Report
to
The LEGISLATIVE FINANCE COMMITTEE

General Services Department
GSD-Procurement Division Effectiveness Review
October 21, 2008

Report # 08-14

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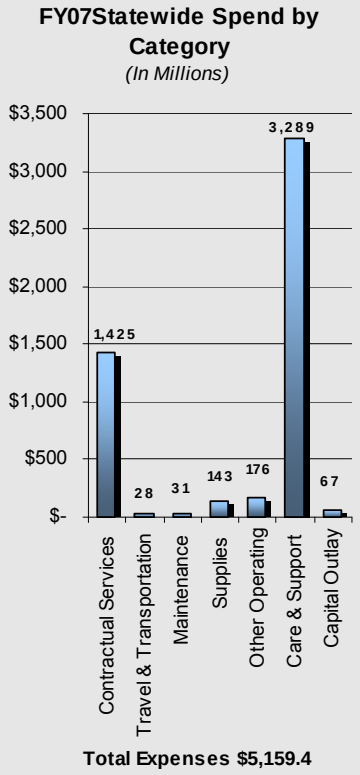
Nine of the 10 surrounding states have its purchasing division within its Finance and Administration agency.

New Mexico has gotten into the habit of exempting "special projects" instead of tangible personal property, etc. causing Section 13-1-98 NMSA 1978 to reflect "sheltered" special interest projects and "protection" for some sole source purchases.



Section 13-1-95 NMSA 1978 created the State Purchasing Division (SPD) within the General Services Department (GSD). Through the State Purchasing Agent, the State Purchasing Division administers the Procurement Code [Section 13-1-28 NMSA 1978] to ensure fair competition for government procurements and the best combination of high quality and low price to manage state spending and conserve resources. *The purposes of the Procurement Code are to provide for the fair and equitable treatment of all persons involved in public procurement, to maximize the purchasing value of public funds and to provide safeguards for maintaining a procurement system of quality and integrity* [Section 13-1-29 NMSA 1978]. The review of the SPD was warranted, because it has not been reviewed since division's inception.

Legislative Key Findings

State Purchasing Function Typically Resides Within A State's Finance And Administration Agency. The surrounding states websites were researched to determine which state agency had oversight for the procurement function. Of 10 surrounding or similar size states, nine states have its state purchasing division within its Finance and/or Administration agency.

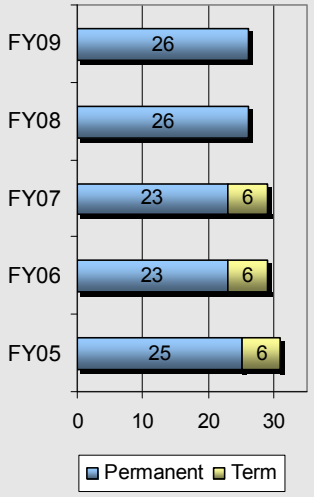
Statutory Guidance On Non-Typical Procurement Methods (i.e., Emergency Purchases And Exemptions) Needs Review By Executive Management And The Legislature. When addressing procurement code exemptions (and exclusions) and emergency purchases, the statute (Sections 13-1-98, 13-1-127 and 13-1-128 NMSA 1978) needs more definitive language to ensure adequate oversight and monitoring of spend dollars. The State Purchasing Agent expressed that besides sole source purchases, emergency purchases are one of the highest procurement categories of abuse.

Agency Key Findings

Of Approximately $5.2 Billion Spent By State Agencies In FY07, State Purchasing Can Only Account For Approximately $16 Million Through Request For Proposals (RFPs) And Invitations To Bid (ITBs) Due To Limited Tracking Documentation And Processes. The amount of dollars that the state spends on goods and services during a fiscal year were compared to how much of that 'spend' is contracted and managed through the State Purchasing Division. The roughly $16 million supported by an Access database spreadsheet from the division does not include the millions of dollars represented by statewide price

No one in management was aware of the definition for 'small business' in the Procurement Code even though there is a performance measure and statutory requirements tied to it.

SPD's FTEs Funded By The General Fund



Surrounding states staffing levels range from 12 to 36 FTEs and manage from $291 million to $6 billion. These states also reported low average annual turnover rates among specialists or buyers, with zero being the lowest and three being the highest.

agreements awarded by the division and used by the agencies. It was determined that only about 10 percent of the state 'spend' is awarded by or through SPD.

The State Purchasing Agent Needs To Develop Improved Management Accountability To Ensure Statutory Requirements Are Consistently Met And Efficient Procurement Practices Are Implemented Immediately. Multiple management responsibilities were identified as weak or not being fulfilled due to the State Purchasing Agent's inability to develop and implement processes and procedures. The internal control environment, SHARE, several statutory mandates, core operations/strategic planning and performance measures are some of the primary areas of responsibility that are not being efficiently and effectively managed within the division.

Staffing Issues Have Impeded SPD's Progress. Even though more than 95 percent of division staff satisfied the experience levels and 78 percent of staff fulfilled the educational requirements for posted positions, the division works on a reactive basis because the manual environment causes the workload to exceed staffing capabilities.

Initial Plan For $500 Thousand Appropriated In The 48th Legislative Session For GSD's Implementation Of The E-Procurement And Strategic Sourcing Modules Was Not Presented For Certification Until The End Of September 2008. The $500 thousand appropriated to the Department of Finance and Administration (DFA) for GSD during the 2008 session has not been used nor has the complete plan for its use been certified by Department of Information Technology (DoIT).

SPD Typically Has A Fair And Consistent RFP And ITB Process; However, File Documentation Needs Improvement. Based on the limited review, it appears that SPD typically has a fair and consistent RFP and ITB process, except the written notice of award was not issued for the ITBs. The Procurement Code [Section 1-3-28 NMSA 1978] sets out specific requirements that all persons involved in public procurement must follow for the procurement of items of tangible personal property, services and construction. The files provided for RFPs and ITBs were not standardized and lacked consistency.

Even Though The State Spent Approximately $8.6 Million For The Save Smart Initiative Between 2004 And 2006, It Will Not Be Continued Due To Lack Of Adequate Knowledge Retention, Outdated Data On Which The Savings Formula Is Based, And Limited Resources. The primary function of the contract with Silver Oaks Solutions (SOS) was to create statewide savings by effectively leveraging the State's purchasing power to save the State and taxpayers

The comprehensive market and vendor analysis that was introduced and transferred to SPD by the Save Smart initiative is not practiced.

money referred to as Save Smart. SOS applied strategic sourcing methods to reduce and negotiate best pricing/value with regard to price agreements and other procurement mechanisms. Multiple knowledge transfer sessions from December 2003 to March 2005 incorporated the strategic sourcing methods deployed by SOS in order to obtain best pricing/value for procurement contracts. However, the State Purchasing Agent considered the ability of staff to handle the Save Smart procurement methods and determined that they are insufficiently staffed to continue the program.

In the past six years, there was only one instance where a report of a potential procurement violation was questioned and returned to the agency by management.

Procurement Code Violations Have Ranged From $2 Million To $7 Million And Are Not Tracked Or Monitored. The fluctuation in the number and dollars of procurement violations could not be explained by management. GSD divisions appear to be the most frequent violator of the Procurement Code. Out of 325 total violations, GSD was responsible for 129 (39 percent) violations which represented approximately $6.3 million (48 percent). Repeat violations by type and/or from the same agency signals a training issue. However, management does not have any quality control mechanisms in place for monitoring procurement violations.

There are no internal controls in place to ensure performance measure data is consistent and accurate. All systems supporting performance measure data collection should have effective controls to provide reasonable assurance that the information is properly collected and accurately reported.

Good Faith Review Was Not Conducted on a Sole Source Purchase of $1.2 Million. During the limited review of sole source contracts, it was determined that "*thorough*" evaluations are not consistently performed. For example, the Department of Public Safety purchased an A500 aircraft from Adams Aircraft Industries' (AAI) in April 2007 as a sole source purchase for $1.2 million. The State Purchasing Agent approved the purchase. However, the aircraft contract file contained multiple issues including:

- The push/pull specifications for the A500 aircraft were out of date and had been discontinued by other manufacturers.
- The negatives which outweighed the positives for the purchase of this aircraft were documented in the professional opinion issued by the Department of Transportation's aviation director.
- Due diligence was **not** performed to ensure the financial stability of AAI.

Due to a manual environment and lack of written procedures, there were multiple instances of errors and omissions in the data and information provided by management.

Legislative Key Recommendations

Location of State Purchasing Function. The Legislature should evaluate the potential improved efficiency by transferring the state purchasing division function to the Department of Finance and Administration (DFA) or consolidating it with the Contracts Review Bureau which manages the professional services contracts for the state.

Emergency and Exempt Purchases. The LFC, DFA and GSD should consider appointing an interim committee during 2009 to:

- Review Sections 13-1-127 and 13-1-128 NMSA 1978 to determine and establish oversight and monitoring mechanisms of emergency purchases.
- Review Section 13-1-98 NMSA 1978 to evaluate all exemptions and determine if non-competitive purchasing status is in the best interest of New Mexico and its public funds.

Agency Key Recommendations

Improved Management Accountability. The State Purchasing Agent (or his designee) should:

- Eliminate the sharing of passwords among staff members immediately. Evaluate (*every 90 days or at least annually*) the staff's SHARE access authorities; assess the need based on their job responsibilities, and request updates to their authorities.
- Develop and document formal policies and procedures for all aspects of the procurement process.
- Immediately coordinate with DFA for division training and actual demonstration of which reports can be generated using the Purchase Order and Procurement Contracts Report modules and available queries in SHARE. Determine which reports will be beneficial as a management tool. Also, coordinate with DFA to develop standard reports for tracking procurement activities as well as specialized reports or queries as needed by management.
- Adhere to all aspects of the Procurement Code and immediately develop processes to submit the annual reports, form the statutory required committee, and develop/implement all parts of Section 13-1-95(D) NMSA 1978.
- Review Section 13-1-184 through Section 13-1-187 NMSA 1978, and develop/implement the requirements of statute in a documented procedure. An efficient method is to capture this data within the vendor applications and during the vendor training registration process.
- Update the information in the monitoring plan to reflect current processes and targets, accurately define each performance measure, re-evaluate the survey questions for the SPC (and vendors) and conduct follow-up to the survey results, and create a formalized process for tracking and maintaining data to ensure data sources are accurate and consistent.

If GSD's executive management believes these requirements are burdensome to the agency, then management should review current statute, justify revisions, prepare and propose alternative language for consideration by the legislature during the 2009 session.

Staffing Issues. The State Purchasing Agent and staff should:

- Continue to focus on completing the hiring process of all funded vacancies as soon as possible.
- Conduct a valid staffing analysis and provide firm support for the FTE request that will be submitted during the upcoming budget hearing.
- Complete the GAP analysis for state purchasing because it will be needed to support additional FTE requests and during the planning phase of the e-Procurement project.
- Follow-up with State Personal Office (SPO) about position reclassifications and remain solution-focused during the discussions.
- Contact the purchasing departments in Arizona and Utah to find out more about their strategic sourcing processes which are conducted in-house and with a similar staff size as SPD.

$500 Thousand Appropriation.

- SPD, DoIT and the SHARE project team need to work on the feasibility of implementing the e-Procurement and Strategic Sourcing modules. Determine the amount of additional funding that will be required for implementation of these modules.
- Management needs to make the commitment to dedicating the necessary resources and staff to function in a leadership role with the e-Procurement team.

Improvement of File Documentation.

- Define the requirements for documenting the procurement process (activities) using a graded approach to establish minimum and mandatory requirements. Enough information should be included in the procurement file so a person versed in procurement can read the information and conclude that all actions taken were appropriate and in the best interest of the state.
- Establish standardized table of contents and format for proposals for RFP and ITB submissions and require its use to ensure the information subject to public inspection is complete, accurate and easy to understand.

$8.6 Million Save Smart Initiative Discontinued. The State Purchasing Agent and staff should:

- Perform a current staffing analysis of current position responsibilities to determine if additional positions are actually needed to support Save Smart or other strategic sourcing methods. Specifically, identify and justify each position's responsibilities prior to submission for approval. Based upon the results, if necessary, request the additional staff needed to implement efficient strategic sourcing methods that will ensure New Mexico is continuously increasing the value of each dollar spent.
- Review and apply as many strategic sourcing techniques gained from SOS and surrounding states as possible to the current contract renewal process.
- As part of their job duties, challenge staff to take the initiative to achieve best pricing for the expiring state-wide price agreement contracts.
- Develop and implement a contract monitoring plan using the *Compliance and Savings Monitoring Tool* as a guide.
- Work with the DFA to develop a savings recapture plan and ensure that a portion will be redirected to SPD.

Procurement Code Violations Not Monitored. The State Purchasing Agent should:

- Establish and document a course of action to effectively monitor and manage the procurement violation process.
- Coordinate with DFA regarding how procurement violations are identified and processed
- Require an agency audit/review of any procurement code violation in excess of $100 thousand
- Establish consequences for repeat violators of the procurement code
- Develop and implement training opportunities based upon types of violations for agencies statewide
- Determine why the agency responsible for ensuring that all state agencies are adhering to the procurement code is the primary violator of the procurement code. Place offending GSD divisions in corrective action plans that include in-depth training.

Limited Review of $1.2 Million Sole Source Purchase.

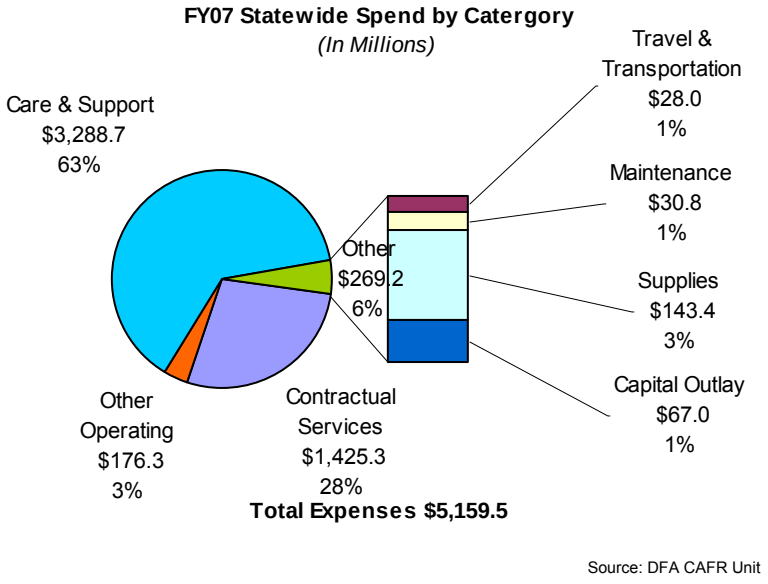
- Develop and document specific guidelines that must be followed for all *good faith reviews* that are required for sole source purchases exceeding $500 thousand.
- Research other states (Utah, Georgia, etc.) sole source procurement policies and procedures. Establish more stringent procedures for procuring by sole source to discourage agencies from using this purchasing option and detect possible abuse.

Background. The State Purchasing Division (SPD) of the New Mexico General Services Department (GSD) is responsible for the administration of the New Mexico State Purchasing Procurement Code that involves identifying products and services that are biddable items and contacting vendors who wish to participate in bids for such items on a statewide or specific agency basis. SPD seeks to conserve public funds and ensure fairness to vendors by procuring goods, services, and construction at competitive prices consistent with required quality and timeliness standards. Its' mission: *To serve the public whose money we spend, the departments and institutions who use what we buy, and the business/vendor community who supply what we ask for by always procuring the right quality, in the right quantity, at the right time, at the right price, from the right supplier and in the right manner for ultimate economy.*

Automation and Staffing. SPD staff was not consistently assigned to the planning and implementation phases of the SHARE project in 2005 and 2006. The only module related to procurement that was implemented with the SHARE project in July 2006, was the agency purchasing module. As a result of minimal involvement in the SHARE project, staff was not familiar with the type of reports that could be generated from the agency purchasing module. When SHARE was brought online throughout the state, SPD eliminated its mainframe operation and went into a manual mode of operation which continues to impact the state's overall purchasing processes and human resources.

Fiscal Impact. According to the most recently audited fiscal year, 2007, the state spent approximately $5.2 billion for goods and services. SPD appears to be responsible for about $550 million according to GSD's FY08 Strategic Plan. As shown in the graph below, over half of this total ($3.3 billion, or 63 percent) related to care and support for sick or indigent persons.

Graph 1: What New Mexico Buys



Purchases for goods and services are processed through SPD, the Department of Finance and Administration (DFA) and state agencies as shown below in Table 1.

Table 1: How New Mexico Buys

State Purchasing Division			Department of Finance & Administration	State Agencies
Request for Proposals	**Invitation to Bid**	**Sole Source**	Professional Service Contracts	RFP for Professional Service Contracts
Price Agreements	Price Agreements	Contracts	Emergency Purchases	Purchase Orders
Construction Contracts	Indefinite Quantity	Purchase Orders		Statutory Exemptions
Other Service Contracts	Purchase Orders			Emergency Purchases

SOURCE: NMSA, DFA and SPD websites

SPD processes RFPs and ITBs for state agencies which result in awards of price agreements, contracts and purchase orders. The statewide and agency specific price agreements are for commodities and services commonly used, or they are agency specific. Sole source procurement of items of tangible property, construction and nonprofessional services must be approved and negotiated by the state purchasing agent. DFA and state agencies may issue a RFP for professional services and other commodities or services within their procurement authority. Additionally, DFA is responsible for reviewing and approving all professional service contracts and emergency purchases. The Procurement Code apply to every expenditure by state agencies for the procurement of tangible personal property, services and construction except as provided in Section 13-1-98 NMSA 1978 Exemptions from the Procurement Code.

Statutory Authority. Section 13-1-95 NMSA 1978 states: Purchasing division; creation; director is state purchasing agent; appointment; duties. (1984)

A. The "purchasing division" is created within the general services department.

B. Subject to the authority of the secretary, the state purchasing agent shall be the administrator and chief executive of the purchasing division. The state purchasing agent shall be appointed by the secretary with the approval of the governor.

C. 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 [Section 13-1-28 NMSA 1978] and shall administer the Procurement Code for those state agencies not excluded from the requirement of procurement through the state purchasing agent.

D. The state purchasing agent shall have the following additional authority and responsibility to:

(1) recommend procurement regulations to the secretary;

(2) 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;

(3) 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;

(4) 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;
(5) 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;
(6) provide information to state agencies and local public bodies concerning the development of specifications, quality control methods and other procurement information; and
(7) collect information concerning procurement matters, quality and quality control of commonly used services, construction and items of tangible personal property.
E. The state purchasing agent shall, upon the request of the central purchasing office of a local public body, procure a price agreement for the requested services, construction or items of tangible personal property.

Objectives.

- Review Bid and RFP processes to assess consistency, fairness and timeliness of administration for FY06 – FY08.
- Review non-typical procurement processes, evaluate how the processes are managed, and determine if they are fair and transparent. Evaluate the amount of funds spent via these options (price agreements, sole source, emergency purchases, IT contracts, etc.). Review exemptions in the Procurement Code.
- Evaluate division staffing level and training plan (internal and external) as well as the status of implementing the e-Procurement module within Statewide Human Resource, Accounting, and Management Reporting System (SHARE).
- Determine how performance measures are managed and used for assessing program success.
- Determine which best practices and national standards regarding the purchasing function can be incorporated in the New Mexico procurement process.
- Determine the status of the 2005 Review of Save Smart Initiative findings and recommendations.

Scope and Methodology.

- Review of applicable laws, rules, regulations, and Legislative Finance Committee (LFC) files,
- Examine statewide policies and procedures regarding procurement,
- Evaluate information obtained from outside sources, including internet searches and procurement policies in other states,
- Assess funding and budget documentation for FY06 through FY08,
- Survey various agencies and contact surrounding states regarding procurement practices, experience and training,
- Interview agency staff, and
- Observe actual procurement activities within the State Purchasing Division.

Authority for Review. The committee is authorized under the provisions of Section 2-5-3 NMSA1978 to examine the laws governing the finances and operation of departments, agencies and institutions of New Mexico and all of its political subdivisions, the effect of laws on the proper functioning of these governmental units, and the policies and costs of governmental units as related to the laws. Pursuant to its statutory authority, the committee may conduct performance reviews and inquiries into specific transactions affecting operating policies and costs of governmental units and their compliance with state laws.

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Exit Conference. The contents of this report were discussed with Secretary Arturo Jaramillo, Deputy Secretary Marilyn Hill, State Purchasing Agent Michael Vinyard, State Purchasing Division Deputy Directory Ross Boom, Executive Procurement Officer Supervisor Kathy Sanchez, Administrative Support Manager Paula Salazar, LFC Analyst David Archuleta and the LFC review team on October 15, 2008.

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

Manu Patel
Deputy Director for Program Evaluation

FINDINGS AND RESPONSES

I. Legislative Concerns

State Purchasing Function Typically Resides Within A State's Finance And Administration Agency. The surrounding states websites were researched to determine which state agency had oversight for the procurement function. The following table identifies that out of 10 surrounding or similar size states, nine states have its state purchasing division within its Finance and/or Administration agency.

Table 2: State Purchasing Function in Other States

State	Finance and/or Administration *(Administrative Services)*	General/Central Services Department
Idaho	✓ http://adm.idaho.gov/purchasing/	
Nevada	✓ http://purchasing.state.nv.us/	
Wyoming	✓ http://ai.state.wy.us/GeneralServices/procurement/	
Utah	✓ http://purchasing.utah.gov	
Arizona	✓ http://www.azdoa.gov/spo/	
Colorado	✓ http://www.colorado.gov/dpa/dfp/spo/index.htm	
Kansas	✓ http://www.da.ks.gov/purch/default.htm	
Nebraska	✓ http://www.das.state.ne.us/materiel/	
Oklahoma		✓ http://www.ok.gov/DCS/Central_Purchasing/index.html
Arkansas	✓ http://www.state.ar.us/dfa/procurement/pro_index.html	
New Mexico		✓ **http://www.generalservices.state.nm.us/spd/**

SOURCE: Internet

Presently, New Mexico's DFA is responsible for administering professional services contracts, approving emergency purchases and issuing warrants for all statewide purchases.

Recommendation.
The Legislature should evaluate the potential improved efficiency by transferring the state purchasing division function to the DFA or consolidating it with DFA's Contracts Review Bureau which manages the professional services contracts for the state.

Statutory Guidance On Non-Typical Procurement Methods (i.e., Emergency Purchases And Exemptions) Needs Review By Executive Management And The Legislature. When addressing procurement code exemptions (and exclusions) and emergency purchases, the statute (Sections 13-1-98, 13-1-127 and 13-1-128 NMSA 1978) needs more definitive language to ensure adequate oversight and monitoring of spend dollars.

The state should identify who (agency) is actually responsible for monitoring and tracking emergency purchases. While reviewing emergency purchases, it was determined that SPD did not have responsibility for or jurisdiction over this process. Agencies are required to justify emergency purchases to DFA and merely 'copy' SPD on the cover letter. The division's records were scanty in FY08, yet DFA had a manual list of all emergency purchases that identified the agency, purchase order number, date received, approval date, date rejected and brief description of the issue. The dollar amount of the emergency was not tracked on this spreadsheet. The State Purchasing Agent expressed that besides sole source purchases, emergency purchases are one of the highest procurement categories of abuse.

Section 13-1-127 NMSA 1978 states the following regarding who may make or authorize an emergency procurement:

> *A. The state purchasing agent, a central purchasing office or a designee of either may make or authorize others to make emergency procurements when there exists a threat to public health, welfare, safety or property requiring procurement under emergency conditions; provided that emergency procurements shall be made with competition as is practicable under the circumstances. A written determination of the basis for the emergency procurement and for the selection of the particular contractor or vendor shall be included in the procurement file. Emergency procurements shall not include the purchase or lease purchase of heavy road equipment.*

Specific oversight of the emergency purchase process does not exist beyond individual agency management. Aside from DFA being responsible for paying the emergency purchase contract or purchase order, the amount of spend dollars within the category of emergency purchases is not monitored. However, when questioned, several agencies stated that it is their right to declare an emergency per statute.

Procurement code exemptions have become an "arena" of protected special interest projects and sole source purchases. New Mexico has gotten into the habit of exempting "special projects/contracts" instead of tangible personal property, livestock, benefits, services, advertising, etc. causing Section 13-1-98 NMSA 1978 to reflect "sheltered" special interest projects and "protection" for some sole source purchases. For example, on May 23, 2007, the program evaluation team presented the "Corrections Department: Review of Facility Planning Efforts and Oversight of Private Prisons and Health Programs" to the LFC, the reviewer reported the following:

> *Local government contracts with a private independent contractor for the operation, or provision and operation, of a jail are exempt for the Procurement Code (Section 13-1-98 (M) NMSA 1978). A 1987 Attorney General opinion concluded that the design and construction of jails were also exempt from the Procurement Code. The department has*

statutory authority to contract with county jails to house state inmates (Section 31-20-2(G) NMSA 1978). Presumably this authority was granted to ease overcrowding at state prisons and does not contemplate the department using an entire jail for state inmates. Since contracts with counties are considered intergovernmental agreements they too are not subject to the Procurement Code. The Committee and other lawmakers questioned this tactic, but according to a letter from then-Attorney General Madrid's office in 2005 the practice is perfectly legal under state law.

Contracting for both the use and operation of prison facilities puts the state at a poor negotiating position to obtain low cost, high quality services. Using an owner-operated contract model outside of a competitive process further reduces the advantages of privatization. These advantages included demonstrated lower prices and higher quality normally produced through competition, ability to change vendors and the flexibility offered by reducing long-term obligations.

Additionally, in a brief to the Committee on August 12, 2008, the analyst for the Department of Health reported the impact on another procurement code exemption:

The quality of care at Fort Bayard Medical Center (FBMC) has been a concern for a number of years. During the 2005 Legislative Session, SB 1055, Fort Bayard Medical Center Contractor, was enacted authorizing the DOH Secretary to enter into an agreement with an independent contractor to operate FBMC. All non-managerial employees would remain as state employees. In addition, in conjunction with the General Services Division (GSD) Property Control Division (PCD), DOH could enter into a lease or other long-term agreement of not more than 25 years for the provision and operation of a facility in Grant County to replace the current facility.

One of the reasons for privatization of FBMC management was that it would speed the construction of a new facility if done by a private entity. However, this has not been the case and the cost of the replacement facility has continued to grow at a rapid rate. The Fiscal Impact Report for SB 1055 quoted a 3D/I estimate that replacement costs would be approximately $22.3 million. During the June 2006, LFC hearing the cost estimate was more than $30 million. Today, the replacement cost is estimated at $48.5 million including furniture, fixtures and equipment; in addition, there will be approximately $11.7 million in other costs (capitalized interest fund, debt service reserve fund, cost of bond issuance, underwriters discount and additional proceeds) bringing the total to more than $60.2 million.

GEO Care. *As result of the statute authorizing hiring a private management company, DOH issued a request for proposal for management of FBMC. According to LFC records only one bid was received and GEO Care (part of the GEO Group, formerly known as Wackenhut), was selected and signed the contract on November 7, 2005. The contractor was to hire a management team of at least 24 staff and assume control of the facility. GEO Care employees were not state employees but the non-management staff retained status as state government employees. The contractor was also to begin the new*

facility design and the construction and financing was to be arranged. Contract negotiations to renew the contract were not successful and the contract ended on June 30, 2008.

Pinon Management, Inc. *DOH selected Pinon Management, Inc. from Lakewood Colorado to manage FMBC using the exemption from the Procurement Code provided by statute. The transition took place on July 1, 2008 with one-day overlap with GEO Care. In the presentation to the interim Legislative Health and Human Services Committee, DOH stated that Pinon is a nationally recognized industry leader providing management and consulting services to long-term care facilities. The contract is for one-year at a cost of $3.6 million with the option to renew…Pinon has not been in place a sufficient time at FBMC to assess its progress but DOH is pleased with the effort they are making.*

While the contracting with Pinon Management, Inc. was exempt from the procurement code, there is ***no evidence that other firms were considered or allowed to offer their services****. [Emphasis added]*

Additional exemptions listed in the procurement code that should be reviewed by the Legislature include the following:

- Contracts with businesses for public school transportation services;
- 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;
- 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;
- 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 [Section 10-11-1 NMSA 1978];
- contracts for retirement and other benefits pursuant to Sections 22-11-47 through 22-11-52 NMSA 1978; and,
- travel or shipping by common carrier or by private conveyance or to meals and lodging.

The following table reflects a comparison of New Mexico and surrounding states exemptions and exclusions:

Table 3. Comparable States' Exemptions

Departments	Utah	Nevada*	Arizona	Oklahoma	Colorado	New Mexico
Higher Education	Not Exempt	Exempt	Exempt	Exempt	Exempt	Excluded**
Judicial/Courts	Not Exempt	Exempt	Exempt	Exempt	Exempt	Excluded**
Transportation	Not Exempt	Not Exempt[1]	Exempt[2]	Exempt	Exempt[2]	Exempt[3]
State Fair	Not Exempt	N/A	Not Exempt	N/A	Exempt	Not Exempt[4]
Information Technology	Not Exempt	Not Exempt	Not Exempt	Not Exempt	Not Exempt	Not Exempt[4]
Health/Medical Services	Not Exempt	Not Exempt	Not Exempt	Exempt[5]	Not Exempt	Excluded**
Human Services	Not Exempt	Not Exempt	Not Exempt	Not Exempt	Exempt[6]	Not Exempt[4]

Source: State Survey and Procurement Code

**In addition to the agencies/branches listed above, in Nevada its Public Works Board is exempt for construction projects as are its political subdivisions.*

*** Excluded from the requirement of procurement through the state purchasing agent but not from the requirements of the Procurement Code.*

To address sole source and emergency procurements as well as other noncompetitive and limited competition procurements (i.e., emergency purchases), the National Association of State Procurement Officials (NASPO) offers statutory, regulatory and general recommended practices. Procurement statutes should:

- Require rules specifying exceptions to requirements for full and open competition.
- Provide that the chief procurement official have final determination of the waiving competitive procurement and mandate that this determination be in writing, specifying reasons competition is not possible.
- Define "emergency," "sole source," and other limited competition conditions, and require regulations mandating a written determination of the condition and requiring competition to the extent feasible.
- Require negotiation on noncompetitive procurements and submission of price or cost analysis under noncompetitive negotiation according to applicable rules.
- Require rules governing the handling of unsolicited offers, and demonstration or pilot projects, including approval by the central procurement official before any evaluation or acceptance of such an offer.
- Require approval of the central procurement officer for the quality and price of commodities and services produced by one agency for sale to other agencies.

Recommendations.

The LFC, DFA and GSD should consider appointing an interim committee during 2009 to:

- Review Sections 13-1-127 and 13-1-128 NMSA 1978 to determine and establish oversight and monitoring mechanisms of emergency purchases.
- Review Section 13-1-98 NMSA 1978 to evaluate all exemptions and determine if non-competitive purchasing status is in the best interest of New Mexico and its public funds.

[1] Only road construction is exempt, non-construction goods and services are procured by the Purchasing Division.
[2] Only highway and/or bridge construction is exempt.
[3] Only highway construction, professional services procurements and small purchases are not required to come through the SPD
[4] Professional services and small purchases are excluded.
[5] Licensed Professions are exempt.
[6] Child support enforcement service and support are exempt.

II. State Purchasing Division Concerns

Of Approximately $5.2 Billion Spent By State Agencies In FY07, State Purchasing Can Only Account For Approximately $16 Million Through RFP And ITB Due To Limited Tracking Documentation And Processes. The amount of dollars that the state spends on goods and services during a fiscal year were compared to how much of that spend is contracted and managed through the SPD. However, SPD does not have an efficient method to determine all of the 'spend' that *flows* through the division. In the GSD's FY08 Strategic Plan, an SPD Fact is listed as *"The State Purchasing Division buys tangible personal property and services for state agencies worth approximately $550 million each year."* Unfortunately, the division was only able to provide estimated numbers for this amount based upon 2002 information from Silver Oaks Solution (the Save Smart vendor). The approximately $16 million supported by an Access database spreadsheet from the division does not include the millions of dollars represented by statewide price agreements awarded by the division and used by the agencies. If the amount of $550 million was valid and verifiable, then only about 10 percent of the state 'spend' is awarded by or through SPD. Based upon statute, this 10 percent *should* be closely monitored and managed by the division. The following discussion will address the issues identified during the review regarding SPD and the State Purchasing Agent. The questions that exist are: *How is the remaining 90 percent ($4.68 billion) monitored and managed? What oversight processes are in place to ensure that the state has spent New Mexicans monies appropriately and efficiently? What controls are in place to ensure that the overall procurement process is fair and provides safeguards for maintaining a procurement system of quality and integrity?*

The State Purchasing Agent Needs To Develop Improved Management Accountability To Ensure Statutory Requirements Are Consistently Met And Efficient Procurement Practices Are Implemented Immediately. Multiple management responsibilities were identified as weak or not being fulfilled due to the State Purchasing Agent's inability to develop and implement processes and procedures. The internal control environment, SHARE, several statutory mandates, core operations/strategic planning and performance measures are some of the primary areas of responsibility that are not being efficiently and effectively managed within the division.

Internal control environment needs significant improvement. Control risk presently exists in the areas of password security, data accuracy and reliability, policies and procedures, and management reports.

Password Security. Two staff members have been using their supervisor's password to update the vendor database because their current authorities do not permit them to do so. These two individuals need the access authority to update and create vendors as part of their responsibilities tied to vendor registration. The State Purchasing Agent was not aware of this situation because he has not assessed employees' access authorities based on current roles and responsibilities. The State Purchasing Agent stated that he *'has no need to access SHARE except to enter his time and effort'*. Access to SHARE should be limited to only what the user needs to accomplish to fulfill his/her job responsibilities based on the agency request using the SHARE System Security Access Authorization Form. DFA provides passwords and access authorities for individual use and users should **not** share passwords. Sharing passwords compromises/undermines the security infrastructure, increases the potential for errors or fraud, and violates Section 1.12.10.9(J) Network Usage Policy and Section 1.12.11.16 Security-Password Policy of the NMAC. There is

not a legitimate reason to share passwords. The State Purchasing Agent can simply avoid risk by requesting the privileges and access needed for staff members to perform their duties.

Data Accuracy and Reliability. Throughout the review, there were multiple instances of data and information provided by management that contained errors and/or omissions. This is largely attributed to the manual environment and lack of written procedures in which the division operates. The following are examples of these instances:

- The procurement violation data was provided twice before management realized that it was not accurate. It would take a concerted effort by multiple staff members to evaluate support documentation to distinguish procurement *process* violations from procurement *code* violations. Upon completion of that exercise, management then provided a third spreadsheet of *reviewed* procurement violation data.
- The debarred and suspended vendor listing was requested during the entrance conference. Management stated that a listing did not exist because the division did not debar and suspend vendors. However, during an update meeting with executive management toward the end of fieldwork, a staff member *(not in attendance at the entrance conference)* communicated that the division previously debarred and suspended vendors and provided a three-inch file folder of data. The State Purchasing Agent did not know the file existed.
- The manually-prepared sole source contracts spreadsheet was provided towards the end of fieldwork. However, it was determined that the data did not include an aircraft purchased by the Department of Public Safety (DPS) for $1.2 million in April 2007 that was approved as a sole source purchase by the State Purchasing Agent. Sole source data provided by management is not reliable.
- Performance measure documentation to support training for external agencies and vendors was either not retained or not centrally filed. The previous deputy director provided three manila folders with support documentation for the data sources. One of the folders was marked "SPD Performance Measures" and was supposed to contain the source documentation for the performance measures. The file contained several reports, some with source documents attached and some without. Sufficient documentation to support the FY07 number of government employees trained (810) could not be located. Another folder was provided to support the new FY08 measure for the number of small business assisted. It contained four sheets of paper with hand written notes, one list that appeared to be from an Excel spreadsheet and several business cards bundled with a rubber band. The hand written sheets included the name of the event/session and the number of attendees (no names) and only one had a written date. The spreadsheet list was marked "4th Quarter FY08" yet the title reflected a date of 2007 which is not in the 4th quarter of FY08. The business cards referenced in one of the hand written notes read *"see calling cards collected"* and according to the previous deputy director, "not all business wanted to sign-in", which indicated that a sign-in sheet with some signatures existed, yet it was not in the folder.

Policies and Procedures. The State Purchasing Agent has not developed and documented detailed operating procedures. The Procurement Code and Administrative Code are used as policy and are not supported by written procedures. Procurement and Administrative Codes do

not provide sufficient detail to guide the staff through daily operations. When written policies and procedures do not exist, are inaccurate, incomplete, or simply not current, the following can result:

- Inaccurate and unreliable financial records due to inappropriate recording of transactions
- Inconsistent practices among employees and/or department
- Processing errors due to a lack of knowledge

Written procedures *(and documented procedures published on the website)* would provide consistency in the procurement process, establish standard practices and ensure compliance with laws and administrative regulations. Also, written policies and procedures enables the following:

- Employees understand assigned roles and responsibilities and encourage adherence to rules, sound decision-making, and productivity.
- Management can guide operations without constant intervention. The organization benefits by allowing managers the freedom to concentrate on strategic issues because policies and procedures are in place to guide the normal-day-to-day operations.
- Employees possess effective training documents for reference purposes and help train new employees within the department and external agency purchasing staff.

In addition, the State Purchasing Agent has not ensured that the division's current business practices and processes have been documented. SPD provided process documentation for what was in place *prior* to SHARE *(implemented July 2006)*. Some of the documented processes in part, such as bid abstracting, mailroom and receptionist procedures are still in place and not affected by SHARE. However, by documenting the division's current business practices and processes, SPD would benefit in specifically identifying inefficiencies and critical risk areas. Documented business practices and processes are crucial for accountability and consistency in implementing public policy.

Management Reports. The review team requested a list of management reports during the beginning of fieldwork and the State Purchasing Agent stated that since operations are predominantly manual, there are not any standard procurement-related reports available for management. Staff generates ad hoc reports from the division's Access database on an "as needed" basis. These reports are designed and created "on the fly" and no "standard" Access-based reports exist. However, the information captured in the Access database is subject to inaccuracies since the review team determined that staff does not consistently use the database to capture contract and bid data. Therefore, the reports generated would not be valuable for program evaluation and management purposes.

Additionally, the State Purchasing Agent and staff do not use the available SHARE Purchasing reports. The review team discussed the SHARE access authorities and available purchasing reports. Initially, staff stated they were not aware they could access the purchasing reports. Then subsequently acknowledged that they do not know how to run the reports and what the reports contain, attributing it to miscommunication with DFA. However, staff has the capability to generate purchasing and management reports from queries available in SHARE. When purchase reports (price agreements by dollar by agency) were requested during the review, one of the review team members had to train several division staff members on how to use SHARE and generate purchasing reports.

Monitoring and management reports are integral parts of the business cycle and an important part of the internal control environment. For example, efficient management reports would include data on the following:

- Due dates on contracts/price agreements about to expire
- Buyer assignments/current workload
- Open purchase requests
- Vendor performance information (submitted by state agencies)
- Dollars spent by commodity via price agreements (SHARE)
- Dollars spent by agency, by vendor (SHARE)

Recommendations. The State Purchasing Agent (or his designee) should:

- Eliminate the sharing of passwords among staff members immediately. Evaluate (*every 90 days or at least annually*) the staff's SHARE access authorities; assess the need based on their job responsibilities, and request updates to their authorities.
- Develop and document formal policies and procedures for all aspects of the procurement process.
- Immediately coordinate with DFA for division training and actual demonstration of which reports can be generated using the Purchase Order and Procurement Contracts Report modules and available queries in SHARE. Determine which reports will be beneficial as a management tool. Also, coordinate with DFA to develop standard reports for tracking procurement activities as well as specialized reports or queries as needed by management.

Several Statutory Requirements Have Not Been Fulfilled. The statute clearly identifies several annual reports and a procurement committee that are the responsibility of the State Purchasing Agent, as well as defining a 'small business' and what New Mexico small businesses are entitled to. However, during the review, the State Purchasing Agent was completely unaware of these sections and requirements of the statute. Additionally, in section D of the Section 13-1-95 NMSA 1978, multiple requirements are identified that have not been implemented by the State Purchasing Agent.

Annual Report. The annual reports to the legislature required by Section 13-1-187 NMSA 1978 were not available and have not been submitted. Section 13-1-187 NMSA 1978 states *the state purchasing agent shall annually, before January 1, report in writing to the legislature concerning the awarding of state contracts to small businesses during the preceding fiscal year*. The State Purchasing Agent acknowledged that he was not aware of the report requirement and that it has not been submitted since he was appointed to this position.

Procurement Committee. The State Procurement Standards and Specifications Committee was established in Section 13-1-162 NMSA 1978. It specifically identifies the members of the committee, the chairman, members' terms and who will staff the committee. When the minutes for this committee's meetings were requested from the State Purchasing Agent, the following response was provided:

> *In calendar year 2005, with the approval of then GSD Cabinet Secretary Lopez, we created the Statewide Procurement Council (SPC) to bring together the senior purchasing agents from local public bodies around the state for the common good. The SPC has met five times so far and I have attached the minutes of those meetings for your reference.*

In 2007, we created the Procurement Advisory Council, later renamed the Executive Procurement Advisory Council (EPAC), to bring together the senior purchasing agents from the departments within the Executive Branch – also for the common good. That council has met twice so far. As I recall, since the EPAC meetings were primarily advisory in nature, we did not prepare minutes from those meetings. I have attached the agendas for your reference.

These two councils cover some of the requirements of the "State procurement standards and specifications committee" that you reference. We will take immediate steps to align the two councils, and take other steps as necessary, to insure that our statutory requirements are being met.

Instead of forming and implementing the committee that has been required in statute since 1984, the State Purchasing Agent created two other councils within the last three years that do not fulfill the requirements of the statute. Additionally, an output of this committee is an annual report due from the State Purchasing Agent as identified in Section 13-1-163 NMSA 1978:

> *F. The state purchasing agent shall report annually to the secretary on the work done by the committee and its special committees during the calendar year. The report shall be made available to the legislature by delivering a copy to the legislative finance committee prior to the beginning of each annual legislative session.*

This report has also not been made available.

Small Business. The State Purchasing Agent and management team was *not* aware of the definition of small business in the procurement code even though there is a performance measure tied to it. The federal definition has been partially used which cites the number of employees (less than 500) determines small business status. Section 13-1-88 NMSA 1978, states *"Small business" means a business, not a subsidiary or division of another business, having an average annual volume for the preceding three fiscal years which does not exceed one million five hundred thousand dollars ($1,500,000).* SPD does not have a process in place to verify small business status. In addition, the State Purchasing Agent stated that *"all businesses are small businesses"*. There is no way to determine if a New Mexico business qualifies as small business based upon the current process and data on file. The division tries to "assist" as many vendors as possible whether small or large but does not have a way of tracking its "small business" status.

Additional Authority and Responsibilities. Seven additional requirements for the State Purchasing Agent are listed in Section 13-1-95(D) NMSA 1978 *(see Statutory Authority in the Background Section)*. However, it appears that only three of the seven requirements are being fulfilled. Two of those three are being partially fulfilled through the SPC created in 2005 and EPAC formed in 2007.

Recommendations.

- The State Purchasing Agent must adhere to all aspects of the Procurement Code and immediately develop processes to submit the annual reports, form the statutory required committee, and develop/implement all parts of Section 13-1-95(D) NMSA 1978.
- Review Section 13-1-184 through Section 13-1-187 NMSA 1978, and develop/implement the requirements of statute in a documented procedure. An efficient method is to capture this data within the vendor applications and during the vendor training registration process.

- If GSD's executive management believes these requirements are burdensome to the agency, then management should review current statute, justify revisions, prepare and propose alternative language for consideration by the legislature during the 2009 session.

Strategic planning and core operations for the division have not been successful during the past several years. The State Purchasing Agent is responsible for developing and implementing the strategic plan components for the division as well as efficiently managing its core operations. However, if the division's core operations published for FY07 and FY08 in GSD's FY08 Strategic Plan were "***graded***", it would reflect the following:

Table 4: State Purchasing Division's Core Operations for FY07

Core Operation	Yes/No	Reason
Respond to requests for basic Procurement Code training as existing resources allow	*Yes*	Training was provided to agencies when they requested it.
Evaluate training needs for current state vendors	*No*	Data to determine training needs of state vendors has not been gathered and documented.
Develop an outreach plan to assist small New Mexico businesses in competing for government contracts	*No*	SPD did not know what the definition of "small business" was in the Procurement Code. Management can not identify a small business from all other New Mexico business.
Establish a library of standard specifications and contract terms	*No*	Objective of the *state procurement standards and specifications committee* which has not been formed.
Review division funding and explore self-generated revenue options	*No*	Division funding has been reviewed; however, no evidence was provided that management has explored "self-generated revenue options". *One option SPD may consider is to incorporate a 1 percent administrative fee that would be included in the vendor's net price for construction, material, equipment item's price, labor rates, freight charges and bond costs. The administrative fee would be taken as a deduction off each line-item's cost when SPD prepares its' purchase order to the contractor, unless an alternative pricing method has been approved by SPD.*
Streamline the budgeting process to reflect discontinuation of the federally-funded procurement assistance program by presenting a consolidated appropriation request for the program.	*No*	The federal grant ceased during FY06. However, the related Fund 585-Procurement Assistance Program still has a balance in excess of $100 thousand @ August 2008. Management was not aware that the balance existed and ASD has not figured out what to do with the balance.

Source: GSD FY08 Strategic Plan

Table 5: State Purchasing Division's Core Operations for FY08

Core Operation	Yes/No	Reason
Identify needs for basic Procurement Code training by conducting a survey of agencies and evaluating the history of training offered and attended by agencies statewide	*No*	Training records were not consistently maintained for statewide agencies; Agencies have not been surveyed regarding training needs.
Initiate a proactive outreach program to agencies in geographic areas with unmet needs	*No*	The "proactive outreach program" has not been designed, developed, initiated or implemented.
Develop a core manual of frequently used specifications and contract terms to assist agencies in quickly identifying specific requirements at the beginning of the procurement process	*No*	Issue for the State Procurement Council reflected in the September 2006 minutes as "No action to date" – not reflected in meeting minutes held in 2007; Objective of the *state procurement standards and specifications committee* which has not been formed.
Implement advanced training program for agencies on effective procurement approaches	*No*	Training program for agencies has not been documented, developed or implemented by the State Purchasing Agent.
Enhance training for current vendors	*No*	Training program for vendors has not been documented, developed or implemented by the State Purchasing Agent.
Continue recruitment of small New Mexico businesses to provide goods and services to government entities	*No*	SPD did not know what the definition of "small business" was in the Procurement Code. Management can not identify a small business from all other New Mexico business.

Source: GSD FY08 Strategic Plan

The Action Plans for FY07 and FY08 would reflect similar grades. For example, only one of the three items on the FY07 Action Plan was completed:

FY07 Action Plan

- *Establish in-house capabilities to assume Save Smart New Mexico (SSNM) savings and compliance monitoring through the SHARE system*
- *Prior to renewal, compare SSNM contracts with competitive market prices and market conditions to ensure best pricing and continued viability. Renegotiate or re-compete as appropriate.* ***(Completed)***
- *Participate in development of e-procurement requirements for SHARE Phase II*

None of the four items on the FY08 Action Plan was completed:

FY08 Action Plan

- *Expand the application of strategic sourcing principles to more products and services*
- *Develop methodology to determine value of long-term strategic sourcing practices*
- *Full implementation of SHARE Phase II e-procurement module*
- *Enhance performance contracting assistance through outreach to more government agencies*

Recommendations. The State Purchasing Agent should re-evaluate division strategic plan components and determine:

- Are these realistic for staff to achieve based upon current skill levels and available man-hours?
- How will they impact the current workload of the division?
- Do they line up with the requirements of the Procurement Code?
- Is funding available ***and*** likely to be approved?
- Does executive management's buy-in exists and is it demonstrated?

After completing this evaluation of each component, the State Purchasing Agent should revise the components as necessary and seek specific direction from executive management prior to finalizing the strategic plan components.

Documentation was insufficient to validate the performance measures for the General Appropriation Act (GAA) and internal measures. Performance measures can be classified into two reporting groups: (1) agencies' internal measures (including measures used to meet federal reporting requirements); and (2) measures that are approved under the Accountability in Government Act (AGA). Key quarterly measures and the GAA measures are all a subset of approved AGA measures. The following table reflects performance measures included in the GAA and identified as key measures.

Table 6. GSD Procurement Performance Measures

Measures			FY06 Actual	FY07 Actual	FY08 Results	FY08 Target	Rating *(See Appendix C)*
GAA: '06,'07, '08	Output	Percent increase in number of small business clients (cumulative)	0	0	18%*	10%	R
GAA: '06 & '07	Output	Total annual audited savings from the *Save Smart New Mexico* Program, in thousands cumulative.	$24,117	$36,991	$42,500*	$42M	R
Internal Measures			**FY06 Actual**	**FY07 Actual**	**FY08 4th Quarter**	**FY08 Target**	**Rating**
GAA - '07	Efficiency	Average cycle completion time for construction projects, in days	Not available	103.3	N/A	N/A	N/A
GAA - '07 & '09	Quality	Percent of customers satisfied with procurement services	N/A	58.8%	Not conducted	69%	R
	Output	Number of small business clients assisted	N/A	N/A	0	50*	R
GAA - '09	Output	Percent of all price agreement renewals considered for "best value" strategic sourcing option	N/A	N/A	11%	5%	Y
	Output	Number of government employees trained on Procurement Code compliance and methods	Training records not available	810	192	500	R

Source: State Purchasing Division and Agent

** Percentage and number reported is inaccurate because SPD does not have a process to validate small business status, audited savings, and a method to determine the total population for small businesses.*

The division did not have complete data to support the reported results for the 4th quarter internal measures. According to the monitoring plan, the division distributes the procurement customer survey in the 2nd and 4th quarter, but did not send a survey for the 4th quarter. The customer satisfaction measure is a GAA measure in FY09 and the State Purchasing Agent should have ensured that the survey was conducted during the 4th quarter in order to have a valid baseline for the upcoming performance period.

Monitoring Plan – The current monitoring plan was prepared in 2007. The State Purchasing Agent has not updated it to show current and accurate information. It needs updating to reflect current targets and processes. For example, the monitoring plan shows the FY08 target of $28

million for the total annual savings from the Save Smart program. However, it is now based on cumulative totals of $42 million and adjusted to reflect cumulative totals which are not verifiable. The State Purchasing Agent did not have documentation to support the change in the methodology.

Measure Definitions – The measure definitions were not accurate. Descriptions of the data elements used as inputs for the measures need to be defined and documented as part of the definition. As previously stated, the measure definition used for small business was inconsistent with the definition in Section 13-1-88 NMSA 1978 and the division does not have a process in place to verify small business status. In addition, the definition of "customers" was not consistently applied. For example, in FY07 GSD employees were defined as "customers" of other GSD services for the measure for customers satisfied with procurement services. In FY08, customers were members of the statewide procurement council and other procurement managers at other state agencies and local public bodies.

Performance Targets – Performance targets are essential to performance management. The State Purchasing Agent established targets primarily based on historical information. In most cases, it was difficult to determine how targets were established based on the documentation. In one case, a documented methodology was not used to establish the targets**.** For example, the State Purchasing Agent stated he *guessed* that 90+ percent of all businesses were small business, yet a process to validate small business status does not exist and there is not a way to determine the total population. In addition, the target for customer satisfaction was based on a "reasonable percentage" of 85 percent and it was used as a benchmark. The target for FY07 was 80% and according to the monitoring plan, the target is 69 percent for FY08 and 80 percent for FY09.

Data Accuracy and Reliability – SPD's method for collecting data is primarily a manual process that is not reliable. The data for some performance measures was unavailable, data sources were inconsistent with the monitoring plan, and data was not always verifiable. SPD did not always maintain documentation in a central location, which confirms that the data cannot be relied on to accurately report on the performance measures.

In addition, according to the monitoring plan for the customer satisfaction measure, "*data is reliable by using the same customer survey questions will provide consistent year-to-year comparisons.*" However, there are inconsistencies in the data. Approximately 296 individuals received the customer survey and 59 responded (approximately 20 percent), but not all questions were answered by the 59 respondents. SPD resent one of the survey questions due to a format error and only 36 of the 59 responded. The validity of the survey results reported as a total percentage could be in question because of the inconsistency in the number of respondents. The performance results reported 83 percent of customers were satisfied with procurement services. However, the GSD website shows 79.6 percent were satisfied. In addition, not all survey questions directly related to customer satisfaction and there was no indication that management followed up on the survey results.

Internal Controls – There are no controls in place to ensure data is consistent and accurate. All systems supporting performance measure data collection should have effective controls to provide reasonable assurance that the information is properly collected and accurately reported. An effective internal control system contains checks and balances to ensure the integrity and accuracy of the information produced, and it should be designed at the time measures are

developed. The employee previously responsible for the division's performance measures retired June 30, 2008. This responsibility had not been assigned to another employee, nor was anyone trained to gather and report the information to the Office of the Secretary by the end of August 2008.

Other States - There is a commonality with the other states measures relative to customer service and cost avoidance and cost savings.

- Utah includes suppliers in its customer satisfaction survey, whereas SPD limits customers to the SPC and purchasing managers at other state agencies.
- Several other states include some type of efficiency measure (cycle time) which no longer exists at SPD. *{Note: Cycle time depending on how it is measured does not consistently reflect accurate turnaround time due to unexpected issues or unforeseen delays.}*
- The methods for gathering data varied by state and by the measure.

According to the information SPD reported, it would *appear* the division's GAA performance measures are on track or exceeding the targets. However, the data sources were inconsistent, not available and in most cases, the documentation was insufficient to validate the measures for GAA and internal measures.

Recommendations. The State Purchasing Agent needs to:

- Update the information in the monitoring plan to reflect current processes and targets.
- Accurately define each performance measure to ensure consistency and identify what is being measured.
- Re-evaluate the survey questions for the SPC. The results should be published and include some type of qualifying statement stating the results are based on those that responded. Otherwise, the results could be misleading. In addition, there should be some type of follow-up to the survey demonstrating how management is striving to improve customer satisfaction. Also, consider including suppliers in the customer satisfaction survey.
- Create a formalized process for tracking and maintaining data to ensure data sources are accurate and consistent.

Staffing Issues Have Impeded SPD's Progress. More than 95 percent of division staff satisfied the experience levels and 78 percent of staff fulfilled the educational requirements for posted positions. Management had extensive experience related to the position postings upon hire. In spite of the experienced staff, the State Purchasing Agent stated that the division works on a reactive basis because the workload exceeds staffing capabilities. For FY08, SPD initially planned to request an expansion of 20 FTEs but was reduced to 15 FTEs by GSD's executive management. Only three buyer positions were approved in the FY08 operating budget. Management asserted that the expansion positions would have allowed for the continuation of the Save Smart program as well as contract follow-up. However, management's analysis and support to justify the additional FTEs was insufficient and did not include a GAP analysis to accompany the request. According to the GAA for fiscal years 2005 through 2009, the Legislature has increased the number of General Fund funded positions at SPD as reflected in the table below:

Table 7: SPD's FTEs Funded By The General Fund

	FY05	FY06	FY07	FY08	FY09
Permanent	25	23	23	26	26
Term	6	6	6	0	0
Totals	31	29	29	26	26

SOURCE: GAA

Turnover. Management indicated that based upon FY06-FY08, turnover rates have remained low. Several of the staff departures in FY06 were part of the Procurement Assistance Program which ended December 31, 2005. Three of four staff departures in FY08 were due to retirements, which included the Deputy Division Director, a Management Analyst in the Data Analysis Unit and a Purchasing Agent. As of August 15, 2008, SPD has experienced additional turnover of two IT positions. At the writing of this report, the hiring of the Deputy Director position was completed, interviews will begin soon for the two IT positions, and the two Purchasing Agents and Management Analyst positions will soon be ready for advertisement. The State Purchasing Agent asserted the following:

- *The majority of turnover is in the associate buyer level,*
- *The primary reason for staff departure is attributed to money followed by opportunity, and*
- *SPD would experience a turnover rate of next to none if sufficient budget was available.*

A possible solution to the turnover/vacancy rates was discussed with the State Personnel Office (SPO) to possibly reclassify buyer positions to line manager positions. Reclassification of the buyer positions would allow a higher pay band and increased wages which could help increase employee retention. SPO has not formally responded to GSD's communication although management asserted SPO's concurrence with the reclassification. However, this solution has not been acted upon because of budget restrictions. Management will continue to pursue buyer reclassifications. The last communication between GSD and SPO about the buyer reclassification was dated November 15, 2007.

Surrounding States Staff Comparison. LFC staff emailed surveys to surrounding and comparable states to gather information about how they administer their procurement offices. Arizona, Nevada, Oklahoma, and Utah were the only respondents. Colorado's information was gathered from online inquiries. Surrounding states staffing levels range from 12 to 36. All state procurement offices with the exception of Nevada have multiple employees that hold a variety of certificates which include a CPPB or CPPO. The educational requirement for the majority of other states is a college degree, which may be substituted on a year-to-year basis. Surrounding states also reported low average annual turnover rates among specialists/buyers, with zero being the lowest and three being the highest. The following table reflects the survey results:

Table 8. Survey of Surrounding States of Comparable Size

State	Total Procurement FTE's within Department	Central or Decentralized Procurement Structure ^^	Utilization of Strategic Sourcing Methods	Utilization of e– Procurement Systems	Approximate Annual Spend Administer by Procurement Dept.
Arizona	30	Centralized	Yes, Performed In-house	Yes	$6 Billion^^^
Colorado^	12	Centralized	Not Utilized	Yes	$291 Million^^^^
Nevada	26	Centralized	Not Utilized	Not Utilized	$800 Million
Oklahoma	36	Centralized	Not Utilized, Anticipated SFY 09	Not Utilized	$700 Million
Utah	26	Centralized	Yes, Performed In-house	Yes	$1 Billion
New Mexico	***26***	***Centralized***	***Not Utilized***	***Not Utilized***	***$550 Million***

Source: State Surveys

^ *Information obtained from* www.gssa.state.co.us.

^^ *Although each State has a centralized procurement structure, certain procurements and dollar thresholds may be exempt.*

^^^ *Arizona is responsible for all state purchases and provides direct services for smaller agencies and procurement delegation for larger agencies.*

^^^^*The total may include estimated and zero dollars when, for instance, in the case of Price Agreements, there is no definite amount awarded.*

Recommendations. The State Purchasing Agent and staff should:

- Continue to focus on completing the hiring process of all funded vacancies as soon as possible.
- Conduct a valid staffing analysis and provide firm support for the FTE request that will be submitted during the upcoming budget hearing.
- Complete the GAP analysis for state purchasing because it will be needed to support additional FTE requests and during the planning phase of the e-Procurement project.
- Follow-up with SPO about position reclassifications and remain solution-focused during the discussions.
- Contact the purchasing departments in Arizona and Utah to find out more about their strategic sourcing processes which are conducted in-house and with a similar staff size as SPD.

Initial Plan For $500 Thousand Appropriated In The 48th Legislative Session For GSD's Implementation Of The E-Procurement And Strategic Sourcing Modules Was Not Presented For Certification Until The End Of September 2008. The primary e-Procurement modules within the SHARE system are (1) e-Procurement and (2) Strategic Sourcing. SPD has begun the process to obtain project certification and has completed a draft *Business Case* and *Project Charter for Certification.* According to the SHARE project team:

> *SPD has had limited involvement in defining the specifications needed to implement the e-Procurement modules. Early in the project, SPD dedicated staff to the analysis of the purchasing module. However, SPD experienced significant budget cuts and did not have the staffing resources to assign to the project. SPD's involvement was then peripheral and their input was limited. Therefore, only the agency purchasing function was implemented in FY 06.*

The $500 thousand appropriated to DFA for GSD during the 2008 session has not been used nor has the complete plan for its use been certified by DoIT (Department of Information Technology). According to management, existing business processes, requirements, and configuration specifications are being documented in preparation for project certification. SPD was originally on the agenda in July 2008 for DoIT's Project Certification Committee (PCC)

meeting; however, the project plan was not completed. Executive management and staff finally presented its SHARE Procurement Enhancement project certification for the Initiation Phase on September 24, 2008. The PCC approved $92 thousand for the following deliverables:

- *Define business requirements through surveying business owners and subject matter experts*
- *Complete project scope*
- *Finalize PM contract & hire*
- *Draft IV & V contract and plan*
- *Finalize Oracle contract for health assessment*
- *Conduct health assessment*

(PM - $50.0 and Oracle Health Assessment - $42.0)

The remaining phases have been planned as follows:

Planning - $275.0 – Certification Date: November 26, 2008
Implementation - $108.0 – Certification Date: December 24, 2008
Closeout - $25.0 – Certification Date: April 29, 2009

SPD had originally proposed a third party stand alone system; however, DFA directed management to stay with the SHARE system, especially since the State has purchased and installed several procurement modules. According to GSD's CIO, the central purchasing e-Procurement modules are broken down into the following sub-modules which have not been configured:

- Catalogue Management
- Supply Chain Warehouse
- Supplier Rating System
- Collaborative Supply Management
- E-Supplier Connection
- Strategic Sourcing
- Supplier Contract Management
- Supply Chain Portal Pack

The state has purchased multiple procurement modules with an array of functionality. According to the SHARE Project Team, Oracle and *MAXIMUS* representatives are confident that the statewide system has the capabilities to meet the division's needs. However, management stated:

- There are no formal cost or implementation estimates for the e-procurement and strategic sourcing modules.
- A gap analysis has not been performed by the division to determine what is specifically needed to bring the modules online.
- The division will need more funding from the legislature to implement these modules.

Recommendations.

- SPD, DoIT and the SHARE project team need to work on the feasibility of implementing the e-Procurement and Strategic Sourcing modules. Determine the amount of additional funding that will be required for implementation of these modules.

- Management needs to make the commitment to dedicating the necessary resources and staff to function in a leadership role with the e-Procurement team.

SPD Typically Has A Fair And Consistent RFP And ITB Process; However, File Documentation Needs Improvement A sample of ITB and RFP files was selected in order to ensure SPD followed the requirements for bids and proposals, and had a fair and consistent process. According to the General Services Department RFP Procurement Guide, the objective of the procurement process is *"to conduct a fair, thorough and impartial evaluation of products or services from responsible offerors which results in the selection and acquisition of the product or service that best matches the needs of the agency at the lowest cost through a process that promotes improvements to offeror proposals."* Based on the limited review, it appears that SPD typically has a fair and consistent RFP and ITB process, except the written notice of award was not issued for the ITBs.

The Procurement Code [Section 1-3-28 NMSA 1978] sets out specific requirements that all persons involved in public procurement must follow for the procurement of items of tangible personal property, services and construction. The data provided for RFPs and ITBs was incomplete and lacked accuracy. The total population for FY06 through FY08 could not be determined; therefore, sampling was on a judgmental basis. A dollar threshold of $100 thousand or greater was set for selecting the items available for review. *(Note: Capital improvement projects were excluded due to quarterly review and oversight by the LFC.)* Sole Source contracts, Price Agreements and IT contracts are included in the population of ITB and RFP files. The sample selection included 30 ITB and 3 RFP files, which represented 3.3 percent of the ITB and 4 percent of the RFP files. The total dollar value impact cannot be determined since the award amounts were not available in all cases and Price Agreements do not include a dollar value in the award. However, sampled items with dollar amounts accounted for approximately $7.7 million.

Based on the ITB documents reviewed, file documentation supported the overall bid process from the invitation for bid to the award in accordance with statute. However, evidence of written notification of award to the lowest bidder was not in the files. Instead, staff uses a stamp on the outside of the folder showing the date the completed document was mailed and who mailed the document. SPD mails the award (contract, price agreement or purchase order) without a written notification. Section 13-1-108 NMSA 1978 states *a contract solicited by competitive sealed bids shall be awarded with reasonable promptness by written notice to the lowest responsible bidder.* In addition, correspondence between the division and state agencies is usually in the form of hand written notes on existing documents, post-it notes or directly on the folder. The files also do not include an index or table of contents that would indicate there is a standard and expectation of what should be included in the procurement file.

Standardization of contract files is very common. While gaining an understanding of the purchasing process of the Cooperative Educational Services (CES) in Albuquerque, CES management shared their standardized documents. The tables in Appendix D contain the overview and submission instructions that are also a standard part of each request. Appendix E provides an example of a standardized Table of Contents that is part of their RFP or *Request for Bid* (RFB) process. Requiring that each offeror (vendor) submits their information in this format ensures that information in each contract will be located in the same place behind the same tab.

Recommendations.

- Define the requirements for documenting the procurement process (activities) using a graded approach to establish minimum and mandatory requirements. Enough information should be included in the procurement file so a person versed in procurement can read the information and conclude that all actions taken were appropriate and in the best interest of the state.
- Establish standardized table of contents and format for proposals for RFP and ITB submissions and require its use to ensure the information subject to public inspection is complete, accurate and easy to understand.

Even Though The State Spent Approximately $8.6 Million For The Save Smart Initiative Between 2004 And 2006, It Will Not Be Continued Due To Lack Of Adequate Knowledge Retention, Outdated Data On Which The Savings Formula Is Based, And Limited Resources. Save Smart New Mexico was a spend management initiative introduced November 24, 2003 by Governor Richardson. The primary function of Save Smart was to create statewide savings by effectively leveraging the State's purchasing power to save the State and taxpayers money. On November 4, 2003, GSD contracted with Silver Oaks Solutions (SOS) in order to accomplish Governor Richardson's Save Smart initiative. The contract specified SOS to act by and through GSD in order to develop and/or modify its procurement practices to reduce expenditures for certain categories of tangible goods and services. SOS applied strategic sourcing methods to reduce and negotiate best pricing/value with regard to price agreements and other procurement mechanisms. SOS achieved best pricing/value by performing comprehensive market and vendor analysis. The majority of the Save Smart contracts were initiated in 2004 and 2005. These contracts had four year durations with an optional one year renewal. *(See Appendix A)*

On October 31, 2007, the contract between GSD and SOS expired. The majority of the Save Smart contracts extended four years with an available one year extension. SOS presented the division with multiple knowledge transfer sessions from December 2003 to March 2005. The knowledge transfer sessions incorporated the strategic sourcing methods deployed by SOS in order to obtain best pricing/value for procurement contracts. In addition, SOS provided GSD with a free of charge *Compliance and Savings Monitoring Tool (Tool)* training session in September 2006.

Significant Progress Was Not Made On The Findings From The 2005 Review Of Save Smart Initiative And Save Smart Status Report. Five primary findings and recommendations were selected for the 2005 Save Smart report follow up. Follow up interviews were conducted with the State Purchasing Agent, previous Deputy Director and other selected staff members. The status of these findings is reflected in the table below:

Table 9: Follow-up of 2005 Review of Save Smart Initiative and Save Smart Status Report

Finding	Status
Staffing levels at State Purchasing Department have decreased	The State Purchasing Agent considered the ability of its staff to handle the Save Smart procurement processes and determined that they are insufficiently staffed to continue the program. 6 FTE's were proposed within the FY08 budget to handle the Save Smart duties which were not adopted in the General Appropriation Act. However, analysis and support to justify the additional FTEs was insufficient and does not include a detailed analysis to accompany the request. Alternatively, the division has not received any redirected Save Smart savings to fund the Save Smart administrative needs.
Continued state savings and return on the potential $8.0 million state investment rely on successful implementation of knowledge obtained from the Save Smart contractor, and adequate staffing.	Staff has received adequate training on all facets of the work performed by Silver Oak Solutions (SOS). Comprehensive training was received over a four year period which included free of charge Save Smart access database training. SOS completed, finalized and delivered all training manuals that were set forth within the contracts. However, there was not a smooth transition from SOS to SPD because management stated it is inadequately staffed to handle the volume of work.
Agencies are expending administration time dealing with Save Smart vendor problems.	The service situation with Belew's Office Furniture and Supply has since been rectified. On November 5, 2007, Belew's was acquired by Sandia Office supply and there have not been any additional issues brought to SPD's attention. Since SPD deals with these issues on a reactive basis, it is hard to tell if agencies are having other individual vendor-related issues. SPD notes that within the procurement pre-proposal conference, SPD encourages vendor questions and provides general information that addresses level of service the state demands. Vendor training will be provided by SPD upon request. However, this is performed verbally and supporting documentation was not available and future vendor training has not been planned.
The Save Smart contractor is being paid dollar for dollar on savings generated rather than fifty cents on the dollar.	GSD's initial response stressed the State's payments to SOS are in total compliance with the terms and conditions of the contract. GSD stated "The LFC's interpretation that SOS would be paid in an amount only half of the realized savings is contrary to both the contract and the appropriation". Therefore, SOS payments continued to be paid on a dollar for dollar basis. On October 17, 2006 the GSD Secretary acknowledged and agreed that the Save Smart savings guarantee ($16 Million) was satisfied and released CGI Group Inc. *(formerly SOS)* from all obligations and contingencies related to the "Guarantee" as stated the contract, specifically the provisions of Section 6, as amended. However, some commodities in which significant "Guarantee" savings were claimed and paid appear to have experienced significant increases since the departure of SOS. For example, since FY03 inmate medical services have increased by $14.6 million or 58.8 percent; even though inmate population only grew by an average of 4.1 percent between FY01 and FY06 and dropped by 4.75 percent in FY07.
Save Smart savings calculation and reporting procedures have weaknesses, some of which may be alleviated by the SHARE project.	Unfortunately, SPD has no internal system capabilities to neither verify or capture Save Smart savings nor use the *Tool*. On February 5, 2008, SPD began to implement a manual process to capture current price agreement contract activity. Memorandums were sent to Vendors, State Agencies, Boards, Commissions, Political Subdivisions and Local Public Bodies. As of September 16, 2008 SPD has not received any responses from the activity requests. Management stated that the Save Smart savings information would be available within the e-Procurement module, if implemented. Although the e-Procurement module would be beneficial, management has not completed a full analysis for implementation. Reported in Volume II – Legislative Finance Committee Report For Fiscal Year 2009, it was stated that in the case of the proposed interim e-Procurement system; it is unclear whether GSD adequately consulted with DFA and DoIT to ensure that the functionality desired by GSD could not be provided from SHARE. In addition, management is not utilizing or analyzing the current Save Smart savings reports that are electronically submitted by vendors.

Source: SPD Staff Interviews and Documentation

SPD Is Not Utilizing The Strategic Sourcing Methods Obtained From SOS To Achieve Best Pricing On Invitation To Bid Contracts. SPD noted the primary difference between Request for Proposals (RFP) and Invitation to Bids (ITB) as follows:

- *RFP contracts are based on best value which should include detailed analysis and review since the terms and conditions of the contract are negotiable by the vendor.*
- *ITBs are based on best price, in which the contract specifications are set by SPD and are non-negotiable; hence the award goes to the best price.*

SPD plans to dedicate the required resources to properly analyze and review all RFP's. Since RFP contracts vary in complexity and may be negotiated, SPD stated the emphasis will be placed on not letting the quality of this evaluation process be compromised. However, the comprehensive market and vendor analysis that was introduced and transferred to SPD by the Save Smart initiative is not practiced. Management will only rely on general analysis factors when determining best pricing, such as, relying on the competitive pricing received through proposals/bids, and the consideration of prior contract amounts. In addition, the focus will be on renewing major Save Smart contracts first and will process minor contracts subsequently.

The U.S. General Services Administration (GSA) defines strategic sourcing as *"the collaborative and structured process of critically analyzing an organization's spending and using this information to make business decisions about acquiring commodities and services more effectively and efficiently."* According to GSA, strategic sourcing helps optimize performance, minimize price, increase achievement of socio-economic acquisition goals, evaluate total life cycle management costs, improve vendor access to business opportunities, and increase the value of each dollar spent. Strategic sourcing is a procurement technique that moves from calculated approaches that constrain costs for individual agencies to cross-boundary strategies that explore the full scope of goods and services the government purchases and leverage that buying power to reduce costs and increase quality of goods and services.

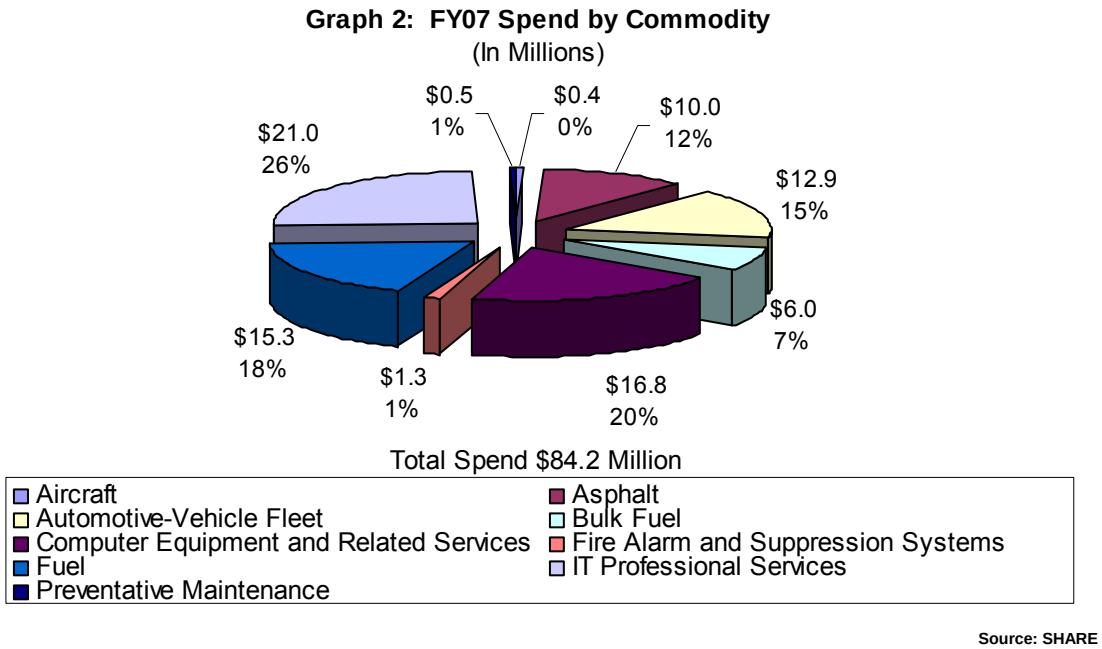
The National Electronic Commerce Coordinating Council (NECCC) indicates that governments must accomplish six tasks for effective implementation of strategic sourcing[7]

- Establish a funding model
- Address unique bidding and sourcing requirements
- Select the appropriate categories of commodities
- Counter the impact on existing suppliers and socio-economic preference programs
- Develop and implement strategies to measure and capture savings
- Create standards and ensure compliance
- Train staff to support the new program
- Enhance the capacity for sustaining strategic sourcing

SOS provided staff with the tools and knowledge to continue the Save Smart initiative and provided multiple knowledge transfer sessions over a four year period. These sessions contained trademark strategic sourcing methods that allowed the state to benefit by reducing primary commodity prices. The State compensated SOS $8.6 million for the initial research and implementation of the Save Smart price agreements and other procurement mechanisms. SPD is not utilizing the strategic sourcing methods obtained from SOS to achieve best pricing.

Amount Of State Dollars Spent Via Price Agreements Can Not Be Determined. The statewide impact of SPD not utilizing the strategic sourcing methods provided by SOS could affect State expenditures and price agreements. Nine commodities in FY07 statewide price agreements were selected to obtain a general idea of the dollars spent using this purchasing method. The following pie chart breaks down approximately $84.2 million spent on the nine selected commodities identified below:

[7] Except where otherwise referenced, the ensuing text on the strategic sourcing process is drawn from NECCC 2005.



SPD has not acquired comparative information from other states and industries which could be used as a negotiating tool. As a result, SPD will loose significant bargaining power leaving the State of New Mexico at a disadvantage for best pricing. The majority of Save Smart contracts are up for renewal in 2008 and 2009 which could leave the State with an unfavorable span of price agreements. With unfavorable price agreements, the State has the potential to expend unnecessary funds for primary commodities.

Recommendations. The State Purchasing Agent and staff should:

- Perform a current staffing analysis of current position responsibilities to determine if additional positions are actually needed to support Save Smart or other strategic sourcing methods. Specifically, identify and justify each position's responsibilities prior to submission for approval. Based upon the results, if necessary, request the additional staff needed to implement efficient strategic sourcing methods that will ensure New Mexico is continuously increasing the value of each dollar spent.
- Review and apply as many strategic sourcing techniques gained from SOS and surrounding states as possible to the current contract renewal process.
- As part of their job duties, challenge staff to take the initiative to achieve best pricing for the expiring state-wide price agreement contracts.
- Develop and implement a contract monitoring plan using the *Compliance and Savings Monitoring Tool* as a guide.
- Work with the DFA to develop a savings recapture plan and ensure that a portion will be redirected to SPD.

Procurement Code Violations Have Ranged From $2 Million To $7 Million And Are Not Tracked Or Monitored. Procurement violations are not identified, tracked or monitored by SPD. An agency will submit documents for payment to DFA. DFA will review the paperwork and determine that a possible process or code violation has occurred. DFA rejects the documentation and notifies the agency that a potential violation has taken place. The agency is

then required to submit a letter to SPD requesting a determination of violation and a plan of action of how they intend to prevent it from happening in the future. The State Purchasing Agent (previously handled by the Deputy Director) will review the documentation, and then issue a standard (form) letter to the agency that a procurement code violation has occurred and what steps are needed to resolve the issue. References are made to the language in the Procurement Code in this letter as well as a directive to remind agency staff of Sections 13-1-196 and 13-1-199 NMSA 1978. Aside from the letter, which the agency must possess to resubmit their documents to DFA for payment, the violating agency receives nothing more than an administrative "slap on the wrist". According to the State Purchasing Agent, the violation is usually a result of employee's lack of knowledge, staff turnover, untrained temporary employees, etc. causing the mistake. Management does not track these violations, nor does the division provide any feedback to agency management. During discussion of this issue, management decided *(effective immediately)* that SPD would only accept letters requesting a determination of violation from Cabinet Secretaries (or equivalents) to "insure management visibility". The following table reflects the number of procurement violations and related dollar amounts received by the division for FY06 through FY08 *(See Appendix B for violation details by agency):*

Table 10: Procurement Violations Received by SPD

Fiscal Year	# Of Violations	Description	Reason(s)	Approximate Dollar Value of Violations
FY06	114	Various	No Valid Contract Or PO	$6,749,341.43
FY07	75	Various	No Valid Contract Or PO	$1,840,223.19
FY08	136	Various	No Valid Contract Or PO	$4,337,163.85
Totals	**325**			**$12,926,728.47**

SOURCE: GSD State Purchasing Division

The fluctuation in the number and dollars of procurement violations could not be explained by management. GSD's divisions appear to be the most frequent violator of the procurement code. Out of 325 total violations, GSD was responsible for 129 (39 percent) violations which represented approximately $6,262,450.87 (48 percent). Repeat violations by type and/or from the same agency signals a training issue. However, management does not have any quality control mechanisms in place for monitoring procurement violations. Section 13-1-95 NMSA 1978 states that the Sate Purchasing Agent shall have the authority and responsibility to:

> *(6) provide information to state agencies and local public bodies concerning the development of specifications,* ***quality control methods*** *and other procurement information; and…[emphasis added]*

In the past six years, there was only one instance where a report of a potential procurement violation was questioned and returned to the agency. A fixed-priced, multi-year contract with one amendment for the amount of $3,051,416 was questioned by DFA when a sixth invoice was submitted by the contractor on December 4, 2007 to the agency for payment of $687,469. Invoice #006 was not supported by an amendment to the original contract or a separate contract. As a result of the dollar amount involved, the standard letter of determination was not issued by State Purchasing Agent. Instead, a request for a complete assessment and report by the agency's

internal auditor was required before a determination would be rendered. The timeline was as follows:

- December 4, 2007: SPD received the report of possible procurement code violations from the Public Education Department (PED) for educational services.
- December 14, 2007: State Purchasing Agent sent letter requesting internal auditor report of possible violations.
- June 24, 2008: Received a response from the agency's Secretary and a copy of the report from the agency's OIG Special Audit dated April 25, 2008 regarding the procurement code violations.
- August 8, 2008: State Purchasing Agent sent the procurement code violation determination letter to the agency with instructions to ensure that DFA receives a copy of the OIG Report.

PED's OIG concluded the following in its report: *(1) The main cause of the violation was the departure of the agency's contract manager in July 2007, as well as earlier staff departures, that left a knowledge vacuum in the division for a short, but critical, period. (2) The agency now has plans in place that will, if carried out, ensure procurement code compliance in the future. (3) Invoice #006 as billed by the contractor includes charges for work not completed and charges excessive under the circumstances. It should re-submit to reflect a fair and reasonable price for the work completed based on actual costs incurred for the work. The State should pay a fair and reasonable price for the services rendered.* In addition to these conclusions, the contractor acknowledged:

- The services invoiced on Invoice #006 were not within the scope of work contained in any executed contract or contract amendment.
- A gross profit rate of $2.2 million on a total billed amount of $3.7 million representing a 60 percent gross profit rate was recorded on the corporation's monthly 'Project Status Reports' from May 2006 to November 2007.
- The final reductions in Invoice #006 resulted in an adjusted amount due of $542,190.

While it is a step in the right direction of beginning some type of monitoring of the procurement code violation process, the concern still exists that savings to the state are being overlooked by management because of not having a consistent process in place to question procurement code violations in excess of a specific dollar amount.

Recommendations. The State Purchasing Agent should:

- Establish and document a course of action to effectively monitor and manage the procurement violation process.
- Coordinate with DFA regarding how procurement violations are identified and processed
- Require an agency audit/review of any procurement code violation in excess of $100 thousand.
- Track and document violations by agency, type and dollars.
- Establish consequences for repeat violators of the procurement code.
- Ensure that Cabinet Secretaries (or their designee) are notified in writing of continuous violations taking place within their agencies.
- Develop and implement training opportunities based upon types of violations for agencies statewide.

- Determine why the agency responsible for ensuring that all state agencies are adhering to the procurement code is the primary violator of the procurement code. Place offending GSD divisions in corrective action plans that include in-depth training.

Good Faith Review Was Not Conducted on a Sole Source Purchase of $1.2 Million. During the limited review of sole source contracts, it was determined that "*thorough*" evaluations are not consistently performed. For example, the Department of Public Safety purchased an A500 aircraft from Adams Aircraft Industries' (AAI) in April 2007 as a sole source purchase for $1.2 million. The State Purchasing Agent approved the purchase. In Section 13-1-128 NMSA 1978, the division is required to document the justification of the procurement method. In Section 13-1-126 NMSA 1978, the State Purchasing Agent is required to *conduct a good-faith review of available sources and consult the using agency* prior to making a determination *that there is only one source for the required service, construction or item of tangible personal property.* The following issues were noted in the aircraft contract file and corresponding interview with the State Purchasing Agent:

- The approval was based upon his aviation experience and a few internet searches for the DPS aircraft selection. However, he did not retain documentation to support these activities.
- Verbal advice was provided to the DPS Cabinet Secretary offering suggestions for a twin engine plane that would be more efficient and cost less. This conversation was not documented.
- The division has no formal procedures for conducting required *good faith reviews.*
- Price negotiations were conducted by the DPS Cabinet Secretary. The State Purchasing Agent did not take an active role in the negotiations of this aircraft. NMAC 1.4.1.54 and Section 13-1-126 NMSA 1978 state: *Negotiations. The state purchasing agent shall conduct negotiations, as appropriate, as to price, delivery and quantity, in order to obtain the price most advantageous to the state.*
- Due diligence was **not** performed to ensure the financial stability of AAI. Research was not conducted on the AAI's financial statements and stability considering the company was less than 10 years old, had previous legal challenges, not cleared for A500's inaugural flight until 2002, did not receive a Type Certificate from the FAA for the A500 until May 2005, and was the **only** manufacturer of this type of aircraft. He stated that the lack of research on his part was due to limited resources. Although this level of research is not mandated, it would be a **good business practice** for Sole Source purchases exceeding $500 thousand.
- When asked if the professional opinion issued by DOT's aviation director in which the negatives outweighed the positives for the purchase of this aircraft was reviewed, the response was '*Yes, however DPS's primary specification was for a push/pull plane and SPD can not dictate what an agency sets as their primary specifications'*.
- The push/pull specifications for the aircraft were out of date and had been discontinued by other manufacturers. AAI was the only viable source for the aircraft - thus the Sole Source purchase.
- AAI filed bankruptcy in 2008, was purchased by another company, and no longer manufactures the A500 aircraft – nor will the new owners honor the warranty agreement. Basically, this aircraft will be grounded indefinitely when maintenance is required.

The only other agency to procure an aircraft in the recent past was GSD for the Governor's Office. This aircraft was **not** a Sole Source purchase. This aircraft was procured through the RFP process because it was a twin engine modern aircraft.

In the state of Georgia, more stringent regulations are in place for sole source purchases. The following regulations would be an excellent guide for use by SPD in strengthening the sole source procedures within the division:

5.4 *Sole Source Verification:*

Sole Source contracts shall meet the following criteria:

Before making a determination of Sole Source, research shall be conducted to determine if more than one service provider exists and can satisfy the procurement requirements. Sound procurement practice requires that sole source procurement be used when it is the only option, not as an attempt to contract with a favored service provider.

In some cases, circumstances beyond the control of the Department may necessitate an emergency procurement. Such needs will be considered on a case-by-case basis. Lack of advance planning will not constitute a need for an emergency procurement.

The following must be submitted to the Office of Financial Services (OFS) as justification to initiate the request to award a contract as a Sole Source:

A. *Scope of Work:* *Provide the information to establish the context of the sole source, such as the service function. Provide where and how the service is to be used, operational environment, previous experience or history. Identify any efforts made to locate other possible sources, such as review of Thomas Register, industry organizations, Internet searches, consultants, Requests for Information, Buyers Laboratory, advertisements, or industrial publications.*

B. *Exclusive Capability:* *Describe the proposed supplier's unique capabilities and explain why this is the only source available. Some examples in which Sole Source could be acceptable are:*

1) When the proposed vendor developed a system for the Department, and having an alternative source to duplicate these capabilities would result in excessive cost to the Department. (Excessive cost shall be quantified.)
2) When only one (1) supplier can satisfy the technical requirements because of unique technical competence or expertise. (Technical requirements shall be valid and verifiable. Branding is not considered a technical requirement, and will not be sufficient to demonstrate exclusive capability.)
3) When only one (1) source possesses patents or exclusive rights to manufacture or to furnish the service.
4) Other extenuating circumstances or considerations include, as applicable, adverse impacts on the Department if not using the proposed source, and other considerations not previously stated.

Requests for sole source contracts must include all of the information and justification listed above. OFS will make the determination as to whether or not the Sole Source justification is in alignment with DOAS (Department of Administrative Services) State Purchasing, and sufficient to award a contract.

If there is a need to validate the justifications provided for a Sole Source procurement, OFS may publish the sole source instrument on the DOAS Procurement Registry for no less than ten (10) calendar days, to allow sufficient time to announce the intention of issuing a sole source contract,

and for interested and capable vendors to respond. The information posted must be of sufficient detail so that any vendor reading the information can determine whether it meets the requirements to provide such service. If no vendor responds to the listing, other than the intended sole source vendor, the contract may be processed as a sole source. However, if responses are received from additional vendors who are judged to meet the minimum requirements for the project, then a Request for Proposal (RFP), Request for Quote (RFQ), Statement of Need (SON) or other appropriate solicitation method must be used.

If no vendor, other than the intended sole source vendor, responds to the posted notice, the requested sole source contract may be processed without further solicitation.

Source: http://www.odis.dhr.state.ga.us/1000_adm/1200_fin/1210_FinancialServices/1214/PRO1214.doc

Recommendations.

- Develop and document specific guidelines that must be followed for all *good faith reviews* that are required for sole source purchases exceeding $500 thousand.
- Research other states (Utah, Georgia, etc.) sole source procurement policies and procedures. Establish more stringent procedures for procuring by sole source to discourage agencies from using this purchasing option and detect possible abuse.

The Vendor Registration And Notification Process Needs Improvement. Vendor registration is primarily initiated on the division's website that is managed by the State Purchasing Agent. The contact information on the website was not current at the time of the review. Upon notification, management updated the contact information; however, references to statute remain outdated as shown below.

Table 11: Outdated Information on SPD Web Page

SPD Web Page	NMSA 1978	NMSA History
Getting on the Bid List "The State Purchasing Agent shall ... ten thousand dollars ($10,000.00)"	*Section 13-1-104(B)* "Central purchasing offices shall … more than twenty thousand dollars ($20,000)"	June 18, 1999 - Substitute $10,000 for $5,000 July 1, 2005 – Increase from $10,000 to $20,000
How We Buy – Techniques *Small Value Authority* – $1,500.00 limit	*Section 13-1-125(C)* Small Value Authority up to $10,000 limit	July 1, 2005 – Increase from $1,500 to $5,000 June 15, 2007 – Increase from $5,000 to $10,000
How We Buy – Techniques *Formal Bid* - $10,000.00 limit	*Section 13-1-125(A)* Formal Bid for more than $20,000	July 1, 2005 - Increase from $10,000 to $20,000
How We Buy – Techniques *Professional Service Contracts* – $20,000.00 limit	*Section 13-1-125(B)* Professional Service up to $50,000 limit	July 1, 2005 – Increase from $20,000 to $30,000 June 15, 2007 – Increase from $30,000 to $50,000

Source: GSD Website, NMSA

Additionally, the website states vendors must register in order to receive notifications and by registering and paying the fee, the vendor will automatically receive Invitations for Bid/Proposals as the division receives them from the using agencies. However, vendors can download an invitation to bid from the website and submit a bid without being a registered vendor. Section 13-1-104 NMSA 1978 states that *such fees shall be related to the actual, direct*

cost of furnishing copies of the notice or invitation for bids to the prospective bidders. The fees shall be used exclusively for the purpose of furnishing copies of the notice or invitation for bids of proposed procurements to prospective bidders. Based on a limited review, the fees collected appear to be for postage, and newspaper advertising. The following table reflects the number of registered vendors and fees collected for FY06 through FY08.

Table 12: FY06 – FY08 Registered Vendors and Fees Collected

Fiscal Year	Number of Registrations	Total Fees Collected
2006*	2,184	$163,800
2007	1,828	$137,100
2008	1,721	$129,175

Source: SPD and ASD

** In FY06, SPD did not maintain the vendor registration list electronically because the "old system" generated a daily receipt log.*

There are two application forms (*Vendor Application for Registration* and *Application for Preference*) available for downloading from the SPD website. The vendor application for registration requires a $75 fee and the commodity codes that the vendor is interested in bidding. Staff will return the application if the vendor did not include a check or the commodity codes. However, staff does not send an acknowledgment letter to provide the vendor number once the application has been processed. Vendors usually have to call to obtain their vendor number and this could delay the bid and award process. According to management, the transition to SHARE and the associated shut down of the mainframe eliminated the division's ability to notify vendors efficiently by e-mail. During the review, management drafted a standard vendor acknowledgement letter. As of the writing of this report, the State Purchasing Agent has not finalized and approved it for actual use.

An additional part of the vendor registration process should include evaluation of the vendor's status. Prior to awarding a contract or purchase order, procurement staff should evaluate vendor's status to minimize the risk of issuing an award to a debarred or suspended vendor. The list of debarred or suspended vendors was requested and management stated that a list did not exist, because there are "none". On the contrary, approximately ten years ago the division had a process in place to debar and suspend vendors. Management has not maintained the process and the State Purchasing Agent was unaware that a process previously existed.

Section 13-1-177 NMSA 1978 establishes the authority for the state purchasing agent to debar or suspend vendors. The statute also includes specific information on causes and limits of debarment or suspension as well as the determination and the corresponding notice to the vendors. One of the causes for debarment or suspension includes conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records or receiving stolen property. Other states such as Arizona, Idaho, Minnesota and Montana have similar requirements for compliance with state and federal law and check the General Services Administration's (GSA) Excluded Parties List System as part of their process.

Recommendation.

- Maintain a current and user-friendly website to ensure accurate information is available to the vendors. Assign the responsibility and allocate the necessary time for the website to an employee possessing the technical skills and capable of manning the division's website.
- Finalize and implement the use of the standard acknowledgment letter to notify the vendor that their application was processed and provide their vendor number.
- Develop a process to evaluate vendor status as a standard business practice and because it is an expectation within the statute.
- Re-establish the debarment and suspension process and, at a minimum, establish a procedure (requirement) to check the GSA Excluded Parties List system found at www.epls.gov prior to awarding a contract or purchase order. Include documentation in the vendor and procurement files to provide some assurance in order to minimize the risk of purchasing agents awarding purchase orders or contracts to debarred and suspended vendors. This would protect the states interest and integrity of the procurement process.

Continuing Education and External Agency Training Is Impacted By Budget Restraints. Management strongly supports and encourages continued education. Staff often attend New Mexico Public Procurement Association (NMPPA) and National Institute of Governmental Purchasing (NIGP) courses that provide a range of procurement training sessions, which include Introduction to Public Procurement, How to Process and Evaluate Bids and Contract Administration. Management often encourages staff to obtain professional certifications, such as Certified Professional Public Buyer (CPPB) and Certified Public Purchasing Officer (CPPO). However, GSD offers no incentives for obtaining these certifications. Management notes the main reasons for not offering incentives are budget and rule restrictions but will explore alternative means for providing incentives. Staff welcomes any continued education courses that are provided but suggested that they should seek new training avenues in order to expand staff knowledge.

External Agency Training. SPD has provided external training sessions to other state agencies and local bodies; however it is on a *'by request'* basis. When possible, the division *piggybacks* on other financial sessions to provide procurement information. For example, SPD provided a *Purchasing Update* presentation for the New Mexico Association of Counties Finance and Purchasing Affiliate, on January 15, 2008. In addition, the State Purchasing Agent provided the LFC with an informative and valuable procurement code training session on May 22, 2008. Each course is tailored to the trainees needs which may cover Procurement Code, RFP, ITB etc. Management noted that usually five or six procurement code training sessions are presented per year. However, management has not maintained supporting documentation and can not verify the volume of these sessions. The general rule of thumb is, if an agency has ten qualified employees committed to attend a training session, SPD will travel to any destination within New Mexico; so long as the requesting agency pays per diem because the division lacks the budget for travel. Management stated that there is a goal to get on a regular training basis directed at the four quadrants of New Mexico (NE, NW, SE, and SW). Unfortunately, there is no evidence that suggests management has planned or participated in a proactive training approach.

LFC staff sent surveys to other state agencies to identify opportunities to improve procurement services in the state and gather information about SPD's state training initiatives. All of the surveyed agencies noted that the training provided by the division during FY06 through FY08 was insufficient for their needs, primarily because there were no SPD-sponsored, at-large training sessions. However, one agency did request and coordinate specific training from SPD, which was well received and proved to be very effective. The agency stated that the training presenters were 'very knowledgeable and helpful'. Most of the agencies noted that the majority of the training received by their departments was externally presented by NMPPA which were somewhat repetitive or NIGP which were informative but costly. Several surveyed agencies had several suggestions for future SPD training sessions:

- RFP training
- Design/Build procurement processes
- Perform semi-annual training sessions
- Consider sponsoring additional one-day training sessions at various locations within the state
- Notify agencies when up coming training is offered
- Expand the class topics and negotiate reduced costing for agencies with limited funding for training

Recommendations.

- Identify staff training needs and design an annual training plan for continuing education for the purchasing staff.
- Develop and implement a proactive annual training plan for external agencies.

October 15, 2008

Mr. David Abbey, Director
Legislative Finance Committee
325 Don Gaspar, Suite 101
Santa Fe, NM 87501

RE: GSD Management Response to LFC Program Evaluation Report

Despite a chronic history of under-funding and insufficient staffing, coupled with the loss of our electronic support system shortly after the implementation of the SHARE system in 2006, the Purchasing Division has continuously met its core obligation – the successful conduct of quality procurements. As noted deep in the evaluation report, "Based on the ITB documents reviewed, file documentation supported the overall bid process from the invitation for bid to the award in accordance with statute." and "**SPD Typically Has A Fair And Consistent RFP and ITB Process.**" (Emphasis in original.) This is our primary mission!

During the past two years the State Purchasing Division has not had sufficient staffing, particularly, trained and qualified purchasing agents and IT Analysts, to carry out our core mission of conducting procurement actions for user agencies. Our FY09 Expansion Request for 15 FTE was not approved. We currently have a request for 6 additional positions in our FY10 budget request. This staffing shortage has resulted in a shift in workload to the remaining staff members and a necessary prioritization of work to insure that we meet our core requirements. While meeting effectively the procurement demands of our 150+ agency customers, some lower priority items have necessarily been left undone.

The Division suffered a further setback in the 3rd quarter of CY2006 when our use of an outdated mainframe computer program, that we had relied upon heavily to provide limited technological support, was discontinued as part of the shift to the SHARE system. Due to anticipated capability within SHARE not becoming available when expected, the Purchasing Division was forced to revert to an almost fully manual system of processing procurements. This situation continues to this day. Indeed, at this point the Division is almost fully paper driven, enduring such inefficiencies as vendor notifications of procurements consisting of hand stuffed envelopes each being dispatched with $0.42 in postage.

These resource and technology shortfalls have significantly impacted the Division's ability to meet all statutory and business requirements for many years. Recognizing these shortfalls, and their impact, is critical to putting the identified shortcomings of the Division into proper perspective.

The management of the General Services Department and the Purchasing Division acknowledge several shortcomings within the Purchasing Division. We acknowledge that there are areas where we have not fully met our statutory and business requirements. And we have been

working diligently for several years, long before this evaluation began, to resolve many of those issues. These efforts have included seeking additional funding to not only hire quality, qualified individuals but to expand the Division to allow a focus on high savings procurement methods. Additionally, our efforts to secure the necessary personnel and technology to allow us to fully meet out statutory and business requirements are continuing despite recent setbacks. In the last budget cycle, our request for 15 additional FTE and support technology funding was unsuccessful, yielding only a modest appropriation to initiate some limited technology implementation. We understand that priorities elsewhere in state government factored into the final budget decisions. Our workload, however, continues to grow beyond our ability to meet every requirement addressed in the evaluation report.

Responsibility for purchasing within the Executive Branch is split between the State Purchasing Division, handling tangible goods and services, and a combination of individual agencies and the Department of Finance and Administration (DFA) handling professional services. This split creates confusion and complications with implementing agency purchase requests. Consolidation under a single procurement organization would reduce the opportunity for agency confusion and also allow for consistent management, goals, direction, and process handling, enabling more consistent procurement processes and reporting. We feel the DFA Contracts Review Bureau should be consolidated with SPD – the current center of procurement expertise for the Executive Branch – within GSD to provide oversight of all Executive Branch procurement actions.

SPD does not agree that all purchasing should be consolidated under DFA. Procurement frequently requires subjective decisions and a strong check and balance system is necessary to avoid conflicts of interest, minimize opportunity to bias evaluations/criteria, and limit undue influences from effecting source selection. As such, we believe it is very important to maintain a separation of procurement decisions from the payment control/function processes. This separation causes each organization to validate and verify the actions of the other making influence of procurements less likely and substantially more visible. For this reason SPD recommends consolidation of all purchasing functions, including those currently performed by the DFA Contracts Review Bureau, under the GSD umbrella.

The report next addresses statutory guidance on non-typical procurement methods and the need for further review. While additional oversight may be beneficial, emergency procurements are conducted consistent with statutory requirements and are subject to oversight and approval by the Department of Finance and Administration. The evaluators have indicated no issues with DFA's exercise of this oversight authority. Emergency procurements from each requesting agency are considered on a case-by-case basis and require written justification for approval by DFA. With additional personnel, SPD can and will implement a more rigorous oversight function to ensure this exemption is properly utilized.

The report further addresses challenges with Procurement Code exemptions. These exemptions are grounded in Legislative policy decisions. Generally speaking, any exemption may impact fair and open competition and could lead to paying higher prices or receiving lower quality goods or services. Exemptions should be limited to those that are absolutely necessary as in the best interest of the taxpayer. Ultimately, however, these are a Legislative policy choice. Our goal is to ensure the statutory criteria for these exemptions are satisfied and to build a staff capable of consistently carrying out this task.

The evaluation report then turns to the lack of adequate visibility into the spend of over $5 billion in state funds. This dollar amount is far beyond the jurisdictional limits of SPD. Almost 90% of this amount does not fall under SPD control. Nevertheless, we agree that the tracking of this spend needs to be resolved across all agencies. Technology we are currently seeking to enable within the SHARE system will go a long way towards allowing all state agencies the needed visibility into that spend. This will provide a major improvement for all of state government.

The report next cites the need for improved management accountability in a number of areas. While our focus on core procurement functions has limited our effectiveness in the key areas noted, we concur with the requirement to apply proper management attention. Lack of internal controls, data accuracy, the lack of detailed policies and procedures and lack of utilization of management reports are all cited as shortcomings. While the bulk of this is attributable to our error prone manual internal systems and lack of human resources, we acknowledge that additional improvements can be brought to bear in these areas as well. GSD management and SPD management are currently working closely to develop a short range tactical plan to resolve those discrepancies that we can within the limits of our available resources and will seek additional resources as necessary.

Three areas where the Purchasing Division is not fully complying with statutory requirements are identified. One deals with the filing of several annual reports while another deals with the formation and operation of a Standards and Specifications Committee. We concur with these findings. To achieve this, SPD will reassign existing personnel from other responsibilities. It is hoped that our pending budget request will assist us in timely meeting all of our statutory requirements.

The report further notes that the State Purchasing Agent formed two other councils that do not fulfill the requirements of the statute. The formation of these councils was intended to foster communication and the sharing of resources between state and local procurement organizations as well as between procurement organizations within the Executive Branch. Their need, and benefit, is not related to and is not intended to replace the committee identified as outstanding. Their creation was intended to increase the efficiency of procurement organizations at all levels throughout the state. These councils are meeting that intended need and are well supported by state agencies and local public bodies.

SPD acknowledges the other areas called out in the report where our statutory compliance and compliance with performance measurement requirements are weak. Resolution of those weaknesses will be addressed in the tactical plan currently in development.

Staffing and training issues are cited as impeding progress. Again we concur. SPD will take steps to conduct a gap analysis prior to the start of the 2009 Legislative session to support our request for additional FTE. We will also continue to aggressively pursue the elevation of our buyers beyond their current classifications – where they are often paid less than personnel in significantly less workload intensive positions within assorted state agencies. And we will create and implement internal and external training plans to insure maximum training coverage for SPD

staff, Executive Branch agency staff and local public bodies – consistent with available staffing and our statutory requirements.

Our delay in proceeding to expend $500.0 for initial implementation of SHARE electronic procurement and strategic sourcing was flagged as problematic. This process includes significant oversight by DFA and we are working collaboratively with them to implement the SHARE modules. We are progressing, have adjusted assignments within SPD to insure adequate coverage and expect to have a project manager hired in the near future. Additionally, we are seeking a supplemental appropriation from the 2009 Legislature to allow us to hire two or three temporary employees to focus on the effort full time.

Later in the report, the evaluators note that RFP and ITB file documentation needs improvement. We partially concur. We feel that we are meeting our statutory requirement with regard to our procurement files. But we agree that the quality and usefulness of these files could be improved. SPD will put a process in place to standardize our filing process and improve the quality of our procurement files.

The report notes that, despite training by the spend management ("Save Smart") contractor, SPD elected not to continue spend management due to lack of resources. We do not totally concur. For the past two years we have worked to acquire the additional resources to not only continue but expand our capability to perform spend management – also referred to as "strategic sourcing." As indicated elsewhere, our efforts to secure 15 additional FTE from the 2008 Legislature were unsuccessful. We have submitted a request of the 2009 Legislature to approve six additional FTE as part of a phased effort to ramp up our capability in this area.

The report also notes the transition of manuals and tools to SPD. Given sufficient resources, the material in the manuals will be useful in transitioning to in-house strategic sourcing. We are currently seeking those sufficient resources. The two tools transitioned to SPD were a compliance tool and a savings calculation tool. The compliance tool is based on the multiple accounting systems that were in place when the Save Smart program was put in place. That tool was rendered unusable upon transition to the SHARE program.

The savings tool is grounded in a baseline of FY 2003 pricing data that has been "adjusted" repeatedly to make it "current" – as the availability of specific items as well as technology has changed. The validity of that "adjusted" data is now very questionable so the overall usefulness of the tool is suspect. New tools and methods are desperately needed and will be part of the strategic sourcing effort we are seeking additional resources to support. These tools will focus on current commodity market conditions for comparison rather than past conditions, like Save Smart, that may no longer be relevant to current purchasing decisions.

And finally, with regard to savings from Save Smart methodologies, the report indicates that "the division has not received any redirected Save Smart savings to fund the Save Smart administrative needs." We concur. As noted above, we are seeking additional resources to deal with strategic sourcing needs.

The evaluators note, in their report, that the amount of state dollars spent via price agreements cannot be determined. SPD personnel are not currently proficient in extracting this information

from the SHARE system via the query process. We will work with DFA to obtain the necessary training to become proficient regarding such report generation from the existing SHARE configuration. We anticipate significant additional reporting capability as we expand SHARE electronic procurement and strategic sourcing capabilities. We are currently seeking resources from the Legislature to fund that expansion.

Procurement Code violations are cited as an issue as well. Such violations are generally caused by human error at the customer agency level – the failure to recognize the expiration of a contract or lack of understanding of the process or the proper paperwork required within the agencies of the Executive Branch. These, in turn, are often the result of staff turnover or the lack of knowledge by newly hired personnel. We acknowledge the value in tracking these violations and providing targeted training as called for. SPD will institute detailed tracking and adjust our educational offerings to insure additional, and targeted, training in this area.

The report cites lack of good faith reviews and negotiations with regard to sole source procurements. With regard to good faith reviews, the State Purchasing Agent insists on a reasonable search being made for optional sources, consistent with available resources, prior to the approval of any sole source purchase. Each sole source approval comes only after the completion of such a good faith review. SPD is compliant with this requirement.

As to the purchase of a $1.2 million aircraft, we again feel an adequate good faith research effort was made by the State Purchasing Agent before approval of the sole source request, given the resources we have available. We agree that an exhaustive search associated with each sole source procurement could identify additional potential problems. But this would hold true with all procurements we conduct as well. The amount of time dedicated to researching any given procurement must be balanced against the available resources. Again we feel we are doing all we can, given the resources we have, and this includes our efforts with regard to the aircraft discussed.

The report goes on to note that SPD did not participate in the negotiations for the referenced aircraft. As stated in the report, the negotiations were conducted by the DPS Cabinet Secretary who had the best handle on the required aircraft specifications, his agency's needs and budgetary resources. SPD does not have sufficient resources to commit extended amounts of time and effort to individual sole source procurements in light of our overall workload. The additional resources we are seeking should allow us to better fulfill this obligation. SPD will take steps to insure that we fulfill our statutory requirement by becoming more involved with our customer agencies in sole source negotiations – consistent with available resources. In addition, we will evaluate the State of Georgia approach, cited in the report, for partial or total implementation in this state.

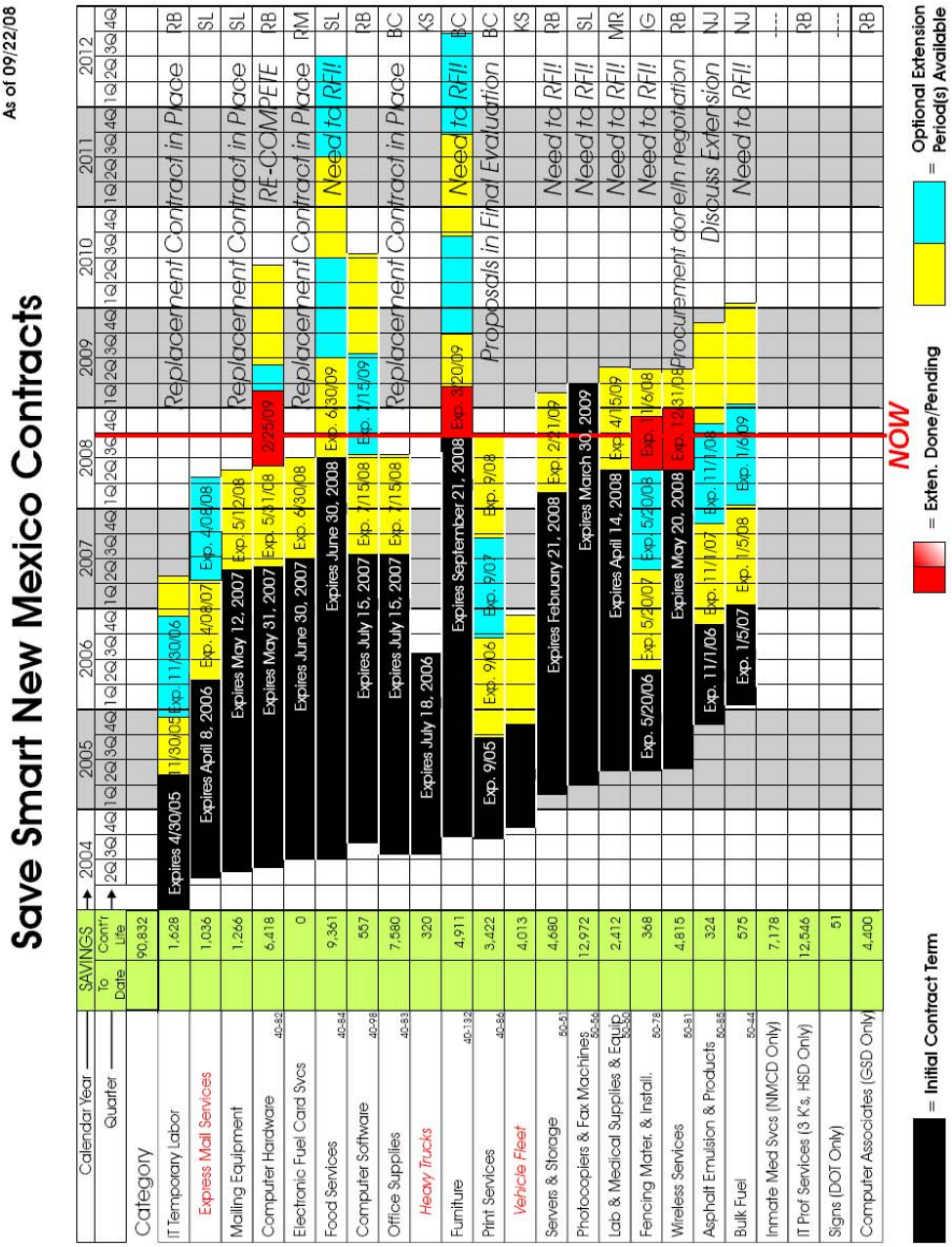
Also according to the report, the vendor registration and notification process needs improvement. We concur. SPD is planning a complete assessment and overhaul of both processes to improve efficiency and customer friendliness and usefulness.

In closing it is noteworthy that, based on discussions with senior LFC management and SPD personnel, it appears that SPD had NEVER been evaluated since the Division was created back in 1983. As such, procedures that have always just "worked" have never been subject to outside

scrutiny. That being the case, the Division was ripe for an outside look to help us get beyond a possible entrenched "business as usual" approach. For this, we thank the LFC and their auditor staff for their efforts. Except as otherwise noted, we see no other recommendations that are not worthy of implementation. We will be prioritizing and implementing the recommendations as resources allow while seeking additional resources as appropriate. It is the goal of GSD and SPD management to provide an efficient, high-performance procurement organization that best meets taxpayer needs by providing the best value products and services to the user. With the assistance provided by the LFC, we will move forward to meet this goal.

Sincerely,

Arturo L. Jaramillo
Cabinet Secretary


Save Smart New Mexico Contracts
As of 09/22/08
Calendar Year
Quarter
SAVINGS
To Date
Contr Life
Category
IT Temporary Labor
Express Mail Services
Mailing Equipment
Computer Hardware
Electronic Fuel Card Svcs
Food Services
Computer Software
Office Supplies
Heavy Trucks
Furniture
Print Services
Vehicle Fleet
Servers & Storage
Photocopiers & Fax Machines
Lab & Medical Supplies & Equip
Fencing Mater. & Install.
Wireless Services
Asphalt Emulsion & Products
Bulk Fuel
Inmate Med Svcs (NMCD Only)
IT Prof Services (3 K's, HSD Only)
Signs (DOT Only)
Computer Associates (GSD Only)
NOW
= Initial Contract Term
= Exten. Done/Pending
= Optional Extension Period(s) Available

APPENDIX B

Table 1: FY06 Procurement Violations

Agency	# Of Violations	Description	Reason(s)	FY06 Agency Total
African American Affairs	1	Conference Fees	Written Quotes Not Obtained	$3,000.00
CYFD	2	Ac Rental; Medical Product	No Declaration Of Emergency; No Encumbrance/Purchase Document	$13,444.14
Corrections Dept.	2	Fuel Purchase; Telecom Eqpt Leased	Written Quotes Not Obtained; Lease Agreement Violation	$102,175.40
EMRD	1	Printing Services	Save Smart Contract Not Used	$12,096.35
Environment Dept	4	Educational Classes; Court Reporting Services; Defensive Driving Materials	No Purchase Document; No Encumbrance	$12,044.03
GSD	**79**	**Telephone Company Services; Software Maintenance; Non-Specific Services/Products; HVAC Services; It Consultant/Product Services; Vehicle Repair Services, Etc.**	**No Encumbrance/Purchase Document; Established Contract Not Used; Written Quotes Not Obtained; No Valid PO**	**$5,403,874.48**
Health Department	14	Federal Survey Services; Health Case Mngt; Health Maintenance; It Services/Software; Laminated Cards; Medical Purchases; Prof Services-Grant Development; Telephone Services; Training Services, Etc.	No Encumbrance/Purchase Document; Established Contract Not Used; Written Quotes Not Obtained; No Valid PO	$658,218.70
Indian Affairs Department	1	Hotel/Travel Services	Written Quotes Not Obtained	$74,760.00
Public Regulation Commission	1	Professional Services; Legal Services	Formal Solicitation Not Utilized	$416,674.30
Public Safety Dept	1	Printing Services	Written Quotes Not Obtained	$13,725.95
Regulation & Licensing Dept	1	Cellular Telephone Misc.	No Encumbrance Or Purchase Document	No Amount Given
State Engineer Office	1	Online Legal Research	No Encumbrance Or Purchase Document	$1,770.37
State Treasurers Office	1	Printing Services	Established Contract Not Used	No Amount Given
Third Judicial District Court	1	Office Furniture	Written Quotes Not Obtained	$7,229.99
Tourism Dept	2	Exhibit Design & Construction	Written Quotes Not Obtained	$27,166.65
Veterans' Services Dept	1	Printing Services	Save Smart Contract Not Utilized	$727.17
Dept of Workforce Solutions	1	It Maintenance	Established Contract Not Used	$2,433.90
Total FY06 Violations	**114**			**$6,749,341.43**

Source: GSD State Purchasing Division

Table 2: FY07 Procurement Violations

AGENCY	# OF VIOLATIONS	DESCRIPTION	REASON	FY07 AGENCY TOTAL
Aging & Long Term Services	1	Purchasing Items From Brown & Bigelo	Did Not Acquire 3 Written Quotes	$5,394.62
OAG	1	NM Coalition Of Sexual Assault Programs	No Purchase Document	$5,000.00
CYFD	1	Purchases From Several Vendors	No Purchase Document	$33,610.00
Corrections Department	3	Training Services Fr. Law Enforcement Training/Corr Counseling; Purchase Of Telephone Services	No Purchase Document; No Valid Contract	$5,595.20
Commission of Deaf & Hard Of Hearing Persons	1	Services From Rochester Inst. Of Technology	No Valid Contract	$10,000.00
Environment Dept	3	Meeting Rooms At The Cities Of Gold; Office Supplies-Office Depot; Rent Of Meeting Rooms/Co-Sponsor Fee	Did Not Acquire 3 Written Quotes; No Purchase Document	$13,985.13
Expo NM	1	Purchase-Wagner Rents Lift Truck	No Valid Contract	No Amount Given
DFA	1	Prof. Srvcs Fr. Acequia Assoc.	No Valid Contract	100,00.00
Game & Fish Dept	2	Eyed Eggs From Springfield Fisheries; Legal Services	No Valid Contract	No Amount Given
GSD	**15**	**Plumbing/Internet/Consulting/Online Legal/Med Case Mngt Services; Vehicle Leasing; Etc.**	**No Purchase Document; No Valid Contract/Price Agreement;**	**$483,079.81**
Health Department	5	Srvcs Fr. The Indian Pueblo Cultural Ctr; Immunizations; Svs From Galaxy Hosted Software; Etc.	No Valid Contract	$17,071.00
HSD	1	Training From Kinney Assoc. LLC	No Purchase Document	$5,315.62
Indian Affairs Dept	1	Trans. Srvcs Cost/Indigenous Games	No Valid Contract	$35,000.00
MLK Commission	1	Payment For Wyndham Hotel	No Valid Contract	No Amount Given
National Hispanic Cultural Center	1	Security Services From Akal Security Inc	No Valid Contract	No Amount Given
NM Board Of Nursing	1	Production & Distribution Of Licenses	No Valid Contract	$18,000.00
NM Livestock Board	2	Services From Various Veterinarians & Vet Techs; Print Srvcs From Starline Printing	No Valid Contract	$24,170.00
PRC	2	Professional Srvcs Fr NUCA NM; Audit Services	No Valid Contract	$20,518.00
Nm Retiree Health Care Authority	4	Services From Prudential Insurance Company/Lovelace & Pres. Health Plans	No Valid Contract; No Purchase Document	No Amount Given
PED	2	Services From Science Education Solutions Inc/Nm Congress Of Parents/Teachers	No Valid Contract	No Amount Given
DPS	4	Training Svs.-Govt Training Inst; Various Training & Svs	No Valid Contract; No Purchase Document	$109,996.08
RLD	2	Services For Towing Vehicles/Short's Wrecker Svs; Proctor Clinical Exam	No Purchase Document	$7,718.68
Secretary Of State	1	Purchased Portable Booths Fr Election Data Corp	No Valid Contract	$124,500.00
Div of Voc Rehab	1	Software Maint/DDS Case Tracking	No Valid Contract	$28,016.67
Workforce Solutions (DOL)	18	Various Prof Svs; Training; Svs-Other Vendors; Wage Keying Services; Etc.	No Valid Contract; No Purchase Document	$893,252.38
Total FY07 Violations	**75**			**$1,840,223.19**

SOURCE: GSD State Purchasing Division

Table 3: FY08 Procurement Violations

Agency	# Of Violations	Description	Reason	FY08 Agency Total
African American Affairs, Office Of	1	Purchase Of Office Supplies From Office Depot	No Valid Po	$2,330.78
Aging & Long Term Services	1	Purchase Of Services From Mr. Donald Bay	No Valid Contract	$1,975.00
CYFD	3	Purchase Of Professional Services From Neutral Zone/Chillhaven Inc./Etc.	No Valid Contract	$5,000.00
Commission F/T/Deaf & Hard Of Hearing	4	Purchase Of Internet Services From Hands And Voices And Community Outreach/Rochester Institute Of Technology/Community Outreach Program For The Deaf/Etc.	No Valid Contract	$137,281.04
Corrections Department	5	Purchase Of Legal Subscription Services From Westlaw Publishing Corp; Roof Repair; Boiler Repair; Intervention Services; Etc.	No Valid Contract Or PO	$61,618.80
Cultural Affairs, Dept. Of	3	Procurement Of Architectural Services From D. Sloan Architects, P.C.; IT Srvcs; Design Services	No Valid Contract	$5,636.40
Development Disabilities Planning Council	1	Purchase Of Professional Services From Necessity Case Mgmt And Consultation LLC	No Valid Contract	$13,383.04
EDD/Film NM	1	Purchases Of Rental Fees From The Santa Theresa Country Club	No Valid Contract	$5,236.00
Environment Department	3	Procurement Of Training Fees From The Nat'l Assoc. Of Clean Air Agencies And Services From EPA	No Valid Contract	$3,432.94
Game & Fish, Department Of	1	Purchase Of Data Entry Services From Systems Consultants Inc.	No Valid Contract	$9,578.31
GSD	**35**	**Purchases Of Various Services/Software License/Conferences/Books/Vehicle Leasing/Etc.**	**No Valid Contract Or PO**	**$375,496.58**
Governor's Commission On Disability	1	Procurement Of Appraisal Services From Stephen's	No Valid Contract	$3,586.00
Health Department	2	Purchase Of Professional Services From Ascend Corporation; Lease Of A System From KCI	No Valid Contract	$101,660.96
Homeland Security & Emergency Mgmt, Dept. Of	1	Purchase Of Services From Texas Engineering Extension Service For Training Course	No Valid Contract	No Amount Given
DoIT	16	Procurement Of Oracle Licenses From Mythics Inc./Various Services/Leased Vehicles/Software Maintenance/Advertisement/Etc.	No Valid Contract Or PO In Place	$148,220.52
New Mexico Film Office	1	Purchase Of Printing Services From Monarch Litho Inc.	No Valid Contract	No Amount Given
Ninth Judicial District Attorney	1	Purchase Of Sexual Assault Equipment From Wallach Surgical Devices Inc	No Valid Contract	$20,000.00
HED	5	Procurement Of Professional Services From Nm Adult Education Assoc.; Software Maintenance; Etc.	No Valid Contract	$140,085.07
PRC	2	Purchase Of Carpet And Installation Services From Dimensions Flooring Services LLC/Sutin, Thayer & Browne, Pc	No Valid Contract	$29,483.92
NM Retiree Health Care Authority	1	Purchase Of Legal Services From French & Assoc., Pc	No Valid Contract	$35,060.62
State Engineer	1	Feith Sys Software Maint. Agreement	No Valid Contract	$31,254.00

Office Of The Treasurer	1	Procurement Of Repair Services For Security Cameras From Target Safe Security Sys.	No Valid Contract	$470.00
PED	9	Procurement Of Text Booklets, Answer Sheets And Services From Harcourt Assess; Professional Development Workshops; Various Services; Etc.	No Valid Contract	$1,259,501.50
DPS	2	Purchase Of Maintenance Services From Motorola And ACS	No Valid Contract	$150,912.75
RLD	6	Procurement Of Various Services And Membership Dues	No Valid Contract	$29,554.88
TRD	1	Purchase Of Conference Services From Sagebrush Inn And Conf. Center	No Valid Contract	$7,328.98
Dept of Veterans' Services	1	Purchase Of Transportation Services From The Disabled American Veterans	No Valid Contract	$48,083.63
Dept of Workforce Solutions	27	Purchase Of Various Services; Software Maintenance; Meter Rental; Leased Vehicles; Dues; Training; Etc.	No Valid Contract Or PO In Place	$1,710,992.13
Total FY08 Violations	**136**			**$4,337,163.85**

APPENDIX C

Performance Measure Rating Criteria

G

- Most annual targets met
- Data is reliable
- Measures gauge core functions
- Measures relate to agency's budget
- Measures tied to strategic and mission objectives

Y

- Mixed success in meeting targets
- Data is questionable
- Measures not closely related to core functions
- A clear and achievable action plan is in place to reach goals

R

- Most annual targets missed
- Data is unreliable
- Measures unrelated to core functions and budget expenditures
- No action plan to improve performance in place
- Agency failed to report on performance

Table 4: CES's RFP Contents Overview

I. Instructions to Offerors

II. Scope of Work and Specifications

III. Conditions Leading to and Including Contract Award

IV. Proposal Forms

Note: The RFP has been divided into four (4) sections:

Section I.	Outlines the RFP; indicates how to prepare a response; and states the General Terms and Conditions.
Section II.	Lists the various commodity titles and, for each, states the Special Terms and Conditions, the Scope of Work and Required Categorical Responses.
Section III.	Indicates how the proposals will be evaluated and how the awards will be made.
Section IV.	Incorporates the forms used in the proposal response.

Source: CES

Table 5: CES's Proposal Submission Requirements

Format of the Proposal

a. One (1) original of the proposal will be submitted on the forms and in the format contained in the RFP and must have original signatures. The proposal will contain all descriptive literature, specifications, samples, etc. The proposal will be submitted in a three-ring binder.

b. The forms as contained in and format as requested in the RFP will be used. Offerors can reproduce the forms and retype the information, but all of the required information must be presented in the order requested. All proposals must be completed in ink, on a computer or typewritten. Forms can be filled in by hand, but must be printed.

c. In preparing a proposal, a contractor must present a point-by-point response to each relevant term, special consideration, or specification. A response that says "See Appendix," "Acknowledge," or "Understood" is not acceptable and may be sufficient to render the proposal as non-responsive. Usually, on a term or condition, either the word "Accept" is appropriate or the word "Exception" with a clarification. Should the Offeror take any "exceptions" to this RFP, a summary of those items must be included in the response to be considered valid. Exceptions can be accepted, negotiated or rejected by CES.

d. In addition to a-c of this Section, the Offeror is to provide an electronic copy of the proposal on a CD-R or CD-RW in either or combination of the following file formats: Adobe PDF (pdf), Rich Text Format (rft), Microsoft Word (doc) or Microsoft Excel (xls).

3. Contents of the Proposal

In order to ensure that every proposal receives a fair evaluation, it is required that each Offeror organize their proposal in the following manner and provide an electronic copy in the format as listed below:

Step One: Obtain a three-ring binder and a set of 10 index dividers.

Step Two: Prepare your Table of Contents with the tabs in this order:

Tab 1:The Offer

- Signed Offer and Acceptance (Form B, page 75)
- The RFP Affidavit (Form C) notarized signature required (page 77)
- Offerors Declaration (Form A, page 73)

Tab 2: Introduction

- Executive Summary (a one-page description of what you are proposing on this contract)

Tab 3: General Terms and Conditions

- Terms and Conditions, Section I-F (copy of each page in order) (pages 12-33)
- Acceptance of Terms and Conditions (Form E, first line must be signed page 79)

Tab 4: Contractor Qualifications

- Answers to Questions from Section I-E-4 questions a-j (pages 10-12)

Tab 5: Category

- Categorical Terms and Conditions page(s) only for the Category(s) the offeror will be submitting a proposal for (copy of each page in order).
- Acceptance of Categorical Terms and Conditions (Form E, second line to be signed, page 79). If submitting more than one Category, submit a separate Form E for each Category or circle the Category that applies.
- Required Categorical Responses for your category (written response to every part). A separate response for each Category that is submitted.

Tab 6: Cost Quotation

- Pricing – CES has provided a mandatory price sheet submittal form (Excel spreadsheet) for each of the categories (1 to 5).
- Additional price information can be submitted using a separate Form D (pages 77-78) for each category offered.

Tab 7: Required Forms

- Offeror's Support for CES Prices (Form G, page 81)
- Questionnaire for Offeror (Form H, pages 82-83)
- Support and Maintenance Plans (Form F, page 80)
- Manufacturer's Representative Form (Form I, page 84)
- W-9 Form

Tab 8: Additional Information

- Additional information that you wish to include
- Additional support pages requested in each specific category

Tab 9: Submission Check-off Form

- Make certain everything is included, and then sign Form L (page 87)

Tab 10: Literature, slicks, samples and supporting printed material

Step Three: Go to the last page of this RFP and prepare the Submission Check-off Form. Sign it and place it after Tab 9. Send your proposal to CES so that it arrives on or before Friday, August 29, 2008, at 1:30 p.m. MST.

Proposals must be submitted in a sealed envelope/package with the proposal number, date and time of proposal opening clearly marked on the outside.

Step Four: Before you seal your proposal, ask yourself this question: "Did I really give my best prices to the schools?" Be sure the Offer is signed and that all forms are enclosed. After verifying this has been done, make a copy of the proposal for yourself. Submit your proposal to CES.

Source: CES

COOPERATIVE EDUCATIONAL SERVICES
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