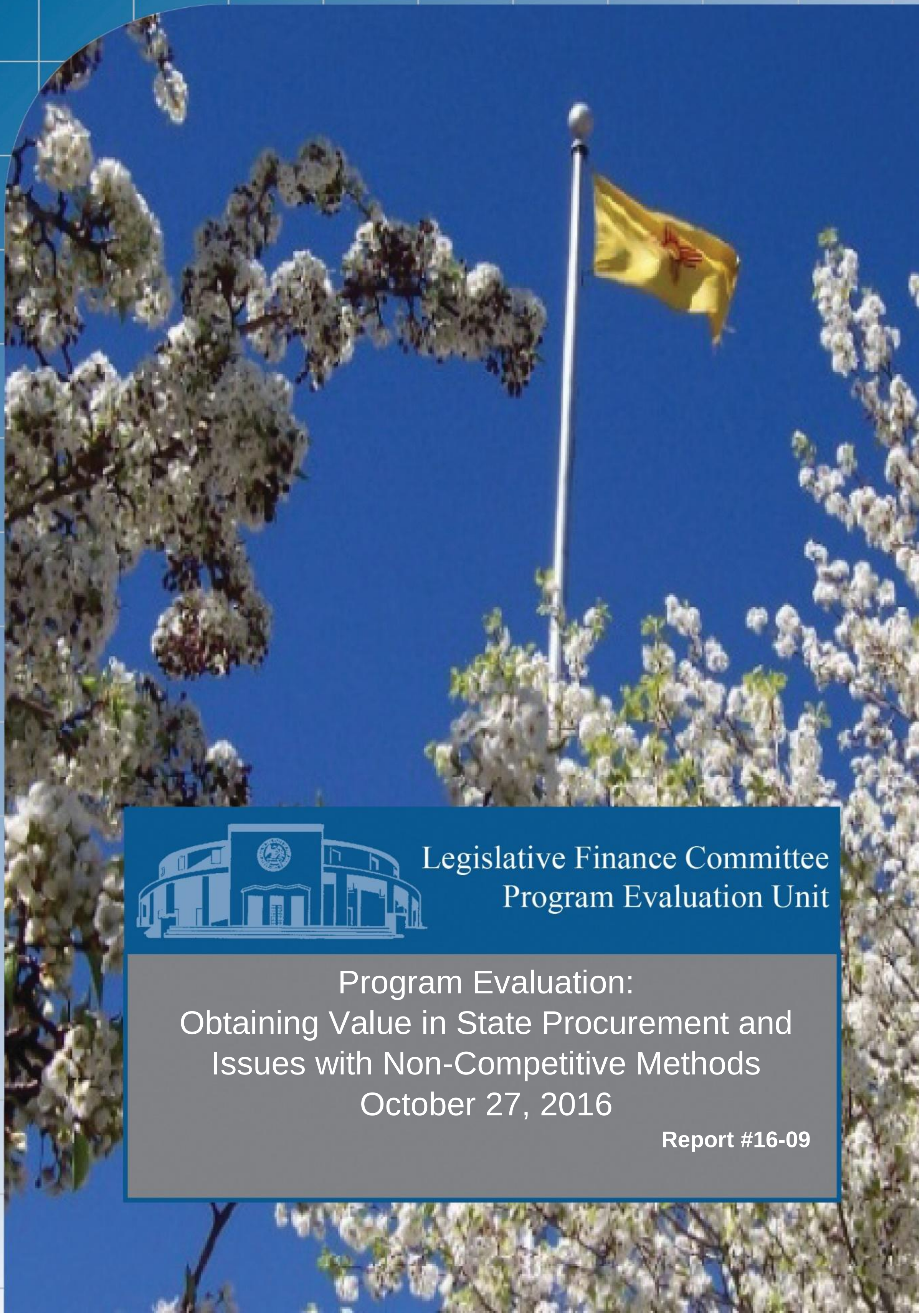

Legislative Finance Committee
Program Evaluation Unit

Program Evaluation: Obtaining Value in State Procurement and Issues with Non-Competitive Methods

October 27, 2016

Report #16-09

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David Abbey
Director

October 27, 2016

Mr. Edwynn Burckle, Cabinet Secretary
General Services Department
P.O. Box 6850
Santa Fe, NM 87505

Ms. Dorothy Rodriguez, Cabinet Secretary
Department of Finance and Administration
407 Galisteo St # 166
Santa Fe, NM 87501

Dear Secretary Burckle and Secretary Rodriguez:

On behalf of the Legislative Finance Committee, I am pleased to transmit the evaluation, *Obtaining Value in State Procurement and Issues with Non-Competitive Methods.* The evaluation analyzed the effectiveness of the state procurement process and explored how the state can leverage its buying power and improve state purchasing to create a more efficient and effective procurement process.

This report will be presented to the Legislative Finance Committee on October 27, 2016. An exit conference to discuss the contents of the report was conducted with staff from the General Services Department and the Department of Finance and Administration on October 18, 2016.

I believe this report addresses issues the Committee asked us to review and hope procurement in New Mexico will benefit from our efforts. We very much appreciate the cooperation and assistance we received from your staff.

Sincerely,

David Abbey

David Abbey, Director

Cc: Senator John Arthur Smith, Chairman, Legislative Finance Committee
Representative Jimmie C. Hall, Vice-Chairman, Legislative Finance Committee
Duffy Rodriguez, Secretary, Department of Finance and Administration
Mr. Timothy Keller, State Auditor
Mr. Keith Gardner, Chief of Staff, Office of the Governor

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Most of the budget is spent on procurement in a decentralized system encouraging non-competitive methods.

Up to $13 billion of the $18 billion state budget is spent on the procurement of goods and services. The purpose of this evaluation was to assess agency purchasing practices and results of state contracts for goods and services. The report finds procurement is done through a decentralized system encouraging non-competitive methods. Room for improvement exists through additional procurement reform regarding contract management, the role of chief procurement officers (CPOs), and more standardization and centralization.

Up to $13 billion of the state budget is spent on procurement.

The state procurement process has redundancies and differing methods among agencies. For procurement subject to oversight, agencies submit their procurement vehicle to one of three agencies (DFA, GSD or DoIT). These agencies then route procurement vehicles between themselves creating a circuitous process. Additionally, the three agencies overseeing procurement have different practices for contract requirements. For example, emergency procurements need only two signatures, including the agency chief procurement officer (CPO) whereas IT professional services contracts require nine signatures, excluding the CPO. The results of this structure and process are a lack of oversight for procurement and long timelines for state agencies potentially encouraging additional non-competitive procurement.

Non-competitive procurement is overused resulting in the potential for higher costs to state agencies.

Non-competitive procurement is overused resulting in the potential for higher costs to state agencies. Sole source contracts, emergency procurements, contract amendments, Procurement Code exemptions, small purchase abuse, and receiving services without a valid contract in place are all examples of non-competitive procurement. Best practices and guidelines from the Governor's office encourage competitive procurement to obtain best value. LFC staff found examples of improper use of sole source and emergency contracting, cases where contracts were amended for more than five times its original value, billions of dollars in spending determined to be exempt from the Procurement Code by state agencies, along with multiple procurement violations exceeding $100 thousand.

LFC staff found examples of:

- ***improper use of sole source contracting;***
- ***improper use of emergency contracting;***
- ***cases where contracts were amended for five times value;***
- ***billions in spending exempt from the Procurement Code; and***
- ***multiple procurement violations exceeding $100 thousand.***

Procurement reform in New Mexico has had partial success but there is still room for improvement, particularly in contract management and other best practices. Accomplishments of the task force on procurement reform include requirements that a chief procurement officer be designated for each state agency and local body and the development of a best value procurement guide. However, guidance and practice for CPOs need improvement. For example, the role of CPOs are not well defined in law, rule, or other guidance. Many contract management best practices are not followed in New Mexico leading to lost value. Potential cost savings in competitive procurements due to issues with contract management were found for professional services contracts and price agreements.

Procurement, the buying of goods and services, makes up most of New Mexico's spending. Generally, purchases for goods and non-professional services are processed through GSD and purchases for professional services are processed through DFA and DoIT. However, only $1.25 billion out of an estimated $10 billion to $13 billion spent on procurement in New Mexico is overseen by GSD, DFA, or DoIT.

$1.25 billion out of an estimated $10 billion to $13 billion spent on procurement in New Mexico is overseen by GSD, DFA, or DoIT.

New Mexico procurement has a decentralized system with confusing processes and differing practices. New Mexico does not have a central procurement office with statewide authority, whereas most states do. Currently at least three state agencies and the Governor's office are involved in the procurement process in some capacity. DFA, GSD, and DoIT are directly involved in procurement oversight and the Governor's office has provided guidelines on procurement and contract issues which have also requested additional required reporting and permissions in order to complete procurement.

New Mexico procurement has a decentralized system with confusing processes and differing practices.

The three agencies overseeing procurement have different practices for contract requirements. Additionally, where and how contract determinations are made varies and guidance from agencies provides conflicting instruction. For example, determinations for whether a contract should be a professional service have transferred back and forth between GSD and DFA. Current guidance on the DFA website indicates that the power resides at DFA and instructs agencies to send a DFA employee information for determinations to be made. Current guidance on the GSD website indicates the determination is made at GSD by the state purchasing agent and instructs agencies to send that agent information for determinations to be made.

The three agencies overseeing procurement have different practices for contract requirements.

Previous LFC evaluations and task forces have recommended creating a centralized procurement office. The National Association of State Procurement Officials (NASPO) has recognized statewide centralization as one of its top priorities. Exclusions and exemptions from the Procurement Code create a lack of oversight. Best practices discourage blanket exclusions of agencies from the state purchasing office as this can limit the oversight a central procurement office can provide. New Mexico has 14 exclusions from central purchasing and 40 exemptions from the Procurement Code. Long timelines for competitive procurement were cited by agency staff, GSD, and DFA, potentially encouraging non-competitive procurement.

New Mexico has 14 exclusions from central purchasing and 40 exemptions from the Procurement Code.

Agencies use non-competitive procurement methods, sometimes violating statute and possibly resulting in higher costs. The legal non-competitive procurement processes are necessary for certain functions of government. However, non-competitive methods, other than small purchase procurements, should be used sparingly, only when necessary, and in conjunction with law and rule. NASPO states that procurement professionals add value to government programs through obtaining best value through competition. The Governor's office also issued guidelines for contract reviews and evaluation including direction for agencies to favor competitive bidding whenever possible as "Competitive biding (sic) may result in lower costs to the agency."

For non-competitive procurement the LFC found multiple methods where the state is potentially losing value.

For non-competitive procurement LFC staff found multiple methods where the state is potentially losing value. Sole source contracts are not competitive and should be used only in select situations. Sole source procurement has declined after a rule change requiring procurements be publicly posted for 30 days. However, LFC staff found recent examples of the improper use of sole source contracting. The General Services Department has posted 74 sole source procurements on the State Purchasing Division website from May to August. Fifty percent were awarded because a vendor completed previous, similar work for the agency. Additionally, 12 sole source procurements (16 percent) submitted no justification. Emergency contracts are not competitive and sometimes misused, potentially leading to increased costs. Some emergency procurement is a result of poor planning, a lack of maintenance, or other mistakes. The use of large, multiple amendments for smaller contracts leads to inflated contract costs.

Exemptions from the Procurement Code are widespread (approaching $6 billion) creating potentially increased costs.

Exemptions from the Procurement Code are widespread (approaching $6 billion) creating potentially increased costs. Key agencies including HSD, NMCD, and CYFD spend billions outside provisions of the Procurement Code. The lack of clear guidance in designating exemptions is associated with differing practices between and within agencies. Some agencies and entities appear to be circumventing the Procurement Code by awarding multiple small contracts to the same vendor. For example, there are several instances where the MLK Commission grants monthly payments to various contractors in a manner that allows it to not report to DFA. DFA is aware of the issue and is taking appropriate action. Unauthorized procurements are the result of services received without a contract and without competition. Statutorily, GSD has responsibility to administer the Procurement Code, however violations reported by the state auditor are not reflected in GSD reporting and there are reporting issues where agencies are not aware of violations identified by GSD or have not conducted internal investigations required by GSD for larger violations. GSD has implemented a pilot program to improve contract administration and management with non-competitive methods, saving $2.75 million.

GSD has implemented a pilot program to improve contract administration and management with non-competitive methods, saving $2.75 million.

Procurement reform has had success but there is still room for improvement in contract management and best practices. Some procurement reform is evident through Governor Martinez's task force on procurement reform. However, guidance and practice for CPOs needs improvement. Sixty-five agencies and local bodies (11 percent) are operating with CPOs who have not gone through certification. To improve uniformity in state procurement practices, the General Services Department is proposing a rule change for CPOs

Best practices for contract management including training, tracking, and guidance are lacking. New Mexico also does not provide helpful contract management tools. According to NASPO, 37 states provide contract management training for using agency contract administrators and 29 states maintain a materials inspection manual, contract manual, or similar set of guidelines. According to NASPO, GSD does not provide any of these.

Several contracts analyzed by LFC staff exemplify the need for improved contract management. LFC staff analyzed professional service contracts from the Contract Review Bureau (CRB) database, which contains an average of $265 million in contracts per year, and found potential cost savings. LFC staff developed an evaluation rubric for determining potential cost savings and identified contracts where contractors were paid up to 300 percent more than state employees for performing the same task. Insufficient oversight and training in contract drafting and negotiation results in unclear and ambiguous contracts creating potential for overpayments and increased risk for litigation. The price agreement process also has potential for lost value without strong contracting and management. Some price agreements have a range of prices and vendors for similar services, with no incentive for agencies to choose lowest price and examples of agencies choosing the highest priced vendor

New Mexico's procurement process needs increased transparency, openness, and accountability. Transparent procurement promotes competition by keeping the public and vendors informed about the process. New Mexico does not currently require all sole source and non-competitive procurement be posted on a single website. State statute does require the posting of sole source and emergency contracts but agencies and public bodies have wide discretion on where the information is posted. Many non-competitive procurements are posted on the various agency websites or notices are advertised in local newspapers making it difficult to find a posting. A central website for all non-competitive procurement would make it easier to track such procurement and would allow GSD and DFA to more easily comply with statute requiring LFC be notified of all sole source and emergency procurement.

Key Recommendations

The Legislature should consider:
Repealing sections of statute granting broad authority for exemptions to state agencies and programs within state agencies due to the current situation of billions of dollars being used to buy goods and services outside provisions of the Procurement Code.

Setting price limits (e.g. $10,000 for advertising) to contracts eligible for exemptions from the Procurement Code.

Putting limitations into place around the amount a contract can be amended for and the number of times a contract can be amended.

Giving statutory authority to GSD's State Purchasing Agent to have sole source determination responsibility and exemption determination responsibility for state agencies requesting such purchases.

Legislation requiring state agency CPO's to report procurement violations to GSD.

Requiring all sole source and non-competitive procurement be posted on a single website.

GSD should:
Improve enforcement of policy around large procurement violations including ensuring an independent investigation and corrective action is taken by state agencies.

Set up a formal process for agencies and CPOs to use when designating exemptions.

Require the signature of CPOs in the determination of an exemption and on all procurement contracts including those secured through exemptions from the Procurement Code.

Work with the State Personnel Office to set up a structure where agency CPOs should potentially be employed by GSD and assigned to a specific agency to achieve centralized control and decentralized execution.

Take practices from their sole source cost savings pilot at FMD and roll them out statewide.

GSD and DFA should:
Develop additional performance measures tracking average time to process contracts.

DFA and LFC should require all state agency contracts to be reported in a standardized fashion and these should be submitted as a part of the budget submission process starting in FY18. This process could use the template and reporting requirements of OSA for professional services contracts over $60 thousand as a best practice.

Procurement, the buying of goods and services, makes up most of New Mexico's spending.

The General Services Department has statutory authority to administer the Procurement Code.

Section 13-1-95 NMSA 1978 created the State Purchasing Division (SPD) within the General Services Department (GSD). Through the State Purchasing Agent, the State Purchasing Division administers the Procurement Code (Section 13-1-28 NMSA 1978) to ensure fair competition for government procurements and the best combination of high quality and low price to manage state spending and conserve resources.

The General Services Department (GSD) is established under Section 9-17-3(A) NMSA 1978. The department has a statutory purpose "to make state government more efficient and responsive through consolidating certain state government service functions; and to establish a single, unified department to administer laws relating to services for governmental entities; and to perform other duties as provided by law" (Section 9-17-2 NMSA 1978). Its internal mission: *Furnish essential resources and services that support state government operations while conserving and managing state government assets in a prudent manner and foster responsive and courteous customer service.*

The goal of GSD is to provide the state government with essential resources and services needed for an effective operation of the government. GSD is comprised of five divisions pursuant to Section 9-17-3(A) NMSA1978. Each division is intended to facilitate an effective operation of state government. The divisions are:

- Administrative Services;
- Facilities Management;
- Purchasing;
- Risk Management; and
- Transportation Services.

These divisions work on individual tasks with a collective goal of making the function of state government more effective and efficient, in part by administering the New Mexico State Procurement Code and ensuring other agencies are operating within compliance. Of the agency's $13.8 million budget, the State Purchasing Division (SPD) received $2.3 million for FY17 of which $922 thousand was from the general fund.

State Purchasing Division. GSD State Purchasing Division (SPD) is created pursuant to Section 13-1-95(A) NMSA 1978. SPD is "responsible for procurement of services, construction, and items of tangible personal property for all state agencies except as otherwise provided in the Procurement Code and shall administer the Procurement Code for those

> **The Procurement Code**
>
> The Procurement Code is a compilation of over 200 state statutes, and administrative code that govern the purchasing of goods and services in New Mexico. The majority of the Procurement Code is contained within state statutes Section 13-1-28 NMSA 1978 to Section 13-1-199 NMSA 1978 which provides definitions, exemptions, delegation of authority, unlawful activities, penalties and much more.
>
> Section 13-1-74 NMSA 1978 defines procurement as:
> A. purchasing, renting, leasing, lease purchasing or otherwise acquiring items of tangible personal property, services or construction; and
> B. all procurement functions, including but not limited to preparation of specifications, solicitation of sources, qualification or disqualification of sources, preparation and award of contract and contract administration.

state agencies not excluded from the requirement of procurement through the state purchasing agent" (Section 13-1-95(B) NMSA 1978). SPD has statutory obligation to administer the New Mexico State Purchasing Procurement Code which involves identifying products and services that are biddable items and contacting vendors who wish to participate in bids for such items on a statewide or specific agency basis.

SPD seeks to conserve public funds and ensure fairness to vendors by procuring goods, services, and construction at competitive prices consistent with required quality and timeliness standards. Its mission: *To serve the public whose money we spend, the departments and institutions who use what we buy, and the business/vendor community who supply what we ask for by always procuring the right quality, in the right quantity, at the right time, at the right price, from the right supplier and in the right manner for ultimate economy. Strive for "best value" in State acquisitions through application of timely, data-driven business and marketplace intelligence, as well as the application of "best procurement practices". Administer the New Mexico State Procurement Code and provide training to all involved persons to ensure a fair and open procurement process which maximizes the benefit and use of limited taxpayer resources.*

The Department of Finance and Administration is responsible to ensure some types of contracts are in compliance with statute.

The Department of Finance and Administration (DFA) is established pursuant to Section 9-6-3(A) NMSA 1978. DFA is comprised of five divisions and additional divisions can be created or merged by the governor. The purpose of DFA is to "make state government more efficient and responsive through consolidating, and eliminating the overlapping of, certain state government functions; and to establish a single, unified department to administer laws relating to finance of state government; and to perform other duties as provided by law" (Section 9-6-2 NMSA 1978). Its mission**:** *Provide sound fiscal advice and problem solving support to the Governor, provide budget direction and fiscal oversight to state agencies and local governments so as to ensure a positive impact on the daily lives of all New Mexico Citizens and ensure every tax dollar is spent wisely*. Under current statute DFA is made-up of the following divisions:

- Board of Finance;
- Financial Control;
- Local Government;
- Program Support; and
- State Budget.

The Contract Review Bureau (CRB) within the Financial Control Division is responsible for ensuring professional service contracts submitted to DFA are in compliance with statutes, rules and regulations. Pursuant to Section 2.40.2.2(A) NMAC, the CRB is tasked with reviewing contracts over $5,000 and all subsequent amendments. The CRB does not review the contracts subject to the exemptions provided in the Procurement Code.

Generally, purchases for goods and non-professional services are processed through GSD and purchases for professional services are processed through DFA and DoIT.

GSD processes requests for proposals (RFPs) and invitations to bid (ITBs) for state agencies which result in awards of price agreements, contracts and purchase orders. The statewide and agency specific price agreements are for commodities and services commonly used, or they are agency specific.

Table 1. How New Mexico Buys

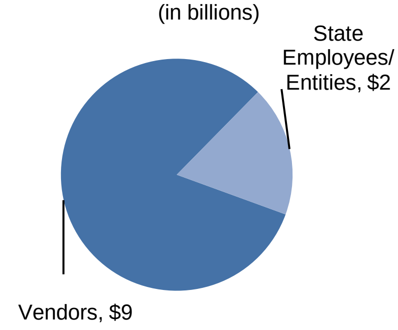
General Services Department		Department of Finance & Administration (only professional services contracts are processed through DFA)		State Agencies	DoIT
Request for Proposals	Invitation to Bid	Professional Service Contracts	Sole Source	RFP for Professional Service Contract	IT Professional Services Contract
Price Agreements	Price Agreements	Emergency Purchases	Contracts	Purchase Orders	IT Sole Source Contracts
Construction Contracts	Indefinite Quantity		Purchase Orders	Statutory Exemptions	
Other Service Contracts	Purchase Orders			Emergency Purchases	

Source: NMSA, DFA and SPD websites

Sole source procurement of items of tangible property, construction and nonprofessional services must be approved and negotiated by the state purchasing agent. State agencies may issue a RFP for professional services and other commodities or services within their procurement authority. DFA does not issue RFPs unless specific to their agency. DFA is responsible for reviewing and approving all professional service contracts and emergency purchases, whereas DoIT is responsible for reviewing IT professional services contracts as well as IT general services. The Procurement Code applies to every expenditure by state agencies for the procurement of tangible personal property, services and construction except as provided in statutory exemptions from the Procurement Code (Section 13-1-98 NMSA 1978).

Approximately 60 percent of state appropriations are spent on procurement, but the exact amount is unknown because of numerous and uncoordinated accounting systems.

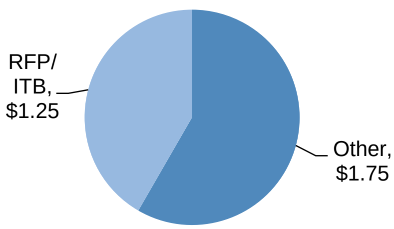
Chart 1. Government Expenses Excluding Education
(in billions)



Source: SHARE

It is not clear exactly how government appropriations are spent because there is no central oversight over procurement and no database that completely tracks all procurement expenditures. Using three different methods to estimate the amount of money spent on procurement, the estimated total is between $10 and $13 billion (see Appendix B for methodologies used in calculating range), the lion's share of an $18 billion budget. The largest uncertainties in the estimate come from spending by education institutions and third party accounting systems, which are not on SHARE, the statewide accounting system. Approximately $500 million is budgeted for procurement in schools, according to PED Stat Books, and it is assumed a similar amount is spent on procurement in higher education, though there is no easy way to verify this as the University of New Mexico is the only institution with a procurement sunshine portal and it is not downloadable. Note that the Office of the State Auditor (OSA) has made efforts to track more of these monies by requiring agencies to submit information pertaining to professional services contracts over $60 thousand with mixed success due to variations in FY15 reporting.

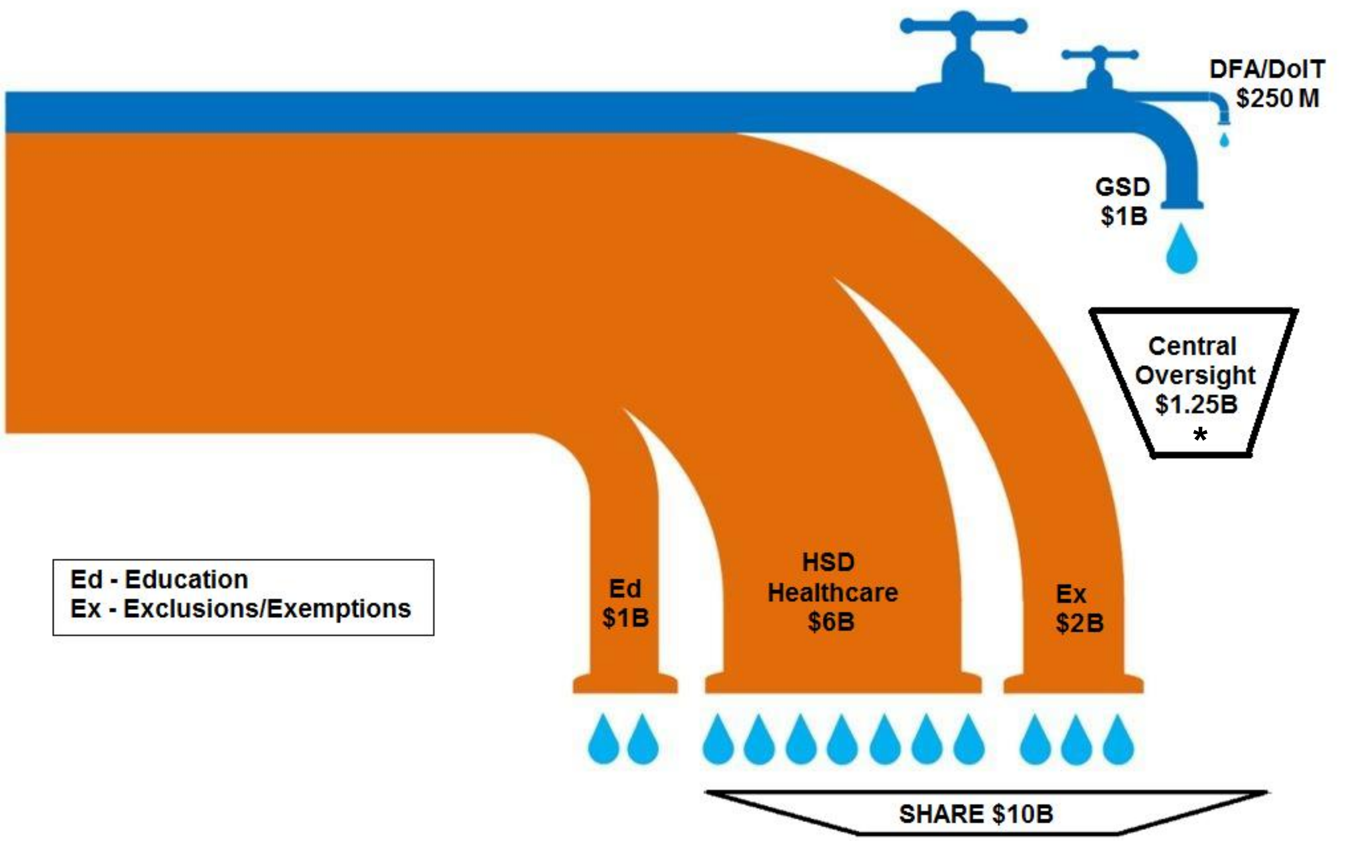
Chart 2. Competitive Procurement Distribution
(in billions)



Source: SHARE

Only $1.25 billion out of an estimated $10 billion to $13 billion spent on procurement in New Mexico is overseen by GSD, DFA, or DoIT. An estimated $1 billion spent on procurement by education institutions is exempt from oversight by state purchasing and is neither in SHARE nor the sunshine portal. The $6 billion spent on HSD-related healthcare is listed in SHARE as a block grant, but HSD has claimed an exemption from state purchasing oversight and the Procurement Code and it is missing from the sunshine portal. Previous Medicaid contracts (2009) followed the typical procurement procedure through DFA. There is $2 billion spent on procurement by all agencies exempt or excluded from state purchasing in some way. About $1 billion is spent on statewide and department specific price agreements and RFPs that are overseen by state purchasing. Only $250 million of the $1.5 billion appropriated in House Bill 2 for professional services is overseen by DFA, less than 20 percent. The percent of dollars overseen by DFA drops to 3 percent when including HSD-related healthcare. Figure 1 shows how oversight and transparency fail to impact the vast majority of procurement in New Mexico. Even if education and HSD-related healthcare is excluded from the calculations, the majority of procurement dollars ($1.75 billion out of $3 billion shown in Appendix B) are not overseen by DFA, GSD, or DoIT.

Figure 1. The Leaky Pipe of Procurement Oversight and Transparency in New Mexico



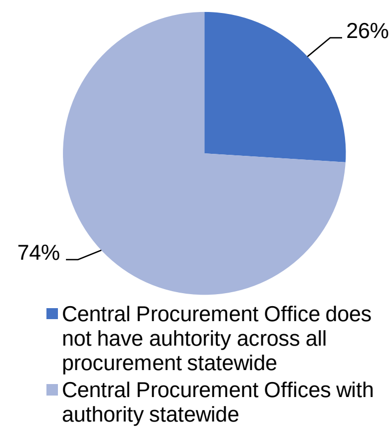
Note: Competitive procurement was also found to have issues and potential for cost savings. See page 33.
Source: LFC files

New Mexico procurement has a decentralized system with confusing processes and differing practices.

New Mexico does not have a central procurement office with statewide authority whereas most states do.

In New Mexico, the central procurement office at GSD has oversight for purchases by many state agencies. However, for other state entities as well as local public bodies, the central purchasing office of that entity has the authority. According to the National Association of State Procurement Officials (NASPO), 74 percent of state central procurement offices hold authority across all statewide procurement with some exceptions for local governments.

Chart 3. States With Central Procurement Office Authority Statewide

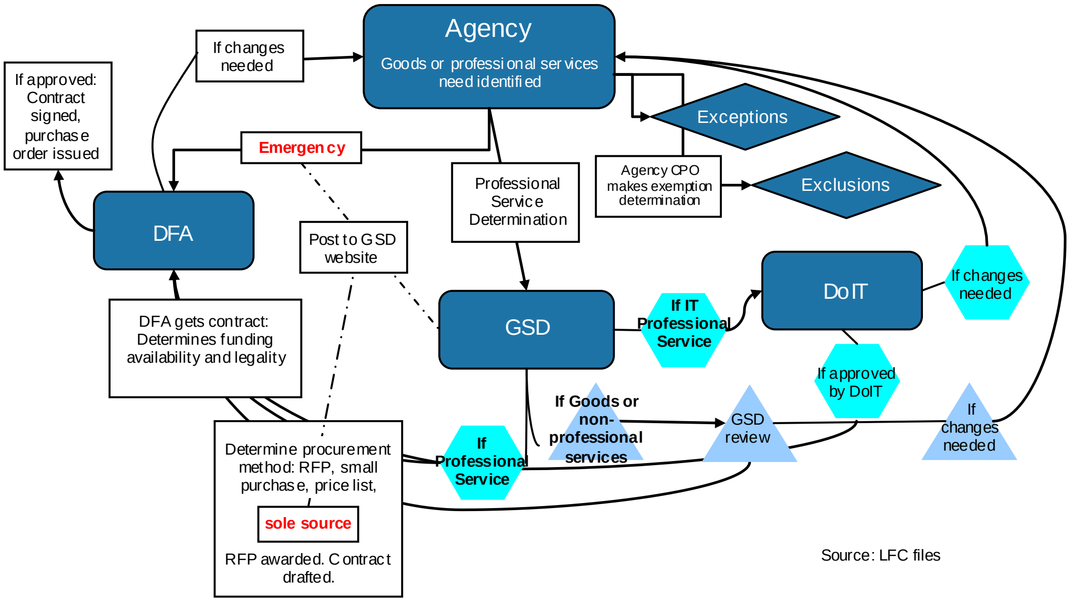


Source: NASPO 2016 Survey

Currently New Mexico procurement is governed by a decentralized system creating potential redundancies. State agencies and vendors have indicated to LFC staff the need for a centralized procurement office to improve efficiency. Currently at least three state agencies and the Governor's office are involved in the procurement process in some capacity. DFA, GSD, and DoIT are directly involved in procurement oversight and the Governor's office has provided guidelines on procurement and contract issues which have also requested additional required reporting and permissions in order to complete procurement. Depending on the contract type, agencies send procurement requests to one of three agencies (DFA, GSD or DoIT). Professional services contracts are reviewed by DFA, IT contracts by DoIT, and other contracts not subject to exemption, by GSD. Subsequent to the initial submission, procurement requests can be returned to the agency for revision, kept at the initial recipient agency, or sent between the various agencies (see Figure 2).

Changes in procurement requirements create the potential for confusion in the procurement process. For example, prior to May 2016 DFA would make the determination whether a procurement method was considered "professional services" as defined under Section 13-1-76 NMSA 1978. Since May 2016 all scopes of work must be submitted to GSD for review and approval. After GSD makes this determination the contract is then sent to DFA to determine, if there is sufficient budget and the contract complies with the law.

Figure 2. State Procurement and Contracting Process



The three agencies overseeing procurement have different practices for contract requirements. GSD, DFA, and DoIT have a wide variety of requirements and guidance for what is required to be included in contracts. For example, signature lines provided in contract templates from different agencies can range from two signatures (DFA emergency justification form) to nine signatures (DoIT IT professional services contract template). Who is required to sign procurement forms also varies widely by procurement type. For example, the agency CPO is required to sign sole source and emergency procurements, but not any other types of procurements. Who signs contracts also varies within oversight agency forms. For example, the current DFA professional services template has five signature lines whereas actual professional services contracts from FY16 have been signed by seven people.

Whether a template specifies the need for performance measures varies by agency and contract type. Service and IT templates make no mention of performance measures, whereas RFP and ITB provide guidance (see Table 2).

Additionally, the Office of the State Auditor signs professional services contracts related to financial audits or engagements related to fraud, waste and abuse.

Table 2. New Mexico Contract Templates and Approval Forms: Authors, Required Signatures, and Need for Deliverables/Performance Measures

Contract Type	Service Contract Template	Professional Services Template	Professional Services Contracts from FY16	Emergency Procurement Approval Form	Sole Source Approval Form	IT Professional Services (over and under 60K) Template	IT Professional Services Amendment Template	RFP/ITB Guidance
Author	GSD	DFA	DFA	DFA	DFA	DOIT	DOIT	GSD
Signature Lines	Designated Agency Representative Signatures, TRD, State Purchasing Agent	Designated Agency Representative Signatures, Agency Legal Counsel, Contractor, TRD, DFA CRB	Designated Agency Representative Signatures, Agency General Counsel, Agency CFO, Contractor, Office of the State Auditor, TRD, DFA CRB	CPO, Cabinet Secretary	CPO, Cabinet Secretary, State Purchasing Agent, DFA Secretary	Cabinet Secretary, Contractor, CIO, General Counsel, CFO, TRD, State CIO, State Purchasing Agent, DFA CRB	Cabinet Secretary, Contractor, CIO, General Counsel, CFO, TRD, State CIO, State Purchasing Agent, DFA CRB	Procurement Manager, Requesting Agency Management, Central Purchasing Officer, SPD Action Officer, State Purchasing Agent
Specifies need for deliverables	Yes	Yes	Yes	No	No	Yes	Yes	Yes
Specifies need for performance measures	No	Yes	Yes	No	No	Yes	No	Yes

Source: GSD, DFA, and DoIT

Where and how contract determinations are made varies and agencies provide conflicting instruction. For example, determinations of whether procurement is exempt from the Procurement Code are generally made at the agency level. Statutory power to make this determination rests with the CPO, however no formal guidance exists on how to make the determination. CYFD cites consulting GSD to make such determinations, while other agencies including the Human Services Department (HSD) and Tourism Department (NMTD) appear to make the determination on their own (See Appendix E for an example from HSD).

Determinations of the adequacy of emergency procurement justification rests largely with the agency. Examples will be presented later where emergency determinations were likely unjustified and in at least one instance found to be in violation of the Procurement Code.

Current guidance reflects conflicting information as to where the professional services determination occurs. As previously mentioned, determinations for whether a contract should be a professional service have transferred back and forth between GSD and DFA and current guidance on the DFA website indicates that the power resides at DFA and instructs agencies to send a DFA employee information for determinations to be made. Current guidance on the GSD website indicates the determination is made at GSD by the state purchasing agent and instructs agencies to send that agent information for determinations to be made.

Procurement exclusions not going through GSD:

- procurement of professional services;
- small purchases having a value not exceeding one thousand five hundred dollars ($1,500);
- emergency procurement;
- procurement of highway construction or reconstruction by the department of transportation;
- procurement by the judicial branch of state government;
- procurement by the legislative branch of state government;
- procurement by the boards of regents of state educational institutions named in Article 12, Section 11 of the Constitution of New Mexico;
- procurement by the state fair commission of tangible personal property, services and construction under twenty thousand dollars ($20,000);
- purchases from the instructional material fund;
- procurement by all local public bodies;
- procurement by regional education cooperatives;
- procurement by charter schools;
- procurement by each state health care institution that provides direct patient care and that is, or a part of which is, medicaid certified and participating in the New Mexico medicaid program; and
- procurement by the public school facilities authority.

Previous LFC evaluations and task forces have recommended creating a centralized procurement office. The following finding is from the 2008 program evaluation, *GSD-Procurement Division Effectiveness Review*: "The Legislature should evaluate the potential improved efficiency by transferring the state purchasing division function to the Department of Finance and Administration (DFA) or consolidating it with the Contracts Review Bureau which manages the professional services contracts for the state." Previous LFC reports on procurement have also cited the high instance of the equivalent of the state purchasing office residing in the equivalent of DFA in other states. The Legislature sought to evaluate this potential recommendation in the 2010 Government Restructuring Task Force (GRTF). The GRTF report recommends a new structure for DFA including moving the purchasing division from GSD and proposing to amend the Procurement Code to change central purchasing office duties from GSD to DFA.

NASPO has recognized statewide centralization as one of its top priorities. NASPO cites six main drivers for change towards centralization: cost savings, leveraging enterprise spend, legislature or governor driven ethics reform and accountability, centralized authority, consolidating limited resources, and creating efficiencies, streamlining operations and processes. Benefits of centralization include standardized processes, eliminated redundancies at the agency level and improved contract management. Other states with decentralized state procurement systems have put forth reform efforts to increase standardization of practices. NASPO reports that the most common legislative changes put in place to modernize Procurement Codes include eliminating procurement exemptions for some agencies and consolidating multiple entities into one single procurement office. NASPO recommends a single CPO be positioned at the cabinet level and be given full authority for purchasing. They further recommend that the state CPO can delegate that authority to agencies that employ skilled procurement professionals. According to NASPO, the delegation of authority could be used as an incentive for high performing agencies to have more independence for procurement, maintaining centralized oversight and authority while allowing agencies with special needs to control all or part of the procurement process.

NASPO has identified several beneficial qualities of a central procurement office including cost savings, leveraging enterprise spend, ethics reform and accountability, centralized authority, consolidating limited resources, and creating efficiencies, streamlining operation and processes. Duties of a centralized procurement office should also include regular tracking and measurement of key qualitative and quantitative functions and processes from requisition to vendor payment. GSD indicates current SHARE functionality does not allow such tracking.

Exclusions and exemptions from the Procurement Code create a lack of oversight.

There are 14 exclusions to central oversight where agencies or certain types of procurements are not required to go through central purchasing with the state purchasing agent. Note that exclusions are still subject to the Procurement Code. According to NASPO the central procurement office (GSD) policies and procedures provide unified oversight and expertise in implementation of state procurement processes. However, such oversight is limited by state law. Best practices discourage blanket exclusions of agencies from the state purchasing office as this can limit the oversight a central procurement office can provide. New Mexico is among a majority of states that do not require highway construction, the judiciary branch, the legislative branch, and higher education institutions procure goods and services through the state purchasing agent. NASPO states that exclusions of this nature "are inconsistent with sound public policy and business practices." Although these entities ***are not*** exempt from the Procurement Code, without having contracts, proposals, or any procurement going through GSD, these entities differ widely on the oversight and internal controls in place for procurement.

Universities generally have several controls in place for procurement in some cases including sunshine portals, audit functions, CPOs and other controls. Conversely, smaller entities such as charter schools do not have the resources to fund such controls and have been found to be lacking CPOs. There are also at least 40 exemptions from the Procurement Code for certain types of contracts. Contracts exempt from the Procurement Code do not have to go through central purchasing and are not subject to requirements of the Procurement Code. Disadvantages of exemptions will be discussed in a later chapter. For the purposes of this section, consider that more exemptions lead to less oversight of procurement.

<u>Exclusions vs. Exemptions</u>

Exclusion: an agency or type of procurement are not required to go through central purchasing but still subject to the Procurement Code

Exemption: an agency or type of procurement that is not subject to the Procurement Code.

Long timelines for competitive procurement were cited by agency staff, GSD, and DFA, as potentially encouraging non-competitive procurement.

GSD estimates competitive procurement averages from two months (for ITBs) to six months (for RFPs). During field visits, agency staff confirmed competitive procurements took at least as long as the GSD estimates and sometimes longer. Additionally, GSD is experiencing increase in workload (14 RFPs in 2014 vs. 96 in 2016) and in the complexity and time involved in procurements. GSD cites this trend as a reflection of careful and proper acquisition planning for complex procurements.

GSD is currently working on a procurement tracker system which identifies the length of time procurements are with SPD, as well as the length of time a procurement vehicle is with an agency. This program is scheduled to be rolled out near the end of November. Once implemented, it will be a year before data can be pulled and tracked. There are several points in the process that significantly increase the length of time to complete a competitive procurement. These phases are: drafting the statement of work (agency), approval from DoIT (if IT), contract negotiation (agency and vendor), and W-9's to be processed (DFA). Each of these can take weeks to several months to complete.

Recommendations

The Legislature should consider LFC staff and GRTF recommendations by moving the state purchasing division from GSD to DFA or other strategy for consolidation.

GSD and DFA should consider fully implementing centralized state central procurement office duties as recognized by NASPO and cited in this report to increase use of best practices and streamline processes including but not limited to:

- Regularly tracking and measuring key qualitative and quantitative functions and processes from requisition to vendor payment;
- Achieving optimal procurement cycle times;
- Developing standardized contract templates across agencies with clearly defined roles for agency staff throughout the approval process and templates for deliverables and performance measures;
- Providing additional guidance on how determinations should be made and CPO involvement;
- Revise existing guidance such that guidance is consistent and does not present conflicting instruction; and
- Providing centralized training for staff and agencies.

GSD and DFA should develop additional performance measures tracking average time to process contracts.

DFA and LFC should require all state agency contracts to be reported in a standardized fashion and these should be submitted as a part of the budget submission process starting in FY18. This process could use the template and reporting requirements of OSA for professional services contracts over $60 thousand as a best practice.

Agencies use non-competitive methods, sometimes violating statute, possibly resulting in higher costs.

The Procurement Code provides avenues for competitive and non-competitive procurement processes. Non-competitive methods are typically faster than competitive procurement.

Non-competitive methods found during the LFC review include:

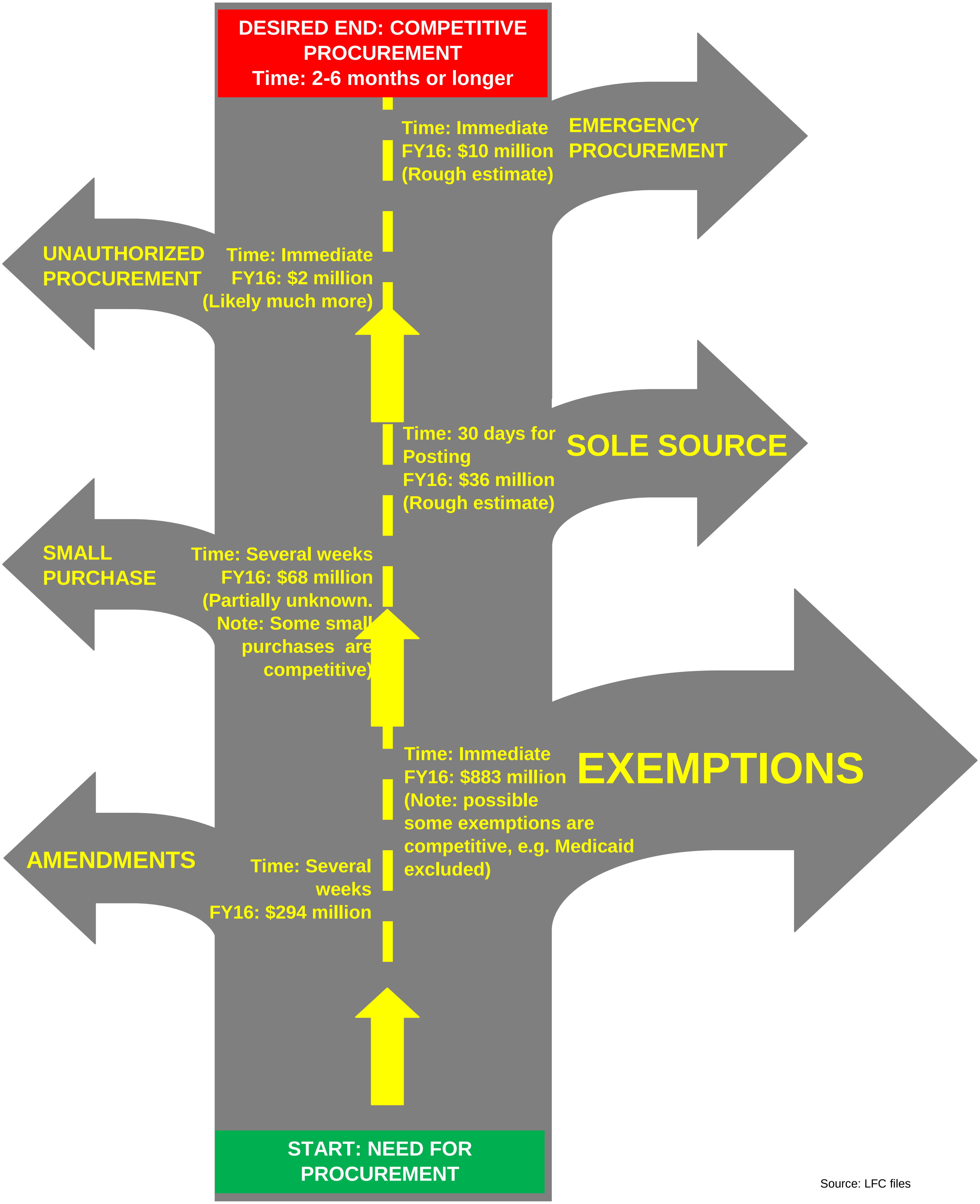
- Sole source contracts;
- Emergency procurement;
- Amendments to existing contracts;
- Procurement Code exemptions;
- Small purchases; and
- Unauthorized procurement (not allowed by statute).

Unauthorized procurements are generally procurements where goods or services are received without a contract in place. Such procurements often result in classification as procurement violations from GSD or OSA.

The legal non-competitive procurement processes are necessary for certain functions of government. However, non-competitive methods, other than small purchase procurements, should be used sparingly, only when necessary, and in conjunction with law and rule. NASPO states that procurement professionals add value to government programs through obtaining best value through competition. The Governor's office also issued guidelines for contract reviews and evaluation including direction for agencies to favor competitive bidding whenever possible as "Competitive biding (sic) may result in lower costs to the agency."

Furthermore, these guidelines indicate improvements can be made in areas of minor sole source contracts, emergency contracts, use of temporary contract employees, and small purchases.

Figure 3: Potential "Non-Competitive" Detours on the Road to Competitive Procurement



Source: LFC files

Sole source contracts are not competitive and should be used only in select situations.

A sole source contract "may be awarded without competitive sealed bids or competitive sealed proposals regardless of the estimated cost" (Section 13-1-126(A) NMSA 1978).

A sole source contract must meet certain criteria to meet statutory requirements. Specifically the state purchasing agent or central purchasing office must determine, in writing, that:

> (1) there is only one source for the required service, construction or item of tangible personal property;
>
> (2) the service, construction or item of tangible personal property is unique and this uniqueness is substantially related to the intended purpose of the contract; and
>
> (3) other similar services, construction or items of tangible personal property cannot meet the intended purpose of the contract.

Additionally, the satisfaction of the mandated criteria must be documented in writing. According to statute, the state purchasing agent or central purchasing office must use due diligence in reviewing the available sources to justify the use of the sole source procurement, including reviewing available sources and consulting the using agency, and must include its written determination in the procurement file (Section 13-1-126(B) NMSA 1978).

The Governor's guidelines state that when considering sole source contracts, "the agency must keep in mind the presumption in favor of competitive bidding, both from an economical view and one of fairness to the public." The Procurement Reform Task Force has examined the issue of sole source designation and limiting sole source designations, particularly in regards to IT and maintenance operations. Task force minutes address the number of times New Mexico enters into a project without consideration of operations and maintenance costs and by the fact that many projects become sole source contracts because of code or warranty considerations that might exist. IT vendors suggest that doing a one year contract for maintenance is difficult for them to price and since there is no guarantee the vendors will receive a maintenance contract going forward the vendor is compelled to front load the costs that would ordinarily be amortized over a longer period.

Sole source procurement has declined after a rule change requiring procurements be publicly posted for 30 days. Sole source professional service contracts reviewed by DFA have reduced by more than half after the FY14 rule change requiring public posting, decreasing total number of sole source contracts from 67 in FY14 to 28 in FY15. The change was recommended by an LFC 2008 evaluation on procurement. DFA staff indicates the decrease is due to requiring sole source contracts be posted for 30 days. The total amount of dollars spent decreased by from $48.4 million in FY14 to $9.8 million in FY16.

Table 3. Posted Sole Source Contracts and Contract Totals FY14 through FY16

Sole Source	Number of Contracts	Total Amount of Contract Value
2014	157	$29,125,100
2015	123	$34,347,328
2016	125	$35,904,816
Total:	**405**	**$99,377,244**

Source: GSD Contract Database

Of sole source procurements, 50 percent were awarded because a vendor completed previous, similar work for the agency.

LFC staff found examples of the improper use of sole source contracting. The General Services Department has posted 74 sole source contracts on the State Purchasing Division website from May to August. Fifty percent (totaling $5.6 million) were awarded because a vendor completed previous, similar work for the agency. While awarding a sole source contract for proprietary software often makes sense (e.g. paying Microsoft to upgrade Windows), it is not clear that always awarding sole source because of previous, similar work (e.g. memorial engravement contracted to the same vendor that completed the engravement of the memorial's half-size model) is necessarily a best use of sole source justification or even in compliance with the Procurement Code. Additionally, 12 sole source procurements (16 percent) submitted no justification. Note this is inclusive of local public bodies, public school districts, and several state agencies.

Previous LFC evaluations have pointed out sole source contracts with private prisons by NMCD as improper, citing poor planning and the need to develop RFPs for such services. In a 2015 sole source procurement for $14.5 million with the Corrections Cooperation of America (CCA), NMCD cites precedent and lack of completion of the RFP process as explanation for the need for a sole source contract:

NMCD cites precedent and lack of completion of the RFP process as explanation for the need for a sole source contract.

"NMCD has, over the past twenty years, entered into serial source contracts with CCA to house and to provide services to all its female inmates in the New Mexico Women's Correctional Facility in Grants, New Mexico. DFA has historically approved this contract as a four year sole source contract, based on the unique legislative history and background of that facility."

The previous 2013 sole source procurement for the women's prison with CCA also cited time to develop and issue the RFP. Knowing the contract was due to expire and that other sources are available, the Corrections Department should have planned accordingly to develop the RFP to avoid the need for issuing sole source contracts. The Procurement Code does not indicate poor planning or precedent are adequate justifications for sole source contracting. NMCD indicated it made various attempts to achieve a contract via the procurement process but was unsuccessful at awarding a contract due to no vendor being able to provide services at a reasonable and acceptable cost. A recent RFP for a gender responsive women's facility was cancelled by the NMCD RFP evaluation committee. The reason provided to CCA (the only respondent) for the cancellation was a "lack of competition." Subsequently an RFP was awarded to CCA (the only respondent) for four years for $61.1 million.

Another example from NMCD, in April 2014, NMCD issued a $105 thousand sole source contract to purchase cell phone detectors, even though a security study completed in the previous year did not recommend the purchase of such detectors. The department stated the prospective contractor, Cellsense, was the only company in the country providing the technology. LFC research indicated at least four other companies manufactured cell phone detection devices in 2014 including BVS Systems Inc., CellBusters, Netline Technologies, and CEIA USA. The state purchasing agent or a central purchasing office is required to use due diligence in determining the basis for the sole source procurement, including reviewing available resources and consulting the using agency, and must include its written determination in the procurement file.

In another example, the Eldorado Area Water & Sanitation District (EAWSD) originally executed a contract with a company in 2014 to identify a new public water supply well, to drill and test an exploratory well at the site, to obtain permits, to design a well house, design piping, and to administer construction and installation of the project. The contract expired July 2016 and cannot be renewed under State procurement rules. EAWSD claims the company is the sole source capable of providing the well drilling service because of the work they have already completed and the experience they gained in the process. EAWSD also cites the costs and likely delays if consultants were changed in the middle of the contract. EAWSD failed to contact any other businesses to determine whether or not those businesses could complete the work at a comparable price and in the same timeline and determined without performing due diligence that the contracted company was the sole company capable of completing the project in a cost effective and timely manner.

In another example, Clovis Community College issued a sole source procurement of $154,840 in May to Apple, Inc. for the purchase of 280 iPads. The cost per unit of the iPad Air 2 Wi-Fi 64GB device with 2-Year AppleCare+ and personalized engraving was $553. However, the cost for a unit with the same exact specifications can be found online for $537 at Wal-Mart, a savings of $5,000 for the entire purchase order. The procurement officer addresses this cost difference in the sole-source request by mentioning they attempted to contract with a less expensive vendor but "iPads are a propriety product of Apple Inc. Due to legal ownership, no other contractor can provide these items."

Table. 4 Posted Emergency Procurement and Contract Totals FY14 through FY16

Emergency Procurement	Number of Contracts	Total Amount of Contract Value
2014	74	$22,818,989
2015	50	$11,464,748
2016	46	$9,609,727
Total	**170**	**$43,893,464**

Source: GSD Contract Database

Emergency contracts are not competitive and sometimes misused, potentially leading to increased costs.

An emergency procurement is permitted when a state purchasing agent or central purchasing officer determines that there is "*a threat to public health, welfare, safety or property*" (Section 13-1-127(A) NMSA 1978). "*An emergency condition is a situation that creates a threat to public health, welfare or safety such as may arise by reason of floods, fires, epidemics, riots, acts of terrorism, equipment failures or similar events and includes the planning and preparing for an emergency response*" (Section 13-1-127(B) NMSA 1978). Additionally, the emergency condition must be threatening:

- The function of government;
- The preservation or protection of property; or
- The health or safety of any person.

The purchasing agent or central purchasing office must use "due diligence" when making the determination that an emergency condition exists and document it in writing. Moreover, the purchasing agent or central purchasing office must document in writing why a particular contractor was selected (Section 13-1-127(D) NMSA 1978). Contract guidelines from the governor state that a true "emergency" must exist for an emergency contract and states that emergencies do not exist simply from a need to procure the services "now", or from time pressure to implement a new contract.

Emergency contracts accounted for $43.9 million in spending from FY14 to FY16. During FY14, FY15, and FY16 there were 170 emergency contracts. This data was compiled from GSD's website, but it is unclear if these are *all* the emergency procurements since emergency procurements are not statutorily required to be kept in one centralized location. Under Section 13-1-28(D) NMSA 1978, emergency procurements shall be posted to a local public body website within three days, ***if*** such a website exists. Therefore, we should not assume that this is an exhaustive list of emergency procurements, but instead it is the most complete compilation of the available data.

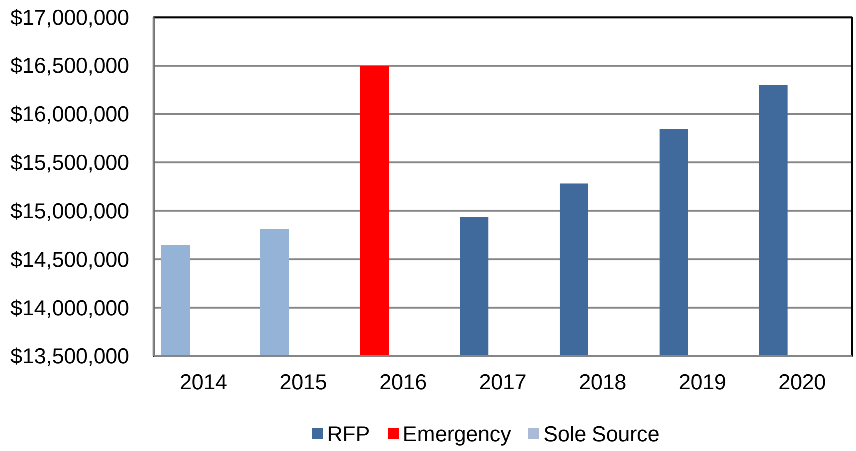
Some emergency procurement is a result of poor planning, a lack of maintenance, or other mistakes. In October 2015, CYFD issued two emergency procurements to reinstate Juvenile Community Corrections services in Eddy County and Chaves County. The total cost for both contracts was $60 thousand. CYFD had begun the RFP process but did not follow proper guidelines which led the Department to cancel the RFP. Subsequently, the lack of proper planning resulted in CYFD filing this emergency procurement.

LFC staff found three emergency procurements in 2016 were required because of poor planning. In March 2016, the Department of Public Safety (DPS) issued a $15 thousand emergency contract for financial services. The Department was aware of the deadlines and failed to plan accordingly which resulted in the emergency procurement. In June 2015, DPS issued a $129 thousand emergency contract to continue maintenance on its "Computer Aided Dispatch (CAD)" system. DPS had a contract with Motorola that expired on June 30, 2015 but failed to properly plan enough time to renew the contract. The lack of planning resulted in the issuance of this emergency procurement.

In another example, a lack of proper maintenance led to the need for an emergency procurement. Eddy County recently issued an emergency procurement contract to replace an HVAC system. Replacing the HVAC system is a time sensitive matter and a functional system is vital to the health and safety of persons working in the building and the preservation of the property, as stated in the emergency determination form submitted to GSD. However, the existing HVAC system failed as a result of a lack of maintenance and inspections. Eddy County claims the unit was in a "difficult" location to provide proper maintenance and inspections. The county also claims the "proprietary and complicated nature" of the equipment made it difficult to find vendors willing to provide maintenance and inspections or replace the unit. The county recognizes work is needed to make similar equipment easier to inspect and maintain to avoid similar situations.

NMCD issued an emergency procurement to CCA for FY16 that was higher than previous sole source and future RFP amounts. As stated in the previous section NMCD used sole source contracts with CCA for a number of years; FY14 and FY15 these contracts were $14.6 and $14.8 million respectively. In FY16 NMCD entered into an emergency procurement with CCA for significantly more than previous years or future years.

Chart 4. NMCD CCA Contracts at Women's Prison



Source: GSD and NMCD

CYFD submitted an emergency procurement to extend an existing contract due to failure to submit an amendment. On August 1, 2016, CYFD submitted a letter to DFA requesting $160 thousand to be paid to ACRO Service Corporation. These services are related to the EPICS program to support work on a web-based system and an inter-agency data warehouse initiative. The letter cited a potential disruption in work should the emergency not be granted. Note that lost amendments and disruption of work are not cited as justification for emergency procurements. Additionally, the Governor's guidelines state:

"For emergency contracts, a true "emergency" must exist (i.e. a threat to the function of government, lives, health, or property). Emergencies do not exist simply from a need to procure the services "now", or from time pressure to implement a new contract."

CYFD later asked for the emergency procurement to be increased to $200 thousand via email which was approved by DFA.

After further LFC inquiry into the emergency procurements, CYFD identified a missing contract as need for the emergency procurement and self-reported a potential procurement violation to GSD. The $1.1 million CYFD emergency procurement to ACRO Service Group for an IT contract was pulled from GSD's website and the Sunshine Portal and replaced with a smaller procurement to ACRO Service Group. LFC staff followed up with CYFD and DFA to learn why it went missing from the databases. CYFD reports they inadvertently failed to submit a contract amendment to DFA for an existing RFP. The CYFD CPO then mistakenly informed the CYFD IT division that the amendment had been submitted to DFA, therefore the contractor, ACRO Service Corporation, continued to provide IT services and incurred costs of at least $97 thousand without a contract in place. CYFD cited vacancies in their contract development section and inadequate procedures and processes as the cause for the potential violation and subsequent emergency procurement.

NMAC 2.81.4.15 AMENDMENTS TO CONTRACTS:

A. Amendments to contracts originally entered into pursuant to this rule, may be made pursuant to rules adopted by the secretary of DFA.

B. For amendments to contracts originally entered into as sole source procurement pursuant to 2.81.4.13 NMAC.

(1) A written determination which includes a detailed, sufficient explanation of the reason, qualifications or unique capabilities that make the vendor a sole source shall be required for all amendments which:

(a) significantly change the scope of work in the original contract; or

(b) when aggregated with any prior amendments, more than double the amount of the original contract.

(2) All other amendments, may be made pursuant to rules adopted by the secretary of DFA.

(3) Amendments which only extend the term of the original contract shall not require the determination provided for in Paragraphs (1) or (2) of Subsection B of this section.

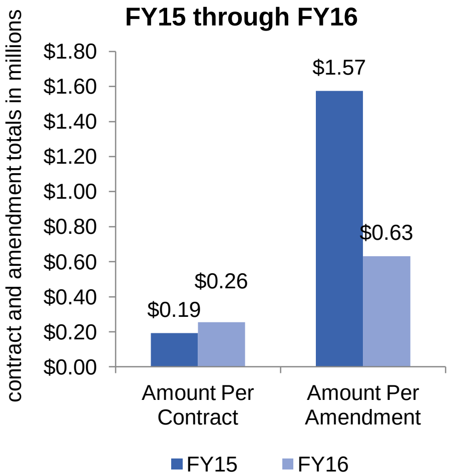
C. For amendments to contracts originally entered into pursuant to a competitive proposal process, as provided for in Sections 13-1-111 through 13-1-117 of the Procurement Code, a written determination that includes a reasonable explanation of the reasons, qualifications or capabilities that make the vendor the best source for the contract services shall be required for all amendments, except for amendments which only extend the term of the contract.

D. For multi-term contracts, renewals shall be made pursuant to the terms of the contract, and amendments involving a change in the scope of services shall be made pursuant to the provisions of Subsections A, B or C of this section as appropriate.

The use of large, multiple amendments for smaller contracts lead to inflated contract costs.

Some amendments pursuant to an RFP are acceptable. However, excessive contract amendments threaten the integrity of the competitive bid process and multiple contract amendments inflate the initial contract price far beyond the original price, potentially impacting the general intent of seeking "best value" for purchases of goods or services. Furthermore, under the current system there is very limited statutory authority addressing the use of amendments, and amendments are not mentioned in the Governor's procurement guidelines. The lack of statutory limitations or additional guidance leaves New Mexico vulnerable to misuse and abuse of the amendment process. New Mexico Administrative Code (NMAC) does address contract amendments but leaves much discretion to DFA.

Chart 5. Average Amount Per Professional Services Contract or Amendment FY15 through FY16



Source: DFA CRB Reports

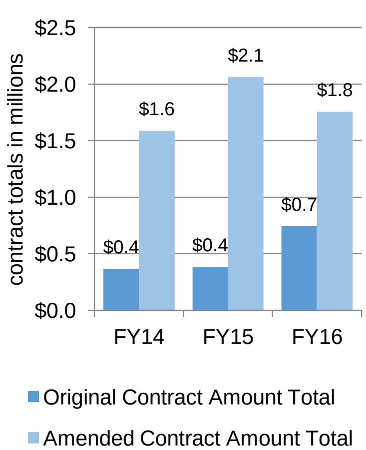
According to DFA the number of amendments for professional services over the last three fiscal years is 1,598 whereas the number of contracts is 3,985. However, the total value of amendments over the last three fiscal years is $1.8 billion, more than double that of new contracts at $800 million. In fact, in FY15 the average amendment was eight times that of the average new contract. As the value of contracts grew in FY16, this number was reduced to the average amendment being 2.5 times that of a new contract. Average amendment numbers are likely understated as not all amendments in the contract review bureau reports have money attached to them. Nevertheless, it is clear that during a typical year, total amendment amounts for professional services contracts are as much or more dollars than new contracts.

Table 5. Professional Services Contracts and Amendment Totals FY15 through FY16

	Total Amendments	Total Amended Amounts
FY15	551	$867.5 million
FY16	465	$293.6 million

Source: DFA CRB Report

Chart 6. DOH Rapid Temps Inc. Contract Increases Through Amendments

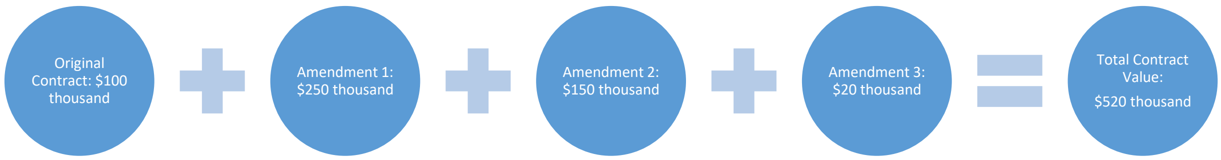


Source: LFC files

The reason for the large drop between FY15 and FY16 in total spent on amendments and the amount spent per amendment likely has to do with increases in new contract value and is also a potential result of budget restrictions.

DOH contracts for high cost medical staff through multiple contracts with multiple amendments. LFC staff has previously urged the department to reduce reliance on contracted medical staff due to the high cost when compared to staff employed directly by the state. In FY14 DOH had six contracts in place with Rapid Temps, Inc. for a total of $368 thousand and each contract was bid through competitive sealed proposal. The contracts were for nursing services at different facilities across the state including the State Veterans Home, Sequoyah Adolescent Treatment Center, and the New Mexico Rehabilitation Center, with another contract for "department facilities." Multiple contract amendments more than quadrupled the value of Rapid Temps contracts in some. For example, by the end of FY14 each Rapid Temps, Inc. contract had been amended at least twice with one contract being amended six times. The majority of the amendments were to increase the contract amount for staffing purposes. In FY14, the total amounts for the contracts more than quadrupled from $368 thousand to $1.6 million. It is possible that a lack of knowledge around staffing patterns or need for nurses occurred during the year leading to multiple amendments; however the same pattern occurred in FY15 and FY16.

Figure 4. Progression of DOH and Rapid Temps Inc. Contract



Source: SHARE

Additional examples of multiple amendments that significantly increase contract amounts are found throughout state government. The Department of Tourism has a $68 thousand contract with Katie Connoly & Associates for marketing services. Since the original contract was issued in 2013, the contract has been amended five times to $524 thousand and the contract date extended to 2017. DOH has a $135 thousand contract with Synertx Inc. for health services. The contract received an amendment in April of 2016 increasing the amount to $270 thousand. Several contracts by this vendor have been amended in a similar manner. The Spaceport Authority amended a contract with the Jemez Mountain Research Center for environmental compliance and analysis services increasing the original contract from $108 thousand to $270 thousand.

Exemptions from the Procurement Code are widespread (approaching $6 billion) creating potentially increased costs.

According to NASPO, exemptions reduce the state's leveraged buying power resulting in higher prices for goods and services and potentially creating differing sets of expectations and standards. According to NASPO, negative results include but are not limited to:

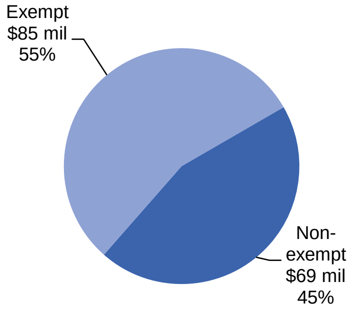
- Losing the benefit of leveraging the total state spend and benefit from economies of scale;
- Lack of adherence to state procurement laws and best practices when underqualified or unqualified personnel are procuring good/services; and
- Increased demand on personnel resources by increasing the need for knowledgeable staff by exempted agency, duplicating efforts across entities and requiring multiple procurement systems.

Exemptions

Provisions of the Procurement Code do not apply to exempted procurement as set forth in statute.

NM Stat. 13-1-98 *Exemptions from the Procurement Code*, NM Stat. 13-1-98.1 *Hospital and health care exemption*, and NM Stat. 13-1-98.2 *Additional exemptions from the Procurement Code*, list a variety of procurement transactions that the provisions of the Procurement Code do not apply to. Other statutes not in the Procurement Code exempt additional types of procurement.

Chart 7. Exempt Status of NMCD Professional Services Contracts Over $60K FY15



Source: FY15 NMCD Audit

NM Stat. 13-1-98 *Exemptions from the Procurement Code* provides the following exemption to the Corrections Department:
I. procurement of tangible personal property or services, as defined by Sections 13-1-87 and 13-1-93 NMSA 1978, by the corrections industries division of the corrections department pursuant to rules adopted by the corrections industries commission, which shall be reviewed by the purchasing division of the general services department prior to adoption.
The above mentioned "services" is defined as "furnishing of labor, time or effort by a contractor not involving the delivery of a specific end product other than reports and other materials which are merely incidental to the required performance. "Services" includes the furnishing of insurance but does not include construction or the services of employees of a state agency or a local public body".

"Tangible personal property" means tangible property other than real property having a physical existence, including but not limited to supplies, equipment, materials and printed materials.

There are currently 40 exemptions in the Procurement Code for certain types of purchases including advertising, magazine subscriptions, contracts with professional entertainers, and works of art for museums or for display in public buildings or places. Some exemptions are agency or body specific. For example, PreK contracts are exempt from the Procurement Code for CYFD but not PED, an exemption allowed because CYFD had encountered problems and delays spending PreK appropriations. Purchases of promotional goods intended for resale are exempt for the Tourism Department. Agency chief procurement officers are empowered by statute to make exemption determinations. Agencies are left to make determinations whether purchases are exempt from the Procurement Code with formal power given to the chief procurement officer in statute to make such determinations. Some exemptions have dollar ceilings such as magazine subscriptions (purchases not exceeding $10 thousand dollars) whereas most do not.

Key agencies including HSD, NMCD, and CYFD spend billions outside provisions of the Procurement Code. HSD has determined that the majority of their contracts for healthcare services are exempt from the Procurement Code. This includes all managed care along with non-Medicaid behavioral health providers and the statewide behavioral health entity (over $5 billion in FY16). LFC staff was able to identify another $826 million identified as exempt from the Procurement Code in SHARE.

Through statute and administrative code, NMCD has broad range and authority to enter into many types of contracts to further the purpose of the department without going through the Procurement Code. Of $154 million dollars in professional services contracts from NMCD, over $85 million or 55 percent of services purchased were identified by the agency as being exempt from the Procurement Code in their FY15 audit. SHARE identifies the total amount exempt from the Procurement Code at NMCD being $92 million. CYFD has a Procurement Code exemption for PreK services and has used exemptions for a large advertising contract. In using their PreK exemption from the Procurement Code, CYFD could have procured up to $16.3 million in PreK services in FY16 outside of the Procurement Code. In 2012 HSD determined all of Medicaid managed care and other medical service contracts to be exempt from the Procurement Code (see Appendix F for HSD determination) and stopped going through central purchasing to process these contracts.

The lack of clear guidance in designating exemptions is associated with differing practices between and within agencies. CYFD entered into a $2.75 million contract for the PullTogether advertising campaign citing the advertising exemption in the Procurement Code. In a letter to the LFC, CYFD indicated it consulted with the State Purchasing Agent at GSD regarding the process and both are in agreement that the procurement falls within the advertising exemption. Regarding the value lost or gained from procuring $2.75 million in advertising services without going through a competitive process CYFD wrote to LFC:

"Rest assured that our use of the advertising exemption was and is an efficient use of taxpayer dollars. For PullTogether, we now have an **<u>in-state</u>** New Mexico firm who I know does great work and charges a reasonable fee in comparison to other ad agencies."

As previously mentioned, contract practices differ among agencies and the only examples of templates providing signature lines for CPOs are on sole source and emergency contracts. From examining the PullTogether contract it appears as if the CPO did not sign the contract nor was there a place on the contract for the CPO to sign, exemplifying the need for standardization across agencies. The contract was signed by the cabinet secretary and the general counsel. Additionally, the Tourism Department (NMTD) procures advertising through multiple methods. Most advertising at the NMTD is procured through the same exemption used by CYFD, however the NMTD indicates that due to the amount and fiduciary nature of the $13 million dollar New Mexico True ad campaign, it was decided to conduct a full RFP for the project. As previously referenced, NASPO cites exemptions as creating differing sets of expectations and standards. The multimillion dollar New Mexico True ad campaign at NMTD was done through the RFP process even though such a contract could be exempt from the Procurement Code, whereas the multimillion dollar PullTogether campaign at CYFD was done through exemption. The NMTD and CYFD state the CPO is involved in procurement and makes procurement determinations in collaboration with legal staff (e.g. general counsel).

The multimillion dollar New Mexico True ad campaign at the NMTD was done through the RFP process even though such a contract could be exempt from the Procurement Code, whereas the multimillion dollar PullTogether campaign at CYFD was done through exemption.

Some agencies and entities appear to be circumventing the Procurement Code by awarding multiple small contracts to the same vendor.

There are several instances where the MLK Commission grants monthly payments to various contractors in a manner that allows it to not report to DFA. From July 2015 through November 2015 the Commission issued six payments to "Educational Research Evaluation" that totaled $32 thousand. Since each payment was below the $5,000 threshold, they did not trigger review by the CRB. There are several other instances of this practice in the past two years which indicates the Commission has begun to develop a pattern of issuing payments to avoid review. Issuing payments in this manner allows the Commission to circumvent oversight and review from DFA. DFA is aware of the issue and is taking appropriate action.

In their FY15 audit, Santa Fe Public Schools was found to have 48 small (under $5,000 each) Wal-Mart purchases made during the year. The total of the purchases exceeded $100 thousand for items that were similar in nature, violating the Procurement Code and administrative code.

The Procurement Code requires purchases to be obtained by competitive sealed bids unless under $60 thousand (or in a few other circumstances). Several agencies appear to be awarding contracts just below $60 thousand to the same vendor for similar services thereby avoiding the competitive sealed bid process. For example, NMCD issued three contracts to PB&J Family Services on the same day in FY15, for approximately $50 thousand per contract. The services provided were all related to reintegration programs for female prisoners (a rehabilitation program for women, parenting education classes, and a visitation program).

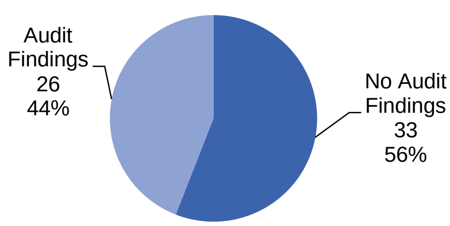
Procurement violations are the result of services received without a contract and without competition.

Over the last three years, over $11.7 million in procurement violations have been recorded by GSD. The number of overall violations has increased by 106 percent between FY14 and FY16 while the total amount of money identified in procurement violations has gone down by 70 percent during this same period of time. Agencies procuring goods and services without valid contracts results in potential loss of value as services are most often obtained through non-competitive methods or with existing vendors through previous relationships. The number of large procurement violations (violations over $100 thousand) has remained fairly steady, averaging three a year over the last three fiscal years.

NMCD violated at least two sections of the Procurement Code with contracts for the women's prison. NMCD had two procurement violations identified by GSD related to services provided by the Corrections Corporation of America (CCA) in FY15. NMCD identified $593 thousand in unencumbered expenditures that exceeded a $15 million purchase order to CCA. In addition GSD identified over $600 thousand in expenses that exceeded the CCA $29.5 million compensation limit. A memo to NMCD from GSD it is stated that "NMCD far exceeded the maximum contract compensation limit without amendment."

Additionally, the FY15 NMCD audit indicates the department has issued emergency procurements for two consecutive years to run the women's facility, instead of issuing a new contract through a RFP. The report cites a lack of planning as the cause of the emergency procurements. According to the report, effects of the procurements are the potential for fraud and misappropriation of public funds, and states the department may not have obtained the best prices to run the facility. The audit report determined NMCD is not in compliance with Section 13-1-127 NMSA 1978, under which the state purchasing agent or a central purchasing office may make emergency procurements when there exists a threat to public health, welfare, safety or property requirement procurement under emergency conditions. NMCD indicates no legal action or disciplinary action is being taken in response to this audit finding.

Chart 8. Number of Charter Schools With Procurement Code Audit Findings in FY15



Source: PED

Forty-three percent of charter schools had audit findings related to procurement issues in FY15. Of 59 charter schools included in the FY15 PED audit, 26 had violations related to procurement issues. Twelve schools had purchase orders dated after invoices which could place the school at risk for fraud or misuse of public funds according to the audit. Seven schools failed to obtain bids or quotes for large purchases which could put the school at risk for overpaying for goods and services according to the audit. One school, The Learning Community Charter School, hired a related party to perform legal services instead of going out for bid to the sum of $124 thousand over a period of two years.

Statutorily, GSD has responsibility to administer the Procurement Code, however violations reported by the state auditor are not reflected in GSD reporting. For example, the Procurement Code violations for charter schools and NMCD are not on the list of violations kept by GSD. Charter schools have an exclusion from going through the state purchasing agent, but are not exempt from requirements of the Procurement Code (Section 13-1-99 NMSA 1978). The previously mentioned NMCD contract is also not exempt from the Procurement Code. A mechanism needs to exist to make use of the oversight function performed by the state auditor such that procurement violations found in audits are routed to GSD and that procurement violations that could result in civil or criminal penalties are investigated by the proper authorities. Namely, state agency procurement violations should be referred to the Office of the Attorney General for investigation.

Additional Procurement Code issues in virtual charter schools. The Procurement Code requires schools submit a request for proposals (RFP) for services contracted with outside bodies. According to LESC, of the three virtual charter schools operating in New Mexico, only one, New Mexico Connections Academy (NMCA), submitted an RFP for curriculum, technology, and speech and language pathology services. The other two virtual schools, New Mexico Virtual Academy (NMVA) and Pecos Connections Academy, entered into sole source contracts with their content providers and parent companies. Despite the RFP process, NMCA received few bids and ultimately awarded contracts to Connections Academy of New Mexico, LLC which is owned by Pearson PLC. In 2015, NMVA paid K12, Inc. approximately $1.5 million, while NMCA paid Connections Academy of New Mexico, LLC, approximately $3 million for curricula, technology, equipment, and support. All three virtual schools awarded high dollar contracts to their parent companies and may have spent more than they would have had they been successful in or attempted a competitive bid process.

New Mexico Virtual Academy's sole source contract with K12, Inc. was a topic of investigation by the attorney general at the request of a legislator. The question asked whether the agreement between NMVA and K12, Inc. violates the Procurement Code. The attorney general opinion found the agreement does not on its face necessarily violate the Procurement Code so long as the school complied with the Code's requirements for sole source contracts. NMVA did submit notice of intent to award a sole source contract; however, the explanation to justify use of sole source contract is circular in its reasoning. The school's authorizing charter agreement identifies its instructional model as incorporating the K12 Inc. curriculum and because that curriculum is proprietary no other vendor can offer the same curriculum and thus the school by the nature of its charter cannot even consider contracting with a different bidder. This allows K12 Inc. to control the price point for its services because they have no competition. K12 Inc. is a for profit company and according to The New York Times, K12 Inc. uses significant funds for advertising and lobbying state officials. Two lawsuits have been filed by shareholders alleging K12 Inc. misled investors about prospects for enrollment growth and regulatory issues. One of these lawsuits was settled.

Violations to the Procurement Code can result in civil or criminal penalties. According to statute, knowingly violating any provision of the Procurement Code could result in a civil penalty of no more than $1,000 per violation. Additionally, an amount equal to the value of anything transferred or received in violation of the provisions of the Procurement Code may be imposed as a civil penalty. Criminal penalties also exist for those willfully violating the code including misdemeanors (if the transaction is $50 thousand or less) or a fourth degree felony (if the transaction involves more than $50 thousand). According to the New Mexico Sentencing Commission, there have been no convictions related to the Procurement Code section of statute in the last three years.

Procurement violations over $100 thousand require investigation by an agency's internal auditor or Inspector General, which does not always occur. GSD put this requirement into effect in 2009 based on recommendations from the LFC. Policy states that if an agency does not have an internal auditor or Inspector General in house then the investigation must be conducted by an independent third-party auditor paid for by the agency. Investigations are either not always done or not recorded by GSD. Of eight closed procurement violations over $100 thousand, GSD had record of five independent audits or internal investigations and no record for three. Additionally, NMCD has no record of receiving letters from GSD regarding the $2.4 million violation from FY14 in which NMCD allegedly paid for litigation services without a properly executed contract in place. NMCD claims never having requested or received such services.

Table 6. Procurement Violations Over $100 Thousand (FY14 through FY16)

Agency	Year	Description	Amount	Status	Investigation or Audit on Record at GSD
NMCD	FY14	No valid contract	$2,360,966	Closed	No
DOIT	FY14	No valid contract	$103,191	Closed	No
Homeland Security	FY14	No valid contract	$163,445	Closed	Yes
Miners' Colfax Medical Center	FY15	No valid contract	$315,000	Closed	Yes
DPS	FY15	No valid contract	$100,000	Closed	No
NMCD	FY15	No valid contract	$593,118	Closed	Yes
NMCD	FY15	No valid contract	$604,118	Closed	Yes
PED	FY16	No valid contract	$140,117	Open	N/A
PED	FY16	No valid contract	$108,188	Open	N/A
PED	FY16	No valid contract	$124,209	Open	N/A
Livestock Board	FY16	No valid contract	$242,740	Open	N/A

Source: GSD

State statute is violated when LFC is not notified of non-competitive procurement. State statute requires LFC be notified prior to award of a sole source procurement contract and within three business days of awarding an emergency procurement contract (13-1-128 NMSA 1978). Currently, LFC staff is notified only if an agency or local public body posts the procurement to the GSD website. LFC does not always receive notification if the procurement is posted to the individual agency website or if it is posted in a newspaper or by some other means, by the individual agency or local body.

To improve transparency and openness, more information should be posted online including winning and losing procurement bids, procurement regulations, annual reports, procurement manuals, and sole source and emergency procurement justification. Additionally, all procurement contracts should be maintained on a searchable website or integrated into SHARE and the Sunshine Portal. The ability to view the results of procurement bids provides the public and vendors information on why a vendor was selected and increase accountability and competition as a vendor will know why a contract was awarded to one bidder over another.

GSD has implemented a pilot program to improve contract administration and management saving $2.75 million.

GSD has a pilot program in their facilities management division (FMD) referred to as price reasonableness. Project managers at FMD examine non-competitive procurements, specifically amendments and change orders to existing contracts. In the program, the project managers are required to analyze contractor change order proposals for cost breakdowns for individual elements of cost such as labor, materials, and other direct costs to establish reasonableness of price. Such analysis is required to be documented and placed in the change order file and any savings recorded on a spreadsheet. Recording of negotiated cost savings by definition could not happen unless project manager did something other than accept the proposed price. GSD provided documentation showing $2.75 million in savings for nine contract managers from February 2014 to present.

Recommendations

The Legislature should consider repealing sections of statute granting broad authority for exemptions to state agencies and programs within state agencies due to the current situation of billions of dollars being used to buy goods and services outside provisions of the Procurement Code.

The Legislature should consider setting price limits (e.g. $10,000 for advertising) to contracts eligible for exemptions from the Procurement Code.

The Legislature should consider putting limitations into place around the amount a contract can be amended for and the number of times a contract can be amended. For example, a contract should not be amended for more than the original value of the contract. This should be done in conjunction with advisement from GSD and DFA around best practices for amending contracts. This could be more relavant to limits on sole source amendments than to RFPs.

The Legislature should consider legislation requiring state agency CPO's to report procurement violations to GSD.

All state agencies should comply with statute requiring LFC be notified of all sole source and emergency procurement.

The Legislature should consider giving statutory authority to GSD's State Purchasing Agent to have sole source determination responsibility and exemption determination responsibility for state agencies requesting such purchases.

DFA should start identifying Procurement Code violations for emergency purchases during the approval process and refer these to GSD for further action. Specifically, those emergencies created by poor planning or lack of action as prohibited by the Procurement Code.

GSD should improve enforcement of policy around large procurement violations including ensuring an independent investigation and corrective action is taken by state agencies.

GSD should make referrals for possible civil or criminal penalties for procurement code violations of which it is aware. For state agency procurement violations, referrals should be made to the Office of the Attorney General.

GSD should take practices from their sole source cost savings pilot at FMD and roll them out statewide.

All state agencies should review annual audits and self-report procurement violation findings identified to GSD and DFA.

The Office of the State Auditor should perform a follow-up to the special investigation conducted on NMCD reviewing the multiple large procurement violations reported here and the large number of contracts exempted from the Procurement Code.

Procurement reform has had success but there is still room for improvement in contract management and best practices.

Some procurement reform is evident through Governor Martinez's task force on procurement reform.

According to GSD the goals of the ongoing task force are:

- Streamline and simplify the procurement process;
- Re-engineer procurement process and incorporate process improvements;
- Review and update Procurement Code as appropriate;
- Increase transparency of procurement processes;
- Automate processes and eliminate unnecessary paper processing;
- Increase reporting data accuracy;
- Validate appropriate use of Emergency and Sole Source Procurements; and
- Ensure fair, open and consistent procurement process throughout State.

To date accomplishments of the task force include the posting of sole source contracts for 30 days prior to award, additional contract information to the Sunshine Portal, clarification of criminal penalties to only include intent, improvements in e-procurement, implementation of commodity codes, development of a best value procurement guide, and requirements that a chief procurement officer (CPO) be designated for each state agency and local body.

Guidance and practice for CPOs needs improvement.

Statute provides CPOs with exclusive power to make exemption determinations, issue purchase orders, authorize small purchases, and approve procurement. A chief procurement officer or CPO is a person in a state agency or local body who is responsible for control of procurement of items of tangible personal property, services, or construction. Agencies and local bodies were required to identify a CPO by January 2014 with CPOs needing to be certified by January of 2015. The CPOs' powers went into effect on and after July 1, 2015 through statute (Section 13-1-95.2 NMSA 1978). Statute also requires agencies and local public bodies to provide the state purchasing agent with the name of the chief procurement officer for that entity.

Little formal guidance exists in rule, law, or other guidance providing information on how CPOs can exercise power. Over 20 guidance documents for procurement from GSD, DFA, and DoIT were reviewed including contract templates, checklists, and procedure documents. Most of these guidance documents make no mention of the CPO or the role they should play in approving the procurement as statutorily required. GSD procedural guidance for ITB and RFP defines CPO but does not mention them again in the 50 page document. Professional service contracts reviewed by LFC were typically signed by an agency secretary, deputy secretary, CFO, general counsel, the office of the state auditor, the department of finance and administration, and the taxation and revenue department, but not by the CPO who is ultimately responsible for the control and approval of procurement according to statute. Contract templates do not have a specified signature line for CPOs, with the exception of sole source and emergency templates. Likewise, contract templates and checklists for ITBs, RFPs, IT contracts, professional services contracts, and price agreements have no signatory page for the CPO. The only template forms where CPOs have a designated signature are on emergency and sole source procurement forms.

No documented method exists for CPOs to make determinations regarding exemptions from the Procurement Code. LFC did not find guidance from GSD or DFA setting procedures for CPOs to make determinations about professional service contracts.

Sixty-five agencies and local bodies (11 percent) are operating with CPOs who have not gone through certification. According to GSD, 11 percent of CPOs are practicing without certification (65 of 606 state agencies and local bodies according to GSD's registry). *It is unclear if the registry is up to date as the report reflects OSA does not have a certified CPO, which conflicts with personnel records provided by OSA.*

Additionally, other agencies and local bodies have operated without CPOs identified. For example, three of 19 charter schools in Albuquerque Public Schools (Alice King Community School, Corrales International Charter School, and Nuestros Valores Charter School) were found to have not identified a CPO to the GSD state purchasing division in their FY15 audit, violating statute (Section 13-1-95.2 NMSA 1978). The Academy for Technology and the Classics did not go out to bid for $73 thousand in IT services. Subsequently upon recommendations in their FY15 audit the school designated their business manager as their CPO to avoid future occurrences. The Department of Public Safety (DPS) and the Higher Education Department (HED) have signed contracts while their CPO position was vacant with a staff member from GSD filling in as the acting CPO in these instances.

Because CPOs report directly to cabinet secretaries they may be forced to approve procurement they would otherwise not approve if they had more autonomy.

At least three examples of an uncertified CPO signing a sole source determination form were found. The Office of the State Engineer had three sole source procurement determinations for a total of $3.3 million dollars. The Procurement Code states that only certified CPOs can approve procurements (see Appendix D). According to the GSD database, the OSE CPO is not certified.

CPOs operate under the authority of agency secretaries or directors of local bodies and as such may lack independence. CPOs are not independent of the agency or local body they work for and thus may lack the independence to block illegal procurement or question procurement practices approved by superiors. A 2015 NASPO report shows 41 jurisdictions across the country have a single CPO. Of those, 28 report directly to the state governor or governor's cabinet level officials. New Mexico is one of only a few states that split the CPO responsibility amongst several CPOs. Because CPOs report directly to cabinet secretaries they may be forced to approve procurement they would otherwise not approve if they had more autonomy. CPOs should potentially be employed by GSD or a central procurement office and assigned to a specific agency or local body to achieve that autonomy.

To improve uniformity in state procurement practices, the General Services Department is proposing a rule change for CPOs. The rule change would suspend procurement acts by a state agency or local public body in the absence of a registered certified chief procurement officer and result in an automatic audit finding. The change also provides for the sharing of CPO duties with another CPO under certain circumstances; provides procedures for revoking CPO certification for improper actions including the severity or frequency of procurement violations; and provides procedures for reinstating certified CPOs subject to the discretion of the state purchasing agent. However, nothing in the new rule addresses the lack of autonomy previously cited.

Best practices for contract management including training, tracking, and guidance are lacking.

According to NASPO, management of contracts is an essential part of the procurement process along with resources to facilitate such management. This includes the central procurement office providing contract management training, tracking of contracts and maintaining a record of contractor performance, and maintaining a materials inspection manual, contract manual, or similar set of guidelines.

Additionally, most states through their central procurement offices provide contract management training, a record to track vendor performance, a materials inspection manual, a contract management manual or similar set of guidelines, however, New Mexico does not.

New Mexico does not provide helpful contract management tools. According to a 2015 NASPO survey, 37 states provide contract management training for using agency contract administrators and 29 states maintain a materials inspection manual, contract manual, or similar set of guidelines. In 32 states, the state central procurement office tracks and maintains a record of vendor performance. According to the 2015 survey, GSD does not provide any of these. The survey is a comprehensive body of knowledge including statutory, regulatory, and policy requirements for procurement and existing practices and is a tool to determine best practices across the country.

In 32 states, the state central procurement office tracks and maintains a record of vendor performance. New Mexico does not.

Several contracts analyzed by LFC staff exemplify the need for improved contract management.

LFC staff analyzed professional service contracts from the Contract Review Bureau (CRB) database, which contains an average of $265 million in contracts per year, and found potential cost savings. LFC staff developed an evaluation rubric, seen in Appendix E, for determining potential cost savings and selected a random sample of 60 contracts to evaluate out of the full CRB database of 4,048 contracts over the last three fiscal years.

Staff identified contracts where contractors were paid up to 300 percent more than state employees for performing the same task. Table 7 shows the hourly wages for contractors in these instances versus mid-point wages for state employees, including all benefits, for the same job. It should be noted that some staff augmentation might be unavoidable or more cost effective in the short term.

Table 7. Contractors Earn Higher Hourly Wages

Position	State	Contractor	Contractor/State Employee
RN	$32.63	$52.43	161%
LPN	$19.54	$41.73	214%
OT	$36.58	$87.36	239%
PTA	$21.69	$65.52	302%
PT	$36.58	$87.36	239%
SLP	$32.63	$87.36	268%
OTA	$21.69	$65.52	302%
IT	$46.07	$58.43	127%

Source: CRB and SPO

As the sample is statistically representative of the entire database, an estimated 3 percent of the $265 million CRB database could hold a similar potential for cost savings of $7.7 million. Note, the vast majority of professional service contract dollars are not overseen by CRB, as the total amount appropriated for contractual services in House Bill 2 is $1.5 billion. An additional $6 billion is spent by HSD on healthcare services and another $1.5 billion is spent statewide on goods and tangible property. It should be noted that previous LFC evaluations have found several millions of dollars in lost value in health contracts ($125 million, 2016 Health Notes: Prescription Drug Costs) and corrections contracts ($60 million, 2007 Corrections Department: Review of Facility Planning).

Contracts in Table 7 were awarded for duties currently performed by state employees. These contracts were seemingly not signed on a temporary basis, but over and over again with multiple amendments, year after year. For instance, Table 8 shows all of the nursing contracts signed with RapidTemps by DOH, with all amendments listed, for FY16, totaling $1.76 million. A similar pattern of using highly paid contractors for nursing staff takes place each fiscal year, creating the potential for millions in savings by filling nursing vacancies and managing logistics more effectively.

Table 8. Rapid Temps INC FY 16 Contracts with DOH

Contract #	Amendment	Run Date	Amount	Total
18780		6/4/2015	$225,000.00	
	#1	9/2/2015	$433,000.00	
	#2	2/3/2016	$221,736.00	
	#3	4/26/2016	$43,137.69	$922,873.69
18793		5/12/15	$400,000.00	
	#1	12/29/15	$125,000.00	
	#2	3/28/16	$188,798.52	$713,798.52
18831		5/4/2015	$57,420.00	
	#1	10/9/2015	$186.99	$57,606.99
19435		11/5/2015	$22,378.08	$22,378.08
19647		4/18/2016	$39,267.49	$39,267.49
Total				**$1,755,924.77**

Source: SHARE

A contract for home visiting services worth $340 thousand analyzed by LFC staff includes ambiguous terms and is unclear as to how many families the contractor is contracted to serve. The contract specifies services to six families but also mentions services for 28 families and it is not obvious what the difference is in services offered between them.

NMCD lacks internal controls and does not adequately monitor services rendered or invoices prior to disbursing payments. A lack of internal controls at NMCD was found in a 2011 special audit of NMCD by the office of the state auditor. The auditor found NMCD failed to request support for charges prior to disbursing payment for work. Costs were not supported before payment approval. It appears at least some of these internal controls are still lacking based on recent audit findings.

Instances sampled in the FY15 NMCD audit reflected NMCD paying for medical services prior to verifying the fixed cost portion of invoices totaling $3.7 million in FY14, and that NMCD paid for behavioral health services of over $1.4 million in FY14. NMCD responded to FY14 findings saying they hired a Health Services Administrator and an Internal Audit Manager whose primary duties would be to perform audits, and monitor the medical contract including quality of service. Despite this, audit findings were repeated the following year with $5 million paid in medical services in FY15 prior to verifying services were received and $1 million paid in FY15 behavioral health services without knowing how the monies were spent. Additionally, the FY15 audit found no evidence that NMCD verified vendor staffing levels or other costs and also found NMCD paid for pharmaceutical costs prior to verifying services were received.

Additionally, the FY14 audit found deficiencies in inventory management, with 58 percent of sampled materials for government activities unaccounted for. An FY15 audit also found that NMCD was not able to perform a required physical inventory of items purchased with SCAAP grant funds and NMCD also improperly disposed of capital assets. During FY15 NMCD staff visited all facilities and determined assets were missing; staff took assets off of the capital asset listing resulting in the department being unable to locate $77 thousand in Corrections Industries assets and $1.7 million in governmental funds assets including computer related assets. The audit report states that "confidential information stored on missing computers or other equipment may be stolen and abused."

Insufficient oversight and training in contract drafting and negotiation results in unclear and ambiguous contracts, creating potential for overpayments and increased risk for litigation. Best practice requires a contract administration plan (CAP) be developed for at least large-scale projects. A CAP is a tool developed to aid in contract management once the contract is awarded and identifies the critical components at the pre-award stage of a contract ensuring important components are not left out of the actual contract. The CAP should include information such as the project name, requested contract start date, actual project award and start date, projected completion date, actual contract completion date, and contract closeout date. Other information that should be documented in the CAP includes contract administration team members, justification of solicitation source selection method, scope of work including deliverables, potential risks and risk level, key contract terms, monitoring methods, how performance will be measured, milestones for measurement, payment terms, reporting method and frequency, documentation required, and the names of those responsible for measuring performance, reporting, payment, etcetera.

A project manager should be appointed by the contracting agency and the central procurement officer should work closely with the manager. The project manager and central procurement officer should discuss specific issues such as coordinating project information, resolving minor disputes, maintaining accurate and thorough documentation about contractor performance, responding to contractor requests, monitoring progress, making recommendations on cost modifications, and reviewing and approving contract deliverables. Additionally, procurement officers should periodically make onsite visits when contract performance is proceeding to determine the progress of the contract.

Some service contracts lack strong and effective performance measures and deliverables. Strong performance measures and deliverables allow agencies to know what they are paying for and ensure the agency will receive a return on investment. Analyzed contracts exhibit a wide range of performance measures and deliverables from nonexistent to strong and clearly measurable. Additionally, some contracts include a scope of work but lack a way to measure whether or not the scope of work is effectively completed because there are no deliverables or performance measures attached to the scope of work.

Performance based contracts incentivize stronger performance measures, reduce waste in multi-year contracts, and make contract bidding more competitive. Performance based contract reviews would create an incentive for vendors to produce their goods or services in a more efficient manner and would reduce potential waste. For example, instead of having a standard multi-year contract, the new contract would have a five year potential with annual or bi-annual performance based reviews. This would make the vendor more accountable for the performance measures and would give the state an opportunity to extend or terminate the contract based on its review. The state would have a chance to terminate a contract prior to there being excessive waste or renegotiate the contract to ensure best value. Furthermore, if a vendor knows they will be closely monitored they are more likely to produce more accurate and stronger performance measures rather than have vague and weak performance measures. This change would incentivize more competitive bids and is likely to reduce unnecessary extensions or amendments.

The price agreement process has potential for lost value without strong contracting and management.

Currently, GSD's database lists 4,696 price agreements, some of them several years old.

"Price agreement" means a definite quantity contract or indefinite quantity contract which requires the contractor to furnish items of tangible personal property, services or construction to a state agency or a local public body which issues a purchase order, if the purchase order is within the quantity limitations of the contract, if any (Section 13-1-71 NMSA 1978). The contracts are negotiated, managed and maintained by the State Purchasing Division within GSD. To establish general service price agreements, GSD uses the ITB process. To establish professional service price agreements, GSD uses the RFP process. DFA oversees the purchase orders for professional service contracts after the price agreement has been established and GSD oversees the general service purchases. Moreover, once these agreements are established they can be utilized by all state agencies. Because price agreements have gone through an RFP, they are considered a competitive purchase. However, agencies could still ensure better value by getting quotes and checking competition prices in an attempt to negotiate for better prices from vendors, essentially viewing prices on this list as a ceiling and not an absolute for what they have to pay.

Further, as agencies increasingly use the price agreements for professional services for information technology support, better contracting practices are needed to ensure clear deliverables and prices. For example, the Office of the Attorney General (OAG) contracted for IT services using a price list vendor. The total contract is for $250 thousand to provide an IT strategic plan and other services. The contract, approved by multiple agencies over several months, does not clearly specify, using price list criteria, the amounts to be paid for these services. As a result, it gives the appearance of allowing amounts above those listed in the price agreement. The OAG will need to ensure the vendor properly bills for services and specifies allowable price agreement hourly and other permissible rates and consider an amendment to clarify. In addition, the contract has a detailed scope of work but does not have a comparable requirement for the deliverables. Again, the OAG will need to ensure the work was properly performed as required in the scope of work as documented when billed. Not having clear contracting prices and deliverables increases internal control risks and complicates contract oversight.

The contracts that use price agreements could be improved by providing greater specificity, which highlights the need for enhanced contract management. The contract between OAG and the vendor was approved by the OAG, DFA's Contract Review Bureau, and TRD. The contract reviews spanned several months and passed through three different agencies without anyone addressing compensation ambiguity. Additionally, there is a presumption that the vendor is keenly aware of the maximum allotted for hourly rates pursuant to its price agreement. Under this presumption the vendor should have addressed the ambiguity regarding the hourly rates and how they apply to various categories of services within the price agreements. The vendor could potentially use the ambiguities to take advantage of the situation but in this case there is no evidence of intent to do so. Here, one of the three agencies should have addressed the ambiguities within the contract regarding compensation terms. Nonetheless, the contract in this case is in compliance within the Procurement Code but highlights the need for greater specificity in contracts that use price agreements.

Some price agreements have a range of prices and vendors for similar services with no incentive for agencies to choose lowest price. For example, a price agreement for aircraft maintenance lists five vendors with prices ranging from $70 an hour to $92 an hour. All aircraft maintenance performed by GSD under the price agreement went to the vendor with the highest hourly rate and the vendor with the median hourly rate. Note that the top hourly rate is $22 higher than the vendor with the lowest rate. The vendor with the lowest rate also has the lowest percentage markup of aircraft related equipment, parts and supplies. Since 2013, GSD has paid this company $378 thousand for aircraft maintenance, parts, and supplies.

In another example GSD had two vendors selling comparable 4 wheel drive pickup trucks. In the price agreement, one pickup truck is listed as $4,000 more. GSD purchased eleven of the more expensive trucks listed at $28,348 a piece with a spotlight option for an additional $375. The total paid for the 11 trucks was $340 thousand.

New Mexico's procurement process needs increased transparency, openness, and accountability.

Transparent procurement promotes competition by keeping the public and vendors informed about the process. New Mexico does not currently require all sole source and non-competitive procurement be posted on a single website. State statute does require the posting of sole source and emergency contracts but agencies and public bodies have wide discretion on where the information is posted. Many non-competitive procurements are posted on the various agency websites or notices are advertised in local newspapers making it difficult to find a posting. A central website for all non-competitive procurement would make it easier to track such procurement and would allow GSD and DFA to more easily comply with statute requiring LFC be notified of all sole source and emergency procurement.

Some states charge state agencies for procurement related transactions as a means for funding their central procurement office.

New Mexico could implement a fee schedule to raise revenue for increased procurement oversight and training, and to supplement appropriation funding of a central procurement office. Some states such as Idaho and New Jersey charge an administrative fee as a percentage of a contract price, Idaho 1.25 percent and New Jersey 0.25 percent. Other states, including Ohio, charge a percentage of dollars expended. New Mexico could charge an administrative fee on all contracts or to specific contracts such as sole source and emergency procurement contracts which would both raise revenue for increased oversight and training, and discourage the use of non-competitive procurement.

Additionally, revenue raised could also be used to train a team of auditors or compliance specialists that would rapidly respond when a certain threshold is crossed by an agency such as when emergency procurement is improperly utilized, contract amendments more than double the original amount of a contract, or there is some perceived procurement violation. The rapid response team would provide real time guidance and instruction in procurement compliance which could potentially save money and increase efficiency across the procurement system.

Recommendations

GSD should set up a formal process for agencies and CPOs to use when designating exemptions.

GSD should require the signature of CPOs in the determination of an exemption and on all procurement contracts including those secured through exemptions from the Procurement Code.

GSD should provide additional guidelines for price agreements asking agencies to put good faith efforts into trying to find better prices for large purchases.

GSD should work with the state personnel office to set up a structure where agency CPOs should potentially be employed by GSD and assigned to a specific agency to achieve centralized control and decentralized execution.

All state agencies should implement monitoring and payment systems to track contract burn rates and track contract performance measures.

GSD and DFA should adopt policies encouraging performance based contracts.

GSD and DFA should adopt policies to require contract administration plans for contracts over $100,000.

The Legislature should consider requiring all sole source and non-competitive procurement be posted on a single website. Additionally post the following on the central website:

- winning and losing procurement bids;
- procurement regulations;
- annual reports;
- procurement manuals; and
- sole source and emergency procurement justification.

The Legislature should consider implementing a fee schedule for non-competitive procurements to fund increased procurement oversight, procurement training, and to supplement appropriation funding of a central procurement office.

The Legislature should provide statutory authority for GSD to be required to approve determinations of exemptions.

SUSANA MARTÍNEZ
GOVERNOR

ED BURCKLE
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October 27, 2016

Senator John Arthur Smith
Chairman, Legislative Finance Committee
325 Don Gaspar, Suite 101
Santa Fe, NM 87501

Dear Chairman Smith,

The General Services Department (GSD) is pleased to provide comments on the Legislative Finance Committee (LFC) Report #16-09 dated October 27, 2016. Overall, GSD concurs that greater centralization in procurement is in the best interests of the state and taxpayers. We believe a philosophy of "centralized control/decentralized execution," generally, should be used as a guide to study and make improvements in procurement for state agencies under the control of the State Purchasing Agent in GSD.

We observe that "exemptions" and "exceptions" to the Procurement Code that are highlighted in the report and used by agencies are statutorily authorized. GSD would be pleased to participate in a systemic, systematic and holistic review of existing exemptions and exceptions to these decentralized methods of procurement and examine ways for greater centralization, if appropriate, and oversight of such determinations and methods.

GSD does not question the veracity of the procurement problems cited in the report, but notes that these "escapements" from established rule and regulation are merely a handful of examples in a state procurement system whose volume is measured in the tens of thousands of procurement actions. Obviously, any departure or escapement from established procurement policies is wrong and demands correction as well as appropriate oversight; GSD merely notes the report contains no in-depth or statistical review of the problems to determine if they are emblematic of a systemic failure in the procurement system. GSD would be pleased to participate in a further review of the problems cited to develop specific recommendations to fix the root causes, if any, of the problems.

The review recommends that the State Purchasing Division (SPD) be organizationally transferred from the GSD to the Department of Finance and Administration (DFA). GSD believes that SPD should reside in the department within state government that will offer the best opportunity for continued procurement centralization and greater efficiency. It is worth noting, however, that in a recent study by the National Association of State Chief Administrators, 47 of the 50 states surveyed have their procurement function located in the state's general administrative organization, i.e., GSD equivalent; therefore, it would not be

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a national procurement "best practice" to move SPD to DFA. GSD further notes that the LFC's recommendation to transfer SPD from GSD to DFA cites the recommendation contained in the 2010 Government Restructuring Task Force (GRTF) final report. In reviewing the GRTF report, there is no rationale or underlying reasons provided for the recommendation to move SPD to DFA.

As the report indicates, the Governor's Procurement Reform Task Force (PRTF) has made progress since its inception in 2011. Perhaps the most significant achievement of the PRTF is receiving statutory authority from the legislature in 2013 to establish a Chief Procurement Official (CPO) certification program. New Mexico is the only state in the nation that has implemented such a certification program to ensure that the head of every agency's procurement operation meets specific training requirements and has demonstrated proficiency in the Procurement Code and best procurement practices. CPO certification is a groundbreaking initiative that will help CPO's at all levels of state government maintain consistency and uniformity regarding application of the Procurement Code and procurement rules. It is a major step forward in helping to strengthen the authority of the SPA and will act as a catalyst in achieving further centralization of procurement functions in NM.

The GSD is always looking for ways to improve the procurement process and methods of procurement. Towards that end, we would be pleased to work with the legislature and other state agencies on our journey of continuous process improvement and suggest the PRTF is the appropriate place to bring new ideas to the attention of key stakeholders.

Thank you for the opportunity to comment on the report.

Sincerely,

Edwynn L. Burckle

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Appendices

Appendix A: Evaluation, Scope, and Methodology

Evaluation Objectives.

- Examine selected special procurements assessing the need and use of sole source, emergency procurements, and those contracts exempt from the Procurement Code.
- Examine selected professional services contracts and assess the effective use of contract performance measures including deliverables and contract monitoring.
- Review use and cost effectiveness of price lists and piggybacking on other government contracts.

Scope and Methodology.

- Interviewed agency staff and visit with GSD and DFA.
- Coordinated with Office of the State Auditor staff.
- Reviewed state and federal laws, regulations and policies.
- Reviewed previous LFC evaluations of state procurement and programs.
- Reviewed relevant contracts, criteria for awarding contracts, and other related documents.
- Reviewed existing research and best practices for state procurement.
- Reviewed and analyzed available data within SHARE and the Sunshine Portal.
- Reviewed and analyzed datasets provided by GSD and DFA related to state purchases.

Evaluation Team.
Dr. Jon Courtney, Program Evaluation Manager
Nathan Eckberg, Program Evaluator
Dr. Travis McIntyre, Program Evaluator
Christopher Jaramillo, Program Evaluator

Authority for Evaluation. LFC is authorized under the provisions of Section 2-5-3 NMSA 1978 to examine laws governing the finances and operations of departments, agencies, and institutions of New Mexico and all of its political subdivisions; the effects of laws on the proper functioning of these governmental units; and the policies and costs. LFC is also authorized to make recommendations for change to the Legislature. In furtherance of its statutory responsibility, LFC may conduct inquiries into specific transactions affecting the operating policies and cost of governmental units and their compliance with state laws.

Exit Conferences. The contents of this report were discussed with the Secretary of the General Services Department, Department of Finance and Administration, Office of the State Auditor, and their respective staffs on October 18, 2016. A report draft was provided to GSD and DFA on October 17, 2016 for a formal written response.

Report Distribution. This report is intended for the information of the Office of the Governor, the General Services Department and Department of Finance and Administration and the Legislative Finance Committee. This restriction is not intended to limit distribution of this report, which is a matter of public record.

Charles Sallee
Deputy Director for Program Evaluation

Appendix B: Methodology Used In Calculating Total State Procurement

Method 1: A lower limit can be placed on how much money is spent on procurement by adding up the amount of money appropriated for goods and services in the budget. House Bill 2 appropriated $1.5 billion for “contractual services”, which encompasses professional services for all executive agencies. An additional $8.2 billion is appropriated to agencies for the procurement of “other costs”, which includes procurement of goods, tangible property, and managed care as well as some services that are not procurements, like utilities. If all of these appropriations are spent for their intended use and all other appropriations are spent on state employees and state property, then $10 billion is spent on procurement in New Mexico. The total amount spent on procurement is most certainly higher; several employee benefits come in the form of procurement (vision, dental, etc.) and the block grant appropriations to education institutions totals over $6 billion, much of which must be spent on procurement of goods and services.

Method 2: An upper limit can be placed on how much money is spent on procurement by subtracting appropriations to state employee salaries and benefits out of the total budget and assuming all other appropriations must then be for procurement of goods and services. The total amount appropriated FY16 in House Bill 2 for “personal services and employee benefits”, which includes salary and benefits for all government employees, is $1.4 billion. The FY15 PED Stat Book, which reports on all public school finances, reports that $2.6 billion is spent on employee salaries and benefits in public schools. The Sunshine UNM Salary Book contains $800 million in salaries and benefits, though other higher education institutions do not have a similar such sunshine portal. If it is assumed that UNM represents one-third of higher education employees, then $2.4 billion is spent on salaries and benefits in higher education for a total of $5.4 billion spent on state employees out of the $18.6 billion FY16 budget. If the rest of the budget is spent on procurement of goods and services, then an estimated $13 billion is spent on procurement in New Mexico.

Method 3: The amount of money spent on procurement can be estimated from summing the amount reported spent on goods and services. The total includes some non-procurements like education funding and scholarships, and excludes some procurements like HSD health services and purchases on third-party accounting systems. Subtracting out education appropriations (PED and HED) and adding in $6 billion spent on healthcare contracts (HSD), the total comes to $9 billion, though SHARE does not include information on procurements by school districts and higher education institutions. The FY15 PED Stat book indicates that $500 million in operations are spent on purchases. It is unknown how much higher education spends on purchases, but if it is a similar amount, then a total of $10 billion is spent on procurement out of the $18 billion budget.

Appendix B: Methodology Used In Calculating Total State Procurement

FY16 Purchase Order Amounts in SHARE

Department	Purchase Order Totals (in millions)
HSD	$496
PED	$3,247*
HED	$136
DOH	$216
CYFD	$176
DOIT	$39
NMCD	$180
DPS	$25
GSD	$145
DFA	$204
DOT	$721
TRD	$45
NMTD	$24
NMED	$71
DGF	$27
NMDHSEM	$77
EMNRD	$52
IAD	$26
OSE	$36
RHA	$297
Total	**$6,242**

Source: SHARE
*PED POs in SHARE include SEG, categorical related, and federal funds. For other discrepancies, see the Methodology section.

Appendix B: Methodology Used In Calculating Total State Procurement

FIN 13.3 State Agencies and Related Subsystems

Currently, the following 14 agencies send financial transactions to interface with SHARE through either Payment Load Interface or Warrants Issued in a Third Party System Interface:

Agency	Subsystem
Administrative Office of the Courts	JURIS
Children, Youth and Families Department	FACTS: "M" Warrants
Educational Retirement Board	IRIS
Department of Finance and Administration	Local Government Subsidiary System (Grants)
Department of Game and Fish	License Refunds
General Services Department	Workers' Comp system/ATS and Cserisa systems
Human Services Department	Child Support Enforcement Medicaid LIHEAP EBT – JP Morgan Legacy and Aspen Systems
Department of Workforce Solutions	Unemployment Claims System
Public Employees Retirement Association (PERA)	RIO
Taxation and Revenue Department	Gentax
Division of Vocational Rehabilitation (DVR)	RISTRAS
Aging & Long Term Services	APSS (Adult Protective Services System)
STO/SIC	QED

Source: DFA

Appendix C: The Majority of Purchases are Exempt or Excluded from State Purchasing

Table X. FY 16 SHARE Purchase Orders

Department	CON	%	DPO	%	EXC	%	EXE	%	SOL	%	Total
HSD	$ 104.7	38%	$ 0.7	0%	$ 24.3	9%	$ 144.9	53%	$ -	0%	$ 274.7
PED	$ 21.0	59%	$ 0.3	1%	$ 11.9	33%	$ -	0%	$ 2.6	7%	$ 35.8
HED	$ 0.7	0%	$ 0.2	0%	$ 0.0	0%	$ 199.5	100%	$ -	0%	$ 200.4
DOH	$ 38.8	15%	$ 7.4	3%	$ 67.1	26%	$ 146.6	56%	$ -	0%	$ 260.0
CYFD	$ 29.5	12%	$ 1.1	0%	$ 74.2	30%	$ 143.3	58%	$ -	0%	$ 248.2
DOIT	$ 39.9	72%	$ 0.5	1%	$ 11.5	21%	$ 3.4	6%	$ 0.1	0%	$ 55.4
NMCD	$ 89.6	37%	$ 3.2	1%	$ 11.3	5%	$ 138.6	57%	$ -	0%	$ 242.7
DPS	$ 16.2	54%	$ 6.1	20%	$ 2.6	8%	$ 4.7	15%	$ 0.7	2%	$ 30.2
GSD	$ 138.6	66%	$ 4.5	2%	$ 63.1	30%	$ 2.9	1%	$ -	0%	$ 209.1
DFA	$ 4.5	3%	$ 0.3	0%	$ 20.4	13%	$ 127.0	83%	$ -	0%	$ 152.2
DOT	$ 376.0	83%	$ 65.5	15%	$ 0.7	0%	$ 8.6	2%	$ -	0%	$ 450.8
TRD	$ 41.7	69%	$ 1.0	2%	$ 7.3	12%	$ 10.6	17%	$ -	0%	$ 60.6
NMTD	$ 2.8	8%	$ 0.4	1%	$ 2.0	6%	$ 30.1	85%	$ -	0%	$ 35.3
NMED	$ 9.7	12%	$ 1.1	1%	$ 10.1	12%	$ 62.9	75%	$ -	0%	$ 83.8
DGF	$ 20.4	62%	$ 3.1	9%	$ 1.5	4%	$ 8.1	24%	$ -	0%	$ 33.1
NMDHSEM	$ 2.5	2%	$ 0.2	0%	$ 1.0	1%	$ 112.5	97%	$ -	0%	$ 116.1
EMNRD	$ 33.1	47%	$ 5.2	7%	$ 6.9	10%	$ 24.8	35%	$ -	0%	$ 70.0
IAD	$ 0.3	1%	$ 0.2	0%	$ 0.9	2%	$ 37.5	96%	$ -	0%	$ 38.9
OSE	$ 4.1	8%	$ 0.7	1%	$ 11.9	24%	$ 32.7	66%	$ -	0%	$ 49.4
RHA	$ 18.6	4%	$ 0.1	0%	$ 426.5	96%	$ 0.6	0%	$ -	0%	$ 445.8
Tot.	**$ 969.9**	**32%**	**$ 99.4**	**3%**	**$ 737.8**	**24%**	**$ 1,210.5**	**40%**	**$ 3.3**	**0%**	**$ 3,092.4**

SHARE Origin Code Legend	
CON	Contracts/Price Agreements
DPO	Direct Purchase Order
EXC	Excluded from State Purchasing ($250M of this is comprised of professional services overseen by DFA)
EXE	Exempt from the Procurement Code
SOL	Sole Source

Appendix D: Statute for Chief Procurement Officers

NM Stat. 13-1-95.2 *Chief Procurement officers; reporting requirement; training; certification.*

A. On or before January 1 of each year beginning in 2014, and every time a chief procurement officer is hired, each state agency and local public body shall provide to the state purchasing agent the name of the state agency's or local public body's chief procurement officer and information identifying the state agency's or local public body's central purchasing office, if applicable.

B. The state purchasing agent shall maintain a list of the names of the chief procurement officers reported to the state purchasing agent by state agencies and local public bodies. The state purchasing agent shall make the list of chief procurement officers available to the public through the web site of the purchasing division of the general services department and in any other appropriate form.

C. The state purchasing agent shall offer a certification training program for chief procurement officers each year.

D. On or before January 1, 2015, the state purchasing agent shall establish a certification program for chief procurement officers that includes initial certification and recertification every two years for all chief procurement officers. In order to be recertified, a chief procurement officer shall pass a recertification examination approved by the secretary of general services.

E. On and after July 1, 2015, only certified chief procurement officers may do the following, except that persons using procurement cards may continue to issue purchase orders and authorize small purchases:
(1) make determinations, including determinations regarding exemptions, pursuant to the Procurement Code;
(2) issue purchase orders and authorize small purchases pursuant to the Procurement Code; and
(3) approve procurement pursuant to the Procurement Code.

Appendix E: Contract Evaluation Rubric

Instructions: For each contract, evaluate every budget item for potential cost savings along the following guidelines.

Direct Cost Savings

	Evaluate	Value Lost	
1.	Is the procurement available for a lower price by searching online?	$	-
2.	Is the procurement available for a lower price by querying other vendors?	$	-
3.	Is any quantity of the procurement wasteful (e.g. two conference fees for one person)?	$	-
4.	Is the value of the procurement more than necessary (e.g. Porchse vs. Ford)?	$	-
5.	Are professional service costs dissimilar from comparable work (e.g. internet installation fees for a specific speed and number of routers)?	$	-
6.	Are professional service costs unreasonable (e.g. $150/hr for laundry)?	$	-
7.	Are professional service costs significantly more expensive than agency staff who perform similar duties (e.g. contract lawyer fees versus salary of counsel)?	$	-
	Total Direct Loss	**$**	**-**

Indirect Cost Savings

	Evaluate	Value Lost	
8.	Does service performed have a known negative ROI (e.g. scared straight)?	$	-
9.	Is vendor kin or kind to any agent involved in the procurement process (use SOS, facebook, google to find out)?	$	-
10.	Is sole-source/emergency with out-of-state vendor when in-state is available?	$	-
	Total Indirect Loss	**$**	**-**

Contract Management Cost Savings

	Evaluate	Value Lost	
11.	Is procurement utilized (e.g. missing flat screen monitors, unused tractors)?	$	-
12.	Is the procurement effective (e.g. IT that doesn't work, deliverables unmet)?	$	-
13.	Do service contracts contain specific deliverables, timelines, and performance measures (e.g. marketing contract expects 20% increase in website clicks within one year)?	$	-
14.	Are contract amendments a demonstrable result of poor management (e.g. kitchen construction that has gone on for five years)?	$	-
15.	Do the employees have the proper knowledge/skills to use equipment (e.g. does vendor continually get sole-sourced for basic operations and maintenance)?	$	-
	Total Management Loss	**$**	

Appendix F: HSD Determination of Exemption of Managed Care

OGC-COPY

NEW MEXICO HUMAN SERVICES DEPARTMENT

OFFICE OF GENERAL COUNSEL
P.O. BOX 2348
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March 6, 2012

DETERMINATION OF PROCUREMENT CODE EXEMPTION

The Medicaid Managed Care program was created by the New Mexico Legislature which empowered the New Mexico Human Services Department ("HSD") to "provide for a statewide, managed care system to provide cost-efficient, preventative, primary and acute care for Medicaid recipients by July 1, 1995." See, NMSA 1978, §27-2-12.6. Since its enactment, the Department received approvals from the Centers for Medicare and Medicaid Services of certain 1915(b) waivers (permissible waivers pursuant to section 1915(b) of the Social Security Act) to provide Medicaid state plan services using managed care organizations in Salud!, CoLTS (Coordination of Long-Terms Services), and the Behavioral Health statewide entity. In providing these services, the Department has engaged seven (7) managed care organizations ("MCO"), duly licensed in the State of New Mexico, to provide a network of health care providers for which eligible Medicaid recipients can receive medically necessary services.

Although the MCO contracts were awarded pursuant to Requests for Proposals, as early as 2009 it was recognized by HSD's Medical Assistance Division, which administers the State's Medicaid program and oversees the MCO contract; HSD's Administrative Services Bureau; and HSD's Office of General Counsel that such contracts are exempt from the New Mexico Procurement Code [13-2-28 *et seq.* NMSA 1978].

Accordingly, it is determined that pursuant to Section 13-1-98.1 NMSA 1978, as amended, the foregoing procurement of health care services via the Department's contracts with managed care entities is exempt from the provisions of the New Mexico Procurement Code [13-1-28 NMSA 1978, *et seq.*] as the services involved will or likely reduce health care costs, improve quality of care or improve access to care.

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