
4. Develop a checklist to be used by agencies to reconcile contract summary forms to contracts. (page 9)	Dec 2016
5. Update Risk Management's insurance manual. (page 10)	Dec 2016

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#### **Category 2: Recommendations with an anticipated implementation period exceeding six months.**

<u>Recommendations</u>	<u>Time Frame</u>
1. Require approval of RFPs. (page 6)	Dec 2017
6. Approve insurance coverages in RFPs and contracts. (page 11)	Dec 2017
7. Develop guidelines for Enterprise Information Technology Services reviews and TIR requirements. (page 13)	Oct 2017



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|--|----------|
| 8. Replace SAM with a comprehensive contract procurement manual. (page 13) | Jul 2017 |
| 9. Create a central contract unit. (page 14)                               | Dec 2017 |
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The Division of Internal Audits shall evaluate the action taken by the agencies 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 the agencies' officials.