STATE OF NEW HAMPSHIRE
SERVICE CONTRACTING

PERFORMANCE AUDIT REPORT
MARCH 2009

To The Fiscal Committee Of The General Court:

We conducted an audit of the State's service contracting practices to address the recommendation made to you by the Legislative Performance Audit and Oversight Committee, in accordance with the standards applicable to performance audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require we plan and perform the audit to provide a reasonable basis for our findings and conclusions. Accordingly, we performed such procedures as we considered necessary in the circumstances.

The purpose of the audit was to determine the efficiency and effectiveness of State service contracting practices, including which agencies procure services, how procurements are made, and how procurement practices conform to best practices. The audit period includes State fiscal years 2006 and 2007.

This report is the result of our evaluation of the information noted above and is intended solely for the information of the Department of Administrative Services, State agencies, and the Fiscal Committee of the General Court. This restriction is not intended to limit the distribution of this report, which upon acceptance by the Fiscal Committee is a matter of public record.

Office Of Legislative Budget Assistant

March 2009

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ABBREVIATIONS

ADR	Alternative Dispute Resolution
BOA	Bureau Of Accounts
BPW	Bureau Of Public Works
CGS	Certificate Of Good Standing
DAS	Department Of Administrative Services
DHHS	Department Of Health And Human Services
DOJ	Department Of Justice
DOT	Department Of Transportation
DRA	Department Of Revenue Administration
DRED	Department Of Resources And Economic Development
ERP	Enterprise Resource Planning
G&C	Governor And Council
Handbook	DAS Administrative Handbook
LBA	Legislative Budget Assistant
LPAOC	Legislative Performance Audit And Oversight Committee
Manual	DAS Manual Of Procedures
MOA	Memorandum Of Agreement
MOU	Memorandum Of Understanding
RFB	Request For Bids
RFP	Request For Proposal
RFQ	Request for Quotes
RSA	Revised Statutes Annotated
SFY	State Fiscal Year
SOS	Secretary Of State

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SUMMARY

Purpose and Scope

This audit addresses the efficiency and effectiveness of State service contracting practices. The audit period includes State fiscal years 2006 and 2007. We focused on determining which State agencies procure services and how agencies with the highest service contract-related encumbrances procure them, how the State controls agency service procurement, and how State service procurement practices compare to best practice. Best practice as used in this report is a synthesis of many sources and no one document summarizes it, we offer no one example as the *only* solution for the State, and policy decisions made in one area of service contracting may affect other areas and moot some recommendations we make. The terms service contracting and service procurement are used interchangeably throughout this report.

We did not audit individual contracts or contracting at any one agency. While the recommendations in many observations focus on the Department of Administrative Services (DAS), this audit examined the statewide service procurement system and most of our recommendations are contingent upon significant legislative changes to provide the DAS needed authority. The full extent of our recommendations cannot be implemented immediately, and while some recommendations could lead to short-term gains in efficiency and effectiveness, any improvement of management controls statewide can only be realized in the long term following statutory changes.

Background

Competitive procurement has been required by statute since at least 1905 when Chapter 120 introduced "an Act to provide purchasing supplies for [S]tate institutions by competitive bids in the open market." Currently, RSA 21-I addresses multi-agency service procurement but exempts "services provided solely to one agency." While procuring supplies and multi-agency services is a DAS responsibility, single-agency service procurement is the responsibility of individual procuring agencies but without statutory guidance or competitive bid requirements. We found procurement references in 34 of 42 agency statutes we reviewed, including blanket contracting authority and exemptions from RSA 21-I and Governor and Council (G&C) approval requirements. This decentralizes the majority of service contracting activity with no one agency responsible for oversight, data collection, or internal audit, thereby compromising management control.

According to G&C minutes, during the audit period the G&C approved 1,744 service contracts with a total value over $926 million and approved 711 amendments to service contracts totaling nearly $129 million for the ten agencies with the highest service contract-related encumbrances. From our analysis of G&C minutes, the Department of Transportation contracted for the largest dollar amount, almost $411 million, while the Department of Health and Human Services had the highest number of contracts with 683 approved totaling almost $290 million, plus 336 amendments totaling over $87 million.

Results In Brief

Poorly managed public procurement can result in inefficient government and may raise the price the State pays for goods and services. However, effective procurement can reduce the cost of government, inspire public confidence, and improve service quality. Management controls provide reasonable assurance operations are effective and efficient, financial reporting is reliable, and entities comply with applicable laws and regulations. Our audit of service contracting practices found areas within each aspect of management control warranting improvement.

Best practice calls for using competitive procurement, centralized oversight, and technology to maximize procurement process efficiency and effectiveness. We found the State's service procurement process is decentralized, has no overarching statute or clear statewide requirements for full and open competition, and relies on fragmented, outdated technology. The lack of training and procurement-focused personnel in the State and outdated and incomplete policies and procedures may prevent the State from maximizing efficiency and effectiveness. Underscoring the decentralized nature of State service contracting, the ten agencies we reviewed identified 400 employees involved in some aspect of service contracting. Further, because service contracting is decentralized and the State lacks standard contracting practices, agencies act independently of, and differently from, each other. Vendors may face unclear or inconsistent processes limiting the number of bidders which reportedly may reduce competition.

Our review of service contracting found duplication of effort and other inefficiencies. Service procurement-related thresholds are dispersed among statute, rules, and policies and procedures, and approval thresholds are lower than best practice suggests. Agencies lack access to a sufficient number of standard templates, flowcharts, and checklists for the service procurement process; however, in January 2009 the DAS added to *SunSpot*, the Department's intranet repository, a new contract form, an associated checklist, and instructions. In addition to the potential risks of an incomplete or inconsistent process, non-standardization and the lack of templates create a burdensome, time-consuming, and unclear process. More standardized forms and contracts could allow for more accurate, thorough, and consistent review. Additionally, State practice does not align with best practice regarding needs identification, solicitation tools, public notice, award processes, vendor processes, insurance and bonding requirements, dispute resolution, contract administration, and technology.

Established review mechanisms for service contracts do not provide sufficient control. Though single-agency service contracts are reviewed by the DAS (Budget Division, Bureau of Accounts, Division of Personnel) and the Department of Justice (DOJ) Civil, Transportation, and Environmental bureaus, neither of these reviews are substantive. Substantive reviews are typically the responsibility of contracting agencies. Additionally, there is no entity in the State responsible for reviewing the broader service procurement system, although G&C review and approval is required for personal service contracts of $2,500 or more and other contracts of $5,000 or more. While providing some centralized oversight, the level of review, inconsistency in agency processes, and current thresholds may limit efficiency and effectiveness.

Our audit presents 26 observations addressing areas where centralization and improved controls could facilitate more effective and efficient service procurement. Twenty-three of these

recommendations may require legislative action. Once statutorily empowered, the DAS will be able to begin to address and fully implement many of our recommendations. Our recommendations include the State establish: a single procurement statute; a central procurement office authorized to delegate service contracting authority to agencies with robust management control structures; service contracting administrative rules, policies, and procedures; formal procurement training for all State employees involved in service contracting; a policy board to create and regularly update contracting policy; user groups to offer feedback on the process; cross-functional contract teams; standardized forms and templates; and a process for substantive review of individual contracts by DAS or DOJ, as well as review and audit of the procurement system.

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RECOMMENDATION SUMMARY

Observation Number	Page	Legislative Action Required	Recommendation	Agency Response
1	17	Yes	The Legislature consider centralizing service procurement in a procurement office located within the DAS and authorize the DAS to delegate service-contracting authority to agencies with adequate management control systems and trained contracting personnel. The DAS implement a centralized State procurement system, delegate service contracting authority to agencies with robust management control systems, and develop governing administrative rules and policy and procedure.	DAS Concur In Part
2	22	Yes	The DAS meet its current statutory obligation to procure services used by more than one agency and seek any needed additional statutory authority. We further recommend the Executive Branch assess personnel needs in order to provide adequate resources to the DAS to meet its statutory obligation.	DAS Concur In Part
3	24	Yes	The Legislature consider consolidating contract-related law into a single procurement statute regulating any expenditure of public funds; repealing agency-specific and stand alone contract authority; establishing responsibility for State procurement in a single agency; including all components of competitive procurement in the State procurement statute; and providing clear definitions, training requirements, and criteria for the delegation of authority.	DAS Concur In Part DOJ Do Not Concur
4	29	Yes	The Legislature consider assigning the DAS statewide service contract rulemaking responsibility.	DAS Concur In Part
5	31	No	The DAS repeal service contracting-related components of the DAS *Administrative Handbook* and the *Manual of Procedures*, publish a comprehensive service contracting manual, and update the manual regularly.	DAS Concur In Part

Observation Number	Page	Legislative Action Required	Recommendation	Agency Response
6	33	Yes	The Legislature consider amending statute to establish a three-tiered system of competitive procurement thresholds, amending RSA 4:15 to set the G&C approval threshold to the full and open competition threshold, simplify and consolidate thresholds into one statute, and establish a process to review thresholds in the future.	DAS Concur In Part
7	38	No	The DAS create and update regularly standard contracting forms, templates, and checklists.	DAS Concur
8	39	No	The DAS establish policies for contract documentation retention and work with the SOS to require agencies adhere to these policies and support electronic record retention and submission.	DAS Concur In Part
9	43	Yes	The Legislature establish service contracting training, certification, and ethical requirements. The DAS identify training needs and coordinate training and certification for State procurement professionals.	DAS Concur In Part DOJ Do Not Concur
10	47	Yes	The Legislature consider amending statute to require development of user groups and cross-functional contract teams. The DAS promulgate administrative rules regulating user groups and cross-functional contract teams.	DAS Concur In Part
11	49	Yes	The Legislature consider amending statute to require a DAS-managed central procurement website. The DAS move to a less paper intensive, electronic approval process.	DAS Concur In Part
12	53	Yes	The Legislature consider amending statute to require a single entry point into the State's procurement system and require the DAS to create and post guidance online for vendors. The DAS develop and post tools online for potential vendors.	DAS Concur In Part
13	55	Yes	The Legislature consider amending statute to require the DAS collect, manage, and publicly report contract management information and promulgate administrative rules regulating agency reporting.	DAS Concur In Part

Observation Number	Page	Legislative Action Required	Recommendation	Agency Response
14	57	Yes	The Legislature consider amending statute to require a single entity within the DAS review each State contract for substantive protection of the public interest, define substantive review, and define the role of the Bureau of Accounts and DOJ.	DAS Concur In Part DOJ Do Not Concur
15	61	Yes	The Legislature consider creating a procurement policy board. The DAS establish the Organizational Management Unit, ensure the Unit performs oversight of agency activities, and ensure the Internal Audit Unit monitors internal controls.	DAS Concur In Part
16	63	No	The DAS and DOJ conform to statute and State policy requiring individual G&C review and approval of all service contracts.	DAS Concur In Part DOJ Do Not Concur
17	69	Yes	The Legislature consider defining in statute required components of competitive procurement. The DAS ensure agencies maximize competitive procurement and promulgate governing administrative rules.	DAS Concur In Part
18	74	Yes	The Legislature consider including in statute need justification requirements based on service type or contract value. The DAS promulgate administrative rules regulating agency need justification based on service type or contract value.	DAS Concur In Part
19	76	Yes	The Legislature consider requiring public notice of all State business opportunities, the DAS post notice online of all agency business opportunities, and the DAS regularly advertise the location of online notices in print. The DAS establish rules and policy and procedure to ensure central posting of all State business opportunities.	DAS Concur In Part

Observation Number	Page	Legislative Action Required	Recommendation	Agency Response
20	78	Yes	The Legislature consider including pre-qualification requirements in statute and require DAS promulgate pre-qualification rules. The DAS promulgate administrative rules regulating the evaluation and pre-qualification processes.	DAS Concur In Part
21	80	Yes	The Legislature consider including in statute authority for the use of vendor list contracts and require the DAS promulgate administrative rules. The DAS promulgate administrative rules regulating vendor lists contracts.	DAS Concur In Part
22	82	Yes	The Legislature consider including in statute the authority to utilize low bid, best value, and highest qualified negotiations and require the DAS promulgate administrative rules. The DAS promulgate administrative rules regulating the negotiation process and develop competitive negotiation training.	DAS Concur In Part
23	84	Yes	The Legislature consider amending and consolidating insurance and bond requirements into one statute. The DAS provide guidance to agencies on insurance and bonding requirements.	DAS Concur In Part
24	88	Yes	The Legislature amend statute to include formal procedures for pre-award, award, and post-award dispute resolution and appeals and require the DAS promulgate administrative rules. The DAS create mandatory contract dispute resolution language; post dispute resolution guidance, and develop dispute resolution training.	DAS Concur In Part DOJ Do Not Concur
25	92	Yes	The Legislature consider amending statute to include a debarment process, provide the DAS with statewide authority to debar vendors, and require the DAS promulgate administrative rules. The DAS promulgate debarment rules and policy and procedure, and maintain the debarred list.	DAS Concur In Part

Observation Number	Page	Legislative Action Required	Recommendation	Agency Response
26	94	Yes	The Legislature consider repealing delegated authority for field purchase orders from RSA 21-I:17-a, I; authorizing the DAS implement a purchasing card system; and requiring DAS promulgate administrative rules. The DAS create and monitor a purchasing card system statewide and investigate and exert control over agency use of store cards.	DAS Concur In Part

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SCOPE, OBJECTIVES, AND METHODOLOGY

Scope

On July 24, 2007, the Fiscal Committee approved a joint Legislative Performance Audit and Oversight Committee (LPAOC) recommendation to conduct a performance audit of certain functions of the Department of Administrative Services (DAS). At its January 10, 2008 meeting, the LPAOC narrowed the audit scope to State service contracts. We held our entrance conference with the DAS on January 29, 2008. LPAOC approved the audit scope on March 27, 2008.

Objectives

This performance audit evaluated State service contracting and was designed to answer the following question: **How efficiently and effectively have State agencies procured services during the audit period, State fiscal years 2006 and 2007?** To address this question, we focused on which State agencies procure services and how they procure them, how the State controls agency service procurement, and how State service procurement practices compare to best practice.

Methodology

We conducted appropriate audit procedures in accordance with *Government Auditing Standards* promulgated by the U.S. Government Accountability Office. To determine whether service procurement was efficient and effective and whether adequate controls existed over the service procurement system, we:

- interviewed three Executive Councilors, the Commissioner and others familiar with procurement at the DAS, and managers familiar with agency service procurement processes at ten agencies;
- established service procurement best practice through a review of pertinent documents from academia and federal, state, and local government - best practice as used in this report is a synthesis of several documents and no one document summarizes it;
- assessed the efficiency and effectiveness of controls over State service procurement processes;
- determined the approximate depth and breadth of service contracting by reviewing DAS-provided data, agency data, and Governor and Council (G&C) minutes;
- reviewed statute, administrative rules, polices and procedures, executive orders, previous audits, and articles related to service procurement;
- analyzed service procurement data, developing descriptive statistics and examining trends; and
- surveyed personnel with a role in service procurement at ten agencies.

We did not audit individual contracts or contracting at any one agency; rather, we focused on an overview of the State service procurement process with consideration of agency level activity to better understand the statewide process. Further, we offer no one example as the *only* solution for the State, and policy decisions made in one area of service contracting may affect other areas and moot some recommendations we make.

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SERVICE CONTRACTING

Public sector procurement is a complex process, potentially subject to abuse, mismanagement, and confusion while expending large amounts of public funds. Poorly managed public procurement can result in inefficient government and may raise the price government pays for goods and services. Effective public sector procurement can reduce the cost of government, inspire public confidence, and improve public service quality. Public procurement constitutes an increasingly large part of public expenditures and has become more complex with the procurement of highly technical professional services.

Competitive procurement has been part of New Hampshire statute since at least 1905 when Chapter 120 introduced "an Act to provide purchasing supplies for [S]tate institutions by competitive bids in the open market." The Department of Administrative Services' (DAS) statute, RSA 21-I, currently establishes competitive procurement requirements for purchasing supplies and multi-agency services. RSA 21-I:11 provides an approach similar to the 1905 statute, "requiring competitive bidding before making any purchase for the [S]tate…" However, the current statute exempts "services provided solely to one agency," leaving no statewide statutory guidance or competitive bidding requirements for single-agency service procurement. References to procurement can be found in 34 of 42 agency statutes we reviewed, and include blanket contracting authority and exemptions from RSA 21-I and Governor and Council (G&C) approval requirements. Consequently, procurement of single-agency services is highly decentralized and the responsibility of individual agencies, leaving no one agency responsible for oversight, data collection, or internal audit, and compromising the adequacy of management controls. Centralized procurement has historically been viewed as the way to ensure adequate control and is considered best practice.

Governor and Council Approval Process

RSA 4:15 subjects expenditures to the approval of the G&C and RSA 9:12 grants investigative authority to G&C regarding the use of State funds. G&C approval is required for personal service contracts of $2,500 or more and other contracts of $5,000 or more. The DAS has established procedures for agencies seeking G&C approval. Three councilors we interviewed reported the G&C approval process is necessary to ensure a fair, open, and transparent process while ensuring the best investment of public funds. While providing some centralized oversight, the level of review, inconsistencies in the process, and current thresholds may limit efficiency and effectiveness. According to G&C minutes, during the audit period, the G&C approved 1,744 service contracts with a total value over $926 million and approved 711 amendments totaling nearly $129 million for the ten agencies with highest service contract-related encumbrances. Table 1 summarizes contracting information for each State fiscal year (SFY).

Table 1

G&C Approval Summary For Ten Agencies By SFY			
	SFY 2006	**SFY 2007**	**Biennium**
Total New Contracts	726	1,018	1,744
New Contract Value	$ 394,589,000	$ 531,506,000	$ 926,095,000
Total Amendments	337	374	711
Amendment Value	$ 69,632,000	$ 59,062,000	$ 128,694,000
Total Sole Source Actions	171	205	376
Total Retroactive Actions	175	169	344

Source: LBA Analysis of G&C minutes.

From our analysis of G&C minutes, the Department of Transportation contracted for the largest dollar amount, totaling almost $411 million during the audit period. The Department of Health and Human Services had the highest contract volume with 683 approved during the audit period, plus an additional 336 amendments. Table 2 summarizes data by agency.

Table 2

Agency Contract Summary, SFY 2006 And 2007						
Agency	**New Contract**	**Value of Contracts**	**Amendments**	**Value of Amendments**	**Total Sole Source**	**Total Retroactive**
DOT	336	$ 410,818,000	138	$ 18,655,000	34	30
DHHS	683	289,814,000	336	87,053,000	117	146
DAS	157	115,276,000	41	9,860,000	8	11
Judicial Council	3	40,080,000	2	328,000	0	0
Department of Environmental Services	167	17,909,000	64	3,702,000	56	43
Department of Safety	147	15,517,000	41	979,000	66	31
Department of Resource and Economic Development	144	14,456,000	32	2,218,000	43	35
Department of Corrections	50	9,982,000	25	2,782,000	11	23
Office of Information Technology	40	9,279,000	17	3,095,000	38	21
The Adjutant General	17	2,965,000	15	22,000	3	4
Totals	**1,744**	**$ 926,096,000**	**711**	**$ 128,694,000**	**376**	**344**

Source: LBA Analysis of G&C minutes.

Past Reports

This audit does not constitute the first review of the State's procurement practices. Previous LBA audits have addressed concerns regarding the State's procurement system, including the 2008 audits of *Fleet Management* and *Office of Information Technology*. Sixty-three observations in 27 audits from June 1990 to January 2008 detail service contracting issues. Our 2006 *Insurance Procurement Practices* performance audit found the State procurement process to be piecemeal, with multiple exemptions to State processes and confusing roles and responsibilities. The 2006 audit recommended centralizing State insurance procurement, consolidating all other procurement, and changing the definition of services so as not to exempt single-agency services.

Additionally, 11 reports issued from 1932 to 2003, five Executive Branch- and six Legislative Branch-originated, addressed concerns ranging from the need for centralized oversight, guidance, and standardization to the need for performance measures and updating components such as thresholds and technology. Three reports noted vendors are faced with inconsistent bidding requirements and no centralized place to find opportunities to provide services to the State. These issues continue to the present day.

Best Practice

Best practice calls for using competitive procurement, centralized oversight, and technology to maximize efficiency and effectiveness of the procurement process. State procurement processes do not align with best practice and do not provide adequate management controls. We found a decentralized process, no overarching service procurement statute, unclear requirements for full and open competition, lack of training and contracting professionals, and outdated and incomplete policies and procedures which may prevent the State from maximizing the benefits of a full and open competition. State practice also does not align with best practice regarding needs identification, solicitation tools, public notice, award processes, vendor processes, thresholds, contract administration, and technology. The State has many opportunities to improve service procurement processes.

Management Control

Management controls are an integral component of an organization's operations and management, providing reasonable assurance operations are effective and efficient, financial reporting is reliable, and entities comply with applicable laws and regulations. Controls span all aspects of an organization's operations and must be continually assessed and updated to reflect changes in the operating environment. There are five components of management control: the control environment, risk assessment, control activities, information and communications, and monitoring. Poor controls may lead to fraud, waste, and abuse, and while we found no fraud or abuse, we found areas within each aspect of management control warranting improvement. The State can effect improvement by addressing issues we found with the service procurement system's structure, support, and processes.

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STRUCTURE

The control environment is the foundation supporting successful implementation of internal controls, also known as management controls. Components of management control include the organizational structure, statute, rules, and policies and procedures. To implement a successful service procurement system, an adequate structure must exist, helping to: 1) create consistency, 2) provide controls to mitigate risk, and 3) safeguard resources.

Observation No. 1

Centralize Service Procurement

There is no overarching procurement statute applicable to all agencies or all expenditures of public funds in New Hampshire. Several agencies possess some procurement authority, with numerous requirements governing the procurement process found throughout State law. Consequently, many agencies have developed their own purchasing function. This piecemeal structure is inconsistent with best practice.

Centralized procurement has historically been viewed as the way public entities can ensure adequate control, quality, efficiency, and effectiveness. Best practice suggests a procurement statute applicable to all expenditures of public funds and consolidating service contracting authority to a central purchasing entity. Agencies and vendors may prefer to work without centralized oversight; however, decentralization may not attain required levels of public accountability or management control. Decentralization may also lead to duplication of effort, resources, and personnel. Centralization remains a basis for better accountability serving as part of a check-and-balance system and should provide no exemption from statewide procurement requirements, particularly full and open competition.

Centralizing service contracting may save time and resources, especially in smaller agencies. Five Legislative or Executive Branch studies issued between 1950 and 2003 recommended greater centralization of administrative services, and five reports issued between 1982 and 2006 specifically commented on the fragmented nature of procurement. One report noted the process "does not provide the State with desired services." Two reports recommended the DAS provide service contracting guidance to agencies, including establishing and enforcing service procurement protocols for implementation at the agency level, and three reports recommended a new function be created within the DAS for review and oversight of service contracts. Our 2006 *Insurance Procurement Practices* performance audit recommended amending RSA 21-I:11, I(f) to delete the definition of services which excludes single-agency services and repealing individual agency procurement authority found in other statutes.

Requirements Of Centralization

Officials indicated communication is needed to ensure centrally-procured service contracts meet agency requirements and programmatic expertise is preserved in any future centralization process. Two agency officials and 136 of 159 respondents to our survey (86 percent) identified flexibility in determining service needs among using agencies as an integral component of

centralization (Appendix C). Agency personnel also noted the central contracting body would need to have knowledge and understanding of business needs, communication and collaboration with the agency would be necessary, and believed not all service contracting could be centralized. A State procurement office should provide oversight and support, but agencies should continue to provide input throughout the process. Table 3 details the results of our 2008 service contracting survey pertaining to essential components of a centralized procurement system.

Table 3

Survey Results Related To Centralization Of Service Procurement		
If the State were to implement a centralized State-level service procurement system, what components would be essential? *Number of respondents=159*		
Description.	**Count**	**Percent**
Clear policies and procedures	139	87
Agency flexibility to specify contract service need	136	86
Responsiveness of central procurement office to agency requirements	131	82
Electronic processing for requisitions, approvals, contracts, etc.	125	79
Formal training	123	77
Agency flexibility to specify contract value	112	70
Accountability of central procurement office	103	65
Other	26	16
From Comments. *Number of respondents=32*		
Doubtful of centralization	8	25
Simplify	4	13
Accountability by the agency	3	9
Skilled and knowledgeable staff	3	9

Source: LBA Analysis of 2008 Service Contracting Survey.

Delegation

Each state (48 of 48) responding to a *Government Performance Project* survey in 2000 reported having a central procurement office with varying responsibilities. Best practice recognizes the benefits of a central procurement office; however, some procurement functions can be delegated. Delegated authority can be based on the agency's past experience in exercising similar authority, the degree of efficiency and effectiveness achievable by delegation, agency resources, and personnel expertise. While most agencies may receive authority to make small purchases, others with more robust management control systems may be delegated authority to undertake limited competitive procurement and a few may receive authority to independently manage full and open competition. A central procurement office may delegate authority to agencies with a satisfactory procurement management review. Agencies must then designate a trained and certified procurement officer. Additionally, agency end-users and contract administrators must receive continuous, updated training commensurate with their delegated authority. Agencies should be required to maintain training records and be able to produce detailed contracting reports and contract-related documents. Agencies should have adequate, up-to-date procedures approved by

the respective agency head. Finally, best practice suggests no delegated authority may override state procurement statutes, rules, or regulations.

Weaknesses Of Decentralization

Interviews with agency officials and our survey of State employees engaged in contracting revealed agencies are not always aware of, nor conforming to, State policy or best practice. Each agency conducts business independently, using resources, and potentially wasting time and money. In the view of some agency officials, the decentralized system frustrates vendors because "doing business with the State is different every time you try to win a contract." This likely diminishes the number of potential vendors and competition. Decentralization may also reduce buying power as some agencies acquire similar services separately. Inconsistent procedures have developed from service contracting being decentralized and personnel not receiving standardized training. Additionally, agencies are making decisions based on organizational best interest, and not based on the best interest of the State.

Service procurement is also decentralized within agencies. Six agencies eventually funnel contracts through a business administrator before Goveernor and Council (G&C) submission; however, need determination and contract administration may be accomplished at the department, division, or bureau level. Underscoring the decentralized nature of State service contracting, the ten agencies we reviewed identified 400 employees involved in service contracting. In one agency, approximately 165 personnel, or 65 full-time equivalent positions, and financial managers in each of 14 divisions have a role in service contracting. One agency official stated divisions within the agency are not knowledgeable about each other's procedures unless they ask and an agency official in another agency noted each division does their own service procurement. Additionally, there is only limited central oversight. Sixty-one of 174 (35 percent) respondents to our survey stated they did not use DAS for service contracting support while 51 (29 percent) reported using their DAS Business Supervisor, 50 (29 percent) reported using the DAS *Administrative Handbook*, and 46 (26 percent) reported using DAS purchasing personnel.

Recommendations:

We recommend the Legislature consider centralizing service procurement in a procurement office located within the DAS and authorize the DAS to delegate service-contracting authority to agencies with adequate management control systems and trained contracting personnel.

We recommend the DAS, using this new authority, implement a centralized State procurement system, delegate service procurement authority to agencies with robust management control systems, and develop administrative rules, policy, and procedure.

DAS Response:

We concur in part.

Although DAS generally supports the notion of greater centralization, further consolidation of procurement would require a significant legislative initiative. The summary of audit findings indicates that all but 3 of the 26 audit observations may require legislative action to fully implement. Accordingly, the majority of the observations contained in the audit recommending that DAS take some form of action are premised upon the assumption that the Legislature will first take action so as to enable DAS to engage in such activities. At present, DAS endeavors to efficiently operate under current law, despite practical limitations stemming both from the overall structure of the procurement system and limited staffing.

Observation 1 generally suggests a model of procurement in which DAS is responsible for all state procurement (possibly with the exception of certain minor purchases), but is nonetheless authorized to delegate service contract procurement responsibilities to other agencies if those agencies demonstrate adequate management controls according to rules, policy and/or procedure developed by DAS. This is a significant change from the present statutory structure and most of the observations following Observation 1 are based upon the assumption that this is a model of centralization that the Legislature will wish to adopt. It is, however, only one possible model of centralization and, to the extent the remaining observations flow from it, those observations would presumably be subject to alteration if the General Court chooses to adopt an alternative model. Therefore, in considering this audit, it is necessary to bear in mind that "policy decisions made in one area of service contracting may affect other areas and moot some recommendations we make." "Purpose and Scope," p. 1 above. Accordingly, DAS' ability to definitively state what action it will and will not take in the future, or to definitively identify the audit recommendations with which it does and does not concur, is greatly dependent upon legislative policy determinations that have not yet been made.

Implementation of the model suggested in Observation 1 and further discussed in the remaining observations would require the expertise and detailed attention of a variety of skilled employees. DAS generally supports the concept of greater centralization of purchasing within the Department only if adequate resources are provided to achieve that goal. Should the Legislature determine that it wishes to implement all of the recommendations contained in the audit under the centralized model suggested in Observation 1, DAS anticipates that it would need, at a minimum, those additional resources listed in The DAS's phased approach to accomplish centralization of service procurement (Appendix B). In regard to personnel, we believe that implementation of the overall model suggested would, at a minimum, ultimately require the addition of:

> *8 Purchasing Agent/Contract Specialists to address centralized management of contracts;*
>
> *2 Purchasing Agents/Contract Specialists, if required to submit all contracts to Governor and Council;*
>
> *3 Program Specialist I, to support the Purchasing Agents/Contract Specialists;*
>
> *One Information Technology Manager IV to formulate and manage the procurement website discussed in Observations 7, 11, 12, 20 and 24.*

One full time, permanent Legal Coordinator to develop policy and procedure for State agencies and others to follow when bidding and contracting for services; to monitor delegation of purchasing authority to outside agencies; to craft administrative rules, proposed statutory provisions and sections of the DAS Manual of Procedures and present them to legislative and executive branch reviewers; to work with the Department of Justice and others in creating templates for RFBs, RFPs and related documents and supervise staff noted below;

One full-time temporary Legal Coordinator to assist in creating the structure of, and implementing, the new administrative system and create initial documents and training materials (minimum of 18 months);

2 Hearings Officers to regularly address adjudicative proceedings, appeals and alternative dispute resolution procedures (see Observations 17, 24 and 25);

One Program Specialist IV to assist the Legal Coordinator, Hearing Officers and Administrator III in addressing contracting, adjudicative and dispute resolution issues, to continue significant rule writing efforts and statutory drafting and to implement administrative functions and continue creation of training materials following departure of the temporary Legal Coordinator;

One technical instructor in the Division of Personnel, Bureau of Education and Training to conduct a needs assessment, work with subject matter experts to develop a curriculum on various procurements standards and procedures and to provide ongoing training;

2 additional employees in the Risk Management Unit to address the recommendations in Observation 23, specifically an Administrator II – Risk Assessor and an Administrator III - Risk Finance Analyst.

In order to accommodate the additional personnel that full implementation of this model of procurement would likely require, the Division of Plant and Property Management believes that it would require approximately 4,500 square feet of office space @ $20.00 = $90,000 per year, as well as computers, printers and recording equipment and operating budgets for telephones, supplies and in state mileage.

Since, as noted in the Audit Summary, no substantive assessment has been made of procurement activities within agencies at present, it is not known what amount of savings, if any, may accrue from centralization and what, if any, personnel can, should or might be reassigned. It is likely that many individuals currently engaged in procurement in various agencies would be required to remain imbedded in those agencies, either because procurement is merely one of the many functions they perform or because of complex funding concerns. While the positions of some individuals are funded by the State's general fund and might therefore be transferred to another general fund agency without creating an accounting difficulty, other individuals are paid through special funds. To the extent that an employee's activities are federally funded, transfer to a centralized DAS procurement function may create difficulties in tracking fund usage and

place federal funds at risk. We also note that since neither individual contracts nor contracting at any one agency were within the scope of this audit, it is not known what particular difficulties may in fact exist or whether a savings would in fact be achieved if contracts were handled under the model set forth in Observation 1.

Observation No. 2

Expand Multi-Agency Service Contracts

Statute makes the DAS responsible for procuring services common to more than one agency, and leaves service procurement authority for unique, individual-agency services to each agency. Though responsibility for multi-agency service contracts is centralized within the DAS, the Department has centralized some, but not other multi-agency service contracting responsibilities leading to further decentralization in State service procurement.

In 2006, the DAS requested four positions to expand centralized multi-agency service contracts which were not funded. In 2008, a DAS official reported managing 27 statewide service contracts during the audit period and adding 14 thereafter. While Department officials reported working to increase services covered under statewide contracts, we found approximately $47 million of multi-agency services such as trash services, mold removal, septic services, and landscaping were separately procured by multiple agencies over SFYs 2006 and 2007. According to DAS data for SFY 2007, there were 66 vendors contracted for janitorial services by 19 different agencies and 245 vendors contracted for building maintenance by 24 different agencies. Table 4 provides a summary of some multi-agency services identified in the G&C minutes for agencies we reviewed during the audit period which were procured by individual agencies.

Table 4

Sample of Multi-Agency Services Procured By Nine Reviewed Agencies, SFY 2006-2007

Contract	Number of Contracts	Value of Contracts	Number of User Agencies
Building Maintenance	21	$7,867,000	8
Trash Services	49	1,311,000	7
Fire Maintenance	26	2,872,000	6
Janitorial Services	49	4,136,000	6
HVAC	17	5,223,000	6
Totals	**162**	**$21,409,000**	

Source: LBA Analysis of G&C Minutes.

A DAS official reported agencies requested the DAS play a greater role in service contracting and suggested the DAS should logically take on greater responsibility for statewide service contracting. This official reported a lack of resources as the biggest impediment but noted, with some additional resources, the DAS could fully provide statewide services. In the current

environment, large statewide contracts such as trash removal are not pursued by the DAS, as they are too large and the effort would reportedly fail.

One DAS official reported recently procured State service contracts have been very successful, saving time and resources for agencies while providing needed services. Lack of statewide service contracts force multiple agencies to procure the same services, using resources which could otherwise be applied to achieve agency goals and missions. Officials from six agencies we reviewed noted centralization of services used by multiple agencies such as trash removal and janitorial services as a good idea. One agency official reported shifting multi-agency service contract to the DAS would be beneficial as these contracts occur frequently and "are more work than they are worth." Another official reported centralized multi-agency service contracts would reduce administrative burdens at the agency. Conversely, 17 percent of respondents to our survey reported they did not know centralized contracts existed, while 37 percent reported centralized contracts did not meet agency needs.

While some officials identified potential benefits of centralized contracting for multi-agency services, three officials were skeptical, reporting the DAS would need to improve communication, work with agencies to establish need, and have flexibility within the contracts to be successful. A thorough analysis of the services agencies use is needed to identify the types of services, commonalities, geographic location, and specific agency needs.

Recommendations:

We recommend the DAS meet its current statutory obligation to procure services used by more than one agency and seek any needed additional statutory authority to require utilization of centralized contracts.

We further recommend the Executive Branch assess personnel needs in order to provide adequate resources to the DAS to meet its statutory obligation.

DAS Response:

We concur in part.

DAS adheres to its current statutory obligations. Presently, the Department does not believe that it can generally engage in centralized service purchasing on behalf of single agencies. See RSA 21-I: 11, I (f). Additional statutory provisions limit overall DAS purchasing authority. See e.g. RSA 21-I: 18. DAS has undertaken its procurement function in conformity with the statutory structure, including by procuring multi-agency service contracts.

As the result of budget cuts and lack of resources dating to before 1986 (the year DAS was assigned some responsibility for procurement of services), the Division of Plant and Property Management has not been able to bid and manage statewide contracts for all services which may be common to State agencies. Over the course of time, however, DAS has, to the best of its ability, endeavored to add to the list of its service contracts. Twenty-six such contracts were in place during FY 06-07. Fifteen additional service contracts have been implemented since FY

08-09, bringing the total to 41. Regardless of whether any statutory change is made to the overall system of procurement, the Division of Plant and Property Management anticipates that the provision of additional resources would allow it to enter into additional contracts. DAS requested additional personnel during the last two biennia. In the last biennium, we requested 4 positions (a contract administrator, 2 purchasing agents and a program specialist), which were denied.

Some potentially desirable service contracts, such as contracts for snow removal, janitorial services and trash removal, are more difficult to manage on an ongoing basis than are others and would undoubtedly require additional resources in order to be successful. DAS is not able to provide contract oversight for these contracts without those resources. In the meantime, the Department is planning to reclassify two in-house positions to purchasing agents/contract specialists. With the reclassification of these positions, the Division of Plant and Property Management is planning to put contracts in place for janitorial services, snow removal, trash removal, recycling and HVAC maintenance. This would bring the total number of service contracts to 46. For the convenience of State agencies and the public, those contracts are listed on the Division's web site.

In regard to the recommendation that DAS seek additional statutory authority to require utilization of centralized contracts, the Department is aware of no provision specifically requiring agencies to utilize the general service contracts it secures. Accordingly, well before receipt of this audit observation, the Department requested legislation providing that agencies are to make use of contracts which have been entered into by the Division of Plant and Property Management for more than one agency when procuring commodities or services that are available to the agency under such contracts, unless granted a waiver by the commissioner of DAS. see HB 464 (2009).

See generally our response to Observation 1 above.

Observation No. 3

Amend State Procurement Statutes

The State has no procurement statute generally applicable to all expenditures of public funds. The current statute is antiquated. While some components of best practice are addressed throughout the dispersed procurement statutes, these requirements fall short of the structure needed for an efficient, full and open competitive procurement process.

Piecemeal Statute

Procurement-related statutes exist in several chapters, including:

- numerous sections of RSA 21-I, which in addition to establishing the DAS, also establish centralized, competitive procurement requirements but exempt single-agency services, several agencies, and other branches of government;

- RSAs 228:4, 228:4-a, and 228:5-a, containing Department of Transportation (DOT) competitive procurement statutes and RSA 21-L:14 regulating the DOT appeals board;
- RSA 206:23-a, authorizing Fish and Game to enter into agreements;
- RSA 5:18-a, requiring vendors of service contracts valued over $1,000 be registered with the Secretary of State to do business with the State;
- RSA 4:15, requiring G&C approval of all expenditures;
- RSA 21:32, defining "publish" for public notice;
- RSA 447:16, detailing bonding requirements for certain contracts;
- RSA 491:8, waiving sovereign immunity when the State contracts; and
- RSA 481:2, V, permitting the Department of Environmental Services to enter into contracts or agreements for State dam projects.

Further, we examined procurement authority in 42 agencies' statutes; 34 have contracting authority.

- Eighteen agencies (43 percent) have blanket contracting authority, six of which (14 percent) also have some specific authority in statute;
- sixteen agencies (38 percent) have specific contracting authority;
- three agencies' statutes (7 percent) noted exceptions to either RSA 21-I or RSA 228;
- ten other agencies' statutes (24 percent) note a requirement to seek either G&C approval or Department of Justice (DOJ) review, or both;
- five agencies' statutes (12 percent) used the term "agreement" or authorized the agencies to "cooperate" with other entities; and
- eight agencies (19 percent) had no clear statutory authority to establish contracts or agreements with other entities, however three entered into service contracts.

Several quasi-governmental entities with broad purchasing authority also fall outside RSA 21-I requirements. Consequently, many agencies developed their own purchasing function, often acting without DAS coordination. Officials from the DAS report their statutes exempt certain agency service contracts from G&C review established in RSA 4:15. This piecemeal structure is inconsistent with best practice.

Antiquated Statute

Guiding statute has not changed considerably since 1949; yet the procurement environment has. Much of the current RSA 21-I procurement-related statute, effective in 1983, is based on language from Chapter 227, Laws of 1949, including definitions, duties of the purchasing agent (now Division Director), delegated purchasing authority, and exceptions. The language requiring competitive bidding in Chapter 227:5 (e), is nearly identical to the language of RSA 21-I:11, III. RSA 21-I definitions have remained the same except for the 1986 addition of RSA 21-I:11, I (f), defining services as those common to more than one agency, but not services provided solely to one agency. This effectively waived most of the State's procurement laws, including central oversight and competitive bidding requirements, for single-agency service purchases. Without a statewide procurement statute, this single-agency service exception leaves little statutory guidance for agency contracts.

Limited Best Practice Content

State procurement statute contains elements of best practice. RSA 21-I:11 requires "competitive bidding before making any purchase for the state," and RSAs 21-I:22-a and 21-I:22-d require clear evaluation criteria and non-limiting specifications be included in request for proposals (RFP). However, statute is not generally applicable and does not clearly define competitive bidding or introduce necessary methods to ensure competitive procurement. Application of the few competitive procurement standards in statute is inhibited by excluding single-agency service contracts and not defining or clearly differentiating between consultant services, multi-agency services, architects, engineers, and surveyor services. Statute also references, but does not define, processes required for emergency and sole source procurement. Best practice identifies the need for an overarching procurement statute, applicable to goods and services, creating the basic procurement infrastructure regulating the expenditure of all public funds. This approach establishes a contracting framework for all procurement processes whether centralized or at the agency level.

Best practice suggests establishing statutory requirements, including:

- competition and full and open competitive procurement as a central tenet and requirement of successful procurement;
- a centralized procurement office responsible for providing oversight, guidance, consistency, and direction in the procurement process;
- responsibility for promulgating administrative rules with statewide applicability, reviewing the current processes, and making recommendations for improvement;
- delegating authority to personnel trained, certified, or qualified to complete procurement tasks;
- using cross-functional contracting teams to enhance efficiency and effectiveness;
- requirements for agency need identification before starting the contracting process;
- properly using competitive sealed bidding, competitive sealed proposals, small purchases, sole source procurement, emergency procurement, and highest qualified bidder procurements;
- defining basic terms such as services and procurement office and more complex concepts such as competitive negotiation and specifications;
- processes allowing for standardization;
- written justification for non-competitive procurements, public notice, and records retention to ensure transparency;
- code of ethics and conflicts of interest requirements; and
- processes for dispute resolution, debarment, pre-qualification, reporting, and determining bonding and insurance needs.

Further, dollar thresholds are outdated. The current $2,000 statute-based threshold requiring agencies use a request for proposal and competitive procurement for purchases, has not been changed since 1985 and has less buying power today than the $200 threshold established by statute in 1913, when adjusted for inflation.

In our 2008 survey of State service contracting practices, only 25 of 152 respondents (16 percent) reported State laws clearly define contracting requirements. This lack of clarity was further noted by 114 of 176 respondents (65 percent) who identified a need for training on State laws, rules, and policies and procedures. One agency official we interviewed also noted the difficulty and complexity of State procurement laws and the need for training. Another agency official noted the procurement statutes were inconsistent and required updating to accommodate certain aspects of competitive procurement. Outdated statutes providing little guidance, threshold constraints established 20 years ago, and procurement processes not aligned with best practice create frustration for agency personnel. Without a centralized, overarching statute based on best practice, simplified procurement, consistency, cost savings, and equity may be missing, as may confidence in the procurement process for both using entities and the public.

Recommendations:

We recommend the Legislature consider:

- **consolidating contract-related law in a single State procurement statute regulating expenditure of public funds regardless of agency type;**
- **repealing agency-specific and stand alone contract-related authority found elsewhere in statute;**
- **establishing responsibility for Executive Branch procurement in a single agency;**
- **including all components of competitive procurement in the State procurement statute; and**
- **providing clear definitions, training requirements, and criteria for the delegation of authority in statute.**

DAS Response:

We concur in part.

DAS generally supports the concept of consolidating various statutory procurement provisions into a single, accessible statutory source, and concurs in the general notion that definitions, training requirements and delegations of authority should be clear. We agree that statutory provisions do not necessarily set forth competitive bidding requirements and criteria, but note that the administrative rules crafted and used by DAS itself do in fact do so. See Chapter Adm 600; See also Laws 2005, Ch. 291: 1, IV. and V. regarding public works.

Precisely what provisions of law a consolidated statute should contain, as well as what practices are best suited to utilization in the State of New Hampshire, are, however, matters requiring additional, careful legislative consideration. Matters warranting assessment by the General Court include what particular dollar thresholds are appropriate for the purposes of competitive bidding; what, if any, particular statutory exemptions or limitations should exist as a matter of public policy or practical necessity for particular executive branch entities (or types of purchases); whether it is possible or advisable to include "all components of competitive procurement" in set statutory provisions rather than in administrative rules or more adaptable guidelines or manuals; what actions are desirable or financially feasible in current

circumstances; and, importantly, a balancing of the anticipated financial advantage that might accrue to the State under a particular model of consolidation against the anticipated costs of implementing that model. Since neither individual contracts nor contracting at any one agency are within the scope of this audit, it is not known whether a savings would in fact be achieved if such contracts were to be handled under a particular alternative model. Regardless of whether a streamlined statutory scheme is conceptually desirable, it would be necessary to assess estimated costs and benefits system wide in order to clearly ascertain the financial advantage which may be gained under a particular model of consolidation.

Were overall consolidation deemed advisable, we concur that DAS Division of Plant and Property Management would be the appropriate entity to handle such consolidation, assuming adequate resources were provided. The Division has extensive procurement experience in a multitude of areas and is one of the only agencies which has actually promulgated administrative rules for its procurement process. In order to facilitate centralization under the model suggested, the additional resources required would include a minimum of 8 Purchasing Agent/Contract Specialists to review state agency bids and contracts and to ensure compliance with new procurement statutes, rules and procedures once drafted. Under the model suggested, we anticipate that the 8 contract specialists would be assigned to various state agencies for the purposes of oversight. This is similar to the model utilized in the State of Maine.

DAS generally supports the concept of raising the dollar threshold for the manner in which commodity and service purchases are made. At present, except where competitive bidding has been employed, no purchase involving an expenditure of more than $2,000 or purchase in an approved class may be made by the director of plant and property management without the written approval of the commissioner. See RSA 21-I: 11, IV. DAS would support increasing this statutory figure and also adding additional provisions to clarify purchasing methodology (be it for commodities or services, single or multiple agencies). As a general matter, the Department would support a provision fixing certain dollar amounts for particular purchasing methodologies, such as a provision indicating that purchases valued at $10,000 or under must be made at a price not to exceed market rate (as such rate is determined by the Division); that purchases from over $10,000 to $25,000 require three quotes and that purchases over $25,000 require full competitive bidding. This is an issue separate from the levels or types of contracts that might require direct, specific pre-approval by Governor and Council. DAS believes that the determination of this/these dollar threshold(s) is a matter currently determined by the Governor and Council themselves and should remain so. See response to Observation 6 below.

See generally our response to Observation 1 above.

DOJ Response:

Do not concur.

Observation No. 3 calls for "repealing agency-specific and stand alone contract-related authority elsewhere in statute." Without more, implementation of this recommendation could result in unintended consequences. It is well established that agency action is limited to its legislative grant of authority. The auditors' second recommendation, standing alone, would

remove all agency contracting authority. Indeed, the recommendation would not only eliminate agency authority to enter into service contracts, but would eliminate agency authority to enter into any contract. Although it is assumed that was not what was intended by the audit recommendation, clarity in a report such as this is essential.

Observation No. 4

Promulgate Service Contracting Administrative Rules Binding On All State Agencies

Of the ten agencies we reviewed, only the DAS and the DOT have promulgated administrative rules for some aspects of their service procurement process. Officials from five other agencies reported using DAS rules to guide procurement. However, DAS Adm 600 administrative rules do not apply to single-agency service procurement and the DAS *Manual of Procedures* is inadequate for regulating procurement in the current environment.

DOT Tra 400 administrative rules define the agency's pre-qualification and bidding process, outlining contractor pre-qualification requirements. According to DOT managers, these rules apply only to low-bid projects. Under DOT statute, the Commissioner is only authorized to adopt rules regulating bidding for low bid transportation construction projects authorized by RSA 228:4, I, and 228:4-a, and for State bridge aid, but does not have authority for rules related to selecting architects, engineers, and surveyors, even though the agency regularly procures such services. The Department also has rules regulating how municipalities select contractors for State bridge aid projects and describing adjudicative procedures, including appeals.

A "Rule" is a regulation, standard, or other statement adopted to interpret statute or prescribe agency policy binding on persons outside the agency, including members of the general public (RSA 541-A:1, XV). RSA 541-A:16, requires each agency adopt as a rule the "methods by which the public may obtain information or make submissions or requests" which will be binding on persons outside the agency. Because contract solicitations, vendor selections, and contract awards require submissions and are binding, these processes appear to fall within the rule requirements of RSA 541-A. Of the eight agencies without rules, four have no contract-specific rulemaking authority, while three others have broad, non-specific rulemaking authority, which could be interpreted to encompass service contracting. None have rules outlining service-contracting procedures; however, one agency is exempt from rulemaking requirements. However, the current rules do not include the selection process required for architecture and engineering services established by RSA 21-I:22. Best practice suggests rules, when properly implemented, are a good management control tool. The current lack of generally applicable administrative rules may result in inefficiencies.

Recommendation:

We recommend the Legislature consider assigning to the DAS statewide service contract rulemaking responsibility under RSA 541-A.

DAS Response:

We concur in part.

We concur that additional rulemaking authority under RSA 541-A should be provided to DAS if a decision is made by the Legislature to consolidate functions in accordance with the model set forth in Observation 1. Assignment of expanded rulemaking responsibility should not, however, be a matter assessed or recommended apart from a general consideration of an alternative statutory scheme. The Department's present rulemaking authority is subject to the overlay of various exemptions and limitations existing within the current procurement process. Any new rulemaking responsibility assigned should be crafted to the particular functions that it is anticipated DAS would perform under a new model of consolidation. It would not be possible to address the specific content of any rulemaking authority that should be granted until the model of consolidation is determined. Generally, however, such authority should include, but not be limited to, the authority to draft administrative rules regarding standards and procedures for the procurement of commodities, materials, supplies, equipment or services by either DAS or by agencies to which DAS delegates purchasing authority; standards that must be met for determining when delegations or purchasing authority will occur (if not set forth in statute); dispute resolution and other matters. DAS notes that certain of the processes that might be utilized in a new purchasing model might be set forth by statute or by way of directives or descriptions of directives in a modernized DAS Manual of Procedures. See Response to Observation 5 below.

We concur with the general observation that rulemaking authority on procurement is not found in the statutory authority of many agencies, and that agency rulemaking authority should be considered when developing any centralized procurement scheme.

The process of formulating and approving new sets of administrative rules, particularly procurement rules, is a lengthy, complex process requiring the involvement of personnel familiar with the requirements of RSA 541-A and the Office of Legislative Services' Drafting and Procedure Manual for Administrative Rules; the practical operation and complexities of the New Hampshire procurement system; statutory or other limitations; and the availability and use of tools other than rulemaking to achieve a desired end, as well as the ability to cogently convey these diverse matters to agencies, vendors and the Joint Legislative Committee on Administrative Rules. At present, no Legal Coordinator or similar position exists within the Division of Plant and Property Management to address rulemaking, policy or procedure. Should a centralized model be developed along the lines of that suggested in Observation 1, DAS believes that it would be imperative that additional personnel be assigned to the Division in order to address statutory issues, rules, procedures, practices, training, drafting and adjudication. The specific personnel resources that DAS believes would be required are set forth in DAS' response to Observation 1 (one full time, permanent Legal Coordinator; one temporary (minimum 18 months) Legal Coordinator; 2 Hearings Officers and one Program Specialist IV).

See generally response to Observation 1 above.

Observation No. 5

Revise Statewide Policy Documents And Guidance To Agencies

The DAS *Administrative Handbook* and *Manual of Procedures* establish some standards and guidance on service contracts, particularly around the G&C approval process. However, the contracting section of the *Handbook* is contradictory, inadequate, and has seen only minor procedural changes since at least 2004. The *Manual* has not been updated since 1984, and is outdated and insufficient for use in the current contracting environment. The Director of the Division of Plant and Property Management reported there are no other regulations outside the *Handbook* and, while the Division would like to provide agencies with a service-contracting manual, no updated manual has been written.

Handbook Inadequate

There are numerous inconsistencies within the *Handbook*. Part of the *Handbook* states agencies must include copies of a G&C approval request letter; a P-37; Exhibits A, B, and C; a Certificate of Authority; a Certificate of Good Standing; and a Certificate of Insurance. Agencies reported assembling these items for submission to G&C, however another part of the *Handbook* states personal service contracts only require the cover letter, P-37, and Exhibits A and B. Additionally, in describing the G&C process, the *Handbook* "recommends" using the State's P-37 contract form but later the P-37 is listed as a non-optional component of the G&C package. Three of nine agencies we reviewed reorganized *Handbook* guidance for internal use to facilitate understanding of the requirements. Further, agency officials reported various interpretations of the requirements for insurance, electronic P-37 contract forms, signatures, and vendor lists. Additionally, some informal guidance has reportedly conflicted with *Handbook* requirements.

Handbook definitions are inadequate. There is no definition of "personal service." While the *Handbook* provides lawyers, janitors, electricians, and consultants as examples of personal services, it does not give any examples of a service other than personal service. The *Handbook* states the G&C must approve contracts for "personal" services $2,500 or more and contracts for "other" services $5,000 and more. One agency's procedure manual interprets the $5,000 threshold to apply only to goods. One DAS official noted the distinction is not always clear to State employees; many people interpret a "personal" service as provided by one person, while the "other" services can be provided by anyone in a company. DAS officials stated the current inclination is to eliminate the distinction, but the *Handbook* has not been changed.

Inconsistent Adherence To Handbook Guidance

The DAS does not always comply with the *Handbook.* A DAS official stated public notice must be advertised for two days, while the *Handbook* requires three days. The DAS has used two-day advertisements since 2002, but did not incorporate the policy change in the *Handbook's* 2006 revisions. One agency official explained the newspaper publication was only a "recommendation," not a "requirement," suggesting enforcement was also inconsistent.

According to a former DAS official, the *Handbook* was created as part of the Division of Personnel's Certified Public Manager program, and was intended to provide new administrators and accounting personnel information required to work within State agency business offices. As

there had been no similar compilation of guidance before the creation of the *Handbook* in 2000 or 2001, various departments subsequently requested copies. However, only 50 of 174 respondents (29 percent) to our 2008 survey reported they used the *Handbook* to support their service contracting efforts. Additionally, the *Handbook* emphasizes the process for G&C review, but does not provide users advice on broader contracting processes.

Manual Outdated

The DAS promulgated statewide procedures in its 1984 *Manual of Procedures*, which is outdated but remains in effect today. Contract-related thresholds have changed since the *Manual* was issued, and the section on construction and repairs for plant and equipment was written before statute regulating the solicitation of architects, engineers, and surveyors and does not incorporate current requirements for selecting these services. DAS officials report the *Manual* is currently under revision.

Effective communications should occur in a broad sense with information flowing down, across, and up the organization. Written policies, guidance, and rules are tools effecting communication. Officials in four agencies we reviewed stressed a need for greater communication if the DAS were to take a greater role in the State's service contracting system. One official noted guidance is not centralized, clear, or complete. Officials at two agencies reported DAS review was inconsistent, particularly regarding the format of the G&C letter. Management should also ensure there are adequate means of communicating with external stakeholders which may have a significant impact on the State's service contracting goals. The *Handbook* and *Manual* do not adequately do this. However, the DAS reported in January 2009 it is working to revise the *Manual* and eliminate the *Handbook*. A DAS procurement official noted there is a fair amount of frustration among the vendor community from the differing requirements. In addition, this official noted the G&C cannot always decipher the inconsistencies in contracts prepared by agencies for G&C approval.

Recommendation:

We recommend the DAS repeal service contracting related components of the *Administrative Handbook* and the *Manual of Procedures* and form a single comprehensive State service contracting manual posted online and regularly incorporate updates to the process.

DAS Response:

We concur in part.

Since 1984, modifications in processes described or established in the Manual have occurred and have not generally been reflected in the Manual itself, rendering the document in some respects dated. DAS has for some time been engaged in the process of updating the Manual. A number of new provisions have already been adopted and work is continuing. We do not concur that an updated Manual is necessarily the location in which procurement practices must be found. Likewise, we do we concur with the functional equation of the DAS Budget Office Administrative Handbook with the Manual

The Administrative Handbook does not contain requirements to which the Department fails to adhere, or which the Department must somehow formally repeal. The Handbook is simply a packet of course material intended for use with, and for further explanation in, the Division of Personnel's Certified Public Manager Program. It was not designed as a general contracting guide and does not itself establish provisions binding on agencies. Generally, Bureau of Purchase and Property procurement procedures are found in Chapter Adm 600 of the Department's rules. It is anticipated that should a new model of centralization be adopted, DAS's procurement practices would be substantially set forth in rules, which may or may not require additional explanation in sources such as a procurement manual.

In recognition of the fact that better communication with agencies is desirable, DAS is presently engaged in the major task of integrating both revised provisions of the old Manual and useful features of the Handbook into a single, updated DAS Manual of Procedures. The Department also recently participated with the Department of Justice in creating additional materials of use to agencies engaged in service contracting; considering adjustments to the P-37 form; and presenting to agencies a well-attended training session which endeavored to explain the state's improved process regarding service contracts and the P-37. Information from that training is currently available on-line at http://www.sunspot.admin.state.nh.us/statecontracting/index.asp.

Alteration of the State's model of procurement may require adjustments not only to DAS rulemaking authority but to other provisions of RSA 21-I and, likely, adjustments to sections of the updated Manual. In recognition of the magnitude of the project, DAS would require additional resources to address this matter. See responses to Observations 1 and 4.

See generally our response to Observation 1 above.

Observation No. 6

Consolidate And Update Competitive Procurement Thresholds

State law, rule, and policy identify various service procurement-related thresholds, ranging from $500 to $5 million. However, the thresholds are dispersed among statute, rules, policies and procedures, and other DAS communications as detailed in Table 5, and key thresholds are lower than best practice indicates.

The time and resources spent completing the competitive process may not be in the best interest of the State, taxpayers, or vendors for service procurement under certain dollar thresholds. Best practice suggests a need for clearly identified thresholds, a tiered approach ranging from small purchases to full and open competitive procurement, and thresholds at an appropriate dollar value to balance oversight with efficiency.

In a National Association of State Procurement Officials survey, 47 of 48 states reported using formal competitive bidding processes and dollar thresholds associated with competitive procurement. The survey indicated small purchases, those under $25,000, often did not require full and open competitive procurement and were approved at the individual purchasing agency

level, not in a central purchasing office. Purchases over the full and open competitive procurement threshold require a formal approval process.

Best practice also establishes dollar value thresholds. One example is a three-tiered system which New Hampshire loosely follows in practice.

1. Small purchase procedures for purchases under a certain dollar threshold from centrally established contracts, using purchasing cards, or small dollar purchases based on delegated authority. Agencies may require no quotes or a quote from a single vendor. This quote is examined for reasonableness against prevailing market costs or other similar recent government purchases.
2. Informal competition threshold. Above the small purchase threshold but below the threshold requiring full and open competition. Three or more written quotes and public notice may be required.
3. The threshold for full and open competition where all of the necessary components of competitive public procurement are required to maximize the benefit of the procurement process.

While the State does not define or differentiate between small purchase authority, competitive procurement, and full and open competition; the structure loosely exists in practice. Policy requires three telephone quotes for purchases below $1,000, equating to the small purchase authority tier. Three written quotes for purchases between $1,000 and $1,999 equate to the informal competition tier. The RFP process for contracts above $2,000 equates to the full and open competition tier. Although the structure may parallel best practice, the thresholds do not. Best practice recommends full and open competition for purchases starting at a value of between $20,000 and $50,000, compared to $2,000 in New Hampshire. New Hampshire was one of two states with the lowest full and open competition threshold of all states responding to the National Association of State Procurement Officials survey conducted in 2000. State thresholds may not maximize the return for the resources required to conform to the process. Table 6 details the average best practice thresholds for each tier as well as the equivalent value in today's dollars from when current thresholds were initially established in the State.

Table 5

State Service Procurement-Related Thresholds		
Threshold	**Description**	**Source**
$0	Any amendment to a contract originally requiring G&C approval or now surpassing the G&C threshold requires approval	G&C via the DAS *Administrative Handbook*
≤$500	Field Purchase Orders with authority delegated to agencies.	RSA 21-I: 17-a; Adm. 602.01(v) and 607.07(a)
>$500	Software, hardware, or computer service requires Chief Information Officer approval. With no statewide contract, or less than $500 without delegated authority, requires a requisition form submitted to the DAS. Brand specific purchases require completing specified forms and processes.	RSA 21-I: 11, XI; Adm. 607.01(f), Adm. 607.01(c), Adm. 607.02(a)
<$1,000	Three telephone quotes required. Service contracts can be processed without encumbering funds.	DAS *Administrative Handbook*
≥$1,000	Non-resident vendors, and resident vendors conducting business under a name other than their own, must be registered to do business in the State for any personal service contract.	RSA 5:18-a
$1,000 – 1,999	Three written quotes required.	DAS *Administrative Handbook*
≤$2,000	Competitive bidding (RFP Process) not required for DAS purchases of goods and multi-agency services.	RSA 21-I: 11, III (a)
>$2,000	Competitive bidding required, and unless competitive bidding has been employed, written approval is required by the DAS Commissioner as well as the reason for not utilizing competitive bidding. Vehicle repairs must be submitted with two quotes to Bureau of Plant and Property Management.	RSA 21-I: 11, IV; Adm. 601.03(c), DAS *Administrative Handbook*,
$1,000 - 2,499	A short form contract must be submitted to DAS for service contracts. However, the DAS *Handbook* also references $500 – 2,499 for short form contracts.	DAS *Administrative Handbook*
≥$2,500	G&C approval required for personal service contracts. G&C approval required for service contracts where the cost is greater than $2,500 and labor is more than 50% of the cost.	G&C via the DAS *Administrative Handbook*
≤$5,000	Authority for purchases from a central contract may be delegated to agencies.	RSA 21-I:17-a
≥$5,000	G&C approval required for other service contracts.	G&C via the DAS *Administrative Handbook*
>$25,000	Major public works projects for all agencies must be bid through Bureau of Public Works (BPW) and awarded to lowest qualified bidder, except for Fish and Game and Department of Resources and Economic Development (DRED) projects. All State projects must be inspected to assure compliance with plans and specifications.	RSA 21-I:80, I, RSA 21-I:83, I-a
>$35,000	RFPs will include criteria, requirements, and award basis and service contracts will include statement of work and award basis.	RSA 21-I:22-a and 22-c
>$250,000	Major public works projects must be bid through BPW and awarded to lowest qualified bidder for DRED and Fish and Game projects.	RSA 21-I:80, I
>$500,000	All major projects must be done by a registered architect or professional engineer unless G&C determines the project can be done in-house.	RSA 21-I:80, II
≤$5,000,000	DOT may utilize design build for transportation improvement projects.	RSA 228:4, I (c)
Key: > Greater than, ≥ Greater than or equal to, < Less than, ≤ Less than or equal to		

Source: LBA Analysis of Statutes, Administrative Rules, and State Policy.
Note: The Administrative Handbook was developed as a training document and contains a mix of legal authority and recommended practices. Agency and DAS personnel use the Handbook as a source of mandatory standards.

Table 6

Comparison Of Best Practice And New Hampshire Service Procurement Thresholds					
Tiered Thresholds	New Hampshire				Average Best Practice Threshold
	Threshold	Description	Year Established	Current Value	
Small purchase authority	< $1,000	Three telephone quotes	1997	$732	< $4,750
Informal competition	$1,000 – 1,999	Three written quotes	1997	$732 – 1,464	$4,750 – 37,000
Full and open competition	≥ $2,000	Competitive bidding	1985	$943	≥ $37,000

Source: LBA Analysis.

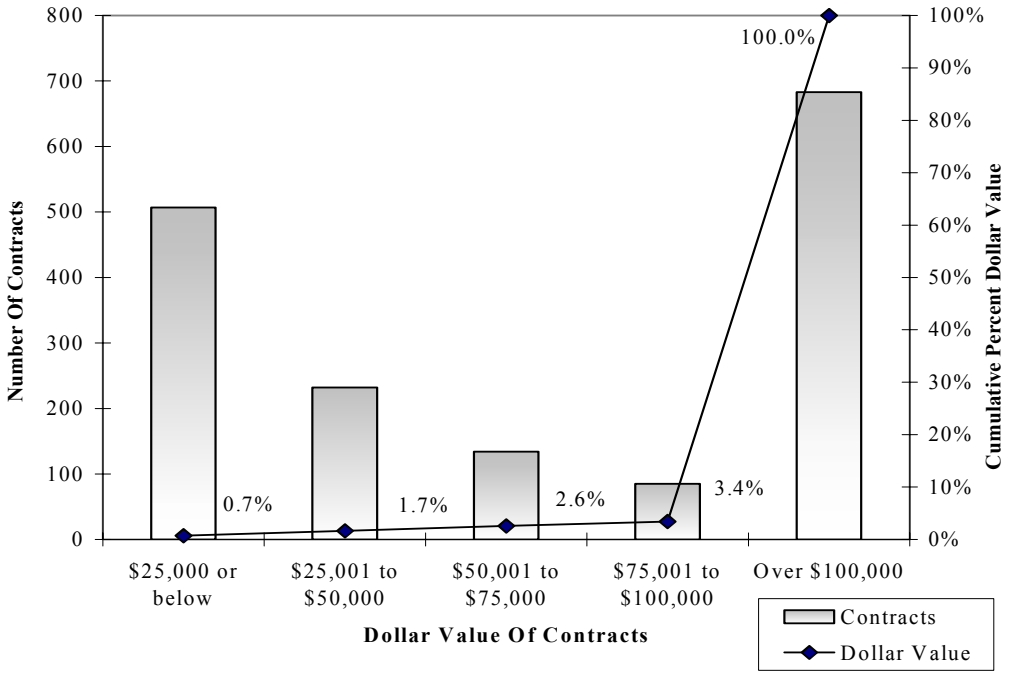
There is no agency or body currently assigned to review and update State service procurement practices to reflect current best practice. This includes the need to assess the current structure and level of dollar thresholds in the procurement process. Officials from six agencies we reviewed and three previous Legislative and Executive Branch reports addressing State government procurement, issued between 1983 and 2003, concluded the State's authorization and approval thresholds were too low. The DAS Commissioner reported there is a sense lower thresholds equal tighter controls, but stated if dollar thresholds were raised, the State could pay more attention to the most important contracts.

As we detail in Figure 1, 507 of 1,641 new service contracts (31 percent) reviewed by G&C over the audit period were under $25,000, accounting for $6.2 million of over $900 million (0.7 percent) of the total value. By raising the G&C review and full and open competition threshold to $25,000, agencies and the G&C could have processed 507 fewer contracts (31 percent), removing less than one percent of the overall value of contracts from the G&C review and oversight process and allowing greater focus on larger contracts.

Officials from six agencies we reviewed, two Executive Councilors, and 39 of 80 service contracting personnel (49 percent) responding to our 2008 survey noted the burdensome nature of the current review process for both agencies and vendors. State policy and current thresholds require the same process for $2,000 contracts as they do for $1 million contracts. Two agency officials concluded vendors may forgo doing business with the State to avoid the paper intensive process required for even low value contracts. One agency official noted it may cost more to advertise than a small contract is actually worth. Of those responding to our 2008 service contracting survey, 109 of 159 (69 percent) concluded the threshold levels for G&C review were too low and 88 of 159 (55 percent) concluded the thresholds for competitive bidding were too low.

Figure 1

Cumulative Percentage Of Dollar Value Over Each Specified Threshold



Source: LBA Analysis of G&C Minutes.

Recommendations:

We recommend the Legislature consider:

- **amending statute to establish a tiered system for competitive procurement thresholds with a small purchase limit, competitive procurement limit, and a threshold above which full and open competition is required;**
- **simplifying and consolidating the current thresholds into one statute; and**
- **establishing a process for reviewing and recommending future adjustments to thresholds.**

We also recommend the DAS propose new thresholds for G&C approval.

DAS Response:

We concur in part.

As a general matter, DAS believes that it may be productive to establish a tiered system for competitive bidding, perhaps including the dollar levels noted in the response to Observation 3. We concur that various statutes and rules establish different dollar amounts that may have some relationship to procurement, but note that not all of these dollar figures address the same conceptual issues. It is DAS' understanding that the "thresholds" noted in this observation do not relate solely to levels at which competitive bidding or Governor and Council approval is

required. Some pertain to unrelated matters such as when Information Technology approval is required for an IT purchase; brand justification requests; business registrations; who must perform certain public works projects and other matters. We concur that any adjustments made to the current purchasing model should in some manner account for these scattered provisions.

In regard to a consolidation of these statutes under the current system, DAS believes that it would require an independent assessment of each statute or rule cited in order to determine whether resources should be spent on consolidating the provisions in one single location or, instead, whether it would be possible or desirable to synthesize the existing statutes in explanatory sources such as the Manual.

See generally our response to Observation 1 above.

Observation No. 7

Implement Standard Language, Forms, Templates, And Guidelines

Agencies lack access to standard templates, flowcharts, and checklists for the service procurement process. There are no standard approval forms, award letters, standardized language for proposals and public notice, and contracting-specific definitions are limited. In addition, the language in the standard contract form is inadequate. Poor guidance and the lack of clarity, definitions, and standard templates can lead to inconsistency in the service procurement process.

Officials at six agencies we reviewed identified need for definitions, templates, examples, checklists, sample RFPs, and "fill in the blank" type forms. One official noted, with little centralized guidance, each agency conducts business independently. The DAS identified three different agencies which publicized RFPs for the same service. Each differed from the others, and not all included requirements for insurance, good standing certificates for vendors, and other required components. Agency personnel also noted the standard contract form P-37 is antiquated, inappropriate for today's complex contracting environment, and inequitable for vendors. One agency official noted the standard terms and conditions are very onerous, placing all contract risk with the vendor, and large vendors may not be willing to agree to the terms and take on such risk. Inconsistent procurement definitions, requirements, and few individuals trained in the service procurement process has led to an inconsistent, "very frustrating" system where agencies move through the process and constantly must revise, resubmit, and potentially miss steps. DAS implemented a new P-37 with a checklist and instructions in January 2009.

In our survey of State employees participating in service contracting, 39 of 80 (49 percent) identified the procurement process as poor, complex, inconsistent, or cumbersome. Only 31 of 152 (20 percent) identified clear policies and procedures as a positive feature of State contracting, while 69 of 159 (43 percent) identified frequent changes in requirements as a weakness. Respondents identified the need for a standardized process with consistency within and among agencies.

Best practice suggests standardized definitions, approval forms and templates for contracts and amendments, approval forms for sole source contracts, public notice language, RFP templates,

required reporting templates, required contract language, templates to evaluate RFP responses, forms assigning responsibility such as contract administrator, and contract award checklists. These can foster consistency and enhance control by requiring standard paths and processes for approval and documentation, ensuring completion of contracting requirements, and ensuring appropriate language within contracts. In addition, agency users and vendors are aware of the contracting process and steps necessary to complete an efficient and effective competitive procurement. Best practice recommends flowcharts ranging from very basic overviews of the process and requirements to detailed, step-by-step process flows. Checklists can also range from basic checklists outlining the needed steps to complete the contracting process and identify common errors to very specific checklists, including identifying need and authority to contract, assigning contract administrators, and maintaining complete contract files. These processes can also help assign accountability and responsibility for the contract and its results. Additional items for posting on a central website can include project planning documents, needs justification form, quote forms, evaluation matrices, standard contract language, required terms and conditions, vendor registration form, W-9, G&C letter templates, retroactive approval forms, emergency approval forms, evaluation committee approval forms, extension templates, contracting responsibility tables, and bid package process.

Recommendation:

We recommend the DAS create standardize contracting forms, templates, and checklists to be posted on a central procurement website and updated when necessary.

DAS Response:

We concur.

We note that DAS has already taken substantial action in this regard by engaging in a joint effort with the Department of Justice to standardize forms, templates and checklists and to post those items on the web. See response to Observation 5 above. After a six month collaborative effort, updated service contracting information is now available on line. In the future, DAS anticipates that some or all of this material may also be referred to in, or be made accessible through, its Manual of Procedures. It is anticipated that additional standardized or descriptive materials will, to the extent possible, be produced and regularly updated in the future.

To the extent that this recommendation is part of the larger recommendation that a revised, centralized purchasing system be generally handled through a DAS website, see DAS' response to Observations 1 and 11. It is anticipated that an Information Technology Manager IV would be required to formulate and manage the procurement website.

Observation No. 8

Establish Contract Document Retention Policies And Procedures

Best practice suggests documentation related to planning, solicitation, proposal evaluation, contract award, and contract monitoring should be retained. However, State agencies

inconsistently maintain contracting documents other than signed contracts. State policy permits contracts and personal service agreements terminated seven years prior to be destroyed; however, agencies have other retention schedules. Further, agencies are not encouraged to retain documents in electronic format, although the current process is burdensomely paper-intensive. Guidance released at the end of 2007 stated contracts and personal service agreements terminated in 2000 were eligible for disposal.

Statute defines a "record" as a document or other material made or received pursuant to law or in connection with official business transactions. State guidance refers only to contracts and personal service agreements and not to other contract-related documentation. Best practice suggests statute, rule, or policies and procedures should require agencies maintain copies of other relevant documents regarding the contracting process and post-contract administration. In our 2008 survey:

- 146 of 177 respondents (82 percent) reported their agency retains the signed contract document,
- 59 of 177 respondents (33 percent) reported maintaining information regarding vendor performance reporting,
- 113 of 177 respondents (64 percent) reported retaining documentation of quotes,
- 137 of 177 respondents (77 percent) reported keeping the original RFP or RFB, and
- 120 of 177 respondents (68 percent) reported retaining contract amendments.

Further, not all survey respondents reported maintaining documents related to final award decisions. Best practice suggests documentation should be retained and posted publicly to ensure an equitable and transparent process. Best practice also suggests the central archiving agency should produce a management guide for electronic record management, develop a record retention schedule, and perform systematic inspections.

Recommendations:

We recommend the DAS determine which contract-related documents must be retained by agencies to protect the interests of the State and others involved in State contracting. We further recommend the DAS, in coordination with the Secretary of State, require agencies retain such contract-related documentation.

DAS Response:

We concur in part.

DAS concurs that agencies' individual statutes may have various retention schedules for various types of records and that records retention policy is therefore not necessarily found in a single location. We also believe that the State's "central archiving agency" is the entity that should consider such matters as viable, consolidated retention schedules and that it may be appropriate for that entity to consult with agencies including DAS as to reasonable retention schedules. As a general matter, however, the State's "central archiving agency" is the Secretary of State's Division of Archives and Records Management, not DAS. See RSA 5: 25 through 41. Those

statutes provide, in part, that unless otherwise provided by law, records without permanent historical value may be destroyed after 4 years and that the Division is to produce a manual of procedures designed to address matters within its control. Current statutes do not assign DAS the general ability to establish record retention policies or require agencies to adhere to them. See also RSA 541-A: 30-a, III (l) (requiring certain model rules for individual agencies to address retention schedules for certain documents). In regard to agency records relating to contracting, we believe that if DAS were to be designated a central purchasing entity with an electronic database of materials, it should have input into schedules and practices relating to matters within its authority. See RSA 5: 33, I (noting that agency heads are to propose to Archives and Records Management retention schedules for their records).

See generally our response to Observation 1 above.

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SUPPORT

Appropriate training and use of procurement personnel, combined with management reporting, adequate technology, and regular system reviews can help maximize the effectiveness, efficiency, and controls in the procurement process. Maintaining a good control environment requires personnel who possess the competence to accomplish their assigned duties. Management must also identify appropriate knowledge and skills and provide needed training. Program managers need both operational and financial data to determine whether they are meeting agency goals and objectives and effectively and efficiently using resources. Internal controls should be designed to ensure ongoing monitoring occurs in the course of normal operations. Properly implemented, these tools can support State service procurement and strengthen management controls.

Observation No. 9

Develop And Implement Service Contracting Training Programs, Class Specifications, And Ethical Guidelines

Procurement training is not required by statute, rules, or policies and procedures, there are no class specifications or positions dedicated to service contracting, and there are no contract specific ethical standards. A lack of training requirements and dedicated contracting positions, combined with the decentralized nature of State service procurement, has created an environment where 400 personnel in the ten State agencies we reviewed procured over $1 billion worth of services during the audit period, but as few as half had received any service contracting training.

Training

Only 12 of 180 respondents (7 percent) to our 2008 survey (Appendix C) reported receiving formal training before assuming service procurement responsibilities, 69 (38 percent) reported receiving informal training, and 90 (50 percent) reported receiving no training. When identifying training most needed, 114 of 176 survey respondents (65 percent) identified State rules, laws, and processes; 97 of 176 (55 percent) identified writing requests for proposal (RFP); and 92 of 176 (52 percent) identified creating contract specifications. Sixty-five of 159 respondents (41 percent) reported a lack of training was a negative aspect of the current service-contracting environment while only three of 152 respondents (2 percent) agreed training was a positive aspect of the current contracting environment.

Best practice calls for mandatory training or certification programs for procurement professionals, as well as making training available for others involved in the procurement process, such as vendors. National procurement organizations offer certification programs, partner with universities to offer procurement degrees, and work with state procurement offices to regularly offer training. Recurring training on aspects of procurement and project management are valuable tools for improving the efficiency and effectiveness of procurement programs. Best practice also recommends various training media including classroom training, workshops, and online tutorials available on a central procurement website. In addition, procurement training

should be managed through a central procurement office and may vary from basic training to full certification programs.

The Bureau of Education and Training, Division of Personnel offered two courses on procurement. One was a half-day class on "Writing and Evaluating Successful Requests for Proposals" which was cancelled due to lack of enrollment. The other half-day course built into the New Hampshire Certified Public Manager Program on the State budget and purchasing is available to a select number participating in the Certified Public Manager Program and is limited in its procurement focus. While the Department of Justice (DOJ) is not authorized or required to train State employees, the agency has taken an informal role in training on contracting requirements. However, best practice does not envision legal departments leading or being responsible for procurement training.

Contracting-Specific Positions

Though the Department of Administrative Services (DAS) employed eight purchasing agents and assistants during the audit period focused on procuring goods and some multi-agency services there are no class specifications or positions dedicated specifically to service contracting such as contracting officers or procurement specialists in the State. Rather, this responsibility is distributed among many positions. Of the 1,162 employee class specifications in State government, 75 class specifications (7 percent) identify formal involvement in contracting processes though it is unclear if the positions are for goods or service procurement. Personnel ranging from administrative secretaries to commissioners were reportedly involved in service contracting, with little to no standard identification for the level of responsibility assigned. Only four of the 75 (5 percent) class specifications require contracting experience. None require contracting certification or training. Educational requirements for class specifications with contracting responsibility vary from a high school diploma to a master's degree and again have no clear connection to level of contracting responsibility. Our survey showed 25 of 175 respondents (14 percent) spent 50 percent or more of their time on contracting; the median amount of time spent was reportedly 10 percent.

Public contracting has become more complex and widely utilized, increasing training needs. Best practice calls for tying training to delegated authority where only those agencies with procurement staff who complete training and certification programs can participate in the procurement process with any degree of independence from the central procurement office. Since government retains responsibility for program delivery and maintaining system controls, it is necessary to require expert procurement officials, responsible for compliance and structuring business arrangements and possessing a unique set of management skills, be involved in the procurement process. Previous audits and studies of State procurement have identified training needs and recommended the State participate in a certification program for procurement personnel.

Ethical Standards

The procurement environment has the potential to introduce financial conflicts of interest and impartiality and equity issues and often deals with confidential and proprietary information. The

State currently has no contracting-specific ethical standards and does not define conflicts of interest related to the contracting environment in statute, administrative rules, or policy applicable to agencies, vendors, or other participants in the procurement process.

RSA 21-G:21 though 21-G:35 establishes the State's Code of Ethics, while RSAs 15-A and 15-B address financial disclosure and gifts, honorariums, and expense reimbursement. No agency has developed a code of ethics and conflict of interest policy specific to procurement. While the Executive Branch Ethics Committee is a contact for State ethics issues, there is no specific contact for procurement issues. Best practice identifies a procurement-specific code of ethics for employees to help ensure the public trust and appropriate use of public funds. The National Institute of Governmental Purchasing (an educational and technical organization of public purchasing agencies) provides a specific procurement code of ethics, as does the federal government, and some state and local governments. This can include defining and prohibiting conflicts of interest, impropriety or the perception of impropriety, gifts and gratuities, disclosure of confidential and proprietary information, and relationships with vendors before and after the procurement process. Additionally, these documents provide specific examples of situations which may arise during the procurement process and appropriate actions and responses to those situations. Some provide guidelines to vendors as well, to establish acceptable behavior for all parties.

Increased responsibility through delegation requires not only training on procurement topics, but also training on ethics. Best practice concludes creating and adhering to the code of ethics and clear ethical guidelines and practices is needed to reduce costs and instill public confidence. Code of Ethics requirements, in addition to those available in RSA 21-G:21-27, should address procurement specific topics. Best practice also shows the need for training on ethical standards while outlining specific codes of ethics, potential scenarios and appropriate responses. Forms for employees to sign indicating they have read and understand the code of ethics should be required. An agency ethics officer, a central point of contact for ethical inquiries statewide, a process for disclosing issues, and legal ramifications for noncompliance are also recommended. All ethical requirements should remain available publicly and both government employees and potential vendors should be required to know, understand, and adhere to the requirements.

The lack of training can lead to varied procurement approaches, misunderstanding, inefficient processes, errors, and project failure. According to best practice, the lack of positions specifically dedicated to procurement, the dispersed nature of contracting in the State, and lack of training create an environment where contracts are processed but not managed. There are no requirements for certification to participate in procurement, acknowledgement of ethical guidelines, or standards for receiving delegated authority. Consequently, employees may not be equipped with needed skills to ensure efficient and effective service procurement.

Recommendations:

We recommend the Legislature consider establishing in statute service contract training, certification, and ethical requirements, including prohibition of conflicts of interest and requiring employee acknowledgement of their ethical obligations.

We recommend the DAS identify training needs and coordinate training and certification for State procurement professionals. Procurement training should also focus on project management and be offered regularly. Needs assessments should be conducted regularly to ensure training remains valuable.

We also recommend the DAS:

- **include requirements for procurement training and certification for those involved in the procurement process;**
- **establish minimum training requirements to be eligible for the delegation of procurement responsibility; and**
- **post online any Legislatively established procurement ethics guidelines and annual training for agency procurement employees, with sign-off demonstrating employees' understanding of the ethical requirements.**

DAS Response:

We concur in part.

Ongoing training would be essential in any effort to centralize State procurement and is important to the present system as well. Procurement training is not at present specifically required by statute. Nonetheless, personnel assigned by DAS to engage in procurement possess specific, practical experience in their field. DAS also provides formal and informal training to its in-house procurement staff and others. In conjunction with the Department of Justice, DAS presented a well-attended training session regarding updated contracting procedures. See response to Observation 5. We do not believe that the Department of Justice's involvement in training was contrary to best practice (see audit p. 34), particularly given that procurement issues involve complex considerations that may in part be legal in nature.

We concur that it would be desirable for DAS to offer expanded purchasing training, provided that adequate resources are available to do so. To the extent that this could be done under current law, we believe that one additional technical instructor would be needed in the Division of Personnel, Bureau of Education and Training to conduct a needs assessment, work with subject matter experts to develop curriculum and provide initial and ongoing training. The Division of Personnel would then work in collaboration with DAS staff to identify the list of employees with purchasing responsibility as well as the variety of levels of interaction those employees have with procurement functions within their respective agencies. If a statutory change results in implementation of a mandatory Procurement Certification program for individuals in procurement related positions, the Division of Personnel would also need to explore potential compensation ramifications.

DAS concurs that training relative to procurement should ideally include training relative to ethical issues and that state ethics laws are not generally written so as to be specific to contracting. DAS would welcome the opportunity to explore with the Department of Justice or other appropriate entities the creation of more specific ethical guidelines tailored to the area of purchasing, particularly should a consolidated system be established. At present, it is noted,

however, that the general provisions of ethics statutes apply with equal force in the contracting sphere as in other areas. See e.g. RSA 21-G: 22 (employees to avoid conflicts of interest). Rather than establish a detailed code of ethics for all of the executive branch, the Legislature has created specific provisions relative to gifts, honorariums and expense reimbursements (RSA Chapter 15-B) and chosen to allow each agency to promulgate supplemental ethics codes to the extent necessary within the agency. See RSA 21-G: 27. Under the present structure, DAS is not designated as the agency to issue ethical guidelines. The Executive Branch Ethics Committee established by RSA 21-G: 29 issues guidance on ethical issues and posts its opinions, as well as other items, on line. In addition, statutory ethical provisions have been explained to many state employees on various occasions, through training offered by the Department of Justice. That Department has also created a detailed PowerPoint presentation relative to ethical matters which is available on line.

See generally our response to Observation 1 above.

DOJ Response:

Do not concur.

The report recommends, in part, establishing service contract ethical requirements, including prohibition of conflicts of interest and requiring employee acknowledgement of their ethical obligations. The legislature has already developed a comprehensive code of ethics for the executive branch of state government. RSA 21-G:21 – 22 defines and prohibits conflicts of interest. RSA 21-G:23 prohibits misuse of position. RSA 15-A governs financial disclosure, and RSA 15-B includes a prohibition on acceptance of gifts. The auditors provide no rationale basis for concluding that New Hampshire should enact a separate ethics law for service contracting. State officials engage in an almost unlimited variety of tasks on a daily basis, only one of which involves service contracting. A multitude of ethics laws for separate tasks would only lead to confusion, and increase the risk of non-compliance. The Attorney General's Office would favor amendments to the misuse of position statute to better effectuate its likely intent. Specifically, RSA 21-G:23, II needs additional language to distinguish unethical conduct from proper conduct. As worded it would make it unlawful to hire anyone, as hiring someone is an act by a public official which, when done properly, nonetheless, secures a governmental privilege or advantage, i.e.; the job, for another. The final clause needs to be amended to add some improper conduct element. The nature of that element is a policy call for the legislature.

Observation No. 10

Require Use Of Service Procurement User Groups And Cross-Functional Contract Teams

User groups can provide feedback on, and help improve, the service procurement process. Cross-functional teams can help ensure those with knowledge of agency service needs and those with knowledge of procurement practices are paired and involved in the procurement process. Both can help to maximize the benefits of full and open competitive procurement.

User Groups

User groups are not required by statute, rule, or policy and have not been used to provide statewide communication and feedback or engage stakeholders in the service procurement process. A user group can consist of agency personnel, contract end-users, vendors, and State procurement office professionals. User groups can help maximize the effectiveness of the contracting process. These groups help ensure contract user needs are met by providing feedback on the contracting process and on active contracts. This arrangement encourages information flow between stakeholders, contracting professionals, and using agencies. Groups can represent users and provide feedback on multi-agency service contracts. Groups can also include stakeholders who can review and make suggestions regarding the overall service procurement process. DAS multi-agency service contracts have not utilized user groups. Consequently, 53 of 144 survey respondents (37 percent) reported not using centralized DAS service contracts because they did not meet agency needs. Additionally, 24 of 144 survey respondents (17 percent) reported being unaware of available centralized contracts.

Cross-Functional Contract Teams

No statute, administrative rule, or State policy requires using cross-functional contract teams in the contracting process. Rather, the roles of those involved in contracting within and among agencies are unclear. Best practice suggests using a team comprised of personnel representing the technical service needs, agency mission, contracting and legal expertise, and stakeholders. Within these teams, delegated responsibilities should be clearly assigned and documented to ensure proper contract implementation and administration. Those with technical knowledge should prepare specifications, agency stakeholders may be assigned contract administration, and contracting experts should ensure the contracting process is handled efficiently, effectively, and conforms to law, rule, and policy. Additionally, team membership should remain intact through contract development and administration, as they have the most knowledge, awareness, and expertise for each specific project.

Best practice includes using cross-functional teams and assigned responsibilities for developing specifications, the contracting process, vendor contact, and contract administration. Changes in roles and responsibilities may be needed during the life of the contract. For example, those responsible for writing specifications may become responsible for ensuring deliverables meet specifications. The agency person assigned responsibility for contract administration should be an employee of the program supported by the contract. Assigned responsibility should be in writing and be part of contract documentation. Team members should be trained and possess the knowledge, skills, and abilities to successfully fulfill their responsibilities. Best practice recommends formally adding the vendor to the contract team once the contract is awarded, to develop and maintain strong relationships and communication. The team should meet regularly to discuss contract performance, as well as any concerns, goals, and issues that may need addressing.

Decentralized service contracting, the lack of positions dedicated to contracting, and the absence of formal policies and procedures assigning responsibility have created a procurement environment with little formal structure and support. Each agency manages the contracting

process differently. Prior reports on State government noted communication and fragmentation issues in the procurement process and identified the need to keep staff informed, for a DAS advisory role on procurement teams, and to improve cross-communication between agencies. Improved communication and integration of contract activities through specific contracting positions, user groups, and cross-functional teams could help meet statewide needs.

Recommendations:

We recommend the Legislature consider amending statute to require:

- **development of user groups for multi-agency service contracts and for the overall procurement process to ensure agency needs are identified and feedback is provided to the DAS, and**
- **cross-functional contract teams to include procurement office personnel and user agency representatives on contracts over the full and open competitive procurement threshold with specific responsibilities assigned in contract documentation.**

We recommend the DAS, using this new authority, promulgate administrative rules identifying when user groups and cross-functional service contract teams are required and how they are to operate.

DAS Response:

We concur in part.

Although DAS does not believe that it is currently required to use, or define the utilization of, user groups and cross-functional service contract teams, the Department does, when appropriate, seek the input of agencies and others regarding multi-agency service contracts. Were centralization of the purchasing function to occur, it is not clear whether or not the groups and teams described in the recommendation would be necessary or whether DAS might instead be able to address some of the matters noted by way of internal procedure. To the extent that DAS might in the future be given the authority to delegate procurement functions and practices to particular agencies meeting set criteria, the Department would consider the circumstances in which such groups and teams might be valuable. DAS would be unable to determine what administrative rules might be needed or desirable until it is known what model of centralization might be adopted.

See generally our response to Observation 1 above.

Observation No. 11

Use Information Technology To Improve Procurement Processes

Technology systems supporting procurement are commonly referred to as electronic or e-procurement. E-procurement is a tool linking buyers, sellers, and users through the Internet. E-

procurement may include a public central procurement website, online agency and vendor processing, electronic signatures, electronic bill payment, and online procurement reporting databases for agencies. These systems may be as basic as online ordering or as complex as integrating vendor registration, catalogs, and solicitation tools with the accounting system and approval processes.

The State's implementation of e-procurement is limited. The DAS website contains some bidding opportunities, some awarded contracts, and limited procurement guidance. At least 18 other agencies maintain websites with other components of the procurement process such as registering with DAS and obtaining a Certificate of Good Standing. The Department of Transportation (DOT) maintains various web pages with guidance on its procurement process. At least 15 additional agency sites post bidding opportunities. As part of its response to our 2006 *Insurance Procurement Practices* performance audit report, the DAS reported establishing a central procurement website would be part of a phased implementation of centralized State service procurement. However, State procurement websites are not all linked to one another, nor are they linked directly to the DAS website. Online bidding, auctions, vendor registration, reporting, and use of purchasing cards are not part of the State's electronic process. In January 2009, the DAS modified *SunSpot*, the Department's intranet repository, by adding a new P-37 template and a supporting checklist and instructions.

The decentralized service contract process makes limited use of technology for oversight and control. The State did not purchase the procurement module for the New Hampshire Integrated Financial System when the system was implemented in the 1980s and the system does not effectively manage the procurement process. The *Business Needs and Process Report* for the Enterprise Resource Planning (ERP) project identifies several needed capabilities to address these shortcomings including online vendor registration, updateable vendor information, online bidding, and electronic signatures. Also needed are electronic requisition forms to alleviate the cumbersome paper process, as well as unique number identifiers for requisitions, fund availability checks, and verification of accuracy and completeness of forms to improve controls. In our 2008 survey of State employees participating in service contracting, 125 of 159 respondents (79 percent) reported increased electronic processing was essential to implementing a centralized procurement process. The DAS identified the ERP's ability to change procurement documents electronically and return them to the originator, as well as manage encumbrances, as a beneficial change. While these needs were identified in initial ERP requirement documents and potential benefits of the system were identified by the DAS, the procurement module is yet to be implemented.

Two Executive Councilors stated the current process is overly paper-intensive; one reported it would be preferable to receive Governor and Council (G&C) service contracting packages on disk. RSA 294-E, enacted in 2001, established legal recognition of electronic records, including contracts, and compels the DAS, in cooperation with the Secretary of State, to determine whether government agencies may create and retain electronic records. However, the G&C *Administrative Handbook* still requires agencies provide 11 hard copies of each request for G&C approval of a new contract, amendment, or extension. The length of a G&C package requesting approval varies from 15 to 100 pages according to DAS Business Supervisors. We approximate

agencies expended over $21,500 on just paper and ink for G&C contract review during the audit period. It is reasonable to conclude staff-hours expended exceed the cost of paper and ink.

Electronic records, electronic signatures, and electronic contracts are permitted by State law, but have not been incorporated into the State procurement process. The standard State contract form, the P-37, is available in an electronic format; however, the DAS is not consistently accepting electronic P-37s. Two agencies would prefer using an electronic form of the P-37, but reportedly were told by the DAS electronic forms are not allowed. One official reported typewriters would not be retained if not for the need to produce typed service agreement forms. However, the DAS approved a process for another agency to use an electronic P-37 form in March 2007.

Three reports on State government efficiency prepared by the Executive or Legislative Branch issued between 1982 and 2003 identified weakness in purchasing technology, the need for a central State procurement website where all solicitations and vendor information are posted, and concluded because the purchasing process is not automated, it is unwieldy and time consuming.

Best practice links a successful procurement process with using e-procurement tools and a central procurement website providing a single point of entry for agencies, vendors, and the public. A central procurement website can help improve communication and agency interaction with citizens and stakeholders. Governments are using websites to post current contracts, awarded contracts, and evaluation matrices, as well as statutes and rules, policies and procedures, how to guides, vendor registration, online payment, online form submission, and e-mailed news alerts. These trends provide a larger pool of vendors easier access and increase competition, pricing, and transparency. Several public and private sector sources we reviewed reported e-procurement benefits can include per transaction cost savings of $40 to $100, reduced paper processes, additional controls and monitoring tools, greater consistency and standardization, and increased accountability and oversight. One state's e-procurement includes vendor registration, reporting, training, contract award, and centralizes transactions, as all activity enters through the e-procurement tool, providing oversight of the statewide process. This state claims saving millions yearly, increasing transparency, and reaching many more vendors, while reducing transaction times. Additionally, efficiency created by e-procurement can lead to a shift from focusing on processing of contract paperwork to management of the procurement process, including strategies such as negotiation, performance measurement, developing vendor relationships, and better buying strategies with the goal to provide more services at the same price.

Centralizing procurement services, increasing online service availability, and improving available online information and guidance, while standardizing the State's procurement website, are needs identified by procuring agencies. Officials from three agencies we reviewed reported the lack of centralized information and poor web presence is reportedly a difficulty for vendors. The need for a central location for vendors to identify opportunities was noted as well as confusion for vendors inquiring where online information can be found, or how to identify bid opportunities or ask questions. The DAS identified some potential cost savings inherent in using an online tool by reporting the State saved $12,000 emailing bids in lieu of mailing them and using newspaper ads directing users to its website instead of printing RFP summaries.

Recommendations:

We recommend the Legislature consider amending statute to require a DAS-managed central procurement website as the single entry point for service procurement information.

We recommend the DAS-managed central website, under this new authority, include:

- **links to statutes, rules, policies and procedures, and guidance memos;**
- **alerts to changes in the process and other news;**
- **centralized posting of all State bidding opportunities and all awards;**
- **contact information;**
- **a guide to doing business with the State;**
- **G&C letter, RFP, and contract templates with standard contract language approved by the DOJ;**
- **training documents and schedules;**
- **feedback processes for vendors, agencies, and citizens;**
- **performance measures;**
- **online vendor registration;**
- **electronic service contract approval process;**
- **process flow charts;**
- **poor performing or debarred vendor lists; and**
- **frequently asked questions.**

We further recommend the DAS support electronic submission of contracts to the G&C for approval.

More advanced functionality could include online RFP submission, electronic signatures, payment functionality, and online reverse auctions for bidding prices down.

DAS Response:

We concur in part.

DAS generally supports the notion of creating a single procurement website if centralization occurs under the model of Observation 1. It does not concur to the extent that the observations might be read to suggest that electronic technology has not been incorporated into the present DAS procurement process. DAS rules do not forbid most electronic or faxed submissions of bids, provided that certain criteria are met, and those rules specifically allow for the submission of various electronic filings. See e. g. Adm 604.02, Adm 609.01.

As noted in Observations 5 and 7 above, DAS has been engaged in an ongoing effort to make various electronic materials available online. We generally support the use of electronic forms and systems and have incorporated them to the fullest extent possible within the current infrastructure. For example, the Bureau of Purchase and Property posts RFPs and RFBs on the web and "auto faxes" certain items to vendors. With the new ERP system being instituted by the state, we will be eliminating paper requisitions and forms and we will be utilizing electronic

requisitions, attachments and issuing purchase orders from the new system. In the second phase of ERP implementation, we are looking to install the ability to receive and issue electronic bids and provide full vendor self service through the use of a module called strategic sourcing. This module will allow vendors to access our system to apply to be a vendor, modify their information and determine the status of payments. Working with the Department of Justice we have revised the P-37 contract template and provided training to state agencies regarding the contracting process. We have posted contract templates, checklists, links to statutes, rules and various samples of insurance and contract documents on SUNSPOT for all state agencies to utilize. We will continue to expand and enhance our website to meet the needs of state agencies and the public. See also our response to Observation 12 below.

Should the Legislature choose to make DAS the centralized procurement agency with a centralized procurement website, the additional efficiencies that might be gained in the information technology area would depend in part upon the model of centralization chosen. Precisely what content should be placed on a procurement website would necessarily depend upon the model. Whatever the content, however, the Division of Plant and Property Management would require additional resources to develop and maintain the website. At a minimum, we would require one Information Technology Manager IV to formulate and manage the procurement website addressed in this observation.

See generally our response to Observation 1 above.

Observation No. 12

Improve Vendor Access To The Service Procurement Process

Vendors have no single entry point into the State service procurement system. Potential vendors are provided little guidance and information. No single website provides vendors with information such as a guide for doing business with the State, process flowcharts, frequently asked questions, or contacts for contracting-related matters. Vendors or potential vendors may have to visit at least 15 different websites to learn about bidding opportunities in the State. These websites are not uniform in their presentation, nor in the information they provide. Additionally, some agencies do not post opportunities online and procurement-related information may be available only at agency offices or published in local newspapers.

DAS Adm 600 administrative rules detail vendor requirements for DAS procurements covered by RSA 21-I, and DOT Tra 400 administrative rules cover pre-qualification requirements for DOT low bid contracting opportunities. The DOT commingles guidance on their website for pre-qualified low bid and highest qualified consultant services. The DAS Bureau of Public Works also provides guidance for these projects, which are bid through DOT, on DOT's website. The DAS website includes links to the Secretary of State's website and to DAS bidding opportunities. In addition to the 15 agency websites posting State business opportunities, the Department of Resources and Economic Development provides basic advice and links for doing business with the State on its agency website. Other potential impediments for vendors in the current system include the up to 60 days required to obtain a Certificate of Good Standing and

obtaining comprehensive general liability insurance. According to agency officials, the antiquated terms and conditions in the standard contract form also limit vendor participation.

Providing a clear, equitable, and concise process for vendors is necessary to maximize the number of bidders and competition. Competition is an integral element of public procurement and can help ensure the State receives the best value for its contracting expenditures. Best practice further identifies the benefits of technology in engaging vendors, noting websites can integrate similar services from multiple agencies. Websites have the potential to improve agency interaction, communication, and engagement with citizens and stakeholders. The Internet allows information to be shared quickly, inexpensively, consistently, and constantly, while lowering transaction costs.

The State's decentralized service procurement environment results in unique procurement processes for single-agency services and multi-agency services not procured through the DAS. Additionally, nonstandard and unlinked websites create inconsistency for potential bidders, and are not a "user friendly" environment for vendors and potential vendors. Cumbersome, unclear, or financially burdensome vendor processes may unnecessarily limit the number of bidders, competition, and effective State spending. Officials at five agencies we reviewed identified decentralization and the lack of available information, vendor guidance, and useful websites as obstacles potentially leading to confusion and deterring vendors. Best practice suggests vendor education and training is necessary and can include:

- a single entry point to obtain procurement information;
- a central website providing a guide to doing business with the State, frequently asked questions, and points-of-contact for vendors;
- training for vendors through either online tutorials or classroom learning; and
- other resources such as online vendor registration, central posting of product catalogues, vendor newsletters, and other components to involve, educate, and simplify the procurement process.

Recommendations:

We recommend the Legislature consider amending statute to require a single entry point into the State's procurement system and require the DAS to create guidance for vendors, post guidance online, and prohibit individual agencies from maintaining separate procurement websites.

We recommend the DAS, using this new authority, develop and post online tools for potential vendors including: a guide to doing business with the State; an overview of G&C process; policies and procedures detailing procurement requirements; links to relevant statutes and rules; online tutorials; agency contact information; frequently asked questions; all State bidding opportunities; current procurement news; and templates and checklists.

DAS Response:

We concur in part.

The Division of Plant and Property Management is presently working with the DAS Financial Data Management Unit to develop and expand its website. It is anticipated that a number of the items noted in this recommendation will be included in the finished product. If the Legislature determines that it wishes to centralize all procurement into one website (regardless of whether all procurement itself is delegated to DAS), DAS does not currently have the resources necessary to achieve this goal. The Department believes that it would require an Information Technology Manager IV in the Division of Plant and Property Management. See also response to Observations 1 and 11 above.

As noted in the observation, a legislative enactment would be required if the General Court wishes to establish a single entry point and prohibit agencies other than DAS from maintaining procurement websites. We do not concur that such an enactment would necessarily also require a provision mandating that DAS create and post guidance on-line, since DAS is already currently engaged in that effort. See also responses to Observations 5, 7 and 11.

Observation No. 13

Establish Contract Performance Measures And Management Reporting System

There is currently no practical way to evaluate the performance of vendors statewide. Additionally, there is limited data on the overall contracting environment relating to amounts spent, encumbrances, contract duration, sole source contracts, agency specific contracts, or employees involved in contracting, all of which may be valuable for assessing the State service contracting environment. DAS officials reported difficulty in utilizing current procurement data for management reporting. Not all agencies were able to provide total contract value, accurate data on contracting trends, or data on vendor performance for all vendors. This lack of basic management information may prevent maximizing efficiency and effectiveness in the service procurement process.

Contract performance measures and management reporting are not required in statute, rules, or policies and procedures. Agency-level summaries of all current contracts, their effective and end dates, and their dollar value were not available. Further, there are no statewide contract performance management requirements and only limited formal feedback processes. Table 7 details responses to a question on contracted service quality feedback in our 2008 survey of State employees taking part in service contracting.

Table 7

Excerpt Of 2008 LBA Survey On State Service Contracting		
Did you receive or provide feedback on the quality of contracted services? Please check all that apply. Number of respondents = 175		
Description	**Count**	**Percent**
Yes, formally via meeting process	49	28
Yes, formally via a complaint or evaluation form	32	18
Yes, informally	91	52
No	38	22
Other	12	7
Don't know	14	8

Source: 2008 LBA Survey on State Service Contracting.

Performance measures and management reporting can help ensure accountability and foster performance improvement. Best practice identifies using performance measures within contracts to evaluate contract quality, effectiveness, and goal attainment. Good performance measures are identified as those measuring relevant information in simple, clear, concise, and auditable terms. These measures allow evaluating the vendor while simultaneously measuring how effectively the contract attains stated goals. Performance measures can be based on industry accepted standards. Standards should be tied to needs, outcomes, and results; be attainable and relevant; be measured regularly against a baseline or benchmark to show improvement and change; and be revisited if found inapplicable or inaccurate.

In addition to requiring performance measures within contracts, best practice suggests using benchmarks and management reports for continuous procurement process improvement. Management reports can include tracking the number of contracts per agency, the value of contracts, average duration of contracts, number of sole source contracts, debarred vendors, number of employees trained in contracting, and other relevant management data. Benchmarking takes reported measures and compares them to a preset standard such as an industry standard or a previous time period, allowing management to better understand trends, performance, and the current environment. Best practice includes publicly posting management reports and benchmarks on a central procurement website, or within an e-procurement system, allowing additional accountability and scrutiny.

The lack of statewide guidance or requirements pertaining to performance measures and management reporting may not foster accountability or assess service procurement practices. The decentralized contracting environment segregates information on vendor performance, as well as general contracting information, if it is collected at all. Additionally, antiquated information technology systems limit, or prohibit, production of basic reports on the types, values, and duration of State contracts. While data on encumbrances are available from the New Hampshire Integrated Financial System, this information does not lend itself to analysis, reconciliation, or management of the service procurement process. Finally, a paper intensive process, excluding the use of information technology systems, does not create an environment where reporting on even basic contracting statistics is easily achieved.

Recommendation:

We recommend the Legislature consider amending statute to authorize the DAS to:

- **collect, manage, and publicly report contract management information; and**
- **promulgate administrative rules addressing agency reporting requirements, as well as guidelines for creating and adhering to contract performance measures.**

DAS Response:

We concur in part.

The ERP system has been designed to track information such as the number of contracts, dollar volume, debarred vendors, sole source contracts and so forth. We believe that any rulemaking authority granted should allow DAS the opportunity to determine whether particular rules are necessary. In order for DAS to monitor performance measures for specific contracts, however, the Division of Plant and Property Management would need additional resources (8 Purchasing Agents/Contract specialist and 3 Program Specialists) as described in our response to Observation 1. Additionally, a statutory expansion of DAS rulemaking authority so as to enable it to specify reporting and to create guidelines for adhering to certain performance measures, particularly if other duties requiring rulemaking, detailed procedures or adjudications/appeals were to be assigned to DAS, would require the hiring of a full-time Legal Coordinator as described in our response to Observation 1.

Observation No. 14

Provide Comprehensive Review And Oversight Of Individual Contract Processing

Immediately before G&C submission, single-agency service contracts are reviewed by the DAS Budget Office and Bureau of Accounts (BOA), and one of three Bureaus within the DOJ: Civil, Environmental, or Transportation, depending on the subject of the contract. Personal service contracts are also reviewed by the DAS Division of Personnel. The extent of contract review currently required of these entities is not defined in statute or administrative rule, and none consistently provides oversight of the substance of agency contracting, focusing on mechanics instead. Best practice suggests numerous steps in the contracting process are important to protect public interest including: determining need; establishing specifications; determining selection method, award mechanism, and contract type; contract writing; and post-award contract monitoring. These activities are largely left to the State's contracting agency, however.

DAS Budget Office Review

The DAS Budget Office reviews all contracts before G&C submission. According to DAS personnel "among other things, the Budget Office reviews contracts for availability of funds, adherence to technical requirements relating to bidding, the existence of documents needed for Governor and Council review, certificates of vote, certificates of good standing and insurance

requirements." Officials from five agencies we reviewed reported their DAS Business Supervisor is available for questions throughout the contracting process.

BOA Review

According to the DAS Commissioner, the Department is only required to provide oversight and control of multi-agency services which are, or could be, procured through the DAS, such as trash removal or snowplowing. However, RSA 21-I:8, I(a), makes the BOA responsible for reviewing *all* State contracts for budget control and for substantive protection of the public interest. Substantive protection is not defined in statute, administrative rule, the DAS *Manual of Procedures*, or the DAS *Administrative Handbook*. Additionally, BOA does not review all agency contracts and the BOA reviews simply for budget control.

DAS Division Of Personnel Review

The Division of Personnel is responsible for reviewing "personal" service contracts. However, there is no formal definition of "personal" service contracts. DAS officials reported these are services contracted to a single individual rather than a firm. According to the Division Director, the Division's review determines the acceptability of hourly rates established in contracts when compared to State wages for similar services. The Director stated this review may make the Division aware of where the State may lack personnel or the effects of a statewide hiring freeze. However, the Division's oversight and authority is limited to the five or six personal services contracts submitted to the Division per month, and, while lacking authority to reject contracts outright, the Director may refuse to sign them. Alternatively, the Director may raise questions with the agency's DAS Business Supervisor.

DOJ Review

The *Manual of Procedures* requires contracts for submission to G&C receive DOJ approval for "form, substance, and execution." These terms are not defined in statute, administrative rule, the *Manual of Procedures*, or the *Handbook*. A DOJ official reported the Department's ability to affect substance is limited, but at an agency's request the DOJ may be consulted during the early stages of contract development to ensure contract language meets agency needs. According to DOJ training documents, this is the only time the Department engages in substantive review. Otherwise, the DOJ reviews contract provisions primarily for legal substance.

Recommendation:

We recommend the Legislature consider amending:

- **RSA 21-I to require a single entity within the DAS review each State contract for substantive protection of the public interest;**
- **RSA 21-I to define substantive contract review;**
- **RSA 21-I:8, I(a) to limit the Bureau of Accounts responsibility to reviewing contracts for appropriate contract funding and financial accountability; and**

- **RSA 21-I to define the DOJ's role in service contracting to be for legal substance to adequately protect the interests of the State.**

DAS Response:

We concur in part.

Under the present structure, substantive review of the desirability of a particular service contract involving only one agency is a matter that is, in the first instance, assigned to that agency. In certain situations the Governor and Council also reviews the substantive desirability of the contract. This structure reflects the decentralized nature of the contracting process, but is not the equivalent of an absence of substantive review.

DAS concurs that the entity which is charged with procuring a service contract should be the entity which, in the first instance, conducts a substantive assessment of whether a contract is in the public interest. Under the model suggested, however, that entity is not necessarily DAS, but might be agencies to which DAS has delegated purchasing authority. Other entities such as the Department of Justice and various subunits of DAS would, however, also be required to conduct forms of review that are within their assigned functions. DAS would be unable to adequately assess what statutory provisions may be needed regarding contract review until it is known what model of centralization might be adopted.

DAS concurs that its operative statute now contains a provision stating that the Division of Accounting Services, Bureau of Accounting Services is responsible for reviewing all state contracts for budget control and "substantive protection of the public interest" and that this provision could be revised. Since a number of agencies do not procure contracts through the Department, the Bureau of Accounts necessarily does not review all contracts. DAS would not object to clarification of this point, nor to deletion or clarification of the provision indicating that the Bureau conducts a review for "substantive protection of the public interest."

Should DAS be assigned as the central purchasing agency which performs an analysis of the need for a contract, the Division of Plant and Property Management would require additional resources, including the 8 Purchasing Agent/Contract Specialists, Administrator III and support personnel noted in our response to Observation 1.

DOJ Response:

Do not concur.

Regarding the fourth recommendation, we do not concur that RSA 21-I needs to be amended to define the Department of Justice's contract review requirements. RSA 7:8 authorizes the Attorney General to "advise any state board, commission, agent or officer as to questions of law relating to the performance of their official duties...." In addition, it provides that the Attorney General "shall, under the direction of the governor and council, exercise a general supervision over the state departments, commissions, boards, bureaus, and officers, to the end that they perform their duties according to law." For purposes of convenience, references in this response

to State agencies is intended to include all the departments, commissions, boards, bureaus and officers subject to the Attorney General's supervision.

The executive power of the State is vested in the Governor and it is the inherent power of the Governor and Council to direct and regulate the internal workings of the executive departments. The Constitution of New Hampshire, Pt. 2, Art. 56 establishes the pre-eminence of Governor and Council to review monetary disbursements from the treasury of the State. Specific statutes, such as RSA 4:14 (Disbursements) and RSA 4:15 (Department Expenditures) articulate the power of Governor and Council in this area.

The law in New Hampshire provides that the expenditure of any money by state agencies is "subject to the approval of the governor, with the advice of the council, under such general regulations as the governor and council may prescribe with reference to all or any of such departments, for the purpose of securing the prudent and economical expenditures of the moneys appropriated." RSA 4:15. Additionally, RSA 7:8 requires the Attorney General, "under the direction of the governor and council, [to] exercise a general supervision" over state agencies. The Attorney General's role of reviewing contracts as to "form, substance and execution" arose out of the expired rule, Adm. 311.07(6)(c), and is now found in the Manual of Procedures.

The Attorney General's Office's review as to "substance" as described in Adm. 311.07(6)(c) is in fact a review as to "legal substance" and involves considerations as to whether or not the contract in question adequately protects the interests of the State of New Hampshire. For example, some contracts, which appear on their face to be sufficient as to "substance," actually contain clauses which limit the liability of the contractor, or which establish no concrete obligations on the part of the contractor to perform under the contract. If Governor and Council approved such contracts, they could create significant legal problems for the State of New Hampshire once such contracts had been undertaken and subsequent problems arose. In such cases, the DOJ attempts to work with the agency to resolve concerns, and to establish a contract which best protects the interests of the State of New Hampshire.

The role of the Attorney General with regard to contract review is not, however, limited to a review of form, substance and execution. On a daily basis, attorneys within the Attorney General's Office provide counsel to state agencies regarding certain details of contracts. The DOJ's role as counsel includes drafting and negotiating the contract or answering specific questions relating to contracts. For any particular contract, an attorney may indeed have been actively involved. The Auditors' repeated their misstatement of the DOJ's role in contract review in the summary of the Report. The auditors stated in the summary: "Though single agency service contracts are reviewed by the DAS ... and the Department of Justice (DOJ) Civil Bureau, neither of these reviews are substantive." As DOJ officials informed the auditors on several occasions during interviews for this audit, DOJ attorneys have regular communications with agency officials regarding contracts. The extent of the communication depends on the nature of the contract. Routine or annual contracts typically require relatively little assistance from DOJ. Other contracts, which are unique or complicated, however, require more extensive legal counsel by DOJ attorneys. It is not unusual for a DOJ attorney to be involved at virtually every step of the process for these more complex contracts. The agencies best understand their needs and generally have the specialized knowledge of their specific area of responsibility, therefore, it

is correct that the Attorney General's Office substantive review often relies on agency determinations of need and what constitutes the best product or vendor for the state.

The legal role for the Attorney General is properly broad. RSA 7:8 states that the Attorney General "shall, when requested, advise any state board, commission, agent or officer as to questions of law relating to the performance of their official duties...." In addition, the Attorney General "shall, under the direction of the governor and council, exercise a general supervision over the state departments, commissions, boards, bureaus, and officers, to the end that they perform their duties according to law." RSA 21-M:2, I further defines the role of the Attorney General as it would relate to contracts to advise and represent the state and its executive branch agencies in all civil legal matters. See also RSA 21-M:10, II(c) (authorizing the Environmental Protection Bureau to counsel state agencies and commissions given responsibilities over environmental concerns); RSA 21-M:11, II (a) (authorizing the Civil Bureau to provide advice and legal representation in civil matters for all executive branch agencies). Furthermore, all attorneys within the DOJ are governed by rules of ethics, compliance with which is a necessary component of remaining licensed to practice law in this State.

As is the role of any legal counsel, it is the Attorney General's role to ensure that agencies comply with the law, and to provide information and training on various aspects of the law. To amend RSA 21-I to specifically define the DOJ's role in reviewing contract requirements, as is suggested by Observation No. 14, would serve only to limit the role of the Attorney General as counsel to state agencies. Limiting the Attorney General's role would be contrary to the overall goals expressed by Observation No. 14.

It is also important to distinguish the role of legal counsel from the policy decisions properly entrusted to the commissioner of the department seeking to enter into a contract. Substantial additional resources would be needed if the Attorney General's Office were to be made responsible for reviewing and making independent judgments on the character of the descriptions of the goods or services being acquired and their necessity or best fit to the state's needs.

Observation No. 15

Improve Statewide Oversight

There is no statewide entity responsible for service contracting policy oversight and system development. RSA 4:15 delegates to the G&C authority to develop procurement regulations, but G&C has many other responsibilities separate from State service contracting. The G&C has created basic requirements and standards for service contracting and appears to be the only body with a contracting policy role. However, the procurement process is dated, cumbersome, and does not conform to many best practices.

Procurement best practice recommends strong policies and involved stakeholders. Successful contracting systems need a central office working with and meeting the needs of supported agencies, as well as delegating appropriate authority to qualified agencies. Procurement policy should be developed by experienced procurement professionals with authority and responsibility

to promulgate rules, policy and procedure, and monitor compliance. A formal policy body could regularly review, receive feedback, and report on procurement activity and performance, helping the State to change how it procures services and meets agency needs. A formal policy body can continually develop policies and practices; provide increased public confidence; increase efficiency, effectiveness, and flexibility; ensure appropriate public access; provide reporting and analysis; receive feedback; and simplify, clarify, and modernize procurement processes. Best practice suggests such bodies can be attached to the agency responsible for service procurement.

Separate from policy development, which develops and enhances procurement practices, an internal audit function can help ensure controls are built into the system and are functioning as expected. Management review can evaluate efficiency and effectiveness of agency operations. Agency officials and respondents to our survey revealed agencies were not always aware of, or conforming to, State policy or best practice including State procurement dollar thresholds, contract payments, needs identification and cost benefit analyses, and public posting of opportunities to do business with the State. The current environment provides little review or audit of procurement activities and therefore any missteps may go unaddressed. The DAS has had neither an active review process, authorized under RSA 21-I:7-a, to monitor State agency activities nor a fully-functional internal audit function, authorized under RSA 21-I:7, to evaluate Department operations. Both could allow the State to uncover and address procurement system weaknesses and allow recommendations or actions to correct deficiencies.

Recommendations:

We recommend the Legislature consider creating a procurement policy body responsible for receiving feedback, reviewing service contracting processes, reporting annually on the contracting environment, and recommending changes to contracting rules and policy.

We recommend the DAS:

- **establish the Operational Analysis Unit authorized in statute and ensure the unit performs oversight of agency activities, including regular reviews of the State's contracting system and**
- **ensure the Internal Audit Unit monitors internal controls, including the Department's service contracting function as well as individual service contracts.**

DAS Response:

We concur in part.

DAS concurs that it may be beneficial to legislatively establish a procurement policy body or committee which reviews service contracting processes, receives feedback reports and recommends changes. The establishment of such a body at this time may be useful in determining whether institution of an alternative procurement system is presently feasible and in formulating the contours of that system. Should the model noted in Observation 1 be instituted, however, such a policy body would likely be unnecessary. Establishing processes, reporting and establishing

rules, policy and procedure would, under that model, presumably be normal functions of DAS personnel who have contracting responsibility.

RSA 21-I: 7-a establishes an Operational Analysis Unit, with specified functions, within the office of the Commissioner of DAS. This unit, however, is unfunded and the position of an unclassified "senior operational analyst" is accordingly unfilled. In view of budgetary constraints, it is not anticipated that staffing for this unit, or additional auditing personnel, will be provided. Should the Legislature wish to fund the functions at issue, DAS would recommend that statutory responsibilities be further considered and possibly refined.

Since individual contracts and agency contracting are beyond the scope of the audit (see "Summary – Purpose and Scope"), we note that Observation 15 does not indicate that specific instances of error have been identified. Rather, the observation suggests only that missteps might occur in the procurement process; that those missteps might go unaddressed; and that the existence of the absent units or functions might have identified or corrected them.

Observation No. 16

Seek Governor And Council Review And Approval For Service Contracts On An Individual Basis

There are some DAS service contracts and some DOJ litigation services contracts for which G&C review and approval is not sought. RSA 4:15 requires the expenditures of any department of the State be subject to G&C approval. To this end, the DAS *Administrative Handbook* reflects G&C's requirement for all State agencies to seek G&C approval for any personal service contracts of $2,500 or more and other services of $5,000 or more.

DAS

We found the DAS does not submit all service contracts to G&C for review. DAS management stated the obligation to seek G&C review of its service contracts was met by including contracts within warrants. However, warrants are presented as a single page summation of all spending for State government for the coming month and do not include specific information on individual service, or any other, contracts. A DAS official stated the Department would only present service contracts to G&C individually if DAS management felt the service contract was of particular interest.

DAS officials assert the Department is statutorily exempt from the requirement, and to include all DAS service contracts in the G&C agenda could overwhelm an already burdened system. However, information from the DOJ in 1999 concluded these contracts should be submitted for final G&C approval. According to DOJ officials, the difference of interpretation was never formally resolved.

DOJ

The DOJ also forgoes the G&C approval process for service contracts funded by the litigation fund. Opportunities for these contracts were not advertised and the resulting contracts were not reviewed or approved by the G&C. According to a DOJ official, these contracts are not statutorily required to seek G&C approval because the contracts are funded by the litigation fund. However, RSA 4:15 requires State agencies obtain G&C approval for the expenditure of *any* moneys to carry on the work of any department of State government. In a 1983 opinion, the DOJ informed another State agency contracts are not excused from G&C review and approval even if the source of funds are not general funds.

Our 2005 financial audit found the DOJ entered into two contracts paid from the litigation fund without G&C approval. DOJ responded the nature of litigation made it impractical to receive approval on a case-by-case basis due to time constraints and the need to protect information from opposing parties. Nonetheless, RSA 7:12, cited by the DOJ as providing it this authority, authorizes the Attorney General to employ counsel, experts, and other assistants with the approval of the Fiscal Committee and the G&C. In addition, the body of State contracting practice shows vendor list contracting options may ensure agency flexibility and protect case-specific information from disclosure.

Executive Councilors we interviewed stated G&C review of service contracts is necessary to ensure a fair, open, and transparent process. To ensure transparency and control, all transactions should be clearly documented and documentation should be readily available. Our review of G&C minutes shows the DAS requested G&C approval for 157 service contracts and 41 amendments valued at approximately $125 million over SFYs 2006-2007. It is unclear how many additional service and goods contracts were procured by the DAS during the audit period via warrants.

Recommendations:

We recommend the DAS and the DOJ conform to statute and State policy requiring individual G&C review and approval of all service contracts.

We further recommend the DAS and DOJ seek statutory changes to exempt their service contracts from the Governor and Council approval processes if they believe their particular situations justify an exemption.

DAS Response:

We concur in part.

DAS does not concur that it fails to adhere to RSA 4:15. That statute generally states that expenditures are "subject to" the approval of Governor and Council under such general regulations as Governor and Council prescribe with reference to all or any of such departments. DAS expenditures of all types are subject to Governor and Council review under RSA 4:15. Whether or not to present the body of a particular contract to Governor and Council for review,

however, is a matter handled in accordance with longstanding practice. The Governor and Council may specify how much or how little information it wishes DAS to provide in regard to any contract. Should the procedure which is currently utilized for multi-agency service contracts secured by DAS be found undesirable and a new process established, DAS would, of course, comply.

During or about February of 1994, the Governor and Council increased the threshold amount of contracts requiring specific G & C approval. Those thresholds ($2,500 for personal service contracts and $5,000 for other service contracts) were reflected in the Handbook. Service contracts for DAS as a single agency are handled at Governor and Council in the same manner as single agency service contracts for other agencies.

It is the Division's understanding that since at least 1986 (the year that the "single agency service contract" provision was added to RSA 21-I), a practice has existed whereby multi-agency service contracts (and commodity contracts) obtained by the Department have not been directly submitted to Governor and Council for contractual review. This longstanding practice developed with the acquiescence of past Governors and Councils, we assume so as to allow for action on contracts between G &C meetings; because contracts obtained through the Division of Plant and Property Management (unlike most single agency service contracts) are vetted through the procurement processes of an agency with perhaps the greatest degree of expertise in contracting; and so as to avoid the administrative burden and expense of requiring specific G & C review of each service contract. Anticipated expenditures under the contracts are included in working capital warrant amounts generally approved by Governor and Council for upcoming time periods. The actual amount of expenditures made are subsequently reported to Governor and Council. Thus, while particular DAS multi-agency service contracts themselves are not presented to G & C, expenditures are subject to the approval of Governor and Council in accordance with RSA 4: 15. Under RSA 9:12, the Governor or Governor and Council and the Commissioner of DAS and any officer of DAS, when authorized by the Governor or Governor and Council, may make inquiries regarding matters including the receipt, custody, and application of state funds.

In some instances, although not believed to necessarily be technically required, past Commissioners of DAS have presented specific multi-agency service contracts to Governor and Council for review due to a high level of interest or due to the significance of the expenditure, so as to better assist the Governor and Council in their efforts to make prudent and economical expenditures. Examples include contracts for credit card processing, cell phones and telephone service. In this and other regards, DAS attempted to abide by what it believed to be desired practice.

We note that the Division of Plant and Property Management's Bureau of Purchase and Property handles approximately 41 service contracts and 250 commodity contracts. If DAS were to submit each of these contracts to Governor and Council, it would need 2 additional Purchasing Agents/Contract Specialists to complete the required documents. This alteration in practice would likely result in increased costs due to delays in obtaining approval. With the current economic downturn and reduced cost of fuel, the Department entered into its first hedged contract and locked into an 18 month fixed-cost contract for gasoline, saving the State

approximately $4.5 million in anticipated cost over the next 18 months. In order to accomplish this, the State needed to be able to make a determination within five hours of bid opening and award the contract. This would not be possible if all contracts were reviewed by the Governor and Council, due to delays between meetings. It is highly unlikely that vendors would be willing to lock in their prices for a period of four to six weeks. Additionally, we note that if the process utilized by DAS were to be changed at this time, current efforts to extend multi-agency service contracts would effectively be thwarted.

DOJ Response:

Do not concur.

*With regard to those contracts separately funded, and the second recommendation of Observation No. 16, we do not concur as it relates to the Department of Justice. RSA 7:12 provides that, "[w]ith the approval of the joint legislative fiscal committee and the governor and council, the attorney general may employ counsel, attorneys, detectives, experts, accountants and other assistants in case of reasonable necessi*ty, *and may pay them reasonable compensation, on the warrant of the governor, out of any money in the treasury not otherwise appropriated."*

Through the process authorized by the biennial budget bill and RSA 7:12, the Attorney General gets advance approval of litigation funds. This process of approving the biennial budget provides an opportunity for the Attorney General to report to the fiscal committee and the Governor and Council on how funds are to be used, and provides an opportunity to answer questions on how previously approved funds have been utilized.

The DOJ's practice is not properly characterized as avoiding transparency and control procedure. The auditors' finding states that all transactions should be clearly documented and documentation should be readily available. RSA 7:12 has the effect of providing an alternative control that better serves the interests of the State and recognizes the unique role the Attorney General performs in state government. The reports provided to the fiscal committee and the Governor and Council that accompany the requests for additional litigation account funds function to provide a fundamentally equivalent level of public exposure and scrutiny of the DOJ's management of these funds.

The nature of litigation expenses makes it impractical and potentially contrary to the state's interests to pursue the acquisition process used for other types of services. First, in many cases, the time required to prepare and release bids or requests for proposals, to evaluate each, to select vendors, and then to seek prior Governor and Council approval would prevent us from obtaining the services in time to comply with deadlines imposed by statute, court rule, or court order. In other cases, for example in many homicide cases, it is necessary to retain experts and have them available on the same day that the need for an expert is first identified.

In many cases, the State competes with opposing parties to obtain the services of the most cost-effective and best qualified experts in a narrow field. If the State were required to engage in the public acquisition process, this would afford inappropriate notice to those opposing the state.

When specialized services are purchased or experts are retained in the course of criminal investigations, the public disclosure inherent in the standard acquisition process would often significantly compromise or inappropriately make public aspects of the investigation. The premature public disclosure of experts, investigators or other persons associated with the prosecution of a case or defense of state action could reveal the target of an investigation or reveal strategy that would negatively affect the outcome of a particular matter. Thus, the untimely public disclosure in many cases would compromise the State's ability to successfully represent the State's interests. The process advocated by the audit observation as it relates to litigation funds would actually harm the interests of the state.

In addition, the auditors observe that the DAS do not submit all of its service contracts to the Governor and Council as individual contracts for review, but instead, will present warrants in place of some of its service contracts. It is entirely within the discretion of the Governor and Council to set procedures for their review of contracts. Thus, the Governor and Council have determined by a long history of practice and acceptance that the DAS should present warrants in place of certain contracts. The auditors' comment suggests that the legislature should dictate the procedure by which the Governor and Council review contracts, and the legislature should prohibit the Governor and Council from reviewing warrants in place of contracts. The procedure utilized by the Governor and Council is exclusively within their control, and the Governor and Council, not the legislature, determine that process.

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PROCESS

Best practice identifies several required components of a successful public procurement process. The most fundamental concept of efficient and effective public procurement is a transparent, competitive process applicable to all agencies and expenditures of public funds. Clear documentation requirements and the consistent implementation of the many aspects of competitive procurement can help the State maximize the value of its service procurements. The controls established to enforce management's directives are an integral part of an entity's planning, implementing, reviewing, and accountability for the stewardship of public resources. With decentralized authority and incomplete controls, the State lacks adequate service contracting processes at both the State and agency levels. Many of the existing processes focus on obtaining Governor and Council (G&C) approval, rather than efficient and effective service contracting. This has led to inconsistent practices and noncompliance with State laws, rules, and policies and procedures, as well as nonconformity with best practice.

Observation No. 17

Maximize Procurement Effectiveness Through Full And Open Competition

Limitations on the State's full and open competitive procurement include the lack of: statewide procurement training, contracting-specific positions, overarching statute, clear definitions and explanations of competitive procurement, and centralized guidance. Statute identifies certain components of competitive procurement, but does not define full and open competitive procurement requirements nor make them generally applicable to all State contracts and agencies. RSA 21-I:11, regulating Department of Administrative Services (DAS) procurement functions, requires competitive bidding before making purchases but does not define competitive bidding or specify the methods necessary to ensure competitive procurement. Further, this statute is applicable only to the DAS, Division of Plant and Property Management. RSA 228:4-a, applicable only to Department of Transportation (DOT) procurement, introduces competitive requirements, mandating awards be to the lowest responsible bidder. DAS Adm 600 rules also address aspects of competitive procurement but fall short of fully defining or explaining the process, and again are only applicable to the Division.

Best practice suggests certain required aspects for a full competitive process including: public notice, non-limiting specifications and clearly identified evaluation and award criteria, use of sealed bids or proposals with public opening, public posting of the award and award process, and a means for vendors to protest the result. In addition, the process should be accessible, open, and manageable for all vendors with information easily obtained. Best practice also suggests it is uneconomical to use full and open competition for small value procurements and should be reserved for procurements over established thresholds. DAS Adm 600 rules reference certain aspects of full and open competition best practice; however, they are by statute applicable only to DAS procurements and do not guide other agency service procurements.

Solicitation Tools

Solicitation tools are used to obtain bids and responses from potential vendors during the procurement process. Statute does not define any of the potential solicitation tools, although request for proposal (RFP), request for bid (RFB), and request for quotes (RFQ) are vaguely defined in Adm 600 rules. RFP is defined in rule referencing RSA 21-I:22-b while RFB and RFQ share fundamentally identical definitions in DAS rules. According to best practice, these tools, as well as other solicitation tools, are best utilized in specific circumstances and for specific services while having common components like non-limiting specifications, clearly identified evaluation criteria, and public opening of sealed bids. These concepts are not clarified in statute or rules although the DAS *Administrative Handbook* (*Handbook*) does provide an overview of the appropriate use of each solicitation tool. Best practice identifies specific definitions and uses:

- Quotes are obtained from vendors for a competitive process below the full and open competitive procurement threshold.
- RFBs are used when specifications are clear and concise, can be easily documented and can be awarded based on low bid.
- RFPs are used when there are multiple, ill-defined criteria. Weighted evaluation criteria are developed and proposals are scored based on their ability to meet the pre-specified requirements identified in the solicitation tool and the award is based on best value or highest qualified respondent.

Best practice identifies using requests for information to gather additional information about a project prior to issuing the formal RFP and requests for qualifications to identify those eligible to bid prior to issuing a formal RFP. Properly utilizing and identifying solicitation tools promotes full and open competition.

Of 153 RFP solicitations identified in our 2008 service contracting survey (Appendix C), 52 (34 percent) were awarded based on best value, 40 (26 percent) were awarded based on highest qualified, and 61 (40 percent) were awarded based on lowest bid. However, best practice suggests the award basis for an RFP should be best value or highest qualified, whereas an RFB or quotes should be applied to lowest bidder. Additionally, survey respondents identified applying a best value or highest qualified award basis when soliciting quotes in six of 20 contracts (30 percent). These varied approaches can lead to inconsistent practices, inconsistent treatment of vendors, and may fail to maximize the tools of competitive procurement.

Non-limiting Specifications And Clearly Identified Evaluation And Award Criteria

Statue requires clearly defined criteria and weights be considered in evaluation and award of contracts over $35,000 (RSA 21-I:22-a), and requires the specifications not be “consultant specific” (RSA 21-I:22-c). These integral parts of a full and open competitive procurement process are insufficiently defined in statute and narrowly applied. There is no definition of consultant, no requirement for non-limiting specifications for non-consultant procurements, and no clarification of the term “consultant specific.”

Best practice requires the solicitation tool identify all requirements, evaluation criteria and weights, and specifications. Identifying specific requirements or specifications ensures the solicitation meets the procuring entity's needs; however, the specifications must be written generally to not exclude vendors and limit competition. For example, using brand names or writing specifications around one vendor's product limits competition. Additionally, when awards are determined by anything besides price, clear evaluation criteria and their weights must be identified. Awards based on these pre-specified criteria can help ensure full and open competition.

Use Of Sealed Bids Or Proposals With Public Opening

Neither statute, administrative rule, nor policy and procedure require using competitive sealed bids or competitive sealed proposals, although DAS Adm 600 rules identify this procedure as an option for the subset of DAS-procured services. Best practice requires all bids or proposals be publicly opened at a pre-specified date and location and remain sealed until the opening date to ensure vendors have the same opportunities, scrutiny, and information. Once opened, bids and bidders or the list of entities submitting proposals are announced and publicized.

Award Basis

State contract award practices do not consistently align with best practice. Best practice identifies:

- using low bid awards for clearly defined, concise specifications where, once met, price alone is the determining factor;
- using best value for those procurements which are not easily defined, will have multiple rating criteria to win the award, and where price may also be a consideration;
- using highest qualified respondent for highly technical and complex procurements where the best rated, determined by pre-specified criteria not including price, are then invited to negotiate a price; and
- in some low bid awards and best value awards, the three lowest bidders or highest rated respondents may be invited to offer a negotiated best and final offer if this option was identified in the original solicitation.

Public procurement practice once relied on low bid awards as the preferred award basis. As procurement has become more complex, using best value, where public entities may consider aspects such as life-cycle costs, responsiveness to need, and quality, has increasingly become best practice. Best value may provide a less expensive procurement over the life of the contract compared to an initial low bid.

State statute, rules, and policies and procedures do not adequately describe, define, or explain the differences between award bases or their appropriate applications. Officials from four agencies reported G&C requires contracts be awarded to the lowest bidder. Award based on lowest bidder is also required in RSA 228:4, applicable to certain DOT transportation projects; however, it does not exist in RSA 21-I, administrative rules, the *Handbook*, or the *Manual of Procedures* regulating other agency procurements. RSA 21-I:22-c introduces weighted evaluation criteria for

consultants but does not define the term consultant, does not allow using this tool for other services, and is silent regarding when weighted criteria should be used for awarding consultant contracts based on weighted criteria as opposed to low bid.

RSA 21-I:22 makes available highest qualified negotiations for architects, engineers and surveyors, however these terms are not defined in statute, rules, or policy and procedure. While statute identifies highest qualified award basis for architects, engineers, and surveyors and requires evaluation criteria be utilized for consultants, the reasoning is not explicit nor is it clear why these award mechanisms are provided only to these services. Limited guidance and training on the potential methods for solicitation and award may fail to provide the best approach for the procuring agency.

Public Posting Of The Award And Award Process

DAS Adm 600 rules require all winning bids be posted online on the Division of Plant and Property Management website. This section also requires posting all timely bids, the amount of each bid, and the name of the awarded vendor. This generally conforms to best practice; however, anything not procured by DAS is exempt from this requirement. Additionally, best practice suggests, but the State does not require, public posting of any evaluation matrices and ratings used to determine the award.

Maximizing competition is limited by the lack of generally applicable definitions and competitive procurement processes in statute, rules, and policies and procedures. Not defining the requirements and permissible options for competitive procurement, paired with no centralized procurement office or trained contracting personnel, limits the State's ability to maximize competition.

Recommendations:

We recommend the Legislature consider defining in statute required components of competitive procurement including:

- **solicitation tools such as quotes, invitations to bid, requests for proposal, and requests for qualifications and their appropriate award mechanisms such as lowest bidder, best value, best and final offer, and highest qualified;**
- **use of evaluation matrices and weighted award criteria;**
- **competitive sealed bid, competitive sealed proposal, and competitive negotiation processes;**
- **public posting of all awards, bids, bidders, evaluation matrices, and contracts;**
- **an appeals process for the solicitation and award of contracts; and**
- **authority for the DAS to promulgate administrative rules regulating the competitive procurement process.**

We recommend the DAS, using this new authority, ensure agencies maximize competitive procurement, and promulgate administrative rules to further explain required components of the competitive procurement process.

DAS Response:

We concur in part.

DAS concurs that State statutes regarding procurement, including competitive bidding, would benefit from further clarification or revision, regardless of whether or not centralization were to occur. We do not concur that each and every aspect of the procurement process need be specifically set forth in statute, particularly if DAS is also given expanded authority to promulgate desired administrative rules.

To the extent that Observation 17 cites weaknesses in the Department's Chapter Adm 600 rules regarding such matters as bidding, vendor code numbers, selection and post-selection procedures, agency purchasing requirements, pre-adjudicative proceedings, we do not believe that the rules are critically wanting. As noted in Observation 4, the rules found in Chapter Adm 600 are some of the only administrative rules that exist in the State of New Hampshire on the matter of procurement. The rules attempt to deal with a complex area within the constraints of equally complex statutory limitations. DAS nonetheless believes that the rules found in Chapter Adm 600 may in some regards benefit from augmentation, further clarification or amendment.

In light of the Department's significant rulemaking efforts to date, we do not concur with the observation that, RFQ ("request for quotation"), RFB ("request for bid") and RFP ("request for proposal") are vaguely defined, particularly when applied in the overall context of the rules, and note that no definition of these terms might be necessary at all. See RSA 541-A: 7 (rules are to be written in a manner using common meanings "for those persons who engage in the activities that are regulated by the rules, which may include technical language as necessary"). Likewise, we do not concur that the terms "request for bid" and "request for quotation" are faulty for their use of similar (but not identical) terminology or that it is inappropriate to reference statutory provisions in a rule. Finally, we note that the rules do in fact specify award criteria and utilize the concept of award to the lowest bidder. See Adm Part 606 – Selection, Post-Selection and Other Purchasing Vendors. The rules were presented to and reviewed by the Joint Legislative Committee on Administrative Rules (the legislative authority charged with reviewing the adequacy of agency rules) and approved by that committee without objection.

Should DAS become the centralized purchasing entity for the state, its rulemaking authority should be expanded and its rules updated and applied to purchasing functions that might exist in other agencies. The precise content of any new rules, and whether any changes in terminology would be required would depend substantially upon the precise model of centralization mandated.

In regard to the observation that best practice necessarily includes negotiation of best and final offers with the three lowest bidders or highest rated respondents, DAS does not concur. Utilization of the method of best and final offer negotiations noted in DAS' existing rules has proven beneficial.

Process

DAS generally supports the concept of a defined appeals process and recognizes that difficulties may exist in the present structure, stemming in part from provisions prohibiting the disclosure of information until a bid is awarded. The Department would welcome the opportunity to work with the Department of Justice to address the matter.

See response to Observation 1 above.

Observation No. 18

Consistently Require Formal Justification Of Service Contract Need

There is no statewide requirement in statute, rule, or policy and procedure for agencies to justify a service contract's need in writing or to conduct a cost-benefit analysis. Nor are State contracting personnel consistently required to explore whether services may be provided by another State agency, or whether a statewide or other agency contract for similar services already exists. Either option may save time and money required to solicit, create, award, review, and approve a new contract.

One hundred twelve of 181 respondents (62 percent) to our 2008 survey of personnel involved in service contracting reported participating in identifying the need to contract. Responsibility for determining the need to contract is often decentralized at the division, district office, bureau, or program level. Only 26 of 175 respondents (15 percent) reported their agency has formal, written policies regarding determining or justifying the need to contract. Consequently, agency personnel have little guidance or criteria to determine when services can be validated as part of a business need, and when services procured will justify cost. Further, 28 of the 112 respondents (19 percent) taking part in need determination reported they could benefit from training.

Additionally, agency personnel are not consistently required to formally document contracting need. Best practice shows state statute, rule, or policy may require a written justification process or cost-benefit analysis for specific procurements, such as those privatizing state services or procurements above certain dollar thresholds. Two officials at agencies we reviewed reported requiring written justification of need, and 43 of 178 survey respondents (24 percent) reported their agency required formal, written justification of need. Another 65 respondents (37 percent) reported only an informal requirement, and 55 respondents (31 percent) reported no agency requirement to determine and justify need.

Officials at agencies we reviewed and employees responding to our 2008 survey reported various considerations prior to determining need to contract:

- Officials at five agencies we reviewed reported the decision to contract is based on the availability of in-house expertise and 107 of 176 survey respondents (61 percent) reported considering whether current employees could meet service needs. Twenty-six of 176 survey respondents (15 percent) reported considering whether sufficient staff were available for contract administration.
- One agency official reported considering whether work may be done more easily, faster, or at lower cost by contract. Best practice suggests agencies should

periodically identify in-house services and explore the feasibility of contracting each service being delivered to determine the most effective delivery method.

- A cost-benefit analysis and lifecycle cost analysis may assist agencies in determining whether commercial procurement would be efficient and effective for service delivery. Officials at six agencies reported doing no formal cost-benefit analysis and only 67 of 176 survey respondents (38 percent) reported performing cost-benefit analysis.
- Best practice suggests agencies must analyze business needs, goals, objectives, and services to determine whether the service is necessary. Just two of 176 respondents (1 percent) reported considering business needs. One agency official added agencies must be able to identify the difference between "nice to have" and "need [to have]."
- Ninety-two of 176 survey respondents (52 percent) reported considering available funds in determining the need to contract.
- Thirty of 176 survey respondents (17 percent) reported performing market research.
- Agencies should consider the availability of services elsewhere in State government, or currently on a centralized or other agency contract. One agency official reported using personnel from another agency instead of contracting to meet service needs.
- Ten of 176 survey respondents (6 percent) reported considering rules, statute, or federal regulations. Best practice suggests agencies must determine whether statute requires the agency to demonstrate its need to contract or prohibits contracting for service. Two agency officials reported the decision to contract is a by-product of the legislative process and, if the Legislature has approved or required a project, it is too late to consider doing analysis.

Recommendations:

We recommend the Legislature consider including in statute need justification requirements based on service type or contract value and require the DAS to promulgate applicable administrative rules.

We recommend the DAS, using this new authority, promulgate administrative rules requiring agencies submit a written need justification before contracting for services based on service type or contract value. We further recommend the DAS:

- **establish training for State employees on service contract need, including proper use of market research, establishing business needs, conducting cost-benefit analysis, and determining lifecycle costs;**
- **require agencies consider whether services can be provided by another State agency or whether a service is already on a statewide or other agency contract prior to contracting with an outside entity; and**
- **require agencies regularly re-evaluate services to establish whether the agency or a contractor can provide the most cost-effective service delivery.**

DAS Response:

We concur in part.

DAS concurs that agencies should conduct an analysis of the need for a contract and notes that the majority of the agencies contacted in relation to this observation reported having such a process, however informal. A substantial increase in formality in the already technical process of procurement would, however, add to the time and complexity of State purchasing and DAS would be unable to ascertain whether rules relative to need justification might be required, or the content of such rules, until a determination has been made as to the model of centralization desired.

While some of the additional recommendations presented here, such as establishing greater training opportunities, may be beneficial and achievable if additional resources are provided, others, such as requiring other agencies to re-evaluate services, could not be accomplished by DAS under the present structure. One recommendation is presently being pursued in statute. See HB 464 (2009) (requiring use of multi-agency contracts unless waived by the Commissioner). DAS does not believe that it could assess the need for overall administrative rules requiring agencies to submit a written justification before contracting; requiring agencies to consider whether other agencies can provide services; or requiring regular evaluation of service contracts until the nature of the recommended legislation was more fully formulated. Some provisions on these topics may more appropriately be seen as material for direct legislative enactment. Likewise, it is unclear from the recommendation to whom any justification would be submitted; by what standard that entity (whether or not DAS) would reach a conclusion as to justification; or what impact any such conclusion would have upon the ability of an agency to purchase.

As noted in response to Observation 1, were the Legislature to grant broad rulemaking authority to DAS under a model of consolidated purchasing, the services of a Legal Coordinator, supplemented by other personnel devoted exclusively to the functions of the Division of Plant and Property Management, would be required.

We agree that training on service contract needs, including the proper use of market research and other matters, may be beneficial. To provide that training, however, the Division of Personnel would need one additional technical instructor. See response to Observation 9.

Observation No. 19

Opportunities To Do Business With The State Should Be Consistently Posted In A Centralized, Public Location

Statute does not require agencies publish notice for all types of competitive procurement, does not establish procedures for most agencies to publish notice online, and does not require agencies to publish notice in a central location. Agencies did not consistently post public notice as required in statute, the requirements in the DAS *Administrative Handbook* were inconsistent with

statutory publication requirements, and the *Handbook* was inconsistently followed. Further, there was no central location for vendors to identify opportunities to do business with the State.

To address fairness, the Legislature enacted RSA 21-I:22-d requiring all State agencies publish certain service procurement criteria and weights. RSA 21-I:22 requires all State agencies publish RFPs for architect, engineer, and surveyor services. We found no other statutory requirements to publish contract-related notice. RSA 21:32 defines "publish" as publication in an area newspaper for three weeks successively; however, no agency reported following this requirement. Contrary to statute, the *Handbook* requires agencies publish notice in a newspaper for three days for purchases over $1,999, regardless of service type. However, four agency officials stated they do not follow the three-consecutive-day newspaper requirement. Rather, some agency officials reported using small advertisements in papers directing vendors to a website containing the RFP in its entirety, while others reported only posting for two days, and eight of 177 respondents to our survey (5 percent) reported no publication in a newspaper at all.

Agencies advertise in newspapers, online, and by direct mail. Officials from five agencies we reviewed identified using some form of direct mail or contact with vendors. Six agency officials also identified using an online posting, where posting may appear on the DAS Division of Plant and Property Management website, agency website, or a third-party trade group website. One hundred-seven of 177 respondents to our survey (60 percent) reported publishing public notices online, while 118 of 177 (67 percent) reported publishing in the newspaper. Officials at three agencies, including the DAS, reported their agency does not publish an RFP in a newspaper in its entirety, but rather advertises a web address where the RFP may be obtained. However, statute gives only the Department of Health and Human Services (DHHS) authority to publish public notice of RFPs online, and requires the DHHS regularly publish notice in print media referring prospective service providers to the website for further information about opportunities.

Best practice suggests full and open competition rests on prospective vendors being made aware of opportunities to do business with the State. Government, therefore, initiates the process by widely advertising its requirements and soliciting vendors. However, State notice structure and requirements do not meet the standards of best practice, which range from a minimum of seven days to 21 days posted in a central location. Three previous Executive or Legislative Branch reports issued between 2003 and 2007 noted vendors face inconsistent bidding requirements and have no central location to find opportunities with the State. Best practice includes centralized e-procurement systems able to post bidding opportunities in a central location, though may also allow for newspaper publication. However, one contracting official called the newspaper requirement, "ridiculous," "archaic," and "expensive." Another official concluded the method does not generate many responses. Two agency officials estimated the cost of newspaper advertisements at $200 or $500 per instance. A 2003 report concluded centrally publishing notice in a newspaper listing available RFPs, a website, and a phone number on a biweekly basis, could save the State $516,200 annually in advertising costs.

Recommendations:

We recommend the Legislature consider requiring:

- **public notice of all State business opportunities for the procurement of any service over a specified threshold,**
- **the DAS post notice online of all agency business opportunities,**
- **the DAS regularly advertise the location of online notices in print, and**
- **require the DAS promulgate applicable administrative rules.**

We recommend the DAS, using this new authority, establish rule and policy and procedure to ensure central posting of all State business opportunities, including a checklist of required public notice information.

DAS Response:

We concur in part.

DAS believes that it would be beneficial to centralize posting of business opportunities. The Department does not presently have specific rulemaking authority to promulgate rules mandating centralized posting by other agencies, but to the extent that this authority might be granted, the content of any rules would depend greatly upon the model of centralization selected. DAS cannot presently ascertain what particular rules might be needed under any new statutory structure.

Generally, DAS would favor implementation of a statutory structure better defining overall publication of notices, including clarification of the method, frequency and content of publications. Regardless of whether centralization of procurement occurs, and subject to refinement, we would generally support implementation of a system in which DAS receives items for publication from other agencies, posts such items in an electronic location and publishes weekly in a newspaper of general circulation a notice of available opportunities, with instructions that a vendor inquire at a particular site on-line or contact a particular office for additional information. Assuming that appropriate legislation is drafted to accomplish this, DAS anticipates that it would require an increase in its advertising budget by a minimum of $25,000. Depending in part upon whether the additional DAS obligations are part of a broader expansion of information technology duties, additional personnel may also be needed.

See response to Observations 1 above.

Observation No. 20

Establish Statewide Vendor Pre-qualification Process

The DOT reported using a pre-qualification process, defined in Tra 400 administrative rules, for contractors including Bureau of Public Works (BPW) projects, which are also bid through the DOT. The DOT and BPW have an additional process for pre-selecting consultants, where a long

list of eligible pre-qualified vendors is developed and then condensed to a short list of firms invited to submit a proposal. Both the DOT and BPW websites provide explanations and guidance, but the language varies slightly. DOT and BPW also share pre-qualification requirements but how vendors are selected for the long and short lists is unclear. No other agency reported using a vendor pre-qualification process; however, the Department of Environmental Services identified using consultants pre-qualified by the DOT. Pre-qualification is not addressed by statute, DAS administrative rules, the *Handbook*, or the *Manual of Procedures*.

Pre-qualification is defined as a process where qualifications are evaluated for specific types of services before specific opportunities to do business with the State are publicized. Best practice suggests the pre-qualification process and evaluation criteria should be clearly documented, established in writing, and provide sufficient time for interested vendors to move through the process and respond to opportunities. Pre-qualification helps predetermine vendor capability before bidding on certain opportunities and is normally reserved for complex or highly technical services. A contracting entity may wish to create a pool of eligible vendors able to complete the work based on experience, financial ability, references, and professional registration. Pre-qualification should be open, competitive, objective, and identify clear criteria.

Based on best practice, pre-qualification can be managed in two ways: 1) issue a request for qualifications to qualify firms to be subsequently invited to respond to the related RFP or 2) for regularly recurring projects, require potential vendors to pre-qualify on an ongoing basis. In the latter case, vendors may submit their information to be on a pre-qualified list for a set period of eligibility for responding to relevant bids and proposals. Best practice suggests pre-qualification processes be detailed in statute.

No overarching procurement statute and a decentralized service procurement process has created an environment where one agency's policy is being used as a surrogate State policy although it does not necessarily have statewide authority. The lack of a central procurement website results in two separate agencies (DOT and BPW) maintaining pre-qualification information online for the same process, without referencing the other, and using slightly different terminology which may confuse potential vendors. Additionally, no clear explanation and guidelines addressing the establishment of the long and short list for consultants may potentially be inequitable for vendors.

Recommendations:

We recommend the Legislature consider including pre-qualification requirements in statute and requiring DAS promulgate pre-qualification administrative rules.

We recommend the DAS, using this new authority, promulgate pre-qualification administrative rules include the evaluation processes and eligibility determination guidelines for consultant long and short lists. Pre-qualification information should be posted on the central procurement website.

DAS Response:

We concur in part.

DAS concurs that if an overall system of prequalification is established, general standards should be specified, likely through a combination of statute, rules and procedural guidelines. We do not concur that a prequalification would necessarily be required in all areas of procurement. A prequalification procedure is currently used in the Bureau of Public Works Design and Construction. An alternative process is used by Bureau of Plant and Property Management. Absence of a "prequalification" process in DAS' current Chapter Adm 600 rules is not tantamount to the absence of any process of vendor qualification. Although prequalification is not addressed under current Chapter Adm 600, any individual or entity believing that it might be qualified and able to provide an item is free to bid. Matters which might be addressed in a separate prequalification process are instead addressed in a single overall assessment of the qualification of a vendor in relation to the particular bid or proposal, against the overlay of a defined correction and cure process. See Adm 604.04 (Disqualification); See also Adm 604.05 (j). It is our understanding that this structure may initially have been developed so as to encourage the submission of bids from various sources, in the belief that a greater number of bids, and the ability to cure non-fatal flaws, might increase the likelihood of a beneficial price offer. Although the observation suggests that best practice would necessarily involve establishing a prequalification process, further study would be needed to ascertain whether a restructuring of the current disqualification process found in DAS's general purchasing rules would result in practical financial or procedural advantages. A prequalification process is utilized in the context of the DAS Bureau of Public Works Design and Construction, according to procedures originally crafted by the Department of Transportation. See response to Observation 4 above and Laws 2005, Ch. 291: 1, V.

DAS concurs that further clarification of processes may be beneficial to agencies, and intends to continue its efforts to foster such clarification. See also our response to Observation 22 below. We are unable to conclude that best practice necessarily, and in all contexts, suggests a prequalification process which is detailed in statute and which may be managed in one of the two ways suggested.

Should it be ascertained that prequalification of vendors is desirable in all contexts, that DAS should establish relevant procedures, and that such procedures should be applied in relation to all contracts, the Department believes that it would require additional resources to address the matter, particularly the Legal Coordinator, Administrator III and support personnel noted in response to Observation 1.

Observation No. 21

Develop Policies And Procedures For "Vendor List" Contracts

Some agencies enter into a single contract with multiple vendors for the same service. These are termed "vendor list" contracts and may be used in an "on-call" situation where an agency requires a service be available on short notice or on a "per event" or as needed basis. In this

situation, a vendor list contract may help avoid retroactive and sole source emergency contracts. Vendor list contracts can also be used to secure several service providers to ensure broad geographical coverage or provide services beyond a single vendor's capacity. Seventy-six of 181 respondents to our survey (42 percent) reported participation in creating vendor lists for service contracts at their agency. Officials from five agencies we reviewed reported entering into vendor list contracts. However, no agency reported or provided formal, written vendor list contract policies and procedures nor is there a statewide vendor list policy or procedure established in statute, rule, the *Handbook*, or the *Manual of Procedures*. Some agency officials reported being prohibited from using vendor list service contracts, and for those using vendor lists, the process was inconsistent.

One agency submitted to the G&C a vendor list contract for a statewide emergency service with each vendor's signed P-37 form, insurance certificate, and attachments, plus a copy of the scope of work and payment. Another agency submitted to G&C only a copy of a contract and list of vendors, without signed contracts or attachments. This agency's personnel reported inconsistently sending informal letters to the G&C regarding mid-contract vendor additions. These added-on vendors did not go through the formal G&C approval process. Officials at three agencies did not believe using vendor list contracts was allowed; although two of the officials noted vendor list contracts can save time, and stated it was unfortunate they were not able to utilize this type of contract.

Best practice suggests competitively bid vendor list service contracts can expedite delivery, ensure adequate support, and reduce the cost of meeting emergency requirements. Of the 2,382 new contracts, amendments, extensions, payments, and emergency payments reviewed by the G&C over the audit period, 330 (14 percent), worth approximately $140 million (7 percent), were identified as retroactive. Another 49 (2 percent) were identified as one-time or emergency payments, totaling approximately $2 million.

Vendor list contracts reportedly evolved over time to make contracting easier, streamline the service procurement process, and improve service delivery. In the State's decentralized service contracting environment, methods and practices developed inconsistently, and no standard, statewide policy or procedure exists to guide the preparation and use of these contracts, including final vendor selection. Vendors on vendor list contracts receive no guarantee they will be used. Because individual vendors are chosen by the agency to perform services *after* G&C review and approval, selecting individual vendors may not be sufficiently transparent. Two Executive Councilors we interviewed indicated the process for choosing vendors after contract approval is not clear. Without clear guidelines and transparency, inequity for vendor list contracted vendors or a workaround to full and open competitions may exist.

Recommendations:

We recommend the Legislature consider including in statute authority for using vendor list contracts and provide the DAS authority to promulgate administrative rules regulating such contracts.

We recommend the DAS, using this new authority, establish administrative rules for vendor list contracts including:

- **appropriate use for emergency, short notice, or planned service procurements,**
- **methods to ensure agencies fairly choose vendors from contract lists once contracts are established, and**
- **methods for adding vendors to established lists.**

DAS Response:

We concur in part.

DAS concurs that legislative clarification of "vendor list" processes may be beneficial but notes that the particular form of clarification, and the content of any potential rules, would depend in large part upon the model of centralization and the particular statutory language adopted. If such clarification includes the authority of DAS to promulgate rules on the topics listed, we would require the additional personnel resources noted in response to Observation 1. We would recommend that should overall standards for vendor list contracts be developed, they allow some latitude to enable agencies to utilize such contracts for emergencies or unforeseen circumstances. DAS also notes that to the extent this observation suggests that it would be beneficial to create overall established lists of vendors, the observation may in part relate to the underlying concept of vendor prequalification. In that regard, see our response to Observation 20 above. The matter of procurement contracting is a complex field involving a variety of technical issues. We would recommend that any attempt to statutorily address the matter of vendor lists, prequalification, competitive bidding or other matters contained in the audit which might be accomplished with or without an overall consolidation of the purchasing function, include the input of individuals involved in the technical areas at issue, including government procurement, administrative procedure and law.

Observation No. 22

Provide Negotiation Tools To Maximize Competitive Service Procurement Benefits

RSA 21-I:22 requires negotiations with the highest qualified bidder for architect, engineer, and surveyor services. The highest qualified bidder is invited to negotiate a price, but if these negotiations fall through, negotiations will be terminated and the next highest qualified will be invited to negotiate a price. The DAS administrative rules Adm 600 reference best and final offer; however, the use of competitive negotiations in low bid or best value acquisitions is not identified in statute or rule.

Best practice identifies negotiation as a valuable tool used to develop the best possible proposal by introducing flexibility and opportunities to reconcile a vendor's proposal to an agency's need. Negotiations can assist the vendor and agency by further clarifying the need and offer, and can help meet mutual objectives. Different types of negotiations best serve different types of service procurement. Low bid, best value, and highest qualified negotiations are all identified in best practice.

- Low bid with competitive negotiation can be utilized when quotes, request for quotes, or request for bids/invitation to bid are used. In this case, the lowest responsible bidders are invited to present a final offer with the award going to the final lowest responsible bidder.
- Best value negotiations invite the highest-rated vendors of the initial review process to negotiate prices and terms until a "best and final" offer is submitted. Negotiations are kept private and once the "best" vendor is selected, based on the criteria contained in the original RFP and the subsequent negotiation, a summary of negotiations and decision processes are made public.
- Highest qualified negotiations can be utilized when an RFP requires the award basis be highest qualified. The final step in this type of service procurement is a competitive negotiation process. If the highest qualified cannot meet the price expectations of the procuring agency, the negotiations will be terminated and the second highest qualified invited to negotiate.

Statute implements the highest qualified negotiation process in line with best practice, but limits this tool to architects, engineers, and surveyors. This tool may also be valuable for other technical professional services. Best value negotiations for services such as information technology contracts or other service procurements based on weighted evaluation criteria may also benefit the State. The State's rules do not apply best and final offer negotiations in line with best practice to maximize competition and cost savings. Rather, it is used as a tool to meet cost estimates when all bids exceed the acceptable dollar value for the contract.

Competitive negotiations are utilized in best practice, but are used only in a limited way under State rules. Best practice identifies competitive negotiations as a tool for best aligning agency needs with a bidder's offer, maximizing service provision. Lack of competitive negotiations as a service procurement tool may prevent the State from maximizing results for service contracts, although implementation of negotiation processes must include guidelines for transparency.

Recommendations:

We recommend the Legislature consider including in statute the authority to utilize low bid, best value, and highest qualified negotiations in a transparent, documented process and authorizing the DAS to develop administrative rules regulating the use of different types of negotiations.

We recommend the DAS, using this new authority, promulgate administrative rules providing guidance on the negotiation process, post guidance online, and develop competitive negotiation training.

DAS Response:

We concur in part.

We concur that negotiation tools may maximize procurement benefits. DAS notes that its own administrative rules on general purchasing specifically incorporate this understanding by providing for "best and final offer" negotiations. See Adm 606.02. The Bureau of Purchase and Property utilizes this rule to advantage whenever possible, so as to obtain the absolute best pricing for the State. Under the current procurement structure, DAS does not have the direct authority to promulgate administrative rules directing all other agencies to engage in this or other forms of negotiation. We concur that statutory clarification of this topic may be beneficial. The particular form of clarification that is warranted, as well as whether rules might be necessary on the topic of negotiation, would substantially depend upon the overall approach taken in any legislation on centralization. See also our response to Observation 21 and Observation 17 above.

In regard to the development of competitive negotiation training, we believe that this would be a matter best handled through the Division of Personnel, Bureau of Education and Training and that the one additional technical instructor, as referenced in our response to Observation 9 would be needed.

Observation No. 23

Revise Service Contracting Insurance And Bonding Requirements

RSA 21-I:7-c, III, requires the DAS Risk Management Unit identify cost-effective means for protecting the State against various types of losses. Best practice suggests contract insurance and bonding are useful in mitigating contract-related risks and the need for, and value of, insurance and bonds may vary depending upon contract dollar threshold and service type. While DOJ officials reported reviewing contract-related insurance requirements, neither the DOJ or the DAS reported reviewing bond requirements or conducting a cost-benefit analysis to determine insurance and bonding requirements based on service contract types and amounts or risks.

Insurance

For nonprofit vendors with State contracts which annually gross under $500,000, RSA 21-I:13, XIV, establishes a general liability coverage requirement at one million dollars per occurrence and two million dollars in the aggregate. There is no general statutory requirement for contract insurance for other vendors or for nonprofit vendors with contracts over $500,000 except for professional liability insurance required by BPW's statute (RSA 21-I:80). Over the audit period, vendor comprehensive general liability insurance requirements were set by the DAS at the limit on claims against the State contained in RSA 541-B: $2 million per incident or $250,000 per claimant, to cover any potential State liability. Both DOJ and DAS officials reported the State should consider potential savings by reducing insurance coverage in less risky situations. Officials at two agencies we reviewed stated the insurance requirement can be burdensome for small vendors and agencies may lower or waive the required coverage if desired. While DOJ and DAS officials reportedly discussed whether there should be policy or guidance for agencies as to when it is appropriate to waive the insurance, no formal guidance has been issued.

Best practice indicates a "one-size-fits-all" solution is unreasonable for service contract insurance coverage. While statute, rule, or policy may require contractor insurance coverage, and stipulate the type of coverage required, best practice does not specify a required amount. Rather, a purchasing professional should consider the types of loss exposures which may give rise to a claim and the appropriate types of insurance, such as worker's compensation, income, and crime insurance, to mitigate risk. Best practice suggests considering professional liability insurance for bodily injury or property damage caused by professional or technical incompetence. Though professional liability insurance is only required in the BPW statute, DOT policy also requires professional liability insurance for architects and engineering services. BPW's statute does not specify a required coverage amount; however, a BPW official stated the current level was established by a DOT committee and the BPW followed suit.

Construction Bonding

RSA 447:16 requires public building, highway, and bridge contracts over $25,000 include *payment* bonds for 100 percent of the contract amount. However, best practice suggests statute should establish required thresholds for *bid*, *performance*, and *payment* bonds. While not required in statute, both the DOT and the BPW require bidders furnish *bid* bonds, and require successful bidders furnish upon contract execution a *performance* bond in addition to the statutorily required *payment* bond equal to the sum of the contract. Statute does not specify whether professional services associated with construction projects are subject to bonding requirements, but the DOT does not currently require bonding for professional service contracts.

Compared to best practice, the $25,000 required bond dollar threshold is low. One official reported the Department was unaware of the statute requiring it, and so increased the threshold internally; however, subsequent to our inquiries, a DOT official reported the Department will seek an amendment to RSA 447:16 to raise the threshold to $30,000. Other aspects of the Department's practices align with bonding best practice, including the DOT's *Standard Specifications* which stipulate the bond must be acceptable to the Department; issued by a company licensed to do business in the State; bid bonds for all but the two lowest bidders will be returned within seven days following proposal opening; retained guarantees will be returned within ten days of G&C approval; and the bid bond will be returned upon discovery of a proposal's irregularity. However, best practice suggests bid bonds between five and ten percent of the contract amount, while DOT bid bonds range between five and 20 percent of contract amount. None of the Department's practices are codified in statute or administrative rule.

The DOT Division of Finance and Contracts reportedly manages BPW vendor bonding and insurance. The BPW has the same 100 percent payment and performance bonding requirements as the DOT, and also outlines bond requirements in the solicitation. However, some states have separate thresholds for public works and transportation projects, sometimes even allowing public works projects to use securities other than bonds. Also, large portions of the bidders' bonding requirements are codified outside statute and administrative rule in DOT's *Standard Specifications*, and it is not clear these apply to the BPW.

Non-construction Bonds

Best practice suggests agencies may require bonds on services other than construction if necessary to protect the public interest, but unnecessary bonding should be discouraged due to increased costs and reduced competition. While the DAS once required performance bonds for non-construction contracts, a DAS official reported such requirements may force prices up and reduce the pool of bidders. The DAS official reported writing clear criteria into the solicitation and taking extra time to manage the contract instead of requiring bonds. Aside from the DAS and the DOT, no other agency we reviewed reported any bond requirements.

Securities Other Than Bonds

Best practice suggests other securities may replace bonds for certain service procurements and at established thresholds. Cash, cashier's or certified check, cash escrow, or bank or savings institution's letter of credit can replace bonds. However, additional risk is associated with bond alternatives, and the collateral originally provided for other securities may deprive the contractor of funds needed to complete the project.

Good management controls comprehensively identify risks and consider all significant interactions between the entity and other parties. DAS officials report the Risk Management Unit is still in the process of identifying statutes referring to insurance and bond procurement, and specific initiatives have not been implemented following our 2006 performance audit of *Insurance Procurement Practices*. Further, the BPW has not independently analyzed its insurance and bonding requirements, nor has the DAS codified these requirements separately from the DOT. By not using cost-benefit analysis of the loss exposures of contracts for various services, and given the reported burden on small businesses, the State cannot assure it is achieving an effective or economical balance between contract risk and insurance and bonds purchased to mitigate risk.

Recommendations:

We recommend the Legislature consider amending and consolidating insurance and bond requirements into one statute to:

- **require bid, performance, and payment bonds for public works projects;**
- **allow non-construction projects to require bonds;**
- **allow construction or non-construction projects to utilize securities other than bonds under established dollar thresholds; and**
- **require the DAS to perform risk-based determinations of necessary insurance and bond types and coverage, including but not limited to worker's compensation, comprehensive general liability, professional liability, and utilizing securities other than bonds under established dollar thresholds.**

We recommend the DAS:

- **Risk Management Unit offer guidance to agencies on insurance and bonding requirements based on dollar threshold, service type, and loss exposure; and**
- **BPW establish rules and policy and procedure for bonding all public works projects.**

DAS Response:

We concur in part.

This audit revisits a number of the procurement practices discussed in the 2006 Insurance Procurement Practices Performance Audit. The Risk Management Unit has made progress expanding the scope of competitive bidding for insurance contracts and improving the quality of the bidding documents and associated process. This progress has been documented in a July 2008 internal Status Report and in a further internal Status Report that is currently being drafted. Further progress is difficult in the absence of legislative action on centralization of insurance procurement as well as the definition of services. Currently, the insurance procurement activities of the RMU are subject to a patchwork of statutes, which together determine which State exposures must be covered by insurance.

In August, 2008, the RMU prepared for internal Department use a comprehensive report on its procurement practices. The report explains the background and legal authority of the RMU's procurement activities, as well as the challenges and opportunities it faces. In addition, statutory mandates, consultation practices as well as payment directives is provided for each insurance policy and bond. A table in the report identifies those insurance policies that are procured without a statutory mandate and the associated state agency.

The RMU has plans to develop a statewide centralized risk management program as was reported in the 2006 audit. The state fiscal situation and the associated hiring freeze has slowed that effort. In addition, as was previously reported, legislation will ultimately be necessary to effectuate that centralization, much as the services procurement will. In the interim, the RMU has been completing cost/benefit analyses on each liability insurance policy. In order to effectively plan, implement and monitor a statewide Risk Management program, we believe that the RMU will likely require one additional Administrator II - Risk Assessor, and one additional Administrator III Risk Finance Analyst.

The RMU has hired an experienced insurance procurement specialist, who is based in the Bureau of Purchasing and Property, as well as a new Operations and Procedure Specialist who will help draft administrative rules, policies and procedures for the statewide risk management program, among other RMU activities.

In addition, the RMU has issued a report entitled "Recommended Insurance Requirements for Vendors Doing Business with the State of NH" to the Department of Justice in November 2008. This report discusses the basic problem that State insurance requirements may hinder small businesses from successfully obtaining contracts. The need to secure adequate insurance to

preserve State assets and minimize liabilities must be balanced with encouraging small business growth through user friendly State procurement opportunities. We proposed that a thorough risk assessment template must be done by trained agency personnel with guidance and input from RMU except in cases of unusual or high risk contracts, where RMU would review the contract and determine insurance requirements. We suggested adopting similar categories of insurance coverage used by the states we surveyed in their contracting, as a best practice. We discussed the impact of sovereign immunity on insurance limits. Another meeting between RMU and the Department of Justice to follow up on these topics is planned for the first quarter 2009.

The RMU was involved in a project with the Department of Justice, Department of Insurance and other departments in DAS to implement new revisions of the P-37 where it impacted insurance coverage and limits. It was also part of the statewide training on the revised P37 in October and November 2008 for DAS business supervisors and agency personnel.

We agree that construction contracts need to have bid, payment and performance bonds and need a higher dollar threshold. We agree that bid, payment and performance bonds need to be secured for non-construction contracts on a case-by-case basis if it is in the public interest. For example, a non-construction contract, the workers compensation third party administrator bid issued by RMU in spring 2008 required bid and performance bonds.

In light of the foregoing, DAS concurs with the recommendations in Observation 23 relative to RMU, but notes that legislative action would be necessary in order to fully achieve desired goals. To the extent that objectives might be accomplished without legislative action, RMU has proactively sought to achieve them.

In regard to the recommendation that BPW establish bonding requirements by rule, as noted in our response to Observation 4, the Bureau of Public Works Design and Construction is authorized to utilize certain DOT practices and rules. The content of any adjustments to rules and procedures currently applied in the context of Public Works rules would in part be dependent upon the nature of any statutory changes that might be implemented regarding purchasing. DAS agrees, however, that adjustments to its purchasing and Public Works rules and procedures would be beneficial. The subject area at issue is complex, and the process of securing passage of administrative rules is technical in nature. In order to address the recommendation regarding Public Works at this time, the Division of Plant and Property Management would require the addition of one full time, permanent Legal Coordinator, as set forth in response to Observation 1. If the procurement system was to be centralized along the model set forth in Observation 1, the additional personnel noted in response to that observation would also be required.

Observation No. 24

Create A Statewide Contract Dispute Resolution Process

No statute, rule, or policy establishes a statewide service contract dispute resolution process. Several statutes and rules address components of a dispute resolution process, including DAS administrative rules Adm 600 which require informal resolution be attempted before formal

process implementation, but none provide a single, coherent, statewide process applicable to service contracting. RSA 541-A outlines the adjudicative processes available to agencies and individuals for contested cases; however, this is not specific to contracting and utilizing RSA 541-A may elevate the process beyond simple resolution and mirror litigation or a more formal, onerous process.

Dispute resolution is a process for resolving protests or disagreements during the bid, award, or contract phase of procurement. Best practice concludes the benefits of dispute resolution and appeals processes include eliminating procurement disruptions and costly litigation. According to best practice, clear policies, procedures, and processes in place for all contracting parties, paired with equitable treatment of vendors and effective documentation, should eliminate most disputes. If disputes are not resolved, agencies should first seek remedy via negotiation and discussion, followed by alternative dispute resolution (ADR), and last by arbitration and litigation.

The standard contract form P-37 has no specific dispute resolution language. There is a section on default and remedies permitting the State to: provide 30 days notice to a vendor to remedy a default, terminate a contract with written notice, suspend payment, or consider a contract breached if a default is not remedied. However, the section provides no recourse, and no dispute resolution or appeals process for vendors. It provides no process for the vendor to bring disputes against the State for its failure to perform, breach, or default and places the burden of proof on vendors.

There is no statewide process ensuring documents supporting contract disputes, dispute resolution, or vendor performance are generated or retained. There is an outdated, infrequently used vendor complaint form, however. Officials from five agencies we reviewed reported utilizing an informal process before seeking litigation, but this process is neither formalized nor standardized across agencies. Agencies report resolving conflicts internally or utilizing the DOJ; however, there is no clear guidance on when either approach is appropriate. While disputes and protests are outlined in DAS pre-award and award stage administrative rules, limited guidance exists for disputes or protests post-award or during the life of the contract. Also, there is no formal guidance for alternative dispute resolution or mediation. Finally, there is nothing dedicated specifically to dispute resolution in the form of flow charts, policies and procedures, or assistance through the dispute process.

There are three potential types of contract-related protests: 1) pre-award or solicitation process, 2) contract award, and 3) post-contract award. All three may include complaints by the State or the vendor. Best practice recommends written explanations of the disputes, protests, or conflicts and written response by the party being challenged, creating a record if conflict persists. The vendor and the State should maintain contract performance until the dispute is resolved. Contracts should include language and information pertaining to dispute resolution and escalation, as well as ADR options.

ADR should be sought whenever possible to minimize costs, time, and maintain good vendor relationships. Best practice recommends ADR as more efficient for handling contract disputes than costly and time-consuming litigation. Using arbitration or mediation in lieu of litigation can

be beneficial for both parties, especially for less complex disputes, by limiting the time, cost, and loss of good will associated with litigation.

DAS Adm 600 rules require informal efforts at resolving disputes before formal process implementation but are only applicable to DAS procurement. Consequently, decentralized contracting practices and absence of statute, statewide administrative rule, or policy detailing the requirements and expectations for dispute resolution can create a varied approach with no formal process. Disruption to the service procurement process or service delivery and costly litigation can result from limited options available for resolving conflicts or disputes. Additionally, the lack of clear documentation requirements, ADR options, and escalation processes, may cause inconsistent treatment of vendors and fail to prevent the situation in the first place. A 1996 DOJ summary of the bid protest process noted the "absence of a clear entitlement to a public hearing" often causes the protest to be elevated to the Superior Court level as the first resort which can be more costly and time consuming. Unclear responsibility for dispute resolution potentially resting with the individual agency, the DAS, or the DOJ, creates a lack of control and accountability in the process.

Recommendations:

We recommend the Legislature amend statute to include formal procedures for pre-award, award, and post-award dispute resolution and appeals. We further recommend the Legislature consider requiring the DAS promulgate dispute resolution administrative rules and ensure they are consistently applied.

We recommend the DAS, using this new authority:

- **promulgate dispute resolution administrative rules;**
- **work with the DOJ to create mandatory contract dispute resolution language providing protections for both the State and vendors;**
- **post guidance, flow charts, and recommendations for dispute resolution on the central procurement website; and**
- **develop training available to both State employees and vendors on topics such as ADR, mediation, and resolving conflict.**

DAS Response:

We concur in part.

Note that this and other recommendations are premature until an assessment is made of the model of centralization desired. The precise parameters of any dispute resolution process would necessarily depend upon the specific procurement structure established by statute. DAS would presently be unable to state that such a structure would necessarily require separate procedures for pre-award, award and post-award dispute resolution. Specific but simple rules for the informal resolution of disputes currently exist within DAS' own Purchase and Property function. See Part Adm 609. We agree that RSA 541-A sets forth a formal adjudicative proceeding process

that is not specific to procurement and may elevate dispute resolution in the procurement context to an unnecessarily formal process. It is for this reason that DAS adopted the provisions of Part Adm 609 as a process that is a prerequisite to any such formal proceeding. See Adm 202.02 (b). We have also built into our procurement system the notion of "correction and cure," a process whereby certain non-fatal errors or technical disqualifying factors can be corrected on an informal basis, thereby avoiding any more formal dispute resolution process entirely. Even in the event that a dispute devolves into a formal hearing, DAS rules encourage informal settlement. See e. g. Adm Part 217, 203.01 (b) (2). Since the process of potentially disqualifying a vendor takes place as part of the bid review by Bureau of Purchase and Property, rather than via a process of "prequalification," there is under this structure no need to have a separate set of procedures for pre-award dispute resolution. Regardless of whether the Department's rules utilize the phrase "alternative dispute resolution," DAS has devoted considerable, detailed attention to specifically requiring that attempt be made at "informal resolution."

Depending on particular circumstances, we believe that it may be beneficial for other agencies to follow DAS' lead by attempting to develop informal dispute resolution procedures. DAS is unable to mandate this under current law. See RSA 541-A: 16, I (b) (requiring each individual agency with rulemaking authority to adopt its own rules of practice setting forth the nature and requirement of all formal and informal procedures available, including rules governing adjudicative proceedings); RSA 541-A: 30-a, II through V (Attorney General is to draft model rules on adjudicative proceedings addressing specified topics, which the Department of Justice has done in Chapter Jus 800). To the extent that Observation 24 may be read to suggest that there exist no processes for informally resolving disputes within agencies or that settlements are not encouraged, it is noted that RSA 541-A: 38 currently specifically encourages agencies to engage in "informal settlements."

Should DAS become a centralized purchasing authority required to handle preliminary dispute resolution, hearings, appeals, the drafting of processes and explanatory material and all related functions, we anticipate that it would be necessary to possess the additional resources noted in our response to Observation 1 above, particular a Legal Coordinator, 2 Hearings Officers and one Program Specialist IV. The initial phase of creating overall procurement regulations and procedures described in the audit would also require the assistance of a temporary (minimum 18-month) Legal Coordinator.

DOJ Response:

Do not concur.

The auditors have recommended the development of a centralized, formal method to address vendor procurement related disputes. At present, this office is not aware of a sufficient number of vendor complaints, both in terms of quantity or quality, that would warrant a more formalized or robust practice of addressing these types of claims. Every department has a formal or informal administrative process to bring complaints to the attention of the agency head for resolution. Further, Governor and Council is a viable forum to address those matters not resolved at the agency level. Lastly, our court system is empowered with the jurisdiction to address those few matters that do find their way into the judicial system. According to the audit, there are over

1600 State employees responsible for processing nearly a billion dollars of contracts during the audit period yet, this office is unaware of any allegations of fraud or criminal wrongdoing on the part of contracting State employees or vendors. Similarly, there are very few instances of formal vendor protests, little substantive contract litigation and no known material ethical violations presently under investigation by this agency or any other. Given the number of contracts entered into by all State agencies, procurement disputes have been relatively rare and, in our opinion, do not warrant the development of another layer of contract dispute resolution at this time. This office, however, does support the notion that all agencies should have a more structured, transparent, standardized and procedurally consistent process for vendors to address contract and procurement related disputes.

Observation No. 25

Develop And Implement A Statewide Debarment Process

The State lacks statute, administrative rules, and policies and procedures to identify vendors unfit to do business with the State, such as those who have defaulted on State contracts or performed poorly, and authority to debar such vendors from future State business. None of the ten agencies we reviewed has a formal, written debarment policy or procedure. However, officials from two agencies reported maintaining an informal list of previously poor performers, while officials from two other agencies reported past poor performers might not be permitted to bid on new contracts, although no list was maintained. It is unclear how past poor performers were identified. Officials at two agencies identified sharing information on poor performing vendors with the DAS and the DOJ; however, no formal, statewide information sharing regarding poor performing vendors exists. While officials from five agencies reported checking federal debarment lists before contracting with a vendor, they each report checking different federal debarment lists which include the Excluded Parties List System, Department of Labor listing, and program-specific lists.

Under RSA 21-I:14, XII, the DAS has authority to make rules "governing the purchase of all materials, supplies and equipment by the division of plant and property management" but provides no debarment rule promulgation authority. Further, the DAS lacks statutory authority to regulate single-agency service contracts. Consequently, statewide oversight authority, responsibility for ensuring satisfactory vendor performance, and maintaining a consolidated list of poorly performing vendors is not vested in any single State agency. Additionally, there is no statutory authority for individual agencies to develop agency-level debarment processes.

Accountability may be compromised through the absence of assigned responsibility and authority for service procurement processes such as debarment. The lack of formal structures within the State and each agency has prevented adequate risk management of poorly performing vendors. One agency official reported assuming the DAS checked the status of vendors. One agency noted there is no way to identify poor performers and provided an example of a vendor, which sold "counterfeit" products still being eligible to bid on State contracts. Another agency stated, even within agencies, one division may not know another was doing business with a particular vendor unless specifically asked.

The DOT has developed administrative rules detailing a prequalification debarment process. DAS rules reference debarment in the limited context of federal funds and surplus property, and require adherence to federal requirements when addressing federal government programs, which includes checking the federal debarment list and not doing business with debarred firms. While no agency has specific statutory authority to debar vendors, three agencies reported informally barring vendors at the agency-level. Only one agency specifically identified its lack of authority to debar vendors.

To ensure public funds are spent effectively and efficiently, 35 states maintain debarment or poorly performing vendor lists for use by contracting agencies and 22 states and the federal government maintain debarred vendor lists online for public review. Best practice requires due process in debarment. Notifying vendors in writing of potential debarment, providing time for a response from the vendor, as well as an opportunity for an administrative hearing are all required. Additionally, best practice identifies using suspension in lieu of debarment during due process proceedings, where the vendor is not eligible to bid or receive awards for a set period while the debarment proceedings are occurring.

Absence of a debarment process for poor performing vendors may expose the State to unnecessary and repeated risk, as these vendors are potentially able to continue receiving State contracts. Since multiple agencies may use the same vendor unknowingly, no statewide process to control poor performing vendors means other agencies may also unknowingly contract with a poorly performing vendor. A formal process could also prevent any potential legal issues from arising when agencies prevent certain vendors from bidding. Due process would be protected by ensuring formal procedures for appeals, as well as criteria for barring vendors, lengths of debarment, and processes for disseminating debarment information to agencies.

Recommendations:

We recommend the Legislature consider amending statute to include a debarment process and:

- **provide the DAS with statewide authority to debar vendors;**
- **provide agencies authority to recommend debarment to the DAS;**
- **establish a standard for due process; and**
- **authorize the exclusion of any debarred vendor from participating in any State contract in any manner.**

We further recommend the Legislature consider requiring the DAS promulgate rules to implement debarment including:

- **establishing the appropriate causes for debarment,**
- **required steps in the process,**
- **providing notice to vendors at risk of debarment and when debarred,**
- **providing notice on debarred vendors to agencies,**
- **the minimum and maximum time limits a vendor can be debarred,**
- **an appeals and public hearing processes for debarred vendors,**

- **documentation requirements,**
- **statewide communication of debarred vendors, and**
- **requirements for public posting of the debarred vendor list.**

We recommend the DAS, using this new authority, promulgate debarment administrative rules and policies and procedures, and actively maintain the debarred list, ensuring vendors debarred at the federal and State level do not do business with the State.

DAS Response:

We concur in part.

DAS concurs that under the present or any revised procurement system it may be beneficial to revise the Department's rulemaking authority relative to procurement and centralized debarment. We also agree that standards relative to debarment, including time periods, appeal procedures, notice and so forth would be desirable and that a process of statewide cross-communication would be necessary to any overall system of debarment. We do not believe that it is at this time possible to ascertain what, if any, language statutory amendments addressing debarment should contain on matters such as due process, documentation and so forth. The processes associated with debarment and the practicalities of cross-communication of information are likely to involve technical and possibly unforeseen issues. The Department would welcome the opportunity to work with the Department of Justice and other resources to ascertain adjustments which might be feasible under the current or any revised system. See also response to Observation 15 and 24.

DAS does not believe that it presently possesses the resources necessary to engage in the technical and complex matters of restructuring overall debarment procedure, crafting statewide regulations or handling hearings, appeals and dispute resolution processes. Central management of debarment would require the services of additional resources, as outlined in our response to Observation 1, in particular the addition of an Administrator III and Legal Coordinator.

Observation No. 26

Develop And Implement Statewide Purchasing Card Procedures

RSA 21-I:17-a authorizes agencies to use field purchase orders to purchase goods up to $500 without prior DAS approval, but does not allow this or any other mechanism for low-dollar service purchases. While some State agencies use store credit cards, other state and federal agencies use bank-issued purchasing card systems for goods and services. Agencies using store credit cards follow their own internal policies and procedures, as there is no statewide guidance.

Four previous Executive and Legislative Branch reports on State government issued between 1982 and 2003 recommended automating and streamlining the DAS purchasing process to improve efficiency. One report specifically recommended purchasing cards, or State-controlled credit cards. Federal agencies have used similar cards for small purchases since the early-1980s

and widespread use of cards among state governments emerged by the mid-1990s. A 2006 survey of states by the Association of Government Accountants showed 32 of 33 states responding had implemented purchase card programs, and over half the states reported substantial savings from the enhanced efficiencies in processing transactions. One federal agency reported saving over $92 per transaction in 1996, and four other agencies estimated average savings were over $87 per transaction. Federal agencies also reported the cards helped agencies achieve mission, enhance outcomes, improve speed of service, or influence confidence in financial management practices and procedures. Notably, a 2000 performance evaluation of another state's purchasing card program reported because payments to vendors are immediate, the purchase card program has increased the involvement of small businesses.

Best practice suggests controls to prevent misuse of purchasing cards such as cardholder training, dollar threshold restrictions on charges, transaction reviews or audits to detect split transactions, as well as coded restrictions in the purchase card such as merchant category blocks to prevent use at unauthorized types of merchants. A 2004 study found misuse accounted for 0.017 percent of purchase card spending at state and federal agencies on average, the equivalent of $170 for every $1 million spent.

Officials at three State agencies reported using store credit cards for several vendors in the State, but business administrators at two agencies reported the DAS had refused their request to obtain a bank credit card. Officials at four agencies reported bank credit cards would be useful in certain situations. One agency official reported the field purchase order will soon become "extinct," while two others noted some vendors now are refusing to take field purchase orders. DAS officials reported considering the implementation of purchasing cards, but have not yet because the resources needed to do so were being used to implement the State's new financial system.

Recommendations:

We recommend the Legislature consider repealing delegated authority for field purchase orders from RSA 21-I:17-a, I, and authorizing the DAS implement a purchasing card system and promulgate related administrative rules, including necessary controls and reporting requirements. We further recommend the Legislature consider prohibiting the use of store credit cards outside the statewide purchasing card system.

We recommend the DAS, using this new authority:

- **create a system to delegate purchasing authority through purchasing cards,**
- **promulgate administrative rules regulating the use of purchasing cards,**
- **require agencies to write internal policies and procedures controlling use of credit cards,**
- **monitor administrative rules and agency policy and procedure for effectiveness, and**
- **update administrative rules and direct agency policy updates when required.**

We further recommend the DAS investigate the frequency of agency use of store cards currently used by agencies, determine the extent of risk associated with agency use of store cards, and centralize controls over agency use of store cards to mitigate risk.

DAS Response:

We concur in part.

DAS has in the past, and does, support the concept of procurement cards, but does not believe that the State is in a position to utilize such cards at this time. The Department in fact put out a procurement card bid in 2001 but decided not to proceed with the installation of a procurement card system due to the challenge of interfacing with a 25 year-old DOS-based financial system. It is critical that the purchasing card system, which is a "real time" system interface with the financial system. Tying into the current system would require state resources that are committed to installing the new financial system scheduled for July 1, 2009. Once the new financial system is up and running, we plan to go out to bid for purchasing card services that will interface with the new ERP system. That system will more easily accommodate the purchasing card process. Once the procurement card system is in place, we plan to eliminate field purchase orders and utilize state issued procurement cards. Assuming that an alternative to the field purchase order system can be devised, we concur that repeal or revision of RSA 21-I: 17-a, I may be in order. In addition, DAS rules regarding field purchase orders and other matters would require review, particularly if an overall alteration were to further centralize, explain or refine the purchasing system.

Generally, DAS concurs with the recommendation that it investigate the frequency of agency use of store cards. The Department is doing so at present, including by working with DOT to review and reduce the amount of "store credit card" contracts wherever possible.

OTHER ISSUES AND CONCERNS

In this section, we present issues we consider noteworthy, but not developed into formal observations. The Legislature and the Department of Administrative Services (DAS) may wish to consider whether these issues and concerns deserve further study or action.

Control Of Amendments And Extensions

From the ten agencies we reviewed, only one official reported having a written policy preventing vendors from increasing contract costs through amendments after a bid. Otherwise, there are no formal, written limits established in State or agency policies regarding how often contracts may be extended or amended.

Four agencies reported the Governor and Council (G&C) expects agencies to award contracts to the low bidder. However, as one Executive Councilor noted, a vendor may win an award as the low bidder, but the same vendor may no longer be the lowest cost if the contract is amended. The Councilor added it is not always clear why there is an amendment. Two Councilors felt there should be a limit on the dollar amount for amendments. Over SFYs 2006-2007, the dollar amount of 124 of the 296 amendments (42 percent), excluding contract amendments extending the end date, constituted 10 percent or more of the original contract amount as detailed in Table 8. Twenty-five amendments (8 percent) constituted 50 percent or more of the original contract value.

Table 8

Amendments From G&C Minutes As Percent Of Original Service Contract Value, SFY 2006 And 2007		
Amendment Percent Of Original Contract Value	**Number Of Contracts**	**Percentage Of Amended Contracts**
Under Ten Percent	172	58
11 to 20 Percent	49	17
21 to 30 Percent	27	9
31 to 40 Percent	10	3
41 to 50 Percent	13	4
More Than 50 Percent	25	9
Total	**296**	**100**

Source: LBA Analysis Of G&C Minutes.

A bureau within one agency has a written requirement for the G&C amendment approval request letter to include "funding sources, percentages, clarity of purpose, and justification," but not all bureaus within this agency have similar policies. There is a requirement to provide an overview of amendments and extensions in the G&C letter in the DAS *Administrative Handbook (Handbook);* however, there is no requirement for justification of amendment or extensions and no clarification as to when amendments and extensions can or should be sought in lieu of re-bidding the contract.

There is no statewide guidance to agencies on service contract amendment controls. Over the audit period, the G&C reviewed 711 amendments and extensions worth over $128 million (14 percent of the dollar value of new contracts). Renewing a contract by extending the end date and amending dollar value without putting the opportunity out to bid limits competition and may not maximize the value for price to the State. Two agencies reported verbal policies on amendment cost control, but a contracting official at one of the agencies was unfamiliar with the policy and both agencies had contract amendments over 50 percent of the original value in the G&C minutes.

We suggest the DAS establish administrative rules and policies to help reduce the risk of spending more resources than necessary on service contracts which are extended or amended instead of being re-bid.

Require Agencies Maintain Service Contracting Policies And Procedures

Agencies lack consistent, comprehensive, written service contracting policies and procedures. Six agencies we reviewed provided some internal, written policies or procedures for service contracting; however, these were incomplete and inconsistent. The remaining four agencies did not provide any internal, written policies or procedures. Three of the six agencies provided internally written policies and procedures generally reiterating *Handbook* requirements. The other three agencies provided written policies and procedures establishing internal and external service contracting requirements beyond those expressed in the *Handbook*.

Best practice suggests rules and policies and procedures be developed by a central procurement office to implement control and mitigate risk. Best practice suggests written policy and procedure manuals be posted online. The lack of written policies and procedures means contracting practices are not standardized within or among agencies, and if vendors face unclear or inconsistent processes, the number of bidders may be unnecessarily limited, reducing competition. Additionally, strong internal policies and procedures at agencies are necessary in order to receive delegated authority to independently complete service procurement activities.

We suggest the DAS require agencies write policies and procedures implementing DAS-promulgated rules and guidelines related to service contracting. Policies and procedures should be incorporated into service contracting training, be reviewed and updated regularly, and explicitly connect failure to adhere to policy and procedure to potential disciplinary actions**.**

Sole Source, Single Source, And Emergencies

Sole source contracts are those where no competition was sought and the award was made to a single vendor without a competitive process. G&C requires agencies identify sole source contracts in the G&C approval request letter. Statute does not define or provide a statewide process for sole source contracts. However, according to State policy, sole source contracts should be avoided except in extraordinary circumstances and require thorough written justification. Although this policy exists, there are no standard forms or definitions expressing

appropriate use and justification of sole source contracts. During the 2006 and 2007 biennium, the State entered into 275 sole-source contracts, 16 percent of all service contracts by the ten agencies we reviewed. Best practice suggests, in most cases, sole source contracting is unacceptable as it fails to maximize competition and provide best quality and price. Although State practice generally conforms to best practice, it should be codified in statute, and should be applicable to all service procurement.

Single source differs from sole source contracts in that full competition is used, but in this case, only one vendor responds. Single source may be justifiable according to best practice, as long as proper public notice and solicitation tools were applied. While best price and quality are ensured through a competitive process, if the contract is for a small value, the additional resources necessary to rebid the contract may not justify the process.

Emergencies and short notice service requirements are unique situations requiring immediate service procurement, without the time necessary to prepare and administer competitive procurement. Emergencies may include threats to public health, welfare, or safety caused by natural disaster, equipment failure, or other unforeseen occurrences. Short notice requirements, while not arising to the level of a disaster, can still require immediate service procurement to restore agency operations. Emergency and short notice procurements require documentation. Best practice recommends avoiding emergency and short notice service procurements by anticipating need and contracting in advance. Whenever possible, these contracts should use competition. The DAS reported developing service contracts for State emergency preparedness and response requirements. However, the State has not established proactive procedures for non-emergency short notice service procurements. Poor planning or preparation by an agency neither constitutes an emergency nor justifies short notice procurements which avoid competitive procurement requirements of statute, rule, or State policy.

We suggest the DAS develop formal sole source and short notice justification standards, require approval for using these non-competitive options, and create formal definitions and circumstances establishing when these types of service procurements are acceptable. Additionally, the DAS should consider developing standards and thresholds for when it is necessary to rebid competitively bid contracts that attracted only one bidder.

Improve Vendor Registration Requirements

A Certificate of Good Standing (CGS), also known as a certificate of authorization or certificate of existence, documents a business has filed all paperwork, and paid all fees and taxes necessary to be authorized to transact business with the State. RSA 5:18-a, requires vendors entering into service contracts valued over $1,000 with the State be registered with the Secretary of State (SOS). Exempt are those doing business in their own name and non-resident, non-profits. All are required to show proof they are authorized to enter into and be bound by the contract. The statute was intended to ensure foreign entities had the same registration requirements as domestic businesses and to protect the State, as redress would then be available to the State in New Hampshire courts. However, business registration may not afford the State real protections or guarantees, is cumbersome for vendors, and is not fully applied.

To prove registration and contract eligibility, State policy requires a vendor submit a CGS obtainable by submitting a form and a $30 fee to the Department of Revenue Administration (DRA). After filing with the DRA, a separate $5 filing with the SOS is required. Vendors may wait up to 60 days to obtain a CGS. The CGS is included in the G&C package when seeking contract approval and a new CGS is required for each contract the vendor enters. While the CGS is required at the onset of the contract, it is only good for one year or until the next filing and payment deadline every April. After expiration, vendors failing to re-file and pay required fees are no longer in good standing with the SOS. State policy is unclear if this means the vendor is in default on the contract or whether it affects the State's ability to seek redress.

We found 13 vendors, holding active contracts as of September 2008, originally entered into during the audit period, listed by the SOS as not in good standing. Since the SOS does not maintain record of prior statuses, it is unclear if these vendors had a CGS at the contract's inception. Additionally, among vendors approved for State contracts at the June 25 and July 10, 2008 G&C meetings, we found one vendor was dissolved, six had never been registered with the SOS, and one was not in good standing. This was a small overall percentage as only eight of 174 vendors (5 percent) considered had a status other than good standing; however, it demonstrates the State's management control system inconsistently ensures registration.

The purpose of RSA 5:18-a and the good standing requirement were addressed in Department of Justice memoranda and reviews since at least the early 1980s. A 1992 memorandum questioned whether the statute was needed or provided any real protection to the State, and concluded the purpose of registering was to generate revenue. However, best practice suggests requiring business registration to contract with the state. Registration is often available online or through a state e-procurement system.

Lack of a single entry point for vendors to obtain a CGS has created a cumbersome environment for a basic process such as obtaining proof of business registration. The SOS maintains an online database listing vendor status; however, this is not used to verify vendor standing in the State as a hard copy of the CGS is required. Further, statute does not specifically place verification of registration status on the vendor though the burden falls on the vendor.

We suggest the registration and Certificate of Good Standing process requirements for vendors be streamlined, simplified, and shifted to an electronic, rather than paper, process.

Best Value Evaluations

Agencies lack standardized templates, policies, and procedures regulating best value evaluations, and do not always follow best practice in using evaluation committees to determine awards. In best value selections, an agency performs an integrated assessment of price and non-price factors. The award goes to the bidder with the best combination of price and non-price factors. One agency official stated the agency cannot determine how to implement such a system because proposals are not comparable and more than one bidder may meet all bid requirements but have different potential benefits. Also, two Executive Councilors pointed out a bidder not presenting the lowest dollar bid might nonetheless offer the State the best value.

To evaluate best value proposals, agencies report using a panel of individuals consisting of agency personnel and sometimes industry experts, who score proposals based on criteria included in the RFP. Three agencies reported industry experts or other non-employees take part in bid evaluations; however, only one division within one agency provided a conflict-of-interest signature form for evaluation committee members. Best practice shows evaluation committees should be comprised of individuals trained to score and evaluate best value proposals. Agencies did not report training the evaluation panels. Also, some states and federal agencies prohibit evaluators from discussing information pertaining to the evaluation with outside parties, however only two agencies provided sample evaluator non-disclosure forms.

Proper practices help ensure agencies select the most qualified vendor at the best price, and contracting decisions are defendable if challenged. Point scores should be used as guides to inform decision-making. Best practice suggests it is proper for evaluators to discuss strengths and weaknesses of proposals to reach a consensus rating, which often differs from individual ratings. Only one agency official specifically reported using consensus scoring.

We suggest the DAS develop administrative rules to standardize evaluation committee processes, including: training members and agency liaisons, detailed procedures for committees, and conflict-of-interest and non-disclosure requirements and forms.

Grants And Agreements

Grants transfer money, property, services, or anything of value to another organization to accomplish a public purpose and do not provide goods or services to an agency. Contracts acquire property or services for the direct benefit or use of the State agency, or its clients. Some grants are authorized by statute. However, New Hampshire does not establish grant procedures in agency administrative rules, statutes authorizing grants, or general procurement statute and rule. At least six State agencies provide grant opportunities. In some cases, agencies post grant RFPs along with service contract RFPs with no differentiation between them. Further, some grants appear to procure services with the clear purpose of providing benefits to the agency, such as equipment testing, repair, and maintenance.

Additionally, neither procedural requirements for creating, nor definition of memoranda of understanding (MOU) or agreement (MOA), exist in statute. It is unclear from the DAS *Administrative Handbook* whether MOUs or MOAs are subject to competitive procurement. The *Handbook* establishes a threshold for MOUs or MOAs, but it is unclear whether other requirements for service contracts, such as competitive bidding or sole source requests also apply to the MOU and MOA. Best practice indicates considering agreements between agencies as a *step within* the process of service procurement, not a parallel process. Since intra-agency agreements are not subject to competitive procurement or to contract terms and conditions, they were not considered service contracts for the purpose of the audit. However, this does not exempt agreements between State agencies and other parties. MOUs or MOAs with third parties appear to serve the contract function in some instances. From January 2006 through June 2007, nine of 62 memoranda (15 percent) were specified “sole source” in the G&C minutes, six of which were between two State entities.

We suggest the Legislature consider standardized, transparent processes and definitions for grants and agreements within statute.

DAS Response:

To the extent that the first three items identified under "Other Issues and Concerns" relate to matters distinguishable from, or which do not flow from, items previously addressed, and to the extent that they suggest that DAS adopt various rules relating to procurement by other agencies, DAS does not currently possess this authority. Should DAS be granted such authority, the content of any rules it might consider would depend in large part upon the precise model of centralization deemed appropriate by the Legislature and the parameters of the rulemaking authority granted. It would not be possible to state at this time whether administrative rules on the topics identified would be warranted, or what those rules would ideally say. The Department notes, however, that its own general purchasing rules currently contain provisions on changes to quantity or scope in purchase orders, requisition forms and proposed contracts (Adm 607.09), sole source requests (Adm 607.03) and brand justification request (Adm 607.02).

CONCLUSION

Our audit of State service contracting found decentralization and inadequate controls have limited efficiency and effectiveness and the management of risk for service contracts valued over one billion dollars and executed during State fiscal years 2006 and 2007. The State utilizes an antiquated service procurement system reliant on outdated statutes, rules, policies and procedures, and thresholds. No one agency is accountable for the State's contracting system and no single set of standards applies to public procurement statewide. While agencies must conform to many statutes, rules, and polices and procedures, the lack of clear definitions and oversight responsibility, adequate and consistent statewide guidance, and a centralized service procurement function limits efficiency and effectiveness.

Competitive procurement, a fundamental component of public procurement, is required by policy but other necessary components of a full and open competitive process are lacking. While the procurement system has been evaluated in the past and recommendations for process improvement have been made, no significant change to the State's service procurement system has occurred. Further, State officials are aware of many inefficiencies and inadequacies of the system and report the State should consider making changes to the system. The State has limited statewide data, inadequate public notice requirements, employees who are inadequately trained in service procurement, and cumbersome vendor processes. Requirements and definitions for sole source, emergencies, solicitation tools, and award mechanisms should be clarified.

While we did not audit individual agencies or contracts, applying an updated, statewide service procurement process, and implementing full and open competitive procurement managed by trained procurement professionals, could improve management control and mitigate risk. An updated statewide service procurement process can also help maximize the benefits of competition in potential cost savings and provide an improved business environment for vendors.

We recommend the State improve service contracting by aligning statute, rule, and policy and procedure with best practice. This includes adopting a statewide procurement statute, standardizing processes, creating a central State procurement office, improving management of human resources engaged in service contracting, and establishing a central location for information dissemination online. The full extent of our recommendations cannot be implemented immediately, and while some recommendations could lead to short-term gains in efficiency and effectiveness, any improvement of management controls statewide can only be realized in the long-term following statutory changes.

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APPENDIX A

State of New Hampshire
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February 25, 2009

Richard J. Mahoney, CPA
Director of Audits
Office of the Legislative Budget Assistant
State House Room 102
107 North Main St.
Concord, NH 03301

Dear Mr. Mahoney:

We thank you for the opportunity to comment on the State of New Hampshire Service Contracting Performance Audit Report.

DAS generally concurs with the audit's main proposition that greater centralization of service contracting may be desirable and that one workable model of centralization might be a system in which DAS is a central procurement agency, with the ability to delegate purchasing authority to other agencies that meet criteria established by DAS. This would, of course, be a significant change from the current statutory scheme. Whether or not to implement this system will depend upon detailed legislative assessment of matters including, but not limited to, the financial costs and benefits of implementation; assessment of whether the current system has resulted in actual problems that could be avoided under an alternative system; and analysis of changes needed in the complex statutory underpinnings of current procurement practice. Only after the basic model of centralization is identified would it truly be possible to assess the features that might be required to fully implement that system. We believe that most of the recommendations contained in the audit are suggestions for the details of a centralized approach should the Legislature choose to adopt the centralized system outlined in Observation 1. If some other method of further centralization were found by the Legislature to be more workable for New Hampshire at this time, we assume that the recommendations might change. At least 23 of the 26 recommendations would require significant statutory revision, each requiring detailed analysis that may be dependent upon other determinations that are made. We therefore believe that it would at this time be premature to reach any definitive conclusion as to the specifics of a new system may and may not be desirable.

DAS looks forward to working with the Legislature and members of the executive branch to streamline and, where necessary, improve procurement practices in the State, be it under the present decentralized system or under a new, consolidated model.

If you have any questions regarding our response to the audit report, please contact me at 271-3204.

Very truly yours,

Joseph B. Bouchard
Assistant Commissioner

FAX: 603-271-6600

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KELLY A. AYOTTE
ATTORNEY GENERAL

ORVILLE B. "BUD" FITCH II
DEPUTY ATTORNEY GENERAL

March 2, 2009

HAND DELIVERED
Richard J. Mahoney, CPA
Director of Audits
Office of the Legislative Budget Assistant
State House Room 102
107 North Main Street
Concord, NH 03301

Dear Mr. Mahoney:

Thank you for providing the Attorney General's Office with the opportunity to comment on the State of New Hampshire Service Contracting Performance Audit Report. Our comments to the Report are enclosed with this letter.

In addition to the Department of Justice's ("DOJ") responses to the observations of the Office of Legislative Budget Assistant's ("LBA") performance audit on State service contracting, the DOJ offers these general comments. The purpose of these general comments is to define our understanding of the goal of performance audits, and to suggest how, going forward, future audits can provide additional value to the New Hampshire General Court, as well as the agencies that are the subject of a LBA audit. These general comments should not be viewed as a criticism of the Service Contracting Audit, but instead it is hoped that these comments will be considered as a move toward improving the process.

Before doing so, we think it appropriate to state that we agree that many of the auditors' observations, if implemented, could make procurement and contracting in the state of New Hampshire more efficient and effective. Similarly, structural improvements to the procurement system, without necessarily involving greater centralization, would also provide agencies, and vendors alike, with much needed guidelines and consistency. Improving the training of agency personnel would go a long way to promote efficiency and effectiveness. And lastly, it is patently obvious that in this age of instant communication and reliance on technology, improving the use of information technology is critical for the State to compete in this challenging economy. But, as is noted at the end of these general comments, simply stating what may be intuitively obvious does not necessarily provide useful guidance to an audit's audience.

In framing these comments, we looked to the Comptroller General of the United States' *Government Auditing Standards*, January 2007 Revision ("GAGAS"). It is our understanding that the LBA also looks to these standards as guidance for its own audits.

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The GAGAS defines performance audits as:

> engagements that provide assurance or conclusions based on an evaluation of sufficient, appropriate evidence against stated criteria, such as specific requirements, measures, or defined business practices. Performance audits provide objective analysis so that management and those charged with governance and oversight can use the information to improve program performance and operations, reduce costs, facilitate decision making by parties with responsibility to oversee or initiate corrective action, and contribute to public accountability.

GAGAS, §1.25. The Comptroller General of the United States has stated that

> Auditing of government programs should provide independent, objective, fact-based, nonpartisan assessments of the stewardship, performance, and cost of government policies, programs, and operations. Government audits also provide key information to stakeholders and the public to maintain accountability; help improve program performance and operations; reduce costs; facilitate decision making; stimulate improvements; and identify current and projected crosscutting issues and trends that affect government programs and the people those programs serve.

January 2007 letter from David M. Walker, Comptroller General.

In its service contract audit report, the LBA relies heavily on "best practices" throughout its report. As is described above, the goal of a performance audit is to provide "objective analysis so that management and those charged with governance and oversight can use the information to improve program performance and operations, reduce costs, facilitate decision making by parties with responsibility to oversee or initiate corrective action, and contribute to public accountability." Many hundreds of thousands of dollars are spent by the New Hampshire legislature for each performance audit, and the final product should provide a stand alone guidance document to achieve this objective. It is our view that performance audits should describe the current legal and performance structure, and report on whether state officials are meeting the high standards expected of state employees within that existing framework. In addition, to the extent the auditors are charged to evaluate performance against best practices, the performance audit should make recommendations that include a range of options, including those that can be taken immediately, within the budgetary and personnel limitations that inevitably exist within New Hampshire's structure of government, as well as those that properly fall within a loftier "wish list" of goals.

Thus, to accomplish this objective, well defined and transparent definitions of "best practices" would provide an objective analysis that can be used by legislators to evaluate whether (1) the auditors have adequately researched the standards against which they are comparing current practice; (2) the best practices identified by the auditors are applicable to New Hampshire, and New Hampshire's form of governance; (3) the best practices are achievable and (4) the best practices are a desired outcome.

The audit report correctly acknowledges that most of the recommendations contained in the report are contingent upon significant legislative changes to provide the DAS needed authority. Service Contracting Audit at p. 1 (*Summary*). In essence, this acknowledgement is a finding that the

current legal structure that defines how service contracting is performed in New Hampshire does not comply with "best practices." This simple fact highlights the need to report to the legislature whether or not service contracting is being conducted in at maximum efficiency within the current legal structure. Such an analysis is necessary to provide an "objective analysis so that management and those charged with governance and oversight can use the information to improve program performance and operations." GAGAS, §1.25. Of course, even to achieve maximum efficiency within the existing legal structure will likely require additional human and financial resources to accomplish that goal, a fact that should not be overlooked in the present economy.

Thus, the value of this performance audit to its intended audience would be greatly enhanced if it included an understanding of how and where the current operations could be improved to achieve the goals of service contracting within the current funding, legal, and policy structure. It is only with that information at hand can the legislature determine whether legislative changes should be made to achieve "best practices." For example, if current operations were operating at maximum efficiency and compliance with existing laws and standards governing service contracting in New Hampshire, there would be no room for improvement within the existing system. The system could thus be improved only with legislative changes to the law. If, however, the current system is not being operated at maximum efficiency, the legislature may want to see how changes within the existing framework improves operations before enacting wholesale legislative change to the system to achieve "best practices."

Furthermore, when "best practices," are not provided in context, it is uncertain what criteria are used to determine what makes the practice "best." For example, when the magazine Consumer Reports identifies a "best buy," it is not only making that determination based on performance, but is also taking into account cost, functuality, and a host of other factors that may make it "best." Those factors are explicitly defined and given relative weight, and their use in determining "best," is critical to consumers' use of their analysis. In the same way, transparency as to what makes a practice "best" in an audit report is key if it is going to be used as guidance on whether a "best practice" is, in fact, best for New Hampshire, or best for Texas. Without access to the criteria that are considered to determine what constitutes each "best practice," the value of an audit is diminished. Without that guidance, it may place the legislative policy committees in the position of repeating much of the work that may already have been performed by the auditors in order to determine whether the legislature should, as is recommended by the auditors, engage in wholesale legislative changes to the structure of New Hampshire service contracting.

We are also concerned with the high degree of confidence applied by the auditors to their conclusions. Keeping in mind that a performance audit requires a standard to gauge or measure against what is done in practice, we note that throughout the audit the term "best practice" is used as if there were a standard or clear definition. However, we also read that there is no one definition or solution, but instead, best practice "is a synthesis of many sources…." Service Contracting Audit at p. 1. The auditors are correct when they write that there is no one example or single solution for the State and that policy decisions made in one area of contracting may affect other areas mooting some of their recommendations. Simply put, we understand this to mean that there is more than one way to address the contracting needs of New Hampshire.

Although we believe the process can be improved going forward, the auditors do make several observations of what can be improved in the existing system. Some of those are currently

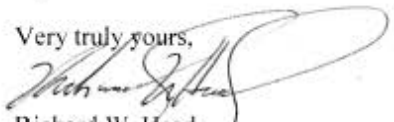
being implemented. For example, the DAS and DOJ recently joined forces and embarked on a project that provided badly needed training to State contracting employees. The DOJ has provided training to the Executive Council, and has created a contracting checklist to assist agencies to standardize the contracting process. DAS has used SunSpot to provide agencies access to a revised P-37, which can be completed electronically and printed, and other pertinent information including the checklist.

What is less obvious is that New Hampshire's method of governance requires those involved in management to also perform jobs associated with non-management positions. For example, DOJ managers also maintain client counseling obligations and litigation cases in addition to their management duties. Litigation or client counseling deadlines often drive the work flow. As applied to one of the recommendations in the Service Contracting Audit, improve on-line contracting for example, the limitation in staff and funds highlights the difficulty of transferring "best practices" from another state to New Hampshire. The obvious step of improving the use of information technology would require additional agency funds that are not currently budgeted, and transfer those funds to the Department of Information Technology ("DoIT) to create the web-based technology to make on-line contracting possible. Unfortunately, such a program cannot be created in a vacuum, but would necessarily be a partnership among agency managers and DoIT to identify the needs, and translate those needs into a State-vendor interface on the State's website. Even the simplest of such programs take many human resource hours and the transfer of tens of thousands of dollars from agency budgets to DoIT.

For example, the web-based interface contemplated by the auditors is a complex task that will take many hours in development and significant dollars. Those hours will be taken from managers who, as noted above, are performing not only management functions, but also non-management functions. Thus, while it may be accepted that a web-based contracting presence is a laudable goal, the cost in dollars and human resource hours is a limiting factor not considered by the auditors. Thus, much like *Consumer Reports* tells its readers what criteria it used to identify the "best buy," the auditors' report of "best practices" should also have identifiable criteria on what makes a practice "best." This would add value to the investment of resources and research done by the auditors to determine what "best practice" they will pick against which they measure executive branch performance. That level of transparency, we believe, will result in a more functional report to the legislature, and provide better guidance on what is achievable in the short term, and what are longer-term goals.

Should you have any questions in the meantime, please do not hesitate to contact me.

Very truly yours,



Richard W. Head
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APPENDIX B

DEPARTMENT OF ADMINISTRATIVE SERVICES PHASED APPROACH TO CENTRALIZATION OF SERVICE PROCUREMENT

We generally support the notion of greater centralization of service contract procurement. Except for a few exceptions such as the legislature, the judicial branch, the University system and a few other state agencies, the Division of Plant and Property Management centrally purchases commodities for all of state government. The purchase of services is fragmented and it is possible that savings and economies of scale may result by centralizing procurement of services. Since no substantive assessment has been made of procurement activities within agencies at present, however, it is not known what, if any, specific savings might accrue from centralization; or what, if any, personnel can, should or might be reassigned.

Centralization which involved implementing recommendations contained in the audit would be a significant task, including the rewriting of statutes and rules, development of policies and procedures, creation of contract templates and training of state employees. This would take time and resources to accomplish. Were further centralization to occur, we are recommending a model that centralizes the procurement of services but allows state agency subject matter experts to remain at their current locations. This would provide in house expertise and help to avoid complex accounting difficulties while still providing the required standards and controls of centralized procurement. This approach is similar to what the State of Maine utilizes.

We anticipate that implementation of a centralized system of this nature, taking into account recommendations made here, would take a minimum of five years to accomplish. Listed below is a phased approach to accomplish the centralization of service procurement. The first phase is for the balance of FY 2009, the second phase is for the next biennium (FY 2010-2011) beginning on July 1, 2009 through June 30, 2011 and the third phase (FY 2012-2013) that would begin on July 1, 2011 and end on June 30, 2013.

Phase I January 1, 2009 through June 30, 2009

- During Phase I Administrative Services will continue to expand the amount of multi agency service contracts to include: janitorial services, snow removal, vehicle rental, trash removal, recycling, burglar alarm and access control system maintenance, sand sweeping, fire suppression testing and inspection services and mold remediation. This shall be accomplished by reclassifying three vacant positions within the Bureau of Purchase and Property. Position # 10094 will be reclassified to Administrator III, Contract Administrator and positions #10082 and 11594 will be reclassified to Purchasing Agents/Contract Specialists.

- In addition, within the limitations of in-house staff, Administrative Services will continue to expand and develop the Purchasing Web Site.

- During FY 2009, Administrative Services will also request additional funding and resources as follows for the next biennium (FY 2010-2011):

  - 1 - full time permanent Legal Coordinator to develop policy and procedures for state agencies.

  - 1 - full time temporary (minimum of 18 months) Legal Coordinator to assist in creating the structure of and implementing the new administrative system.

  - 1 - full time permanent Program Specialist IV to assist the Legal Coordinators and Administrator III Contract Administrator.

  - 2 - full time permanent purchasing agents/contract specialists, if Administrative Services is required to submit all service contracts to Governor and Council.

  - 1 - full time permanent technical instructor to conduct a needs assessment and work with subject matter experts to develop a curriculum for training.

  - Receive funding to Support planning for Phase II of Purchasing (Electronic Bid Submission) and Strategic Sourcing (Vendor Self Service)

  - Seek additional funding in the amount of $25,000 for the Bureau of Purchasing beginning in FY 2010-2011 if required to advertise all state bids for services in a newspaper.

  - Seek additional funding in the amount of $25,000 per year to lease 1,350 square feet of office space for the 6 new positions.

  - Seek additional funding in the amount of $20,000 per year for equipment and supplies to support the new positions.

Phase II July 1, 2009 through June 30, 2011 (FY 2010-2011)

- Assuming the successful receipt of the above-mentioned resources, Administrative Services will work with the Department of Justice to develop standard bid and contract templates. They will also create new statewide service contracting rules and procedures and develop a list of recommended statue revisions. Working with the Division of Personnel Training Section, Administrative Services will conduct a needs assessment and work with subject matter experts to develop a curriculum for state wide training of service contracting personnel.

- Administrative Services will also work with DoIT and other departments to establish standards to accept electronic signatures on bid and contract documents.

- After the new financial system is installed and functioning properly, Administrative Services will bid and establish a contract for Procurement Card Processing Services.
- Administrative Services will also work to define and prepare for the installation of the Phase II Procurement Module and Strategic Sourcing.

- During FY 2011, Administrative Services will request the following positions and resources for FY 2012 -FY 2013, to continue the process of centralizing and expanding service contracting:

  - 8 – full-time permanent Purchasing Agent/Contract Specialists to support centralized management of contracts.

  - 3 – full-time permanent Program Specialist I to support the Purchasing Agents/Contract Specialists.

  - 2 - full-time permanent Hearing Officers to regularly address adjudicative proceedings, appeals and alternative dispute resolution procedures.

  - 1 – full-time permanent Information Technology Manager IV to formulate and manage the procurement website.

  - 1 – full-time permanent Administrator II, Risk Assessor

  - 1 – full-time permanent Administrator III, Risk Finance.

  - Seek additional funding in the amount of $63,000 per year to lease 3,150 square feet of office space for the 16 new positions.

  - Seek additional funding in the amount of $56,000 per year for equipment and supplies to support the new positions.

Phase III July 1, 2011 through June 30, 2013

- Assuming the successful receipt of the above-mentioned resources, Administrative Services will begin the roll out of statewide procurement for services.

- Locate office space and required equipment and supplies for new staff.

- Assign purchasing agents/Contract Specialist to respective agencies.

- Establish adjudicative office.

- Expand web site to full statewide capability, eliminate other state agency procurement web sites.

- Train state agency personnel regarding standardized bidding and contract procedures for service contracts.

APPENDIX C
SERVICE CONTRACTING SURVEY

OFFICE OF LEGISLATIVE BUDGET ASSISTANT - AUDIT DIVISION

Service Contracting Survey

You have been selected for this survey because you may have some level of responsibility for contracting or procurement for your agency. The survey will address your experience with **service** contracting during State fiscal years (SFY) 2006 and 2007, or July 1, 2005 to June 30, 2007.

For the purpose of this survey **"service contracting"** is being used broadly to mean obtaining any service where the work provided consists primarily of a service or individual's skill such as architects, engineers, consultants, medical professionals, trash removal, building maintenance, or advertising.

Involvement in service contracting may consist of:

- Determining a need to contract,
- Preparing requirement or specifications,
- Speaking with vendors,
- Qualifying vendors,
- Preparing or maintaining contracting documentation,
- Monitoring contract performance,
- Processing invoices for a contract,
- Receiving or providing feedback on contract performance,
- Participating in the bid process,
- Sending a contract package through the approval process, or

Participating in the amendment of a contract.

Were you involved in any aspect of service contracting in SFY 2006 or 2007?
(CHECK ONLY ONE ANSWER)

N=259

Count	Percent	Response
185	71	Yes
74	29	No, I did not participate in any service contracting in SFY 2006-2007

If you answered No to the above question, please click the Exit button below to exit the survey. We thank you very much for your time. Otherwise, click next to complete the survey.

Directions

*Please answer the following questions to the best of your ability based on **your experience** with service contracting within your agency for SFY 2006 and 2007. It is **not necessary** to answer regarding other service contracts your agency may have, but you were not involved in.*

Please answer "Don't know" for questions you may not have direct experience with or for which you are unsure.

There are 34 questions. We estimate it will take approximately 30 minutes to complete the survey.

Please feel free to provide any additional feedback or comments about service contracting or this survey at the end.

We appreciate your time and input. Thank you for participating.

Navigating and Exiting the Survey

Please do not use the "Enter" key on your keyboard or the browser's "Back" button to navigate through the survey.

To read to the bottom of a section: Use the scroll bar on the right hand side of the section.

To move from section to section: Use the "Next section" and "Previous section" buttons at the end of each section. Do not use the "Enter" key on your keyboard to navigate through the survey.

To exit at any time: Click on the "Exit" button at the end of each screen. Always use the "Exit" button to close the survey. If you do not, you will lose the information you entered in that section.

To restart your survey: Log on to the survey using your user name and password. The survey will restart at the point where you exited.

To change your answers: To change an answer marked with a "button" (circle), click on another answer. To "uncheck" a checked box, click on the box again (this will "uncheck" it), then check the box(es) you wish to check. To change what is in a text box, click in the box and then delete and retype. *Note:* You cannot use your browser's "Back" button to backup and make changes. Use the previous section button instead. You can change your answers, even after logging off, by logging on again (see above).

To answer open-ended questions: Click anywhere inside the box and begin typing. When you reach the limit of the open space, keep typing and the box will automatically expand.

To print your responses: Click on the "View response summary" link at the end of the survey.

Contracting Responsibility

1. In SFY 2006 and 2007, what aspects of service contracting did you participate in? *(CHECK ALL THAT APPLY)*

   N=181

Count	Percent	Response
112	62	Identifying the need to contract
116	64	Planning
76	42	Creating Vendor Lists
51	28	Prequalifying Vendors
137	76	Developing contract specifications
122	67	The bid process
111	61	The award process
115	64	Contract Administration
42	23	Contact auditing
100	55	Invoice or payments related to contracts
129	71	Communication with vendors
94	52	Contract record keeping or document maintenance
16	9	Other

2. During SFY 2006 and 2007, approximately what **percentage** of your time was dedicated to service contracting?

   N=175

Count	Percent Of Respondents	Percent Of Time Dedicated
129	74	0-24
21	12	25-49
7	4	50-74
18	10	75-100

Responses	Percent Of Time
High	100
Low	0
Mean	20
Median	10
Mode	5

3. Did you have the authority to:
(CHECK ALL THAT APPLY)

N=169

Count	Percent	Response
109	64	Initiate the service contracting process
153	91	Review contract specifications
92	54	Approve contract specifications
110	65	Review contracts for your agency
39	23	Approve contracts for your agency
11	7	Sign a contract on the behalf of the State
18	11	Other

4. Did your contracting involvement require you to work with a cross-functional team?
(CHECK ONLY ONE ANSWER)

N= 180

Count	Percent	Response
117	65	Yes
50	28	No
13	7	Don't know

5. Did contracting responsibilities factor into your annual employee evaluation?
(CHECK ONLY ONE ANSWER)

N=179

Count	Percent	Response
61	34	Yes
75	42	No
43	24	Don't know

6. Did you receive service contract training **before** assuming contracting responsibility? *(CHECK ALL THAT APPLY)*

N=180

Count	Percent	Response
12	7	Yes, I received formal training
69	38	Yes, I received informal training
15	8	No, I received training *after* assuming contracting responsibilities
90	50	No, I have not received any contracting training
2	1	Don't know

7. If you received service contract training, was the training adequate? *(CHECK ONLY ONE ANSWER)*

N=173

Count	Percent	Response
47	27	Yes
20	12	No
9	5	Don't know
97	56	Not applicable

8. Which of the following service contract training topics would you benefit from? *(CHECK ALL THAT APPLY)*

N=176

Count	Percent	Response
28	16	Identifying the need to contract
92	52	Creating contract specifications
97	55	Writing the request for bid or request for proposal
34	19	Working with vendors
114	65	State laws, rules, policies, and procedures
75	43	The Governor and Council (G&C) approval process
49	28	Record keeping
63	36	Contract administration
5	3	Other
24	14	Not applicable

Contracting Processes

9. The Department of Administrative Services (DAS) may provide support for service contracting. How did you use DAS for service contracting support?
(CHECK ALL THAT APPLY)

N=174

Count	Percent	Response
51	29	Used our Business Supervisor for guidance
50	29	I used the DAS Administrative Handbook
46	26	I used DAS procurement personnel in the BPP to assist in service procurement
5	3	All services used by our agency were procured by the DAS
23	13	Some services used by our agency were procured by the DAS
61	35	I did not use the DAS for service contracting support
18	10	Don't know
19	11	Other

10. If your agency did not utilize centralized DAS service contracts, why not?
(CHECK ALL THAT APPLY)

N=144

Count	Percent	Response
24	17	Unaware of availability
2	1	Prefer different vendor
6	4	DAS contract unavailable in our geographic area
53	37	DAS contract does not meet our needs
6	4	Too little control of contract terms and conditions
8	6	The process is too cumbersome
58	40	Don't know
30	21	Other

11. In SFY 2006 and 2007 did your agency have formal written policies and procedures for any of the following:
(CHECK ALL THAT APPLY)

N=175

Count	Percent	Response
26	15	Determining or justifying a need to contract
45	26	Creating contract specifications
60	34	Providing public notice to potential vendors
42	24	Determining if a bid is responsive
58	33	Determining award criteria
52	30	Determining which vendor has won the contract
30	17	Service contract record retention
41	23	Contract administration
24	14	Contract auditing
26	15	Contracting Code of Ethics or Conflict of Interest statement
22	13	Dispute resolution
35	20	No formal written policies and procedures
61	35	Don't know
20	11	Other

12. Were you required to determine and justify the need for contracting within your agency?
(CHECK ONLY ONE ANSWER)

N=178

Count	Percent	Response
43	24	Yes, formally in writing
65	37	Yes, informally
55	31	No
15	8	Don't know

13. Which of the following were considered when deciding to contract for services?
(CHECK ALL THAT APPLY)

N=176

Count	Percent	Response
67	38	Cost-benefit analysis
30	17	Market research
107	61	Determined current employees could not meet service needs
92	52	Available funds
26	15	Sufficient staff available for contract administration
11	6	None of the above
28	16	Other
22	13	Don't know

14. How did you determine the type of solicitation used, such as request for proposal (RFP), request for bid (RFB), RFQ/quotes?
(CHECK ALL THAT APPLY)

N=176

Count	Percent	Response
109	62	Type of service needed
62	35	Dollar value of service needed
44	25	DAS Administrative Handbook requirements
81	46	Agency practice
21	12	Identified in statute
31	18	Based on award criteria
17	10	Other
23	13	Don't know

15. Which of the following State guidelines were you familiar with during SFY 2006 and 2007?
(CHECK ALL THAT APPLY)

N=177

Count	Percent	Response
78	44	Three telephone quotes for services of less than $1,000
96	54	Three written quotes for services between $1,000 and $2,000
107	60	RFP with public notice for services over $2,000
152	86	Governor and Council (G&C) approval for services over $2,500
47	27	Criteria and their relevance identified in the RFP for services over $35,000
102	58	Office of Information Technology approval for any information technology-related purchase over $250 (now a requirement over $500)
137	77	Approval by G&C for amendments to contracts previously approved
111	63	Approval by G&C for amendments to bringing the total contract value over $2,500
67	38	Division of Personnel approval for all personal service contracts
119	67	Attorney General approval for service contracts over $2,500
9	5	Other
11	6	Unfamiliar with these requirements

16. How was public notice provided for service contracting opportunities?
(CHECK ALL THAT APPLY)

N=177

Count	Percent	Response
107	60	Opportunities were posted online
118	67	Opportunities were advertised in newspapers
19	11	Opportunities were posted at your agency's office(s)
94	53	Opportunities were e-mailed or mailed to vendors
15	8	Other
8	5	No public notice was utilized
24	14	Don't know

17. Considering all media utilized for advertising service contracting opportunities, what was the longest duration of any one public notice?
(CHECK ONLY ONE ANSWER)

N=176

Count	Percent	Response
5	3	Two days or less
33	19	Three days to one week
28	16	More than one week and less than three weeks
39	22	Three weeks or more
64	36	Don't know
7	4	Not applicable

18. Once vendors are determined to be qualified, do you award low-bid contracts based on anything other than cost?
(CHECK ONLY ONE ANSWER)

N=176

Count	Percent	Response
77	44	Yes
64	36	No
35	20	Don't know

19. Did you receive or provide feedback on the quality of contracted services?
(CHECK ALL THAT APPLY)

N=175

Count	Percent	Response
49	28	Yes, formally via meeting process
32	18	Yes, formally via a complaint or evaluation form
91	52	Yes, informally
38	22	No
12	7	Other
14	8	Don't know

20. When performance measures were used, they were:
(CHECK ALL THAT APPLY)

N=176

Count	Percent	Response
89	51	Identified in the solicitation (RFP, RFB, RFQ)
91	52	Identified in the contract
36	20	Used for benchmarking
22	13	Used to provide incentives or penalties for the contractor
28	16	Performance measures were not used
36	20	Don't know

21. Please specify what records pertaining to the procurement process were maintained.
(CHECK ALL THAT APPLY)

N=177

Count	Percent	Response
113	64	Documentation of quotes
137	77	The original RFP or RFB
130	73	Vendor responses to the RFP or RFB
111	63	Information pertaining to the final decision on which vendor has won the contract
146	82	The signed contract
120	68	Amendments to the contract
59	33	Performance reporting
99	56	Vendor communications
131	74	G&C letter
20	11	Other
0	0	No records are formally retained
23	13	Don't know

22. What information was provided to the potential vendor during the bid process? *(CHECK ALL THAT APPLY)*

N=176

Count	Percent	Response
149	85	Bid due date
107	61	Public opening date and location
108	61	Criteria and weight of each component considered in awarding the contract
59	34	Funds available for the project
139	79	A contact within the agency to address questions
124	70	Overview of required performance, requirements, and reporting
104	59	General requirements such as vendor registration
31	18	A "How-to Packet" or "Doing Business with the State" guide
13	7	Other
1	1	No information provided
18	10	Don't know

23. What percentage of vendor bids were non-responsive, meaning the vendor fails to include all required information or to meet the criteria identified in the solicitation?

N=49

Count	Percent Of Respondents	Percent Of Non-responsive Bids
29	58	0-5
9	18	6-10
3	6	11-25
9	16	>25

Responses	Percent
High	70
Low	0
Mean	12
Median	5
Mode	0

24. If you utilized or worked with retroactive contracts, please identify why.
(CHECK ALL THAT APPLY)

N=142

Count	Percent	Response
41	29	Contracts with short notice cannot be processed on time
2	1	It is less burdensome in some cases to seek approval retroactively
35	25	Retroactive contracts are not utilized
43	30	Don't know
33	23	Other

25. In the case of retroactive contracts, how were timely payments made to the contracted vendor for services provided prior to Governor and Council approval?
(CHECK ALL THAT APPLY)

N=125

Count	Percent	Response
3	2	Payment voucher
3	2	Purchase order
10	8	Contract encumbrance
53	42	No payments were made
11	9	Other
58	46	Don't know

26. How often did competitive bidding result in only one vendor responding, requiring a sole source justification?
(CHECK ONLY ONE ANSWER)

N=154

Count	Percent	Description
53	34	Never
41	27	1 - 5 of the time
16	10	6 - 10 of the time
14	9	11 - 25 of the time
30	19	26 of the time or more

27. In SFY 2006 and 2007, in the cases where no competitive bidding was utilized, please identify why.
(CHECK ALL THAT APPLY)

N=147

Count	Percent	Response
32	22	Only one vendor in geographic area
73	50	Only one vendor provides the unique service required
13	9	Bidding process too cumbersome for some contracts
12	8	Established vendor-agency relationship
9	6	Sole source contracts are not utilized
26	18	Other
37	25	Don't know

General Service Contracting Overview

28. Please provide an **estimate** for the number of service contracts you were involved in for SFY 2006 and 2007.

N=157

Count	Percent Of Respondents	Number Of Contracts
135	86	0-24
10	6	25-49
5	3	50-74
5	3	75-100
2	1	100+

Responses	Number
High	251
Low	0
Mean	14
Median	5
Mode	2

29. For each service contract you were involved in during SFY 2006 and 2007, please complete the table, below. If you participated in more than five service contracts, please provide information on up to five contracts representative of your participation in service contracting.

Contract Information	Summary of Response
Contracts Identified	419
Number of Services Identified	43
Agencies Responding	10 of 10
Minimum Contract Value	$0.00
Maximum Contract Value	$129,780,047.00

Current Environment

30. Please select all of the following components which you consider ***positive*** aspects of the current service contracting environment.
(CHECK ALL THAT APPLY)

N=152

Count	Percent	Response
12	8	Easy process
39	26	Strong controls and accountability
50	33	Decentralization at the ***State*** level allows agencies flexibility in meeting needs
50	33	Decentralization at the ***agency*** level allows agencies flexibility in meeting needs
25	16	State law clearly defines contracting requirements
31	20	Clear ***State*** policies and procedures
29	19	Clear ***agency*** policies and procedures
25	16	Strong working relationship with DAS
3	2	Adequate training available
32	21	Ability to utilize DAS-procured services
23	15	There are no positive aspects of the current contracting process
23	15	Other

31. Please select all of the following components which you consider ***negative*** aspects of the current service contracting environment.
(CHECK ALL THAT APPLY)

N=159

Count	Percent	Response
125	79	Cumbersome paper process
14	9	Lack of controls and accountability
88	55	Threshold levels for competitive bidding are too low
109	69	Threshold levels for Governor and Council (G&C) approval are too low
22	14	State law does not clearly define contracting requirements
69	43	Frequent changes in requirements
47	30	Lack of guidance from the State
23	14	Lack of guidance from my agency management
65	41	Lack of training available
42	26	Lack of technology for maintaining current information and generating reports
41	26	Inability to attract adequate vendors
16	10	Poor working relationship with DAS
26	16	Not enough statewide services procured by DAS for multi-agency use
7	4	There are no negative aspects of the current contracting process
28	18	Other

32. If the State were to implement a centralized State-level service procurement system, what components would be essential?
(CHECK ALL THAT APPLY)

N=159

Count	Percent	Response
136	86	Agency flexibility to specify contract service need
112	70	Agency flexibility to specify contract value
131	82	Responsiveness of central procurement office to agency requirements
103	65	Accountability of central procurement office
139	87	Clear policies and procedures
123	77	Formal training
125	79	Electronic processing for requisitions, approvals, contracts
26	16	Other

33. Which agency do you work for?
(CHECK ONLY ONE ANSWER)

N=163

Count	Percent	Response
17	10	DAS
27	17	DOT
30	18	DHHS
17	10	OIT
13	8	DOS
14	9	DOC
22	13	DES
12	7	DRED
9	6	Adjutant General
2	1	Judicial Council

34. Please provide any additional information about the service contracting process or feedback pertaining to this survey. *

*Individual comments have been excluded from this summary.

When the Survey is Complete

When you have completed this survey, please check the "Completed" box below.

Clicking "Completed" is equivalent to "mailing" your survey -- it lets us know that you are finished, and that you want us to use your answers. It also lets us know not to send you any follow-up messages reminding you to complete your survey.
(CHECK ONLY ONE ANSWER)

N=276

Count	Percent	Response
160	58	Completed
116	42	Not completed

Thank You

Before you click the Exit button below to log out, you may view and print a summary of all the responses you made by clicking on the link below.

Click on the **Exit** button below to exit the survey, then click on the **Close** button to close the browser windows associated with this survey. You may access your responses for review, changes, and printing up until July 22, 2008. ***Thank you for your participation.***

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