

NEW MEXICO
LEGISLATIVE
FINANCE
COMMITTEE

Program
Evaluation
Unit

Program Evaluation: Maximizing Value in
Procurement

October 31, 2019

Report #19-04

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October 31, 2019

Mr. Ken Ortiz, Secretary
New Mexico General Services Department
Joseph Montoya Building, Room 1004
1100 S. St. Francis Drive
Santa Fe, New Mexico 87502

Dear Secretary Ortiz:

On behalf of the Legislative Finance Committee, I am pleased to transmit the program evaluation, *Maximizing Value in Procurement*. The evaluation provided an update of procurement-related policy actions in response to past evaluations and audits; explored the development and use of price agreements as a procurement vehicle; and analyzed the breadth and scope of professional services and staff augmentation contracts.

The report will be presented to the Legislative Finance Committee and public on October 31, 2019. An exit conference was held on October 22, 2019 with you and other General Services Department representatives to discuss the contents of this report. The Committee would like a plan to address recommendations in this report within 30 days of the release of the report.

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

Sincerely,

A handwritten signature in blue ink that reads "David Abbey".

David Abbey, Director

Cc: Senator John Arthur Smith, Chair, Legislative Finance Committee
Representative Patricia Lundstrom, Vice-Chair, Legislative Finance Committee
Olivia Padilla-Jackson, Secretary, Department of Finance and Administration
John Bingaman, Chief of Staff, Office of the Governor

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Evaluation Objectives

Provide an update of procurement-related policy actions in response to past evaluations and audits.

Explore the development and use of price agreements.

Determine the scope of professional services and staff augmentation contracts.

5 Trends That Are Reshaping How Governments Buy

The Governing Institute's national survey of state procurement officials reveals innovative best practices and leading states

TREND No. 1:

States are using data and analytics to drive better procurement.

A 2019 report from the Governing Institute on procurement noted that high-performing states are increasing their use of data and analytics. Even though state law tasks the State Purchasing Division with preparing statistical data concerning the acquisition and usage of good and services by state agencies, the division lacks business analytics capabilities and essential technology to easily collect, analyze, and use spending and vendor performance data.

Better Business Intelligence Will Make the State a Smarter Buyer

State law places the responsibility for the procurement of goods and services for all state agencies, except as otherwise provided in the Procurement Code, with the New Mexico's State Purchasing Division (SPD.) However, the division lacks essential technology and analytics capabilities to collect and use spending and vendor performance data. As a result, it is highly likely that the SPD isn't maximizing the value from the \$1.8 billion in spending it influences each year. This evaluation report includes recommendations to improve SPD's purchasing systems as well as analysis and recommendations in two other critical areas of procurement: price agreements and staff augmentation contracts.

Key Findings

- In FY19, agencies spent approximately \$216 million against price agreements—statewide contracts that should allow agencies to purchase goods and services at pre-negotiated price ceilings. However, certain features of the state's price agreement system can actually dissuade savings because they do not require agencies to shop around for better prices or create a statement of work for services. As a result, some agencies are:
 - unnecessarily buying high-end vehicles, computers, and other goods.
 - forgoing bulk purchasing and additional negotiation for discounts.
 - buying millions of dollars' worth of niche and highly complex goods and services with almost no oversight.
- State agencies are not required to track or justify their use of contracted staff and, as a result, LFC staff found a number of inappropriate services contracts, including:
 - agencies contracting with former employees and paying them considerably more money to serve a similar role.
 - frequent use of temporary employment services for years to overcome staffing shortages.
 - agencies using price agreements in lieu of putting out high-dollar consultancy work out to bid.
 - contractors paid excessive hourly rates
- Even though state law tasks SPD with “prepar[ing] statistical data concerning the acquisition and usage of all services, construction, and items of tangible personal property by state agencies,” the division lacks business analytics capabilities and essential technology to collect, analyze, and use spending and vendor performance data.

Key Recommendations

The Legislature should consider

- Amending the Procurement Code in Section 13-1-129 NMSA 1978 such that:
 - Purchases against a price agreement for general services over \$60 thousand or professional services over \$5,000 must occur under a separate contract with a defined scope of work between the agency and vendor according to the terms of the price agreement.
 - Purchases of goods or general services between \$10 thousand and \$60 thousand may only occur after the agency has gathered and documented three quotes. These quotes must be documented in a searchable form in the purchase ordered logged into the SHARE statewide financial information system.
- Approving the General Services Department funding request for SHARE strategic sourcing and eProcurement modules for FY21 through FY23.

The State Purchasing Division should

- Require its purchasing specialists to conduct business analyses of all spending. Specifically, before November 2020, the State Purchasing Division should undertake an effort to analyze spending on current price agreements and create an action plan for consolidating the number of price agreements into fewer, more frequently used agreements with fewer vendors. State Purchasing should report on the outcomes of the exercise to the Legislative Finance Committee at the General Services Department's 2020 budget hearing.
- Cease renegotiation of price agreements with annual spending below the \$20 thousand regulatory small purchase threshold.
- Work with the Department of Finance and Administration and the State Personnel Office to develop regular methods to collect, analyze, and report data on temporary employment use, with special attention paid to the length of the contracts, number of contract renewals, and contract amount relative to full-time employee pay for similar tasks and duties. The State Purchasing Division should report the outcomes of this activity to the Legislature before the 2021 legislative session.
- Work with the Department of Finance and Administration and the State Personnel Office to develop methods for state agencies to justify needs and determine the cost-benefit ratio before any services contracts above the small purchase limit are approved.
- Implement a rule that encourages state agencies to retain a percentage of payment for all projects until acceptance of the final deliverable.
- Find a way to share certain information across agencies, such as contracted hourly rates by vendor and vendor type in a way that would help agencies strategically negotiate rates and deliverables.

The Department of Information Technology should

- Develop standard computer configurations, require that 80 percent of state agency computer purchases fit within these standards, and develop uniform computer refresh guidance for executive agencies.



Despite Decades of Study, Opportunities to Improve Purchasing Practices Remain

In 1984, the Legislature created the State Purchasing Division (SPD) and placed it within the General Services Department (GSD). The purpose of SPD is to facilitate the buying of low-cost, high-value goods and services to state agencies, as well as to ensure a competitive process among vendors to effectively manage state spending and conserve resources. SPD is statutorily responsible for “the 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 state agencies not excluded from the requirement of procurement through the state purchasing agent.”

Today, SPD has 28 funded staff positions in four different bureaus. SPD’s FY20 budget was roughly \$2 million, of which \$1.4 million was from fees collected from vendors and the other \$600 thousand was from the general fund. In FY19, SPD oversaw the contracting processes for an estimated \$1.7 billion of state spending.

New Mexico’s Procurement Code is based on the American Bar Association’s (ABA) model procurement code.

The ABA model was written in 1978 and updated in 2000 to help facilitate the procurement of new technology. In 1984, New Mexico adopted a form of the ABA model procurement code, and the Legislature has amended it a number of times since, resulting in the creation of numerous exemptions as well as procurement vehicles, such as price agreements. In some cases, these amendments made procurement a more streamlined process, in others, they have allowed agencies to make large purchases without requiring they undertake due diligence to ensure they are receiving the best deal.

This assortment of legislation, combined with the age of the ABA model procurement code, has left lawmakers without a modern, consistent, comprehensive model for responsible state purchasing. The federal government, however, issued extensive guidance for procurement methods for organizations spending federal grant funds in 2013 via the Office of Management and Budget’s *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, which may be a good guide for reforms to state law. For example, the circular requires grantees “perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold (\$250 thousand) including contract modifications” (2 CFR §200.323 (a)). In contrast, New Mexico’s Procurement Code merely states a cost or price analysis may be conducted prior to the award of a contract but only if noncompetitive methods are used (Section 13-1-144 NMSA 1978).

State Purchasing Division Statutory Charge (Section 13-95-1 NMSA 1978)

- The purchasing division and state purchasing agent shall be responsible for the 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 state agencies not excluded from the requirement of procurement through the state purchasing agent.
- The state purchasing agent shall have the following additional authority and responsibility to:
 - recommend procurement rules to the secretary;
 - establish and maintain programs for the development and use of procurement specifications and for the inspection, testing and acceptance of services, construction and items of tangible personal property;
 - cooperate with the state budget division of the department of finance and administration in the preparation of statistical data concerning the acquisition and usage of all services, construction and items of tangible personal property by state agencies;
 - require state agencies to furnish reports concerning usage, needs and stocks on hand of items of tangible personal property and usage and needs for services or construction;
 - prescribe, with consent of the secretary, forms to be used by state agencies to requisition and report the procurement of items of tangible personal property, services and construction;
 - provide information to state agencies and local public bodies concerning the development of specifications, quality control methods and other procurement information;
 - collect information concerning procurement matters, quality and quality control of commonly used services, construction and items of tangible personal property; and
 - develop standardized classification codes for each expenditure by state agencies and local public bodies.

In 2011, the governor issued Executive Order 2011-31 creating the Task Force on Procurement Reform. The task force's stated goal was to streamline and simplify the procurement process, improve accountability and transparency, and update the Procurement Code to ensure efficient state purchasing. The task force consisted of the state purchasing agent and the secretaries or their designees from the Departments of General Services, Taxations and Revenue, Finance and Administration, Information Technology, Human Services, and Regulation and Licensing. The General Services Department secretary chaired the task force and was to report to the governor twice annually. However, the task force has not met since 2017.

During the past 11 years, Legislative Finance Committee (LFC) staff and the Office of the State Auditor (OSA) conducted four major reviews related to state purchasing. The first, an October 2008 LFC evaluation "*GSD-Procurement Division Effectiveness Review*" was a general review of the operations of the State Purchasing Division. The evaluation found statutory guidance on nontypical procurement methods (e.g., emergency purchases and exemptions) needed review by executive management and the Legislature. In addition, out of the approximately \$5.2 billion spent by state agencies in FY07, State Purchasing could only account for approximately \$16 million through requests for proposals and invitations to bid due to limited tracking documentation and processes. Finally, Procurement Code violations ranging from \$2 million to \$7 million were not tracked or monitored.

Since 2008, SPD implemented an online platform for requests for proposals and invitations to bid that has alleviated most of the difficulty tracking requests for proposals and invitations to bid. SPD reports that the tracking remediation activities required of procurement code violators is still manual, but that the division is working to automate the process.

The objectives of the March 2015 LFC evaluation "*State Purchasing Division and the Status of Procurement Automation*" were to assess the status of procurement automation and evaluate the process for establishing price agreements, including information technology. The evaluation found, in some cases, emergency procurements were improperly used by agencies in lieu of the competitive procurement process for existing services. Additionally, after spending nearly \$1 million on the SHARE system, the eProcurement module did not function, though GSD had made some process improvements. Finally, the evaluation found that, although GSD established statewide price agreements for commodities or services agencies commonly use in volume, the process did not encourage agencies to use the lowest-cost option. Because prices in the agreements are established for an extended period, agencies lacked incentives to pursue competition or search out more cost-effective vendors.

The objective of the October 2016 LFC evaluation "*Obtaining Value in State Procurement and Issues with Noncompetitive Methods*" was to analyze the effectiveness of state procurement processes and explore how the state could leverage its buying power and improve state purchasing to create a more efficient and effective procurement process. The evaluation found procurement in New Mexico was a decentralized system that often encouraged noncompetitive methods, resulting in the potential for higher costs to state agencies. Additionally, the report found room for improvement, particularly in contract management, where training, tracking, and guidance were lacking. The evaluation also recommended consolidating oversight of professional

services contracting by moving the Contracts Review Bureau from the Department of Finance and Administration to the General Services Department. The Legislature acted on that recommendation during the 2019 session, with the passage of Senate Bill 88, relocating the Contracts Review Bureau to the State Purchasing Division. The bill also required sole source and emergency procurements to be posted to the websites of the purchasing agency and the GSD website, narrowed and clarified provisions for emergency procurements, and required all state agencies to make an annual report to GSD on the amount of state agency contracts awarded to in-state and out-of-state contractors.

Most recently, in October 2017, the Office of the State Auditor’s Government Accountability Office released a “procurement compendium” of seven special audit reports. The largest of these was conducted to address various concerns related to the competitive bidding process, exceptions and exemptions to the competitive bidding process, inordinate amounts of state purchasing from out-of-state vendors, and oversight of state agency procurement. According to OSA, “These concerns included non-compliance with policies and best practices, delays in approvals and other actions, a lack of coordination among oversight agencies, a lack of consistency in the processing of requests for proposal, and general overuse of noncompetitive procurements resulting in higher costs to state agencies.”

Each of the OSA reports contained best practices and recommendations, including that the Legislature comprehensively review exceptions and exemptions in the Procurement Code, consider imposing dollar limitations on exceptions and exemptions, and address loopholes in and expanding campaign contribution disclosure laws.

New Mexico’s authority for procurement is dispersed across state government, with agency-based chief purchasing officers making most of the decisions about what, when, and how to buy, within the limitations of the Procurement Code. SPD’s primary purview in statute is to develop rules to implement the Procurement Code and to conduct procurement activities, like invitations to bid and requests for proposals, only for the following:

- 1) Purchases for general services and goods above the \$60 thousand small purchase threshold,
- 2) Items and services not exempt from the Procurement Code, and
- 3) Agencies not excluded from the Procurement Code (see box at left and Appendix B).

The State Purchasing Division reports conducting 34 requests for proposals and 171 invitations to bid in FY19. Most of the 138 invitations to bid were for statewide and agency-specific price agreements, for which SPD is responsible for developing at the request of an agency. With price agreements, SPD competitively negotiates bids for goods or services and then negotiates a contract with one or more low-bid vendors. Once the price agreement contract is in place, any state agency or local public bodies can use the contract to purchase the goods or services on the agreements, saving them from having to go out to bid multiple times for otherwise standard items. The one exception is for IT professional service price agreements, in which SPD works in conjunction with the Department of Information Technology to negotiate. In FY19, agencies across New Mexico state government spent \$216.3 million against statewide price agreements.

Agencies and Purchases whose Contracts are Excluded from State Purchasing Division Review:

- Department of Transportation (for highway construction)
- The entire judicial branch
- The entire legislative branch
- The Boards of Regents of state’s constitutional colleges and universities
- The State Fair Commission (under \$20 thousand)
- Purchases from the instructional material fund
- All local public bodies
- Regional Education Cooperatives
- Charter Schools
- Medicaid-participating state health care institutions
- The Public School Facilities Authority

Regarding contracts, the responsibility for review and oversight is dependent on the type of contract. Before a (nonexcluded) agency enters into a contract, SPD makes a determination that it is for general goods or services or professional services. If it is a contract for professional services, SPD's Contracts Review Bureau reviews the contract with its own specific tools and guidelines. The Department of Information Technology also reviews the requests for proposals and contracts for IT goods and services in addition to SPD staff.

Beyond these program evaluations, the Legislature has very little oversight over contracting activities. Even though contracting and purchasing is the use of much of state-appropriated dollars, the Legislature has very few tools to monitor procurement activities or gauge the outcomes of agency contracts and purchases. A 2019 study from Wayne State University on legislative oversight confirmed this, saying that in New Mexico, “as in many other states, the legislature is not empowered to oversee state contracts, but legislators sometimes manage to monitor this sort of spending through audits and, in this case, program evaluations.”

This evaluation takes a first look at spending and performance analysis of two major state purchasing vehicles: statewide price agreements and contracts for staff-replacement services. The aim of this evaluation is to understand how effectively the state is spending procurement dollars and to make recommendations for how SPD and state agencies might better use spending and performance data to make more sophisticated purchasing decisions in the future. This evaluation addresses three key issues in state procurement. The first is the process for establishing and monitoring price agreements. The second is agency use of contractors in place of in-house employees. The final is the outdated systems SPD uses for procurement. The division lacks a centralized system that allows for tracking spending, evaluating vendor performance, or communicating data across agencies. A general methodology LFC staff used to track spend for this evaluation is outlined in Appendix C.



New Mexico's Statewide Price Agreement System Lacks Necessary Guardrails

Features inherent to New Mexico's price agreement system lead to off-contract spending and a loss of value.

Most states use statewide price agreements to simplify the buying process of common items and services. With statewide price agreements, the State Purchasing Division (SPD) periodically requests bids on frequently purchased items and services, like computers, vehicles, office furniture, and temporary staffing service. SPD then develops a contract with one or more low-bid vendors for a set ceiling price, a set discount, or both. Theoretically, SPD is negotiating the terms of the price agreements by leveraging the buying power of the entire state for discounts. SPD encourages agencies to further negotiate with the price agreement vendors for specific contracts, but LFC staff found little evidence that this occurs in practice. Most price agreements are negotiated for one to four-years at a time, many with terms allowing for extensions and changes in price. In total, SPD oversees 380 statewide price agreement with over 600 vendors on behalf of all state agencies and local governments. In FY19, agencies spent approximately \$216 million against those agreements.

SPD is also a participant in the National Association of State Purchasing Officials (NASPO) ValuePoint cooperative purchasing program, meaning they can participate in multi-state price agreements. As of September 2019, New Mexico was the lead state in negotiating four NASPO price agreements (with 16 vendors) and participating in an additional 27 NASPO price agreements with 89 vendors.

The federal government also negotiates its own version of price agreements via the General Services Administration's (GSA) schedules. GSA has agreements for over 11 million products and services. While New Mexico state agencies are not allowed to purchase off GSA schedules directly, they can ask SPD to negotiate a separate statewide or agency-specific price agreement with a GSA vendor as long as the vendor offers an equal or better price than is offered on the GSA schedule. Agencies purchasing below the small purchase threshold can also buy goods or services from any vendor, including those on GSA schedules.

Price agreements allow agencies to purchase millions of dollars' worth of outsourced items and services without the protections of contracts. When federal agencies want to purchase hourly services from a GSA schedule, they are required to first develop a statement of work as well as issue a request for quotes for any purchase over \$10 thousand (Federal Acquisition Regulation, 48 C.F.R. § 4.804-2). New Mexico agencies purchasing hourly services from a statewide price agreement, however, are not required to shop around for better rates or even write down what work they expect the vendor to perform, no matter the total cost. This puts the state at risk, allowing vendors

Beginning Points for Most Statewide Price Agreements



NEW MEXICO
GENERAL SERVICES DEPARTMENT



Since August 2015, the General Services Department purchased \$4.9 million worth of services from Trane under a price agreement without additional statements of work attached to the purchase order in SHARE.

to invoice the state for services that may not meet the expectations of the agency.

In other words, statements of work are not universal in state contracting. That said, some agencies do, on their own, request vendors develop a statement of work before completing a purchase order for services. For example, between November 2016 and June 2019, the Department of Information Technology (DoIT) spent over \$8 million on radio equipment and support services via a price agreement with Motorola. Included in that \$8 million was a purchase order for \$574 thousand in December 2017 for DoIT's Statewide Infrastructure Replacement and Enhancement (SWIRE) project. The statement of work for the \$574 thousand SWIRE project was relatively robust, with set deliverables for the services and payments tied to those services.

GSD issued best-practice guidance for agencies using price agreements, but rescinded the guidance in 2019. In 2017, the State Purchasing Division issued helpful guidance to agencies using price agreements that purchases for general services of \$60 thousand or less, or professional services \$5,000 or less, can be made via direct purchase orders from agencies to the vendor under a statewide price agreement. According to that guidance, purchases for any services over the thresholds must occur under a separate contract between the agency and vendor according to the terms of the price agreement, though the contract does not need to be competitively sourced. The full text of the guidance is in Appendix D.

However, SPD rescinded that guidance in July 2019. As such, the Legislature may want to consider galvanizing the terms of the 2017 guidance into the Procurement Code. Further, the Legislature should consider requiring agencies to comply with federal regulations requiring purchases of general services between \$10 thousand and \$60 thousand only occur after the agency has gathered and documented three quotes.

Both LFC and the Office of the State Auditor noted price agreements do not encourage agencies to spend thriftily. This is especially true of price agreements that offer a wide range of products. Without any accompanying advice to agencies to aid them in deciding between products that are "nice-to-have" versus "need-to-have," agencies sometimes receive wildly different quotes for variations of otherwise similar products. The Office of the State Auditor further flagged agencies are not required to select the lowest price when there is a suite of options on a price agreement, solicit quotes from additional sources, "or in any way research that the agency is receiving the best value when using a price agreement."

Price Agreements allow agencies to buy a wide variety of items without accompanying guidance about which items the agency *should* buy.

In August 2018, the Department of Transportation (DOT) purchased a high trim level 2019 Dodge Durango R/T for \$38,420 from Melloy Dodge in Albuquerque under a statewide price agreement. While the discount for that vehicle is significant (the retail price on the Melloy website was over \$46 thousand), the price of DOT's Durango is significantly more than the \$25,860 for the State Land Office spent on a 2018 Durango under the same price agreement in April 2019.

The Department of Game and Fish saved 11 percent on an ammunition purchase by searching for the lowest price outside of a price agreement.

Ammunition purchases exemplify the need for informed purchasing off statewide price agreements. In FY18, the Attorney General, Department of Game and Fish, Corrections Department, and Department of Public Safety each purchased the same specific ammunition (9mm, 124 grain, full metal jacket round) at various prices. DPS and Corrections used the statewide price agreement price of 19 cents per round and spent \$13.3 thousand and \$3,800, respectively. The Attorney General did not use the price agreement and paid 22 cents per round, 16 percent more than the statewide price agreement. Conversely, Game and Fish went outside the statewide price agreement and purchased 100 thousand rounds at a price of 17 cents, saving 10.5 percent compared with the price agreement, for a total spend of \$17 thousand.

Price agreements inherently allow agencies to make small, fragmented purchases, likely diluting potential discounts to be had from purchasing in bulk. To illustrate, in four months, 10 state agencies purchased eight different models of Dell laptops (81 laptops in total.) Except for the Department of Transportation, all agencies purchased fewer than 10 laptops at a time. Not surprisingly, the discounted costs varied wildly and, in some cases, agencies paid more for laptops than the manufacturer suggested retail price, likely due to unspecified product upgrades.

Because agencies are not required to use price agreements nor seek better prices, LFC staff saw wide variation in pricing for otherwise standard items.

Example: Purchases for 9 millimeter, 124 grain, Full Metal Jacket Bullets Purchased in FY18

Agency	Price per Round	Purchasing Method
Attorney General	\$0.27	Small Purchase
Game and Fish	\$0.17	Small Purchase
Corrections	\$0.19	Statewide Price Agreement
Public Safety	\$0.19	Statewide Price Agreement

Source: SHARE

Price Agreements for Dell Latitude Laptop Purchases, January to April 2019

Agency	Laptops Purchased	Laptop Model	Price Paid Per Laptop	Price Agreement Used?	Highest MSRP + GRT for that Model on Dell.com	Discount (Overpaid)
Administrative Office of the Courts	3	5490	\$1,252	Yes	\$1,940	\$688
5th Judicial District Attorney	2	5580	\$1,484	Yes	\$1,091	(\$393)
8th Judicial District Attorney	2	5491	\$1,775	No	\$1,766	(\$9)
11th Judicial District Attorney (Div. I)	5	5591	\$1,882	Yes	\$1,929	\$47
13th Judicial District Court	3	5490	\$1,375	No	\$1,940	\$565
Regulation and Licensing Dept.	2	5580	\$1,096	Yes	\$1,091	(\$5)
Public Regulation Commission	2	5590	\$1,416	Yes	\$1,940	\$524
Children, Youth, and Families Department	1	5490	\$1,329	Yes	\$1,940	\$611
Children, Youth, and Families Department	2	5490	\$1,502	Yes	\$1,940	\$438
Children, Youth, and Families Department	3	5490	\$1,767	Yes	\$1,940	\$173
Department of Transportation	22	5580	\$1,194	Yes	\$1,091	(\$103)
Department of Transportation	25	5590	\$1,229	Yes	\$1,940	\$711
Public Education Department	8	3590	\$777	Yes	\$997	\$220
Public Education Department	1	7390	\$2,632	Yes	\$1,951	(\$681)

Source: New Mexico Sunshine Portal monthly purchase reports

New Mexico could mirror the federal government in standardizing computer setups and consolidating hardware contracts to drive down costs. Agencies that purchase standardized products in bulk are in a better position to negotiate prices with vendors. Knowing this, in October 2015, the federal Office of Management and Budget (OMB) announced a new policy for purchasing computers and other IT products.¹ In its announcement letter, OMB administrators noted, “Instead of the [federal] Government banding together as the world’s largest buyer to negotiate better prices and terms, too

¹ U.S. Office of Management and Budget Memorandum M-16-02. Category Management Policy 15-1: Improving the Acquisition and Management of Common Information Technology: Laptops and Desktops. Available at <https://obamawhitehouse.archives.gov/sites/default/files/omb/memoranda/2016/m-16-02.pdf>

IT agencies in other states oversee computer hardware refresh and purchasing cycles.



The Indiana Office of Technology coordinates a rolling, four-year PC refresh across all state agencies.



Alabama's Office of Information Technology requires all agencies to develop an IT refresh policy and provides guidance to agencies on PC lifecycle timelines.

often it buys like thousands of small businesses, making smaller awards for the same IT products across multiple agencies, and sometimes within a single organization.”

A prior federal study found about 80 percent of federal agencies’ computing needs could be satisfied through one of five standard desktop or laptop setups. As such, OMB’s 2015 policy required agency chief information officers to procure at least 80 percent of new laptop and desktop computers according to those standard specifications. Further, OMB directed federal agencies to adopt uniform refresh cycles, rather than replacing computers on an ad hoc basis. “Uniform refresh plans allow agency leadership to budget for laptops and desktops in a more strategic and predictable manner [... and also to] host semi-annual buying events to leverage buying and drive down costs.”

In New Mexico state government, IT purchasing and refresh strategy is left to individual agencies, and the result is the wide variety of computer systems and small purchase numbers. The Department of Information Technology (DoIT), however, is statutorily responsible for providing IT standards and guidance to agencies and should be doing more to achieve consolidated and standardized statewide IT procurement. As a start, DoIT should create regulations to limit the variety of desktop and laptop configurations that agencies can purchase, as well as develop common standards for IT refresh and bulk purchasing cycles.

GSD is using an energy performance price agreement to authorize millions of dollars of capital improvements without typical review. Long-term capital planning through project prioritization is a best practice allowing for prioritization of needs to guide allocation of limited resources. This is recognized in statute, Section 6-4-1 NMSA 1978, which requires departments and agencies to annually provide a statement of all capital projects proposed for the ensuing four years to the Department of Finance and Administration.

Statewide price agreements make the process of competitive purchasing easier for agencies by simplifying the “how” of purchasing. However, price agreements also make it easier for agencies to skip the “why” – allowing them purchase any item or service on a price agreement without justification, even of very complicated services or niche goods worth millions of dollars. For one example, GSD has price agreements for energy performance contracting services, in which an agency can contract with a company to perform an “energy audit” of a facility and then provide energy upgrades (i.e., solar panels, LED lights) in exchange for the state paying their energy savings back to the company over a fixed rate and time.

Determining if energy performance contracts are advantageous is a complicated task requiring energy price forecasting, expertise about a building’s lifecycle, and the ability to decide if the performance contract is a better deal than just purchasing the building upgrades outright. Recognizing this complex calculus, the U.S. Department of Energy recommends government entities first “convene a decision-making team including administration, finance, legal, procurement, facilities, maintenance, and other key staff members” before deciding if energy performance contracts are a good fit. However, New Mexico’s price agreement for energy performance contracts allows agencies to skip those steps and enter directly into contracts.

GSD’s Facilities Management Division issued a \$20 million purchase order to Trane off a price agreement “to provide Statewide Energy Performance contracting for guaranteed utility savings.”

Notes in the purchase order entry in SHARE indicate the division plans to increase the amount of the order to \$31.7 million in the future.

Some price agreements allow agencies to purchase complicated or niche products and services without the necessary expertise to judge if that product or service is what the agency really needs.

In July 2019, the New Mexico Department of Homeland Security purchased a pair of drone aircraft and a command center for \$466 thousand off a price agreement, based on a federal price schedule. Albuquerque-based Silent Falcon UAS Technologies manufactured the drones, but the department bought the drones through a value-added, third-party vendor, Santa Fe-based Wildflower International. The department may have actually needed hundreds of thousands of dollars' worth of drones, but it was likely a one-off need. And yet, now that SPD negotiated a statewide price agreement, theoretically any agency at any time could purchase the same drone setup.



Photo Credit: Silent Falcon UAS

GSD could take several steps to mitigate the number of complicated or otherwise high-risk purchases made without adequate review.

SPD should consider how to best limit vendor selections for small purchases and price agreements. Right now, any state agency may purchase from a U.S. General Services Agency (GSA) agreement vendor without having to use an additional competitive process, so long as SPD is able to negotiate a state-specific price agreement at or below the GSA rate. GSA reports they have agreements for over 11 million products and services, meaning that state agencies could purchase almost anything via GSA agreements. However, the concept of leveraging the significant buying power of the state for better pricing only holds true if the state is harnessing its purchasing power into a minimized amount of large transactions, rather than many, many small transactions with a wide variety of vendors. When agencies make bulk purchases, they should be able to negotiate volume discounts from vendors (see “Category Management” on the next page.) However, if agencies are artificially splitting their purchases into many purchases from many vendors, they are much less likely to be able to negotiate a deal. As such, SPD may want to consider renegotiating price agreements with as few vendors as possible, while remaining cognizant of the geographical distribution of vendors throughout the state. They may also need to consider how to best limit agency purchases of outside of existing price agreements. This, of course, puts the onus of negotiating the best rates possible for price agreements on SPD. To ensure that SPD is securing the best rates possible, they will need to develop better business intelligence on agency spending patterns and make rules to consistently and more frequently put statewide price agreement services out to bid.

SPD should consider how to best limit the products and services available on price agreements. Similar to limiting vendors, if state purchasing can better standardize the types of products and services available

Most agencies limit the number of vendors they buy from, but a few agencies buy from thousands of different vendors

Unique Vendors	Number of Agencies
1-49	42
50-99	35
100-199	19
200-499	14
500-999	6
>1,000	2

Source: Sunshine Portal

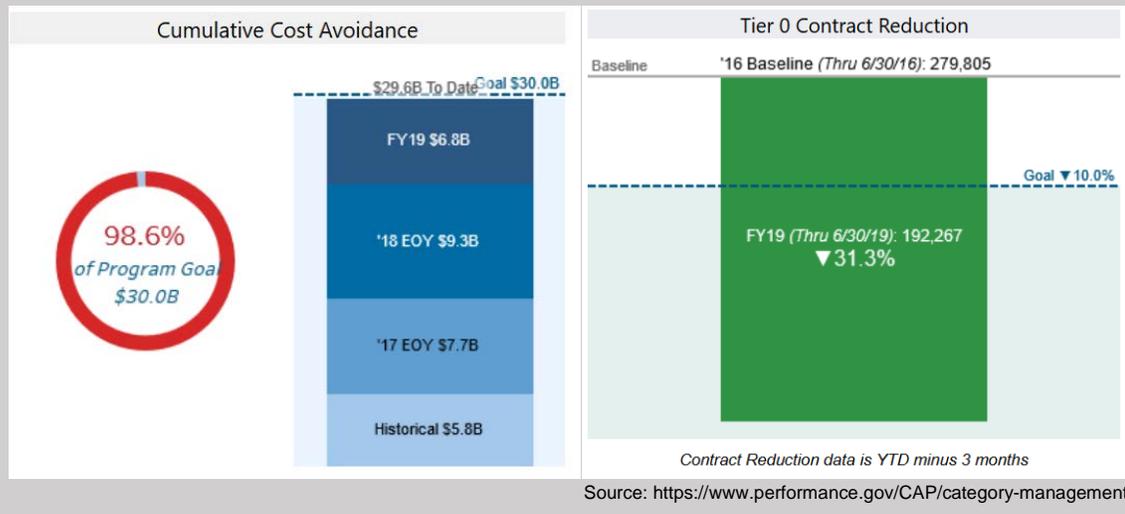
The concept of leveraging the significant buying power of the state for better pricing only holds true if the state is harnessing its purchasing power into a minimized amount of large transactions, rather than many, many small transactions with a wide variety of vendors. In the above table there are a few agencies that could likely benefit from activities to consolidate the number of companies they purchase from.

through price agreements, then it could, theoretically, negotiate a better price for those products (see the previous Dell laptop case study). Further, SPD should be limiting purchases from price agreements to those items and services that do not need specialized or technical knowledge to procure, such as niche products and professional services. Purchases of these types of specialized products and services often carry additional risk and should, therefore, be purchased via a contract vehicle that allows the state to recoup its money if the product needs to be returned or the service needs to be terminated.

Category Management as a Strategy to Save

Since 2015, the federal government has been working under an initiative to leverage common contracts and bulk buying to drive savings. The initiative, called “category management,” hinges on requiring federal agencies to (1) have an annual goal to bring more of their annual spending under “best in class” contracts with a limited number of vendors and (2) develop demand management strategies to eliminate inefficient purchasing and consumption behaviors.

As of October 2019, the U.S. General Services Administration reports a 31 percent reduction in one-off, agency-specific contracts and \$30 billion in cumulative cost avoidance since the category management initiative began.



SPD should ensure contracts made against price agreements follow the terms of the price agreement. In 2017, SPD issued guidance that required separate contracts be formulated between agencies and price agreement vendors for general services over \$60 thousand or professional services over \$5,000 and further requires these contracts follow the terms of the price agreement (see Appendix D). However, SPD rescinded this guidance in 2019 and. LFC analysis found instances of contracts for staffing services made against price agreements that did not include hourly rates (see ATA Services, Inc. case study in the next section) and seemed to be well outside the scope of work of the original price agreement. SPD should be periodically reviewing the spending against these contracts for consistency with price agreements.

The State Purchasing Division spent over half a million dollars in staff time executing 313 seldom-used price agreements. In FY19, there were 313 active statewide price agreements against which agencies bought less than \$20 thousand in aggregate. Twenty thousand dollars is the state’s regulatory small purchase limitation for goods and services – meaning that agencies can purchase goods and services under \$20 thousand by simply issuing a purchase order directly to a vendor. These price agreements with low-level spending,

Statewide Price Agreements with the Smallest Spend in FY19

Vendor	Total Purchase Orders in FY19	Purpose
STRATEGIC MARKET ALLIANCE	\$66.58	Facilities Maintenance and Repair & Operations and Industrial Supplies
TORMEY BEWLEY CORPORATION	\$68.37	Collection Services
WEISE AUTO SUPPLY INC	\$69.80	Automotive & Heavy Equipment Filters
VALUTEL COMMUNICATIONS INC	\$84.59	Telecommunications Local Exchange Carriers
RWAAS INC	\$103.42	Automotive Maintenance
BAKER UTILITY SUPPLY CORP	\$114.76	Water Service Connection Equipment
PERMA -BOUND BOOKS	\$122.40	Hardcover Books
BROWNS SHOE FIT CO LLC	\$135.00	Safety Boots and Slip Resistant Footwear
ROWAN ENTERPRISES LLC	\$138.38	Footwear, Safety Boots & Slip Resistant Footwear
AVANTI ENTERPRISES INC	\$149.00	Hardcover Books

Source: SHARE

therefore, are practically useless for agencies. Despite their limited utility, the development of these low-level price agreements cost State Purchasing staff time. The State Purchasing Division reports statewide price agreements take between 63 and 101 days each to negotiate. As such, the division could have saved thousands of man-hours and dollars if they could have foreseen that those 313 price agreements would have been unnecessary (assuming a wage of \$26/hour for an SPD contract specialists and assuming they spend one hour per day on the agreement, 313 agreements * 63 days * 26/hour = \$513 thousand.) Given that the total spend on the 313 was under \$2 million in FY19, it is unlikely that the benefit to the state exceeded the over \$500 thousand price tag of putting the agreements in place.

Many of these low-use price agreements are also among the 206 statewide price agreements used by a single agency in FY19 – further calling into question their merit as *statewide* price agreements.

Georgia’s state purchasing office reported it analyzes purchasing activity from its statewide price agreements regularly, and the office has a rule of thumb that price agreements should have at least \$1 million of spending against them annually and benefit more than one agency to be worth staff time. Likewise, New Mexico’s State Purchasing Division could begin tracking annual spending with all vendors under statewide price agreements and, like Georgia, adopt internal rules dictating minimum usage necessary to continue to negotiate price agreements with vendors conducting very little business with state agencies. It is worth noting that local public bodies may be using some statewide price agreements that appear as low use, but because local public bodies don’t report their purchase data to SPD, there is no way to determine actual price agreement spend across all purchasing entities. This should reduce unnecessary staff time spent negotiating low-utility price agreements and free up staff to instead perform business analytics and intelligence to better inform state purchasing decisions.

The State Purchasing Division regularly negotiates price agreements open only to a single agency, but the utility of State Purchasing doing this for the agency is unclear. Nothing in the Procurement Code restricts the State Purchasing Division from developing regulatory guidelines to prioritize its involvement in agency-specific price agreements. As such, LFC staff recommend the division develop guidelines that would only necessitate the division’s staff involvement in the development of agency-specific price agreements if

1. The price agreement would likely benefit more than the requesting agency,
2. The single-agency price agreement would result in significant levels of expenditures, or
3. State Purchasing Division staff could negotiate better terms and pricing than the agency chief procurement officer.

A more beneficial role for State Purchasing Division staff to play in agency-specific price agreements is likely supplying business analytics and intelligence to agencies. State Purchasing should be tracking spending against agency-specific price agreements in the same way they should be tracking spending against statewide price agreements. Expert purchasing staff at the division could then have annual meetings with agencies to recommend which agency-specific price agreements to drop or renegotiate for better discounts in the future, based on the agency's past purchasing behavior.

SPD is required by statute (Section 13-1-95 E. NMSA 1978) to procure a price agreement for any local government, school, or other subdivision of the state that requests one. In order to give SPD more discretion over which price agreements are most beneficial, the Legislature may want to consider changing the statute so that SPD "may" procure these price agreements on behalf of localities, rather than being mandated to do so under any circumstances.

Recommendations

- The Legislature should consider amending the Procurement Code in 13-1-129 NMSA 1978 such that:
 - Purchases against a price agreement for general services over \$60 thousand or professional services over \$5,000 must occur under a separate contract with a defined scope of work between the agency and vendor according to the terms of the price agreement.
 - Purchases of goods or general services between \$10 thousand and \$60 thousand may only occur after the agency has gathered and documented three quotes. These quotes must be documented in a searchable form in the purchase ordered logged into the SHARE statewide financial information system.
- Before November 2020, the State Purchasing Division should undertake an effort to analyze spending on current price agreements and create an action plan for consolidating the number of price agreements into fewer, more frequently used agreements with fewer vendors. State Purchasing should report on the outcomes of the exercise to the Legislative Finance Committee at the General Services Department's 2020 budget hearing.
- The State Purchasing Division should cease renegotiation of price agreements with annual spending below the \$20 thousand regulatory small purchase threshold. SPD should instead focus efforts on streamlining vendor numbers and securing better pricing on price agreements for items agencies regularly buy.

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- The Department of Information Technology should develop standard computer configurations, require that 80 percent of state agency computer purchases fit within these standards, and develop uniform computer refresh guidance for executive agencies.
 - The Legislature should consider amending the “shall” in Section 13-1-95 E. NMSA 1978 to a “may” regarding the State Purchasing Division’s mandate to procure price agreements for local public bodies.

State Government Relies on Temporary Staff and Professional Consulting for Daily Operations

Agencies are not required to track or justify their use of contracted staff.

New business practices, communications, and technologies have led to the emergence of the “gig economy.” The modern labor market includes a variety of employment arrangements beyond the traditionally defined employment. According to a 2018 report from the U.S. Bureau of Labor Statistics, an estimated 15.5 million U.S. workers have alternative arrangements for their primary employment – this includes independent contract workers, temporary agency workers, workers provided by contract firms, and on-call workers.

A 2016 article from the Pew Charitable Trusts noted state governments have long used independent contractors and temporary staff for seasonal jobs, emergency vacancies, and outside expertise. However, recent evidence suggests state governments are using alternative-arrangement employees with increasing frequency and for lengths beyond historical norms.

In New Mexico, no single agency is tasked with oversight on temporary employment and there are no requirements that state agencies justify any decisions regarding contract staff augmentation. A serious challenge in understanding contracting and temporary staffing use within state government is the lack of collected, and consequently analyzed, data. As most states do not track how many people are employed through nontraditional arrangements, it is challenging, if not impossible, to determine whether agencies are saving money using nontraditional employees. To fill this knowledge gap, SPD will need to work with the Department of Finance and Administration and the State Personnel Office to develop regular methods to collect, analyze, and report data on temporary employment use, with special attention paid to the length of the contracts, number of contract renewals, and contract amount relative to full-time employee pay for similar tasks and duties. This work would align with SPD’s statutory duty in Section 13-1-95 (3) NMSA 1978 to work with the Department of Finance and Administration “to prepare statistical data concerning the acquisition and usage of all services, construction, and items of tangible personal property by state agencies.”

Across all agencies, the amount spent on professional service contracts has declined over the past five years; however, a few agencies buck this trend, growing their contract spending by tens of millions over the same period. The New Mexico Procurement Code defines professional services as “the services of architects, archeologists, engineers, surveyors, landscape architects, medical arts practitioners, scientists, management and systems analysts, certified public accountants, registered public accountants, lawyers, psychologists, planners, researchers, construction managers and other persons or businesses providing similar professional services, which may be designated as such by a determination issued by the state purchasing agent or a central purchasing office (13-1-76 NMSA 1978). Several large agencies, including DOH, HSD, and CYFD, have drastically reduced their expenditures on professional services contracts (\$98.9 million in reduction collectively.) However, this decrease masks significant growth in contracting at other agencies, including \$20 million at the State Investment Council – the agency

**Over Five Years,
Agency Spending on
Professional Services
Contracts Decreased
27 percent while
Spending on Personal
Services and Benefits
increased 20 percent
(in thousands)**



Source: LFC Files

with the highest expenditures on professional services contracts – and \$10.9 million at DoIT (see Appendix E for more details).

The state spent an estimated \$10.6 million on professional services provided by independent contractors in FY19, but the bulk of this spending went to only a few individuals. While the 31 independent contractors paid more than \$60 thousand in FY19 only comprise 4 percent of all independent contractors, they account for roughly 25 percent of total independent contractor spending by the state (\$2.7 million). Independent contractors paid between \$20 thousand and \$60 thousand make up another 45 percent of the state’s spending on independent contractors.

Between FY18 and FY19, the Department of Health spent \$2.8 million on independent contractors, the most of any agency, followed by Division of Vocational Rehabilitation (\$1.7 million) and Administrative Office of the Courts (\$1.7 million). Common professional services provided by independent contractors for DOH include behavioral healthcare and support, training services, harm reduction, prevention services, and screenings and assessments.

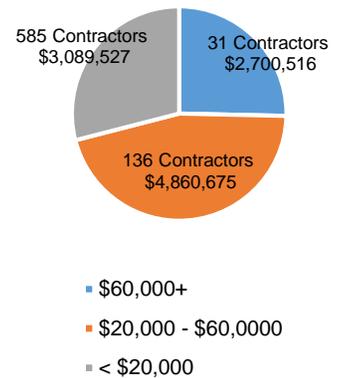
Professional service contracts for specialized engagements lack oversight and accountability.

In other states, agencies are required to justify their use of consultants or professional services. In Texas, state agencies must justify their need for consultant services to the state’s Budget and Policy Division (the Texas equivalent of the Department of Finance and Administration) for work exceeding \$15 thousand. The state agency secretary is required to fill out an affirmation that includes this statement: “Our state agency requires the consulting services because we have a substantial need for the consulting services and we cannot adequately perform the services with our own personnel or obtain the consulting services through a contract with a state governmental entity.” The division must then certify the need for the consultant before the agency can enter into any contract or professional service agreement with a consultant. A similar process must be completed by state agencies in Wisconsin for all services contracts over \$50 thousand. Wisconsin state agencies are additionally required to complete a cost-benefit analysis before contracting for services to compare the costs of employing contractors versus comparable state staff. In New Mexico, no such justification for services contracts exists, only a certification the contract complies with state laws. Consequently, the state likely outsources professional service work more frequently, and at a higher wage rate, than it would if agencies were required to document and demonstrate need.

Between FY17 and FY19, executive agencies spent an estimated \$75.7 million on outside attorney services. Forty percent of that \$75.7 million went to 16 law firms paid over \$1 million each. Almost all these law firms have contracts with multiple agencies. In some cases, agencies are likely contracting with outside law firms to perform work left from vacant staff attorney positions within the agency. As of July 2019, the 2nd Judicial District Attorney has 15 vacant staff attorney positions, the Attorney General has 12, and the Human Services Department has nine.

New Mexico state agencies are able to contract for outside legal counsel with little additional oversight. The American Bar Association’s model procurement code recommends that states add a section to their procurement

31 Contractors Receive One-Quarter of all Professional Services Contracting Dollars



Source: Sunshine Portal

code that states “no contract for the services of legal counsel may be awarded without the approval of [such officer as may be required by applicable law].” The model code goes on to note that many states by statute direct their Attorney General to provide legal services for the agency and also define what agencies other than the Attorney General may provide counsel, as well as whether the Attorney General or the Governor, or both, must approve such decisions. LFC staff found several specific example of states that require an additional level of scrutiny when agencies wish to contract for attorney services.

- In Texas, agencies may not retain or utilize services provided by outside counsel without first receiving authorization and approval from the state’s Office of the Attorney General, regardless of the source of funds that would be used to pay for such legal services. No such review occurs in New Mexico.
- In Oklahoma, agencies are only allowed to contract with private attorneys if the Attorney General is unable to represent the agency due to a conflict of interest or lack of expertise. In that case, the agency must select attorney services from a list of pre-approved vendors kept by the Attorney General’s office.
- In Florida, an agency requesting approval for the use of outside legal counsel must first offer to contract with the state’s Department of Legal Affairs for attorney services at a mutually agreed cost. The Attorney General then decides on a case-by-case basis to accept or decline to provide attorney services.

The Office of the State Engineer (OSE) relies heavily on contractors to provide professional and technical services. In FY18, OSE’s actual spending on contractual services amounted to \$4.8 million, roughly 15 percent of its total FY18 budget. The budgeted and requested amounts for contractual services in FY19 and FY20 were both around \$7.5 million, representing 19 percent of forecasted spending in each year. LFC estimates one-third of contractual services in FY18 and FY19 were for professional services.

Following a request for proposals issued in March 2019 by OSE’s Interstate Stream Commission for “professional water resource services,” the agency entered into 16 professional services agreements with RFP respondents. The price agreements, valid through FY23, include specific scopes of work in the disciplines of surface water hydrology, fluvial geomorphology, geohydrology, biology/ecology, and water resource planning. While the state might require professional services contracts for the more specialized, and presumably infrequent, tasks outlined in the RFP, it is unclear whether the same is true of the more frequently performed tasks, such as biology/ecology and water resource planning. The need for these more common services is likely ongoing, and the state could save money by using permanent staff to provide them. However, because the state does not collect and analyze data on professional service contract use, it cannot determine if the \$130 per hour charged by the independent contractor to provide water resource planning is a good use of state resources.

State agencies use temporary employment price agreements to contract with specific individuals.

The state uses price agreements to provide high-skill, high-pay consultants – many of whom are former state employees – at rates much higher than equivalent employees earn. ATA Services, Inc. is a Denver-based company with an Albuquerque office that “provides staff augmentation support and services to government and commercial clients for short-term, long-term, temp-to-hire, and full-time assignments at competitive rates.” The state of New Mexico currently holds three different price agreements for staff augmentation with ATA. The state has thus far spent \$9.8 million against those price agreements since their inception in 2017.

Beyond these price agreements, the state also has several individual contracts with ATA for the services of high-skill, high-pay contract workers. While SPD guidance encourages agencies to enter into separate contracts for professional services over \$5,000, these contracts were for especially high-value, high-risk technical work; the referencing of a price agreement meant agencies could skip going through the request for proposal process.

One recent example, the Department of Information Technology (DoIT) established a contract with ATA in May 2019 for \$160,480.32 for the services of a former state employee – a procurement specialist at GSD and business analyst at DoIT – for 32 weeks (between the contract signature date of May 22, and December 30, 2019.) The contract was broken into two parts:

1. \$139,638.72 to develop and execute two RFPs for price agreements (one for Internet service provider services and another for outbound long-distance call services), and
2. \$20,841.60 for additional contract review and oversight services.

Over the same 32 weeks, the highest-paid IT procurement specialist at GSD will only earn \$44,381 – a mere 28 percent of the pre-tax pay GSD is paying ATA Services for the former employee’s work.

A professional services price agreement with a former state employee’s company pays him over 1,000 percent more to do the same work as when he was an employee. In 2017 the Department of Game and Fish established a price agreement with a former department pilot (officially, the former pilot’s consulting company) to provide pilot services. The price agreement states the department requires the pilot services for wildlife surveys, radio telemetry, and surveillance work. Records from the state’s web-based “sunshine portal” indicate the pilot position for the department was vacant in FY17. The price agreement specifically states the contractor “should have 250 hours’ experience flying a Partenavia P.68.” The hourly rate presented in the price agreement is \$350, along with a \$125 per diem rate, minus mileage rates. The price agreement also notes the agency shall provide the fuel.

Based on data from the sunshine portal, the department’s “airline pilot-A” received a salary of \$59,515.87 in FY16. This translates to an hourly rate of approximately \$28.61. The price agreement hourly rate of \$350 is a 1,123 percent increase over the full-time employee hourly rate calculated for FY16.

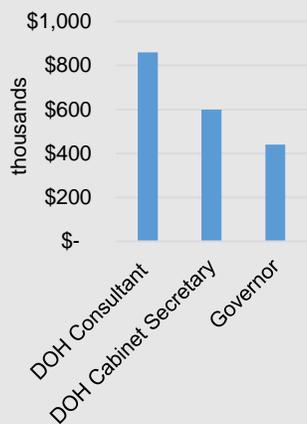
Temporary employment contracts commonly result in excessive hourly rates. LFC staff found three ATA Services consulting contracts with hourly rates ranging from \$138 an hour to \$904 an hour.

- A DoIT contract related to project management provided an hourly rate of \$181 (considering a 40-hour workweek.)
- A DoIT contract totaling \$82,559.85 for a former DoIT and HSD employee to develop and execute an “Executive Work Plan” provided an hourly rate of \$94 (considering a 40-hour workweek.) In September 2019, DoIT increased the contract to \$241.8 thousand for 13 months.
- A January 2017, Administrative Office of the Courts contract for six “Generalist II” employees for eight weeks of work for eight hours a day corresponding to AOC paying six employees approximately \$138 per hour inclusive of GRT. The contract was later proportionally amended to \$154,401.23 for 24 weeks of services.

A single independent consultant for the Department of Health billed the state an average of \$210,000 each of the past three years

The consultant is currently working with the state under a four-year contract valid through FY21 and worth a maximum amount of \$860,000, over double what the governor will make over the same time. The executive has cited low pay for cabinet secretaries in New Mexico – relative to other states – as a barrier in hiring practices.

Over four years, A DOH consultant will have been paid nearly double the governor’s salary



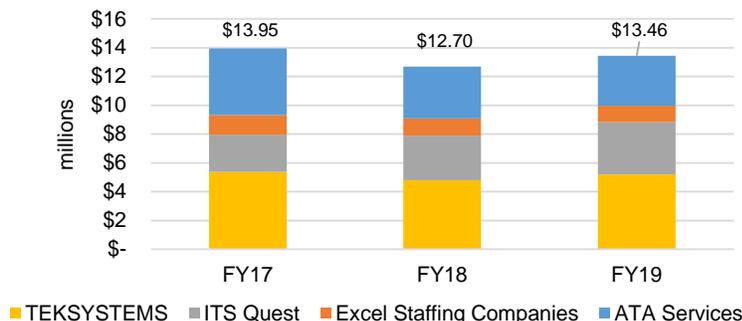
Source: SHARE, LFC Files

Statewide price agreements for temporary employment services are acting as long-term staffing solutions.

According to a 2015 federal survey by Accenture and the Government Business Council, governments principally use contract labor is to leverage outside knowledge and expertise on a *temporary* basis. The survey report also noted tradeoffs to using contract personnel, because hiring personnel in more cost-effective in the long run.

Currently, the state has seven statewide price agreements for “temporary employment services” and another two for “temporary administrative and professional services.” Between FY17 and FY19, ATA Services, Excel Staffing Companies, ITS Quest, and TEKsystems were the most commonly used companies for temporary staffing needs. In FY17, the state spent nearly \$14 million on temporary staffing from these four companies, decreasing to \$13.5 million in FY19. The state paid TEKsystems – a provider of IT temporary staffing, support services, and software development – the most in each of the three years, averaging around \$5.1 million annually. The state’s use of ATA Services for temporary staffing decreased by \$1.1 million from FY17 to FY19, a 25 percent reduction. Conversely, temporary staffing engagements with ITS Quest have increased by \$1 million since FY17. Use of Excel Staffing Companies by the state has remained stable with total annual expenditure ranging from \$1.1 million to \$1.3 million.

New Mexico Spends Between \$13 Million and \$14 Million Annually on Temporary Staffing



Source: LFC Files

In some cases, agencies are using temporary staffing agencies, through price agreements, to fill vacancies over long periods. For example, the Department of Homeland Security and Emergency Management used a price agreement with ATA Services to procure year-long engagements (2,080 hours) for multiple contract specialists, auditors, and administrative assistants. Additionally, the Facilities Management Division at GSD used ATA Services for the services of specific individuals over multiple years. In at least two instances, the Facilities Management Division used ATA Services to use the same individual in FY17, FY18, and FY19. In both cases, the former contracted temporary employee is now a full-time employee of the Facilities Management Division, according to the agency’s website.

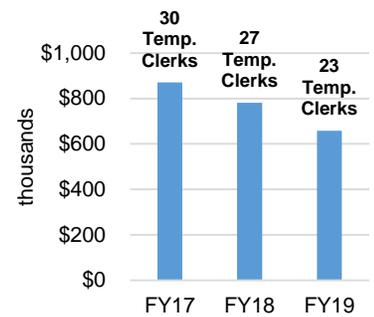
Another example, as noted in LFC’s 2016 program evaluation *Obtaining Value in State Procurement and Issues with Non-Competitive Methods*, DOH uses temporary staffing solutions for high-cost medical staff. The contracted

nursing services provided by Rapid Temps, Inc., have cost the department an average of \$1.9 million annually between FY14 and FY18. Despite LFC's continued urging for the department to decrease its reliance on contracted nursing staff, FY18's \$2.2 million spend on Rapid Temps exceeded the previous high point of \$2.1 million in FY15. Additionally, LFC found DOH to be noncompliant with the Procurement Code (Sections 13-1-1 through 13-1-199 and Section 6-5-3) in 2018 due to delays in finalizing nursing contracts with Maxim Healthcare Solutions, which resulted in accruing past due amounts totaling \$190,183.01. The need for improved planning around staffing capacity persists.

Conversely, agency leadership at the Motor Vehicle Division (MVD) has developed a plan to decrease a long-standing reliance on temporary employees. In FY17, MVD spent \$870 thousand on 30 temporary clerks contracted through ATA Services (14 related to IT implementations) at an hourly rate between \$17.99 and \$18.38. In FY19, MVD decreased spending on temporary employees by over \$200 thousand and reduced the number of temporary clerks to 23. As of September 2019, MVD has 65 clerk and clerk supervisor vacancies.

According to correspondence from TRD, department leadership has a goal of decreasing its reliance on temporary clerks. MVD leadership is working with staff to streamline recruitment techniques, such as using multiple fill advertisements and continuous position postings. Additionally, MVD is taking measures to appropriately classify positions and increase staff retention.

MVD is decreasing their reliance on temporary staffing to fill clerk positions



Source: Taxation and Revenue Department

Recommendations

- By FY21, the State Purchasing Division should work with the Department of Finance and Administration and the State Personnel Office to develop and make available to all agencies guidance on acceptable temporary and contract staffing uses.
- The Legislature should consider legislation mandating the Office of the Attorney General has first right of refusal for all legal services sought by state agencies and requiring the Attorney General maintain a list of pre-approved attorney service vendors in case the Attorney General's Office cannot provide the service.
- The State Purchasing Division should work with the Department of Finance and Administration and the State Personnel Office to develop regular methods to collect, analyze, and report data on temporary employment use, with special attention paid to the length of the contracts, number of contract renewals, and contract amount relative to full-time employee pay for similar tasks and duties. The State Purchasing division should report the outcomes of this activity to the Legislature before the 2021 legislative session.
- The State Purchasing Division should with the Department of Finance and Administration and the State Personnel Office to develop methods for state agencies to justify needs and determine the cost-benefit ratio before any services contracts above the small purchase limit are approved.

New Mexico Must Improve Its Systems and Structure to Achieve Cost Savings

State Purchasing Division technology and activities are insufficient to track spend and communicate vendor performance.

From the Governing Institute's 2019 Report on Procurement

5 Trends That Are Reshaping How Governments Buy

The Governing Institute's national survey of state procurement officials reveals innovative best practices and leading states

TREND No.1:

States are using data and analytics to drive better procurement.

Excerpt from the Texas Procurement and Contract Management Guide on the Importance of Spending Analysis

“Historical spend analysis is a tool used to optimize an agency's buying power. By studying an agency's purchasing data, public procurement professionals seek, among other things, to identify cost savings, which may be available by consolidating purchases or diversity, and areas for improvement of administrative efficiencies. For instance, a study of an agency's spending pattern may reveal that the agency is missing a volume discount opportunity when it makes multiple single purchases rather than consolidating the individual purchases together as a bulk purchase.”

One major shortcoming of the State Purchasing Division's structure is a lack of business analytics capabilities. In its 2019 report on procurement, the Governing Institute reports 70 percent of states implemented some method to capture use and spending data. However, the State Purchasing Division does little analysis of spend or vendor performance. Without these types of insights, the impacts of past spending cannot be used to inform future purchasing decisions.

The Procurement Code is clear the State Purchasing Division should be collecting procurement data for the state. Beyond conducting requests for proposals and invitations to bids, the State Purchasing Division's other central statutory duty is to monitor and track purchasing data. Specifically, Section 13-1-95 (3) NMSA 1978 directs the Purchasing Division to work with the Department of Finance and Administration “to prepare statistical data concerning the acquisition and usage of all services, construction, and items of tangible personal property by state agencies.” While purchase order data are uploaded to the sunshine portal and purchase records can be found in SHARE, there is no evidence of “prepar[ing] statistical data” or other analysis by State Purchasing. Additionally, the manner in which the data are uploaded to the sunshine portal or searchable in SHARE is not conducive for analysis by state agencies.

The State Purchasing Division is not specifically tasked with developing or using data, but the division needs to do so to help agencies become more intelligent buyers. The division has a staff of 15 agents who deal in purchasing goods and general services and another three staff dedicated to reviewing professional services contracts, but the division does not have any specific staff dedicated to business intelligence.

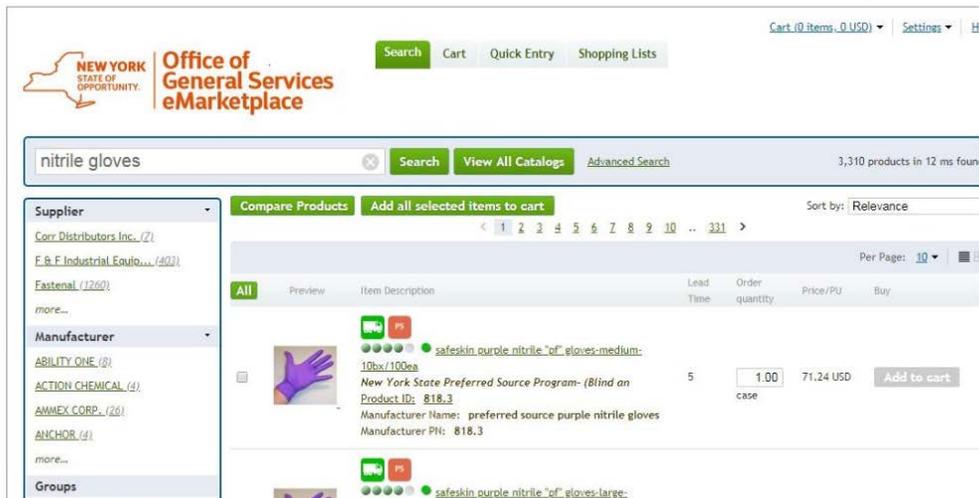
Many of New Mexico's roadblocks to smarter purchasing are related to insufficient and outdated procurement technology and systems.

Without the right procurement and accounting software, even basic analysis of spending, such as the analysis LFC staff completed for this evaluation, are cumbersome, overly sensitive to data entry errors, and ultimately based on paper records and signatures.

Several states have developed “eMarketplaces” to automate purchasing of items from price agreements. These eMarketplaces are centralized electronic catalogs that function much like online shopping platforms. The catalogs are populated with items from the many existing electronic catalogs of vendors with statewide price agreement contracts. Agencies search for the items they wish to buy and the eMarketplace returns a list of results with a picture or description of the good, vendor information, a link to the actual contract, and exact pricing. An agency can then add the good to its cart, and the system automatically populates a requisition or purchase order that is then sent to the appropriate staff for approval. This process ensures agencies are

consistently ordering items for the lowest price possible and that all information about the purchase is correctly recorded in the state's accounting system. These eMarketplaces also allow state purchasing staff to track spending on items within price agreements and how vendors are changing prices for products over time.

Screenshot of New York State's E-Marketplace – a Part of the State's PeopleSoft eProcurement Module



New Mexico's current reliance on manual input of pricing and coding by agency purchasing staff is inherently prone to errors, making accurate spending tracking difficult. As an example, of all purchases from vendors with price agreements, only about two-thirds referenced a price agreement. It is unclear if this was because the purchase was not aligned with the price agreement, or if the agency procurement officer simply failed to note the price agreement number in SHARE. This makes exact spend analysis difficult and leaves the state at a disadvantage when renegotiating price agreement terms.

The General Services Department will request funding in FY21, FY22, and FY23 to enhance SHARE's procurement functions. Theoretically, the functionality to build an eMarketplace already exists within the state's current version of its eProcurement module in its PeopleSoft-based SHARE system. In fact, New York state built its e-marketplace within its own PeopleSoft-based system. According to SPD staff, DoIT already has the necessary SHARE modules (e-procurement and strategic sourcing) purchased, but the strategic sourcing module has not yet been configured for use and is therefore not functional at this time. For FY21, the General Services Department is requesting \$1.9 million to take initial steps to implement the strategic sourcing module so that all vendor management, request for proposals, invitations to bid, and other sourcing event information will be housed within SHARE. According to GSD's request, the division's current procurement activities system is not "robust enough to pull the data required to perform in-depth analytics to use for business improvement or procurement statistics."

GSD reports the configuration of the strategic sourcing module is only the first phase of a larger implementation of e-procurement in SHARE. The department plans to request funding for the contract management module in FY22 and supplier e-catalog functionality in FY23.

Procurement is an ideal application for blockchain technology to simplify and expedite processes, reduce costs, increase transparency, and heighten security protocols.

The U.S. Department of Health and Human Services' Accelerate project, a blockchain technology, is expected to be fully operational in early 2020 and will enable next-generation procurement practices, such as real-time service and product price comparisons, similar to individual consumer's ability to compare prices on Amazon. Accelerate is expected to significantly reduce procurement timelines, lower contract spending, and improve overall procurement efficiency.

Blockchain is a technology that could benefit procurement systems soon, and software system improvements should consider blockchain compatibility. Blockchain defined in its simplest terms is “a time-stamped series of immutable record-of-data that is managed by a cluster of computers.” As noted in a recent workshop led by the National Association of State Procurement Officers, a basic feature of blockchain is the reduction of duplicative data entry for both procurement staff and vendors. Blockchain allows procurement professionals to have a single software system to access information, with each block automatically containing vendor information, past vendor performance, prior contract terms and conditions, prior pricing, and all other historical data. Additionally, as blockchain is a distributed network, a data change anywhere in the network (e.g., all state and local agencies in New Mexico) is instantaneously updated across the platform. As an example, if an agency renegotiates a better price with a vendor than what was on a price list, this newly negotiated price would automatically and instantaneously become available to all agencies without needing to go through a centralized point.

Eight states since 2016 have created task forces or working groups to study blockchain and enact legislation. The majority of these eight states are also inquiring as to how they themselves can implement blockchain to improve agency processes and spur economic development. Earlier this year, the Colorado Governor's Office of IT hired a “blockchain solution architect” to build and promote the state's blockchain infrastructure.

After an agency executes a contract, the State Purchasing Division does not, and likely cannot, track vendor performance.

SPD is limited in its ability to track and communicate potential hazards for underperforming vendors. There is no central repository for vendor performance information anywhere within the New Mexico state government, no agreed-on set of metrics by which agencies should be measuring vendor performance, and no staff with responsibility for collecting or disseminating this information. Other states, however, have developed processes and systems for contract management, and SPD may want to consider how New Mexico could best emulate these other states in the future.

Other states have implemented innovative solutions to monitor and communicate contract vendor performance. One example: The state of Texas requires all state agencies to use a vendor performance tracking system (VPTS) and submit vendor performance reviews within 30 days of contract completion for all contracts exceeding \$25 thousand. In 2015, the Texas Legislature enacted legislation requiring (1) the Comptroller's Office to establish an evaluation process that rates vendor performance on an A through F scale, (2) state agencies to review vendor performance (provide a brief report and assign letter grade) for contracts greater than \$25 thousand within 30 days of completion, and (3) purchasing agents and contract specialists to consult the VPTS prior to contract approval. The goal of the legislation is to aid state purchasers in “making a best-value determination based on vendor past performance,” as well as limit the state's exposure to vendors with a poor performance record. The Statewide Procurement Division's guidelines recommend the following for evaluating vendor performance:

- Compare actual performance against contract requirements,
- Compare actual expenditures with the approved budget,

- Compare the current period of work to prior periods for unexplained trends,
- Compare contractor performance with other contractors performing similar work, and
- Compare appropriate key metrics (e.g., cost per unit of service, percentage of fees charged, change in variable costs).

While the VPTS system was successfully implemented, an analysis of contract data by the Texas State Auditor’s Office revealed only 18.4 percent of contracts in the state database had a related VPTS score. Additionally, a survey found 57.1 percent of state purchasing agents did not consult the VPTS system during purchasing decisions. In response to agencies’ VPTS noncompliance, legislative staff recommended compiling an annual report with agency VPTS compliance and requiring VPTS completion prior to contract renewal or new awards for a given vendor.

Another example: A 2005 performance audit of Colorado’s contract management practices led to the state implementing a centralized contract management system four years later. In 2005, Deloitte and Touche conducted a performance audit of Colorado’s statewide contract management practices. Colorado, like New Mexico, has a decentralized state procurement model where most state agency purchasing offices have fully delegated procurement authority over their own purchasing. According to the Deloitte report, “This includes identifying a need for service, defining the scope of work, obtaining a qualified vendor, preparing the contract, and submitting the contract for the appropriate levels of review and approval before final contract execution.” Deloitte found Colorado did not have adequate centralized contract management systems and agencies were not consistently using performance measures in their contracts. Without those measures and monitoring, state staff was unable to determine if contractors met the performance expectations and standards included in the contract and ensure the state received full value for the funds it spent. Deloitte recommended the state evaluate the cost-benefit of implementing an integrated, statewide contract management system. It also recommended the state develop a methodology for determining what performance measures should be used in personal services contracts and the information needed to evaluate contractor performance. Colorado implemented a statewide contract management system (Cobblestone’s Contract Insight) in 2009.

State agencies frequently have few, or no, assurances procured goods or services will meet reasonable expectations. LFC’s review of numerous contracts revealed agencies very rarely retain amounts from vendors and instead disburse funds at the onset of an engagement or at specified time intervals regardless of deliverables. The notion of “retainages” in state procurement is most often associated with construction projects, where it is common to withhold a percentage of a project’s total budget. However, this practice has not extended to the professional services realm; most states tend to view retainages for professional services as optional and apply them on a case-by-case basis.

Instituting retainages for all professional services would provide some assurance to agencies that projects would be completed on time and to a satisfactory level, meeting the conditions outlined in the contract. In SPD’s sample contract for state agencies, Section 3. D. is a retainage clause and presents two choices:

By not using retainage, the Public Education Department has little recourse for a failed IT project.

The Public Education Department presented its IT “transformation project” for closeout to the state’s IT project certification committee. At the committee, DoIT staff noted, even though the contract was paid by June 2017, “many project deliverables and objectives were not met, and the lack of oversight failed to mitigate risks.” The \$1.2 million contract with Respec, an IT services company, included no retainage, and the entire fee was paid to the contractor at the onset of the failed project, two years before contract completion.

SPD's Sample Contract Language on Retainage

D. Retainage. [CHOICE #1 -] The Procuring Agency shall retain [INSERT percentage which is recommended at - twenty percent (20%)] of the fixed-price Deliverable cost for each Deliverable that is the subject of this Agreement as security for full performance of this Agreement. All amounts retained shall be released to the Contractor upon Acceptance of the final Deliverable. [CHOICE #2 -] Not Applicable – The Parties agree there is no retainage.

A number of additional clauses at the end of SPD's sample contract (page 11) "may be added as needed." Some of the additional clauses presented are indemnification, subcontracting, confidentiality, insurance, arbitration, etc. As the likely default contract for many state agencies, SPD should review its sample contract and carefully consider the "as needed" portion, knowing that some agencies are unlikely to substantially modify the existing version.

Recommendations

- The State Purchasing Division should issue guidance encouraging state agencies to retain a percentage for all projects until acceptance of the final deliverable.
- The State Purchasing Division should require its purchasing specialists to conduct spending business analyses. This is considered a best practice by the National Association of State Purchasing Officials, is in use in many other states, and would allow New Mexico to have a better understanding of procurement performance.
- The State Purchasing Division should find a way to share certain information across agencies, such as contracted hourly rates by vendor and vendor type, in a way that would help agencies strategically negotiate rates and deliverables.
- The Legislature should consider approving the General Services Department funding request for SHARE strategic sourcing and eProcurement modules for FY21 through FY23.
- The State Purchasing Division should explore how the SHARE and eProcurement module updates can be leveraged for vendor performance tracking.
- The State Purchasing Division should explore how blockchain technology can be integrated into future software improvements.
- The State Purchasing Division should consider developing and disseminating to state agencies a Model of Procurement Practices Manual; similar in nature to the annual Model of Accounting Practices Manual circulated by the Department of Finance and Administration.



MICHELLE LUJAN GRISHAM
GOVERNOR

KEN ORTIZ
CABINET SECRETARY

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General Services Department

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PURCHASING DIVISION
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RISK MANAGEMENT DIVISION
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STATE PRINTING & GRAPHIC SERVICES BUREAU
(505) 476-1950

TRANSPORTATION SERVICES DIVISION
(505) 827-1958

October 29, 2019

David Abbey
Legislative Finance Committee
State Capitol North
325 Don Gaspar, Suite 101
Santa Fe, NM 87501

RE: GSD response to LFC evaluation

Mr. Abbey:

Thank you for engaging the General Services Department (GSD) on the important work that the State Purchasing Division (SPD) does for taxpayers and the challenges it faces. I appreciate the courtesies and cooperation that you and your staff at the Legislative Finance Committee (LFC) provided to GSD in preparing Report 19-04 titled “Maximizing Value in State Procurement.”

I agree with many of the report’s recommendations, including those initiatives that would enhance SPD’s ability to analyze government-wide spending using statewide price agreements. A key to improving SPD’s spend analysis is funding for the SHARE strategic sourcing module. The strategic sourcing module, which we plan to implement over the next several years, will allow SPD to electronically manage contracts, make it possible for vendors to submit electronic bids and create a vendor catalog of goods and services. I am also committed to adding SPD staff who are skilled in analytics.

GSD agrees with the LFC that the Legislature should consider some changes to the Procurement Code. Those proposed changes include requiring agencies to obtain three quotes for some small purchases and mandating that agencies using statewide price agreements for general services over \$60,000 and professional services over \$5,000 enter into separate contracts. But I also want to point out, as your staff did in the report, that numerous exceptions and exemptions have been added to the Procurement Code since its enactment 35 years ago. The Procurement Code is past due for a comprehensive rewrite, and GSD is now working on an overhaul. We plan to submit a proposed revamp of the Procurement Code during the 2020 interim for consideration in the 2021 legislative session.

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We do encourage agencies to retain a percentage of vendor payment until all work outlined in contracts is done, and we encourage agencies to shop around and negotiate when using statewide price agreements. Prices in statewide agreements are meant to be ceilings, and agencies can often get better deals from awarded vendors through negotiation. I agree prices paid by agencies under statewide agreements should be shared across government, but SPD doesn't have access to price data. It also would be helpful if agencies were required to report data on vendor performance.

I agree with the report's recommendation that SPD should consider consolidating some statewide price agreements and eliminating those that are little used by state government agencies and local public bodies. However, there are challenges in accomplishing those tasks. It is impossible to determine the total spend on any statewide price agreement because local public bodies don't report their spend to SPD and we don't have the authority to force them to do so. Also, SPD is required to enter into a statewide price agreement when requested to do so by a local public body, and SPD obtains more than half of its funding from vendor fees generated by statewide price agreements. I am also concerned that reducing the number of statewide price agreements could result in fewer government contract dollars flowing to small New Mexico companies. In fact, SPD is trying to do just the opposite with its Buy New Mexico initiative by engaging and providing training for New Mexico businesses on opportunities to provide goods and services to the state and local governments.

The core mission of SPD is to provide a contracting means for most of state government to purchase goods and general services. SPD is responsible for issuing invitations to bid (ITBs) and requests for proposals (RFPs) for goods and general services over \$60,000. Agencies are responsible for small purchases of goods and general services and for issuing their own RFPs for professional services. But while SPD puts contracts in place, it has no authority over agency spending using those or other contracts. The report "Maximizing Value in State Procurement" recommends action in several areas where SPD lacks authority. We cannot require an agency to justify the need for a professional services contract or that an agency use a statewide price agreement for a small purchase. And we don't have the authority to police agency use of temporary employees. I believe the section of the report dealing with temporary employees was misplaced. The State Personnel Office (SPO) and/or the Department of Finance and Administration (DFA) are the more appropriate agencies to oversee spending on temporary staff. This is a policy, budget and personnel issue, not a procurement issue.

Again, I want to thank you and your staff for the evaluation of SPD and the recommendations contained in the report. We share a common goal: an accountable, fair, competitive, transparent and cost-effective means for government to procure goods and services.

Sincerely,



Ken Ortiz
Cabinet Secretary

cc: Senator John Arthur Smith
cc: Representative Patricia Lundstrom

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Appendix A: Evaluation Scope and Methodology

Evaluation Objectives.

- Provide an update of procurement-related policy actions in response to past evaluations and audits,
- Explore the development and use of price agreements as a procurement vehicle, and
- Determine the breadth and scope of professional services and staff augmentation contracts.

Scope and Methodology.

- Reviewed:
 - Applicable laws and regulations
 - LFC documents and Office of the State Auditor reports
 - SHARE purchase order and contract data
 - Available performance evaluations from other states and organizations
 - State Purchasing Division data
- Compared other states' central purchasing offices
- Interviewed State Purchasing Division staff and agency chief procurement officers

Evaluation Team.

Micaela Fischer, Program Evaluation Manager
Jacob Rowberry, Program Evaluator
Mitchel Latimer, 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 and his staff on October 22, 2019.

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

Jon R. Courtney, Ph.D.
Deputy Director for Program Evaluation

Appendix B: Exemptions and Exclusions from the New Mexico Procurement Code

13-1-98. Exemptions from the Procurement Code.

The provisions of the Procurement Code shall not apply to:

- A. procurement of items of tangible personal property or services by a state agency or a local public body from a state agency, a local public body or external procurement unit except as otherwise provided in Sections 13-1-135 through 13-1-137 NMSA 1978;
- B. procurement of tangible personal property or services for the governor's mansion and grounds;
- C. printing and duplicating contracts involving materials that are required to be filed in connection with proceedings before administrative agencies or state or federal courts;
- D. purchases of publicly provided or publicly regulated gas, electricity, water, sewer and refuse collection services;
- E. purchases of books, periodicals and training materials in printed or electronic format from the publishers or copyright holders thereof and purchases of print, digital or electronic format library materials by public, school and state libraries for access by the public;
- F. travel or shipping by common carrier or by private conveyance or to meals and lodging;
- G. purchase of livestock at auction rings or to the procurement of animals to be used for research and experimentation or exhibit;
- H. contracts with businesses for public school transportation services;
- 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;
- J. purchases not exceeding ten thousand dollars (\$10,000) consisting of magazine subscriptions, web-based or electronic subscriptions, conference registration fees and other similar purchases where prepayments are required;
- K. municipalities having adopted home rule charters and having enacted their own purchasing ordinances;
- L. the issuance, sale and delivery of public securities pursuant to the applicable authorizing statute, with the exception of bond attorneys and general financial consultants;
- M. contracts entered into by a local public body with a private independent contractor for the operation, or provision and operation, of a jail pursuant to Sections 33-3-26 and 33-3-27 NMSA 1978;
- N. contracts for maintenance of grounds and facilities at highway rest stops and other employment opportunities, excluding those intended for the direct care and support of persons with handicaps, entered into by state agencies with private, nonprofit, independent contractors who provide services to persons with handicaps;
- O. contracts and expenditures for services or items of tangible personal property to be paid or compensated by money or other property transferred to New Mexico law enforcement agencies by the United States department of justice drug enforcement administration;
- P. contracts for retirement and other benefits pursuant to Sections 22-11-47 through 22-11-52 NMSA 1978;
- Q. contracts with professional entertainers;
- R. contracts and expenditures for legal subscription and research services and litigation expenses in connection with proceedings before administrative agencies or state or federal courts, including experts, mediators, court reporters, process servers and witness fees, but not including attorney contracts;
- S. contracts for service relating to the design, engineering, financing, construction and acquisition of public improvements undertaken in improvement districts pursuant to Subsection L of Section 3-33-14.1 NMSA 1978 and in county improvement districts pursuant to Subsection L of Section 4-55A-12.1 NMSA 1978;
- T. works of art for museums or for display in public buildings or places;
- U. contracts entered into by a local public body with a person, firm, organization, corporation or association or a state educational institution named in Article 12, Section 11 of the constitution of New Mexico for the operation and maintenance of a hospital pursuant to Chapter 3, Article 44 NMSA 1978, lease or operation of a county hospital pursuant to the Hospital Funding Act [Chapter 4, Article 48B NMSA 1978] or operation and maintenance of a hospital pursuant to the Special Hospital District Act [Chapter 4, Article 48A NMSA 1978];
- V. purchases of advertising in all media, including radio, television, print and electronic;
- W. purchases of promotional goods intended for resale by the tourism department;
- X. procurement of printing, publishing and distribution services for materials produced and intended for resale by the cultural affairs department;
- Y. procurement by or through the public education department from the federal department of education relating to parent training and information centers designed to increase parent participation, projects and initiatives designed to improve outcomes for students with disabilities and other projects and initiatives relating to the administration of improvement strategy programs pursuant to the federal Individuals with Disabilities Education Act; provided that the exemption applies only to procurement of services not to exceed two hundred thousand dollars (\$200,000);
- Z. procurement of services from community rehabilitation programs or qualified individuals pursuant to the State Use Act [13-1C-1 to 13-1C-7 NMSA 1978];
 - AA. purchases of products or services for eligible persons with disabilities pursuant to the federal Rehabilitation Act of 1973;
 - BB. procurement, by either the department of health or Grant county or both, of tangible personal property, services or construction that are exempt from the Procurement Code pursuant to Section 9-7-6.5 NMSA 1978;
 - CC. contracts for investment advisory services, investment management services or other investment-related services entered into by the educational retirement board, the state investment officer or the retirement board created pursuant to the Public Employees Retirement Act [Chapter 10, Article 11 NMSA 1978];
 - DD. the purchase for resale by the state fair commission of feed and other items necessary for the upkeep of livestock;
 - EE. contracts entered into by the crime victims reparation commission to distribute federal grants to assist victims of crime, including grants from the federal Victims of Crime Act of 1984 and the federal Violence Against Women Act of 1994;
 - FF. procurement by or through the children, youth and families department of pre-kindergarten services purchased pursuant to the Pre-Kindergarten Act [Chapter 32A, Article 23 NMSA 1978];
 - GG. procurement of services of commissioned advertising sales representatives for New Mexico magazine; and
 - HH. procurements exempt from the Procurement Code as otherwise provided by law.

13-1-98.1. Hospital and health care exemption.

The provisions of the Procurement Code shall not apply to procurement of items of tangible personal property or services by a state agency or a local public body through:

- A. an agreement with any other state agency, local public body or external procurement unit or any other person, corporation, organization or association that provides that the parties to the agreement shall join together for the purpose of making some or all purchases necessary for the operation of public hospitals or public and private hospitals, if the state purchasing agent or a central purchasing office makes a determination that the arrangement will or is likely to reduce health care costs; or
- B. an agreement with any other state agency, local public body or external procurement unit or any other person, corporation, organization or association for the purpose of creating a network of health care providers or jointly operating a common health care service, if the state purchasing agent or a central purchasing office makes a determination that the arrangement will or is likely to reduce health care costs, improve quality of care or improve access to care.

13-1-98.2. Additional exemptions from the Procurement Code.

The provisions of the Procurement Code do not apply to contracts entered into by a local public body with a person, firm, organization, corporation, association or state educational institution named in Article 12, Section 11 of the constitution of New Mexico for:

- A. the operation and maintenance of a hospital pursuant to Chapter 3, Article 44 NMSA 1978;
- B. the lease or operation of a county hospital pursuant to the Hospital Funding Act [Chapter 4, Article 48B NMSA 1978] ;
- C. the operation and maintenance of a hospital pursuant to the Special Hospital District Act [Chapter 4, Article 48A NMSA 1978]; or
- D. the use of county buildings pursuant to Section 4-38-13.1 NMSA 1978.

13-1-99. Excluded from central purchasing through the state purchasing agent.

Excluded from the requirement of procurement through the state purchasing agent but not from the requirements of the Procurement Code are the following:

- A. procurement of professional services;
- B. small purchases having a value not exceeding one thousand five hundred dollars (\$1,500);
- C. emergency procurement;
- D. procurement of highway construction or reconstruction by the department of transportation;
- E. procurement by the judicial branch of state government;
- F. procurement by the legislative branch of state government;
- G. procurement by the boards of regents of state educational institutions named in Article 12, Section 11 of the constitution of New Mexico;
- H. procurement by the state fair commission of tangible personal property, services and construction under twenty thousand dollars (\$20,000);
- I. purchases from the instructional material fund;
- J. procurement by all local public bodies;
- K. procurement by regional education cooperatives;
- L. procurement by charter schools;
- M. 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
- N. procurement by the public school facilities authority

Appendix C: General Methodology

LFC staff used two separate sources of data to analyze state purchasing practices. First, LFC downloaded and combined monthly purchasing reports from the New Mexico Sunshine Portal to get a monthly list of all purchase orders by agency, date, contract number, description category, and a number of other factors. Monthly purchase reports were analyzed for all months FY17 to FY19. Generally LFC staff excluded purchase orders with the following description codes from analysis: Bond Premiums, Brd & Comm Member I/S Travel, Brd & Comm O/S Meals & Lodging, Brd & Comm O/S Mileage & Fares, Debt Service-Interest, Debt Service-Principal, Deposits Held for Others, Employee I/S Meals & Lodging, Employee I/S Mileage & Fares, Employee Liability Ins Premium, Employee O/S Meals & Lodging, Employee O/S Mileage & Fares, Employee Training & Education, Grants -Higher Ed Institution, Grants To Individuals, Grants To Local Governments, Grants to Native Amer Indians, Grants to Other Agencies, Grants To Other Entities, Grants To Public Schools-Univ, O/F Uses – CU, O/F Uses - Higher Ed Institut, Other Employee Benefits.

The second data set was the result of a SHARE query NMS_GSD_PO_CNTRCT which pulled all purchase orders associated with seven types of contracts (agency-specific contracts, construction, DOT converted contracts, governmental service agreements, joint power agreements, memorandums of understanding, sole-sourced professional services, competitively sources professional services, professional services small purchases, professional services price agreements, and statewide price agreements).

LFC staff cross-walked these two data sets in order to attribute purchase orders to active and expired statewide price agreements and professional service contracts.

Appendix D: SPD Policy Memo FY18-001: Statewide Price Agreements

Susana Martinez
New Mexico Governor

Ed Burekle
Cabinet Secretary

Lawrence O. Maxwell
State Purchasing Agent



STATE OF NEW MEXICO
GENERAL SERVICES DEPARTMENT
PURCHASING DIVISION

Administrative Services Division
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Building Services Division
(505) 476-2425

Property Control Division
(505) 827-2141

Purchasing Division
(505) 827-0472

Risk Management Division
(505) 827-2038

State Printing & Graphic Services Bureau
(505) 476-1950

Transportation Services Division
(505) 827-1958

September 12, 2017

SPD POLICY MEMO #FY18-001
Regarding the Use of Statewide Price Agreements

The following policy regarding Statewide Price Agreements (SWPA) is effective as of the date of this memorandum. This policy applies to executive branch agencies of the state government and any other entities that come under the authority of the State Purchasing Agent and should be used as guidelines for other entities under the procurement code:

- 1) An agency or local public body wishing to utilize a SWPA for general services shall:
 - a. For an amount less than \$60,000, issue a purchase order to the vendor.
 - b. For an amount greater than \$60,000, the using entity must enter into its own general services contract identifying scope of work and terms and conditions pertaining to the specific project pursuant to the SWPA.
- 2) An agency or local public body wishing to utilize a SWPA with indefinite delivery and indefinite quantity for general services shall:
 - a. For an amount less than \$60,000, issue a purchase order to the vendor.
 - b. For an amount greater than \$60,000, the entity must first obtain three quotes from the list of awardees and document the contract file with such evidence. After a vendor is selected, the using entity must enter into its own general services contract identifying scope of work and terms and conditions pertaining to the specific project pursuant to the SWPA.
- 3) An agency or local public body, using a SWPA for "goods", for any dollar amount, shall issue a purchase order to the vendor.
- 4) An agency wishing to utilize a SWPA for professional services over \$5,000 must ALWAYS enter into its own professional services agreement pursuant to the SWPA. Professional services agreements must be processed through the Contracts Review Bureau of the Department of Finance and Administration.

Thank you for your attention to this matter.

A handwritten signature in black ink, appearing to read "Lawrence O. Maxwell".

Lawrence O. Maxwell
State Purchasing Agent

Appendix E: Five-Year Change in Agency Expenditures on Professional Services Contracts Compared to Expenditures of Personal Services and Benefits

Agency Name and Business Code	Professional Services Contracts		Five-year Change	All Personal Services and Employee Benefits		Five-year Change
	FY13	FY18		FY13	FY18	
33700 State Investment Council	\$27,007.2	\$47,045.1	74%	\$3,233.6	\$3,590.2	11%
66500 Dept. of Health	\$51,564.7	\$26,296.3	-49%	\$189,941.0	\$189,591.1	0%
63000 Human Services Dept.	\$76,057.2	\$25,482.5	-66%	\$95,410.4	\$102,198.8	7%
36600 PERA	\$28,145.3	\$23,980.7	-15%	\$5,221.6	\$6,779.0	30%
80500 Dept. of Transportation	\$20,940.0	\$21,645.0	3%	\$132,685.1	\$146,022.0	10%
34200 NMPSIA	\$16,824.0	\$20,659.4	23%	\$849.1	\$1,001.7	18%
69000 CYFD	\$43,261.6	\$20,244.4	-53%	\$116,977.8	\$134,919.6	15%
35200 ERB	\$17,864.7	\$17,178.8	-4%	\$4,318.9	\$5,705.5	32%
36100 DoIT	\$1,135.3	\$12,074.8	964%	\$13,806.0	\$14,334.4	4%
77000 Corrections Dept.	\$301.6	\$7,972.0	2543%	\$121,327.8	\$141,201.3	16%
63100 Workforce Solutions Dept.	\$166.6	\$7,437.9	4365%	\$26,561.7	\$24,881.2	-6%
49000 Cumbres and Toltec RxR Com.	\$3,052.7	\$4,001.6	31%	\$134.6	\$246.0	83%
64700 DD Planning Council	\$3,395.1	\$3,915.0	15%	\$881.1	\$982.9	12%
66700 Dept. of Environment	\$6,280.4	\$3,827.3	-39%	\$40,315.0	\$41,507.6	3%
21800 AOC	\$2,651.8	\$2,913.8	10%	\$27,010.5	\$31,231.2	16%
52100 EMNRD	\$1,353.0	\$2,041.1	51%	\$26,216.4	\$27,823.1	6%
41900 EDD	\$1,581.8	\$1,965.6	24%	\$3,237.9	\$3,302.3	2%
55000 State Engineer	\$3,650.9	\$1,820.1	-50%	\$20,613.2	\$20,920.0	1%
64400 Div. of Vocational Rehabilitation	\$27.3	\$1,728.0	6230%	\$14,705.4	\$16,312.7	11%
44000 Superintendent of Insurance	\$198.6	\$1,467.2	639%	\$5,164.3	\$6,561.6	27%
Top 20 agencies for professional services contracting	\$305,459.8	\$253,696.6	-17%	\$848,611.4	\$919,112.2	8%
NEW MEXICO TOTAL	\$367,816.0	\$269,258.9	-27%	\$1,392,892.1	\$1,669,731.6	20%

Source: LFC Files