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NEWS RELEASE

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FOR RELEASE February 20, 2004

Auditor of State David A. Vaudt today released a report conducted in accordance with Chapter 11 of the *Code of Iowa* on certain service contracts. Service contracts from several State agencies were reviewed to determine if the contracts and related expenditures complied with relevant laws, procedures and administrative rules, and whether the State agencies sufficiently monitored and evaluated contract activity. This report focused on selected service contracts of the Departments of Agriculture and Land Stewardship, Commerce, Education, Economic Development, Human Services, Natural Resources, Public Health and Workforce Development.

Vaudt stated the State agencies reviewed in detail often did not follow contracting rules and guidelines or effective contract management principles when contracting for services. Specifically, Vaudt reported over 47% of the service contracts reviewed were identified as sole source contracts, and more than 70% of those contracts did not have reasonable justification for being sole source. Also, 23% of the sole source service contracts did not have the sole source justification documented. Vaudt also reported contract management procedures reviewed at the selected State agencies were not sufficient for holding the service providers accountable for the agreed-upon services. Of the service contracts reviewed, 59% did not have evidence of monitoring and evaluating services provided during the contract.

Vaudt recommended State agencies evaluate each service contract under consideration on an individual basis and determine whether or not the sole source criteria have been met while investigating and documenting whether the prospective service provider is, in fact, the only and best source. Also, State agencies should allow more opportunity for competition when soliciting service contracts. Additionally, Vaudt recommended State agencies implement policies and procedures for how contracts are to be monitored to ensure services contracted for are received and are adequate to meet the needs of State agencies and any clients State agencies serve.

A copy of the report is available for review in the Office of Auditor of State and on the Auditor of State's web site at www.state.ia.us/government/auditor/reports.

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**A REVIEW OF SERVICE CONTRACTS
FOR SELECTED STATE AGENCIES**

Table of Contents

	<u>Page</u>
Auditor's Transmittal Letter	3
Executive Summary	4-6
Introduction	7-10
Scope and Methodology	10-12
Service Contracting Process	13-18
Revised Contracting Rules	19-22
Findings and Recommendations:	
1. Sole source not sufficiently justified	23-26
2. Monitoring and evaluation of service provider performance is not consistently documented and/or needs improvement	26-29
3. Contract signed after start date/not signed	29-30
4. Contract amendments	30-31
5. Contract clauses	31-34
6. Questionable expenditures	34
7. Analysis of factors or rationale involved in deciding whether to contract was not documented	34-35
8. No documentation of employee/employer relationship determination	36
9. Pre-contract questionnaire was not completed	36
10. Required documentation relating to the competitive bidding process was not maintained	36
11. Service provider selection method not documented	37
12. Consider allowing competitive bidding for laboratory service	37
Schedules:	<u>Schedule</u>
Statewide Professional Service Expenditures by State Agency	1 39-41
Professional Service Expenditures for the Reviewed State Agencies	2 42-43
Findings Summary by Type	3 44-47
Staff	48
Appendices:	<u>Appendix</u>
Summary of Current Service Contracting Laws, Procedures and Rules	A 49-52
Executive Order Number 25	B 53
Purchasing Methods Flowchart	C 54
State Agency Responses	D 55-91



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To the Governor, Members of the General Assembly and the Directors of the Departments of Administrative Services, Agriculture and Land Stewardship, Commerce, Economic Development, Education, Human Services, Natural Resources, Public Health, and Workforce Development:

In accordance with Chapter 11 of the *Code of Iowa*, we have conducted a review of selected service contracts entered into by certain State agencies and the related monitoring and evaluation procedures followed by the agencies. Our review assessed State agencies' contract management procedures and was not limited to compliance with contracting laws and rules. Our review included service contracts established prior to or during fiscal year 2001. For those contracts with terms that extended beyond fiscal year 2001, our review also included activity occurring in fiscal years 2002 and 2003, as appropriate. In conducting our review of the service contracts, we performed the following procedures:

1. Interviewed various personnel and reviewed related information to obtain an understanding of the State agencies' planning, contracting, monitoring and evaluation functions related to service contracts.
2. Reviewed procedures used by the State agencies for the selected service contracts to determine whether the:
 - a. Service provider selection process was sufficient,
 - b. Contracted services were the best value available and in the best interest of the State,
 - c. Services contracted for were received, and
 - d. State agencies sufficiently monitored and evaluated the services.
3. Determined compliance with significant laws, administrative rules and guidelines, as appropriate, for the selected service contracts.
4. Reviewed the selected service contracts to determine whether the contract provisions were sufficient for holding the service providers accountable for performance of contract terms.

Based on these procedures, we have developed certain recommendations and other relevant information we believe should be considered by the Governor, General Assembly and the Departments of Administrative Services, Agriculture and Land Stewardship, Commerce, Economic Development, Education, Human Services, Natural Resources, Public Health, and Workforce Development.

We extend our appreciation to the management and staff at the State agencies for the courtesy, cooperation, and assistance provided to us during this review.

A handwritten signature in black ink, reading "David A. Vaudt".

DAVID A. VAUDT, CPA
Auditor of State

A handwritten signature in black ink, reading "Warren G. Jenkins".

WARREN G. JENKINS, CPA
Chief Deputy Auditor of State

June 30, 2003

EXECUTIVE SUMMARY

As State agencies' operations have become more complex and State agencies' full-time equivalent employees have been reduced, State agencies have contracted for more services to help operate or supplement programs and functions. The result has been a substantial increase in professional service expenditures over the last several years. *Just the Facts 2002*, prepared by the Iowa Department of Personnel, shows the State's Executive Branch full-time equivalent employees (excluding Fair Authority, Community-Based Corrections and Regents employees) decreased from 20,246 to 18,953, or by approximately 6%, from fiscal year 2000 to 2002. Over the same time period, \$1.7 billion has been spent by State Executive Branch agencies for professional services. From fiscal year 2000 to 2002, the total professional service expenditures for state agencies increased by about 2.4% or by more than 12.9 million. In fiscal year 2001, state agencies spent over \$638 million on professional service expenditures, a 20% increase from fiscal year 2000. In fiscal year 2002, professional service expenditures decreased from fiscal year 2001, largely as a result of reductions in overall state spending.

Executive Branch	Professional Service Expenditures by Fiscal Year				
	1990	1995	2000	2001	2002
State Agencies	\$ 266,007,173	328,942,782	530,693,499	638,467,634	543,643,745
Board of Regents Institutions	*	128,366,273	217,618,556	212,988,479	204,653,506
Totals	\$ 266,007,173	457,309,055	748,312,055	851,456,113	748,297,251

* - Fiscal year 1990 data for the Board of Regents Institutions was not available from the State's accounting system.

A significant portion of State agencies' professional service expenditures for those fiscal years was for service contracts, which is the focus of this review. We selected service contracts for the following State agencies: Departments of Agriculture and Land Stewardship (Agriculture), Commerce, Economic Development, Education, Human Services, Natural Resources, Public Health and Workforce Development.

The total professional service expenditures for the State agencies selected for inclusion in this review of service contracts increased by 73%, or by over \$100 million, from fiscal year 1990 through 2002. The table below summarizes the total professional service expenditures for each of the State agencies reviewed.

State Agency	Professional Service Expenditures by Fiscal Year				
	1990	1995	2000	2001	2002
Agriculture	\$ 6,637,021	6,235,310	7,179,908	8,132,978	6,361,967
Commerce	410,452	3,151,657	4,654,279	5,432,870	5,614,702
Economic Development	53,512,181 *	1,486,168	3,098,913	1,806,134	1,865,767
Education	3,296,540	6,215,695	10,002,421	8,495,738	9,749,521 **
Human Services	20,076,293	50,917,877	110,869,226	110,826,336	80,495,413
Natural Resources	12,039,804	11,487,096	18,086,590	21,001,788	17,909,317
Public Health	40,966,163	65,065,427	66,537,908	81,067,092	83,828,540
Workforce Development ^	757,417	2,256,157	32,256,567	31,736,427	32,053,711
Totals	\$ 137,695,871	146,815,387	252,685,812	268,499,363	237,878,938

* - Includes \$52,069,628 of subgrant pass-through funds coded to object code 2495 on IFAS.

^ - Includes \$27,025,639, \$28,829,447, and \$30,257,694 of subgrant pass-through funds coded to object code 2495 in fiscal years 2000, 2001 and 2002, respectively.

** - Includes \$816,846 of subgrant pass-through funds coded to object code 2495 on IFAS.

A Review of Service Contracts

Several of the selected service contracts had terms that extended beyond fiscal year 2001. Therefore, we reviewed agencies' contract management procedures into fiscal years 2002 and 2003, as applicable.

In addition to assessing the agencies' contract management procedures (which are not established by any oversight body or statewide rules), we determined each agencies' compliance with procurement rules governing selection of the vendor and terms and conditions included in the service contracts established. Because the procurement rules were revised several times between 1999 and October 2002, we determined compliance with rules in effect at the time the contract was established.

Service Contracting Process, Laws, Procedures and Rules

The service contracting process involves:

- ◆ Planning and preparation,
- ◆ Developing the scope of work,
- ◆ Identifying service providers,
- ◆ Selecting service providers*,
- ◆ Completing the pre-contract questionnaire*,
- ◆ Formalizing the contract* and
- ◆ Managing/monitoring the contract.

* Addressed by procurement rules established by the Departments of General Services and Revenue and Finance

However, the procurement rules State agencies are required to comply with only address the selection of services providers, completion of the pre-contract questionnaire and formalizing the contract. In addition to the procurement rules, it is the responsibility of each agency to ensure the complete contracting process is well managed.

The findings we identified during our review of service contracts include the following:

- ◆ Over 47% of the service contracts reviewed were identified as sole source contracts. A significant percentage of those, more than 70%, did not have reasonable justifications for being sole source. Also, 23% of the sole source service contracts did not have the sole source justification documented.
- ◆ Contract management procedures reviewed at the selected State agencies were not sufficient for holding service providers accountable for the agreed-upon services. Of the service contracts reviewed, 59% did not have evidence of monitoring and evaluating the services provided during the contract. Also, approximately 54% of the contracts did not have evidence of a final overall evaluation of services received.
- ◆ For almost 46% of the service contracts reviewed, the State agencies allowed service providers to begin work before the contracts were signed.
- ◆ Almost 20% of the service contracts reviewed were amended, and approximately 47% of the amended contracts increased both the cost and duration of the contract.
- ◆ Approximately 17% of the service contracts reviewed contained a scope of work that was too vague. Of the Department of Education's service contracts reviewed, 57% included a scope of work that was too vague. The provisions that defined the services to be performed were not established in a manner that allowed the agency to hold the service providers accountable for contract performance.

A Review of Service Contracts

- ◆ Almost 76% of the service contracts reviewed did not have documentation of an analysis of factors or rationale involved in deciding whether to contract for services or use in-house resources to meet the needs.

We identified 12 findings, as shown below. More detail regarding each of the findings is included in the Findings and Recommendations section of this report.

Finding #	Finding Description	Page #
1	Sole source not sufficiently justified	23-26
2	Monitoring and evaluation of service provider performance is not consistently documented and/or needs improvement	26-29
3	Contract signed after start date/not signed	29-30
4	Contract amendments	30-31
5	Contract clauses not included	31-34
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7	Analysis of factors or rationale involved in deciding whether to contract was not documented	34-35
8	No documentation of employee/employer relationship determination	36
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Introduction

Service Contracting Trends

As State agencies' operations have become more complex and State agencies' full-time equivalent employees have been reduced, State agencies have contracted for more services. The result has been a substantial increase in professional service expenditures over the last several years. *Just the Facts 2002*, prepared by the Iowa Department of Personnel, shows the State's Executive Branch full-time employees (excluding Fair Authority, Community-Based Corrections and Regents employees) decreased from 20,246 to 18,953, or by approximately 6%, from fiscal year 2000 to 2002. Over the same time period, \$1.7 billion has been spent by State agencies for professional services. A significant portion of the professional service expenditures for those fiscal years was for service contracts, which is the focus of this report.

Total professional service expenditures for all State agencies for fiscal year 2002 increased by 104.4%, or more than \$277 million, when compared to fiscal year 1990. From fiscal year 2000 to 2002, total professional service expenditures increased by approximately 2.4%, or by more than \$12.9 million. In fiscal year 2001, state agencies spent over \$638 million on professional service expenditures, a 20% increase from fiscal year 2000. In fiscal year 2002, professional service expenditures decreased from fiscal year 2001, largely as a result of reductions in overall state spending.

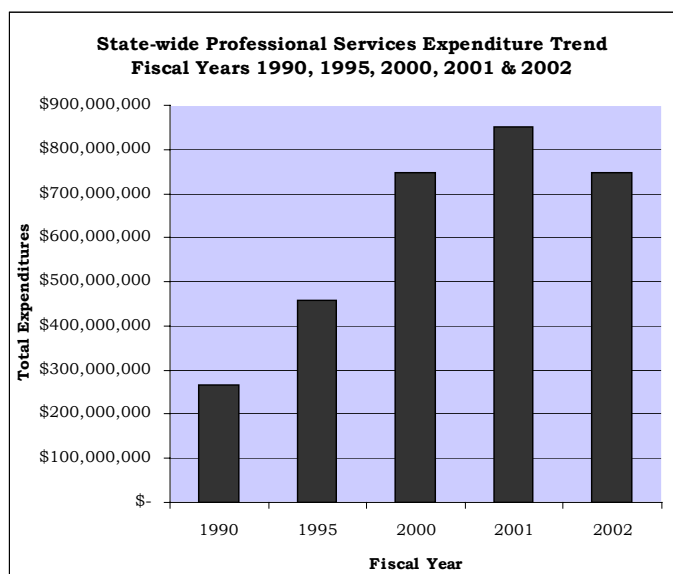
Table 1 and the related graph below present the increasing trend in the total professional service expenditures for the State from fiscal year 1990 through 2002.

Table 1

	Total Professional Service Expenditures				
	Total \$'s	\$ change since previous fiscal year included in this table	% change since previous fiscal year included in this table	Average Annual % change	% Change from Fiscal Year 1990
Fiscal Year 1990					
State Agencies	\$266,007,173				
Board of Regents Institutions	*				
Totals	\$266,007,173				
Fiscal Year 1995					
State Agencies	328,942,782	62,935,609	23.7%	4.7%	23.7%
Board of Regents Institutions	128,366,273	*	*	*	*
Totals	\$457,309,055	*	*	*	*
Fiscal Year 2000					
State Agencies	530,693,499	201,750,717	61.3%	12.3%	99.5%
Board of Regents Institutions	217,618,556	89,252,283	69.5%	13.9%	*
Totals	\$748,312,055	291,003,000	63.6%	12.7%	*
Fiscal Year 2001					
State Agencies	638,467,634	107,774,135	20.3%	20.3%	140.0%
Board of Regents Institutions	212,988,479	(4,630,077)	(2.1%)	(2.1%)	*
Totals	\$851,456,113	103,144,058	13.8%	13.8%	*
Fiscal Year 2002					
State Agencies	543,643,745	(94,823,889)	(14.9%)	(14.9%)	104.4%
Board of Regents Institutions	204,653,506	(8,334,973)	(3.9%)	(3.99%)	*
Totals	\$748,297,251	(103,158,862)	(12.1%)	(12.1%)	*

* Fiscal year 1990 data for the Board of Regents Institutions was not available from the State's IFAS system. Therefore the \$ and % changes since fiscal year 1990 are not included for the Board of Regents Institutions.

A Review of Service Contracts



Source: IFAS class 405 and 406 expenditures.

The State agencies selected for inclusion in this review were judgmentally selected from State agencies that had the most professional service expenditures for fiscal year 2001. Total professional service expenditures for the selected State agencies increased by 73%, or by over \$100 million, from fiscal year 1990 through 2002. **Table 2** presents the total professional service expenditures for fiscal years 1990, 1995, 2000, 2001 and 2002 for the selected State agencies.

Table 2

State Agency	Professional Service Expenditures by Fiscal Year				
	1990	1995	2000	2001	2002
Agriculture	\$ 6,637,021	6,235,310	7,179,908	8,132,978	6,361,967
Commerce	410,452	3,151,657	4,654,279	5,432,870	5,614,702
Economic Development	53,512,181 *	1,486,168	3,098,913	1,806,134	1,865,767
Education	3,296,540	6,215,695	10,002,421	8,495,738	9,749,521 **
Human Services	20,076,293	50,917,877	110,869,226	110,826,336	80,495,413
Natural Resources	12,039,804	11,487,096	18,086,590	21,001,788	17,909,317
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Workforce Development ^	757,417	2,256,157	32,256,567	31,736,427	32,053,711
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** - Includes \$816,846 of subgrant pass-through funds coded to object code 2495 on IFAS.

Schedule 1 presents the total professional service expenditures for all State agencies. Each State agency included in the scope of this review is highlighted within the schedule. In addition, **Schedule 2** presents the total professional service expenditures for each of the selected State agencies (including the amounts for the Iowa Financial Accounting System State agency numbers that comprise each of the selected State agencies) and percentage changes since fiscal year 1990.

Service Contracting Procedures Overview

State agencies contract with vendors for many services, such as information technology consultation, specialized training and program consultation. State agencies may establish service contracts through a competitive bidding process, sole source procurement, emergency procurement, or intergovernmental agreements. State agencies may also use general contracts established by the Department of General Services that are available for use by all State agencies.

When establishing contracts, State agencies are required to comply with the Departments of General Services' and Revenue and Finance's procurement rules. The rules have been revised several times since early 1999, but they have not addressed any areas of the procurement process beyond selection of a vendor and required contract terms and conditions. Over the past several years, the Legislature has shown a continuing interest in service contract activities and has recognized improvements within the service contracting process are needed. During the 2001 Regular Session of the 79th General Assembly, legislation requiring the adoption of uniform terms and conditions for service contracts was enacted. The legislation, found in section 8.47 of the *Code of Iowa*, requires contracts to include:

- the amount or basis for paying the contractor based on their performance under the contract
- methods to effectively oversee the contractor's compliance with the contract
- methods to effectively review performance of the contract

While the procurement rules have addressed only vendor selection and contract terms and conditions, State agencies are responsible for other aspects of contract management, including proper planning and development of an appropriate scope of services. In addition, proper administration of contracts culminates with ensuring services were received and paying the vendor an appropriate amount for the services provided. It is the responsibility of each agency to ensure the *complete* contracting process is well managed, even if rules for contract management have not been reduced to writing.

Our review assessed the agencies' contract management practices for selected contracts in addition to compliance with rules in effect at the time the contracts were established.

Finding Highlights

We identified 12 findings as a result of the review of selected service contracts. Some of the more significant findings we identified include the following:

- ◆ Over 47% of the service contracts reviewed were identified as sole source contracts. A significant percentage of those, more than 70%, did not have reasonable justifications for being sole source. Also, 23% of the sole source service contracts did not have the sole source justification documented.
- ◆ Contract management procedures reviewed at the selected State agencies were not sufficient for holding service providers accountable for the agreed upon services. Of the service contracts reviewed, 59% did not have evidence of monitoring and evaluating the services provided during the contract. Also, approximately 54% did not have evidence of a final overall evaluation of services received.
- ◆ For almost 46% of the service contracts reviewed, State agencies allowed service providers to start work before the contracts were signed.
- ◆ Almost 20% of the service contracts reviewed were amended, and approximately 47% of the amended contracts increased both the cost and duration of the contract.
- ◆ About 17% of the State agencies' service contracts reviewed contained a scope of work that was too vague. Of the Department of Education's service contracts reviewed, 57% included a scope of work that was too vague. The provisions that defined the services to be performed

A Review of Service Contracts

were not established in a manner that allowed the agency to hold the service providers accountable for contract performance.

- ♦ Almost 76% of the State agencies' service contracts reviewed did not have documentation of an analysis of factors or rationale involved for deciding whether to contract for services or use in-house resources to meet the needs.

Each of the 12 findings identified is discussed in detail in the Findings and Recommendations section of this report.

Report Overview

The remainder of this report is organized as presented in **Table 3** below.

Table 3		
Report Section	Description	Page #
Scope and Methodology	Summary of the service contracts review focus, scope and methodology.	11
Service Contracting Process	Summary of the service contracting process used by State agencies	12-20
Findings & Recommendations	Summary and detailed examples of findings and related recommendations for improvements to service contracting.	20-36

Our review highlights some of the common problem areas within past service contracting processes and related activity based on a review of service contract activity from fiscal years 2001, 2002 and into 2003. The results and recommendations included in this report will enhance the on-going efforts to improve service contracting within State government.

Scope and Methodology

To determine if State agencies have implemented effective contract management procedures, we selected service contracts established by the following State agencies: the Departments of Agriculture and Land Stewardship (Agriculture), Commerce, Economic Development, Education, Human Services, Natural Resources, Public Health and Workforce Development.

We selected contracts established prior to or during fiscal year 2001. Several of the selected service contracts had terms that extended beyond fiscal year 2001. Therefore, we reviewed agencies' contract management procedures into fiscal years 2002 and 2003, as applicable.

In addition to assessing the agencies' contract management procedures (which are not established by any oversight body or statewide rules), we determined each agencies' compliance with procurement rules governing selection of the vendor and terms and conditions included in the service contracts established. Because the procurement rules were revised several times between 1999 and October 2002, we determined compliance with rules in effect at the time the contract was established. The Department of Transportation and the Regents' institutions are exempt from the rules and were not included in our review.

Generally, the following methodology was followed for our review of service contracts:

- 1) Using the Iowa Financial Accounting System (IFAS), we identified fiscal year 2001 class 405 (professional and scientific services) and class 406 (outside services) expenditures and summarized those expenditures by State agency.
- 2) We judgmentally selected the Departments of Agriculture, Commerce, Economic Development, Education, Human Services, Natural Resources, Public Health, and Workforce Development since they were some of the State agencies with the highest total dollar amount of

A Review of Service Contracts

expenditures coded under class 405, professional services, and class 406, outside services, in IFAS.

- 3) We judgmentally selected service providers from each of the selected State agencies' disbursement information for inclusion in the contract review.
- 4) We identified certain contracts and performed the following steps:
 - a) We obtained copies of and reviewed relevant financial audit working papers to determine if and to what extent the selected contract vendors had already been reviewed. Based on that information, we decided whether to pursue more information about the contracts.
 - b) We requested and, when available, obtained a copy of the fiscal year 2001 Annual Report on Contracted Services prepared by each State agency and submitted to the Department of General Services. (Some agencies did not submit a report.) Information from the reports obtained was used to the extent possible for the contract review.
 - c) We met with the State agencies' staff to obtain a description of services provided by the service providers that were initially selected.
- 5) The State agencies' contract management procedures were discussed with agency personnel and documented to obtain an understanding of the procedures used for contract management, including determining the need to contract for services, service provider selection, payment methods and amounts, and monitoring/oversight.
- 6) We reviewed the service contracts and related activity to determine whether the State agencies:
 - a) Determined contracting for the service was the best option.
 - b) Determined the contract was the best value available.
 - c) Received the goods/services for which they contracted.
 - d) Included sufficient contract provisions.
 - e) Oversight/monitoring procedures actually performed were documented and sufficient.
- 7) We summarized findings and recommendations based on the results of performing the above procedures. Our findings are based on proper contract management practices and the rules in effect at the time the selected contracts were established. Our recommendations take into consideration the current rules for establishing service contracts in addition to proper contract management practices.

Definitions - The following terms are used throughout this report. The definitions provided are comparable to those used by State agencies establishing service contracts.

"Service" or **"services"** means work performed for a department or establishment (State agencies) or for its clients by a service provider and includes, but is not limited to:

1. Professional or technical expertise provided by a consultant, advisor, or other technical or service provider to accomplish a specific study, review, project, task, or other work as described in the scope of work.
2. Services provided by a vendor to accomplish routine functions. These services contribute to the day-to-day operations of state government.

"Service contract" means a contract for a service or services when the predominant factor, thrust, and purpose of the contract as reasonably stated is for the provision or rendering of services. When there is a contract for both goods and services and the predominant factor, thrust, and purpose of the contract, as reasonably stated, is for the provision or rendering of services with goods incidentally involved, a service contract exists and these rules apply. "Service contract" includes grants when the predominant factor, thrust, and purpose of the contract formalizing the grant is for the provision or rendering of services.

A Review of Service Contracts

“Service provider” means a vendor that enters into a service contract with a department or establishment (State agencies).

General Services Statewide Service Contracts - General Services solicits and establishes Statewide service contracts for use by State agencies, such as contracts for computer consultants, media display and production services. General Services is required to use the same procurement processes other State Agencies are required to use to establish service contracts, including an emphasis on a competitive process. State agencies are advised annually of the types of service contracts on file in the Purchasing section of General Services, and they are advised they may request copies of any or all of the contracts. As needed, State agencies refer to the appropriate contract and prepare an agency purchase order for services or items to be delivered from the contract.

If State agencies have a specific need, they may request assistance from the Purchasing section of General Services to establish a service contract. This form of contract is an individual service contract entered into by the General Services Purchasing section to purchase specific services primarily requested and used by a certain State agency. Subsequently, the State agency prepares an agency purchase order for services, as needed.

State Agency Organizational Changes - The Laws of the 2003 Regular Session of the 80th General Assembly of the State of Iowa enacted House File 534 that provides for the reorganization of certain State agencies by establishing a Department of Administrative Services. Effective July 1, 2003, several agencies identified in this report were renamed as a result of the reorganization. The following table summarizes those name changes.

Old Name	New Name
Department of General Services	General Services Enterprise*
Department of Revenue and Finance (financial services)	State Accounting Enterprise*
Information Technology Department	Information Technology Enterprise*
Department of Personnel	Human Resources Enterprise*

*within the Department of Administrative Services

Also as a result of the organizational changes, rules found in the Iowa Administrative Code and referred to in this report have been moved from the Department of General Services to the Department of Administrative Services. Effective September 17, 2003, rules previously found in [401] Chapters 12 and 13 are now located in [11] Chapters 106 and 107.

Service Contracting Process

This section of the report is not intended to be all-inclusive, but is presented to provide a basic overview and understanding of proper contract management. The service contracting process involves:

- Planning and preparation,
- Developing the scope of work,
- Identifying service providers,
- Selecting service providers*,
- Completing the pre-contract questionnaire*,
- Formalizing the contract* and
- Managing/monitoring the contract.

**Addressed by procurement rules established by the Departments of General Services and Revenue and Finance*

However, the procurement rules State agencies are required to comply with only address the selection of service providers, completion of the pre-contract questionnaire and formalizing the contract. The Department of Transportation and Regents' institutions are exempt from the procurement rules. In addition to the procurement rules, it is the responsibility of each agency to ensure the *complete* contracting process is well managed.

Each of the areas listed above will be addressed in detail in this section of the report.

Planning and Preparation

State agencies should develop a clear understanding and description of the need in the initial planning stage for service contracts. Consideration should be given to whether there is a real need for the service and, if so, determine the resources needed and the most feasible method to resolve it.

Defining service needs contributes to effective prioritization of funding, a common understanding within State agencies of required services, and the identification of the nature of the work and the level of service required to meet the need. Defining the need also contributes to the determination of how performance and quality will be measured. The ability to specify and convey what is needed forms the basis for obtaining a fair and reasonable price while selecting the best-qualified service provider. Another consideration of State agencies during planning is to decide whether to contract out for services, use in-house resources, or use a combination of both. The planning questions and other factors to consider listed in **Table 4** also aid in the decision-making process.

Table 4

Planning questions	Other factors to consider to help make the decision to contract for services
1. Is there a real need for the service?	◆ Specialized skills, knowledge and resources
2. If there is a real need or problem, what is the most feasible method to resolve it?	◆ Broad experience
	◆ Objectivity
3. What resources will it take to meet the need?	◆ Credibility
	◆ Timeliness
	◆ Innovation
	◆ Time-limited project
	◆ Fluctuating demand
	◆ Quickly Changing Expertise
	◆ Cost
	◆ Federal or State mandate

If management determines a project is warranted, the statement describing the need will provide direction to potential service providers. The description of need is also useful in establishing a basis for evaluating the service providers' proposals.

A Review of Service Contracts

One of the most important considerations to be addressed during the planning process is the availability of sufficient funding to cover the projected expenditures. The contract manager must verify adequate funding based on in-house cost projections. If funding is inadequate or non-existent, the project should not proceed.

In addition to the identified costs associated with contracting for services, contract managers should consider overhead expenses, such as costs for staff involvement with contract development, contract management, monitoring and internal fiscal processes, training, legal review of the contract, and dispute resolution.

Developing the Scope of Work

Developing the scope of work is the most critical part of the entire contracting process. State agencies use the scope of work both for selecting a service provider and formalizing the contract with the selected service provider.

At the selection stage, it is important the scope of work is clear and understandable so prospective service providers can understand what State agencies want to buy. Whether a competitive selection process, sole source or emergency procurement is used, it is more likely that service providers will be able to provide good, responsive proposals that meet State agencies needs if they are able to understand exactly what it is State agencies want to buy. Good proposals make the evaluation process easier and increase the chances of obtaining what is desired from the resulting contract. Vague and unclear scopes of work can also result in higher prices if service providers have a hard time understanding the limits of what is wanted.

When the contract is being formalized, the scope of work used in the selection process should be the scope of work in the contract. Again, it is important the scope of work be clear, understandable and precise. If the scope of work is vague, State agencies will have difficulty ensuring the service provider complies with expectations. The scope should be defined in a manner that allows the agency to monitor and review the progress of the services contracted for.

Identifying Service Providers

Identifying sufficient numbers of potential service providers to ensure competition is essential to success.

State agencies should determine whether other State agencies provide the services sought, any laws or executive orders require the use of services of other State agencies or other service providers, and whether targeted small businesses could be used to provide the services. Service providers may be located using many other sources, such as those listed in **Table 5**.

Table 5

Possible Sources for Locating Service Providers
<ul style="list-style-type: none">• Responses to notice of procurement posted on the State's or the Agency's web-site• Responses to a published legal notice• General Services web-site: www.state.ia.us/government/dgs/• Agency service provider listings• Trade journals and periodicals• TSB web-sites: http://www.state.ia.us/government/dia/tsb.pdf or tsb.xls and http://www.iowai.net/iowa/dia/tsb/• Professional societies and associations• Telephone book

Selecting Service Providers

Generally, State agencies may select service providers through the following selection methods: competitive bidding, sole source procurement, emergency procurement, or intergovernmental agreements.

As stated previously, State agencies must comply with the laws, procedures and administrative rules in effect at the time of the procurement. State agencies are required to comply with Department of Revenue and Finance Procedure 240.102. For the contracts we reviewed, we used two versions of Procedure 240.102 to identify the appropriate criteria against which to test the contracts. The oldest version of Procedure 240.102 we used became effective on April 1, 1999. That version was replaced by one effective April 1, 2001. Each version of the procedure contains a policy statement and purpose that states, in part:

- a. “It is the policy of the State of Iowa that the expenditure of public funds for personnel services contractors shall, insofar as practicable, be done through an open, competitive process.
- b. The purpose of this policy is to provide general guidelines to be used by departments in soliciting, selecting, administering and auditing personnel services contracts.
- c. This policy does not cover contracts between state agencies, political subdivisions of the State of Iowa, federal government agencies or not-for-profit entities created by the federal government, another state government or a political subdivision thereof.
- d. Contracts under \$1,000.00 (plus allowable expenses) are exempt from this procedure.
- e. Implementation of this policy shall be the responsibility of each department if and when it seeks to contract for personnel services.”

Both versions of the policy statement list the content to be included in each contract and describe the procedures to be followed when procuring personnel services. The 2001 version of the procedure contains additional requirements related to sole source and emergency procurement.

Sole Source Selection Method

State agencies may procure services through a sole source selection. The 1999 version of Procedure 240.102 stated sole source selection is justified when (1) a single source is determined to be the only one qualified or eligible, or is obviously the most qualified or eligible to perform the service, or (2) the work is of such a specialized nature or related to a specific geographic location that only a single source, by virtue of experience, expertise, or proximity to the project, could most satisfactorily provide the service.

The 1999 version of the procedure required all agencies employing sole source or emergency procurement contracts for more than \$25,000, or contracts for which the dollar amount was unknown, to complete the pre-contract questionnaire and have the contract signed by the department director or designee. The justification for use of sole source selection and the basis upon which a particular source is selected were required to be documented.

The 2001 version of Procedure 240.102 expanded the requirements associated with sole source procurement. The procedure contained the language: **“Sole source procurement is the contracting method of last resort.”**

In addition, the 2001 version required the department using sole source procurement to prepare and submit a “Report of Sole Source Procurement” document that provided justification for the sole source procurement and specified the duration of the procurement.

A Review of Service Contracts

Also, the 2001 version allowed State agencies to use sole source procurement only after “exhausting” the following requirements for contracts between \$5,000 and \$25,000:

- Completion of a pre-contract questionnaire as a planning document.
- Preparation of a scope of services. (The procedure instructed the agencies to “be as detailed as possible.”)
- Identification of vendors qualified to perform the work described in the scope of the work.
- Contact at least three vendors to perform the work described in the scope of services by telephone, fax, e-mail or letter and send a copy of the scope of services to the vendors. Notice of the availability of this procurement does not need to be published, but the notice shall be sent to the Targeted Small Business web site for distribution.
- Obtain bids after the vendors have had an opportunity to review the scope of services. Ask the vendors for sufficient information, including references, to make a judgment as to whether the vendor can perform the work identified in the scope of services.
- Award the contract based on price and past performance of work identical or similar to the scope of services identified for the project.

The 2001 version also provided additional procedures for service contracts that exceeded \$25,000. These requirements also had to be “exhausted” prior to an agency being allowed to use sole source procurement methods:

- Completion of a pre-contract questionnaire as a planning document.
- Request for Proposals (RFP) process or other authorized competitive process shall be undertaken unless emergency or sole source conditions exist and can be clearly documented and justified. The Department of General Services maintains a directory of providers of various personnel services and will provide assistance, upon request, in selecting and negotiating with contractors.

Emergency Selection Method

State agencies may use emergency procurement procedures to procure needed services when justified. Emergency procurement involves an acquisition of a service or services resulting from an emergency need. In accordance with the 1999 version of procedure 240.102, an emergency procurement was allowable when it was determined normal selection procedures would unduly delay the initiation of a critically needed service or would impose unjustifiable costs on the contracting department.

The 2001 version of the procedure defined an emergency situation as a condition that (1) threatens public health, welfare or safety, or (2) the agency must act to preserve critical services or programs. The procedure also defined emergency as a situation that results from events or circumstances not reasonably foreseeable, for example, delays by contractors, delays in transportation, or an unanticipated volume of work. The procedure also provided:

- Emergency purchases shall not be used as a solution for hardships resulting from neglect, poor planning or lack of organization by the agency.
- The procedure does not relieve the agency or department from negotiating a fair and reasonable price, and thoroughly documenting the procurement action.
- An emergency procurement shall be strictly limited in scope and duration to meet the emergency.
- All emergency contracts and amendments must be signed by the agency’s director or designee if the agency director is not available.
- The agency was required to complete a “Report of Emergency Procurement,” attach it to the contract, and provide a copy to the Department of Revenue and Finance.

Completing the Pre-Contract Questionnaire

Prior to signing a contract, State agencies must determine if the Department of Revenue and Finance has made a determination as to whether or not the service provider has an employer/employee relationship with the State. Contracts that create an employer/employee relationship are not allowed.

As required by Revenue and Finance Procedure 240.102, State agencies must review the Pre-Contract Questionnaire Table (PCQT) that is a part of the statewide Iowa Financial Accounting System (IFAS). The PCQT lists vendors providing services whose relationship with the State has been reviewed by the Department of Revenue and Finance and a determination made that no employer/employee relationship with the State exists. If the service provider is not listed on the PCQT, prior to signing the contract, State agencies must prepare and submit the original Pre-Contract Questionnaire, the completed Internal Revenue Service (IRS) form SS-8, and the proposed, unsigned contract to the Department of Revenue and Finance. The Department reviews the information submitted by State agencies to make a determination of whether there would be an employer/employee relationship.

Formalizing the Contract

Once State agencies have selected a service provider, the next step is to prepare a written contract identifying all terms of agreement between the contracting parties.

All service contracts entered into by State agencies must include, at a minimum, the uniform terms and conditions (clauses), as required by Department of Revenue and Finance Procedure 240.102 and presented in **Table 6**.

Table 6

Service Contract Clauses Required
<ul style="list-style-type: none">• Identification of all contracting parties• A fixed or determinable agreement period• A scope of services to be performed• A maximum dollar amount• A schedule of payments for the services provided• An indemnification clause• A termination clause including a non-appropriation clause• Clauses, where applicable, denoting compliance with all applicable laws and regulations of the State of Iowa and the federal government• Where appropriate, a clause to insure that the contract cannot be assigned or transferred by the contractor to any other parties, unless written prior approval by the agency is given

Managing/Monitoring the Contract

Once State agencies have signed service contracts and service providers have begun work, it is important to monitor the service providers' performance under the contracts and to promptly deal with any problems that arise. This is often referred to as contract management.

While service providers have a responsibility to perform under the terms of the service contracts, State agencies are responsible for reasonable and necessary monitoring of the service providers' performance. Monitoring includes any planned, ongoing, or periodic activity that measures and ensures service provider compliance with the terms, conditions, and requirements of a contract.

A Review of Service Contracts

The purpose of monitoring is to assist the service providers in:

- Complying with the terms and conditions of the contract and applicable laws and regulations.
- Preventing non-compliance by identifying and resolving potential problems by providing constructive, timely feedback.
- Making progress toward the expected results and outcomes.
- Assisting in identifying and reducing fiscal or program risks as early as possible, thus protecting public funds.

Monitoring is also used as an opportunity to determine the need for technical assistance and is a valuable source of information concerning the effectiveness of services and service delivery methods.

State agencies should identify an individual to serve as the contract manager. Although the contract manager may delegate certain functions, the contract manager should perform the principal contract management and monitoring functions. The contract manager should ensure the service provider fulfills all contractual obligations in a quality manner on schedule and within budget. To accomplish this task, the contract manager must be completely knowledgeable of the terms of the contract and maintain control throughout.

To effectively manage the contract, the contract manager should establish controls and monitor performance to ensure all work is completed within the requirements of the contract. To get good results from a service provider, precise performance objectives must be set. The service provider needs to know exactly what is expected and when it is expected. The mechanism for monitoring the contract should be established in the contract.

Monitoring Plan

A monitoring plan is one means of defining the specific monitoring methods appropriate to the particular service and the monitoring activities to be completed for an individual service provider. The plan should identify the tools to measure and assess contract performance and compliance and the process for collecting information. Monitoring plans can also be used to decide how to monitor contracts, based on risk, and can also enable State agencies to assess the contract management resources necessary to ensure adequate oversight.

Monitoring activities may include those listed in **Table 7**.

Table 7

Monitoring activity	Description
Periodic service provider reporting	Require the service provider to submit progress reports or other appropriate data or reports, based on pre-defined criteria, and review the service provider's reports for verification of services provided and adherence to the contract. Substandard performance should be identified and addressed timely and appropriately.
Fiscal monitoring	A review of the service provider's invoices and supporting documentation. Before authorizing payment, contract managers should ensure the service provider has adequately demonstrated the satisfactory delivery of services as agreed to in the contract. Contract managers should verify the accuracy of the service provider's invoices and documentation, whether billings are consistent with contract requirements, and whether total payments are within the limits set by the contract. If the services received are not acceptable or not in accordance with the contract terms, the contract manager should authorize payment only for those services received in accordance with the contract terms and conditions. The contract manager may withhold payment for all other charges until the contract terms and conditions have been met. Contract managers should ensure payment documentation is on file.
On-site visits	On-site visits to maintain contact with the service provider to review progress on a regular basis. Good contract monitoring includes a continuous dialogue with the service provider.
Other communications	Every communication with a service provider is an opportunity to monitor activity. Adequate documentation is essential for effective contract monitoring. Contract files should include copies of letters, meeting notes, and documentation of phone conversations as evidence that conscientious monitoring has occurred during the period of the contract.
Contract close-out	Once the contract has ended, contract managers are responsible for: <ul style="list-style-type: none">◆ Following up on any activities the service provider is completing,◆ Ensuring all invoices are received and paid, and◆ Assessing whether objectives and outcomes have been met.

Revised Contracting Rules

The General Assembly has shown a continuing interest in service contract activities and has recognized improvements within the service contracting process are needed. During the 2001 Regular Session of the 79th General Assembly, legislation was enacted that included the Accountable Government Act and imposed new responsibilities on State agencies when contracting for services. *Code of Iowa* section 8.47, Service Contracts, was created as part of the legislation and requires:

1. *The department of general services, in cooperation with the office of attorney general, the department of management, the department of personnel, and the department of revenue and finance, shall adopt uniform terms and conditions for service contracts executed by a department or establishment (State agency) benefiting from service contracts. The terms and conditions shall include but are not limited to all of the following:*
 - a. *The amount or basis for paying consideration to the party based on the party's performance under the service contract.*
 - b. *Methods to effectively oversee the party's compliance with the service contract by the department or establishment receiving the services during performance, including the delivery of invoices itemizing work performed under the service contract prior to payment.*
 - c. *Methods to effectively review performance of a service contract, including but not limited to performance measurements developed pursuant to chapter 8E.*
2. *Departments or establishments, with the approval of the department of management acting in cooperation with the office of attorney general, the department of general services, the department of personnel, and the department of revenue and finance, may adopt special terms and conditions for use by the departments or establishments in their service contracts.*
3. *The state board of regents shall establish terms and conditions for service contracts executed by institutions governed by the state board of regents.*

This *Code* section was amended during the 2002 Regular Session of the 79th General Assembly through the addition of subsection 4, which states as follows:

4. *This section does not apply to service contracts or other agreements for services by the department of public defense that are funded with at least seventy-five percent federal moneys. The department of public defense shall establish terms and conditions for service contracts and other agreements for services that comply with this section to the greatest extent possible.*

Section 8.47 of the *Code of Iowa* requires service contracts to include clauses in three interrelated categories: (1) payment terms, (2) monitoring performance and (3) reviewing performance.

In response to the legislation, Executive Branch agencies of State government have implemented rules and guidelines intended to address concerns expressed by members of the General Assembly and to help the Executive Branch gather useful information about service contracting and more effectively manage service contracts. To ensure adequate and consistent contract terms are included in service contracts, the committee clarified some of the previous contracting rules and developed additional rules. However, the new rules focus on contract content and not management practices. The new required contract clauses provide agencies with additional guidance on some of the areas necessary for contract management, but it is still up to the agencies to ensure implementation of the monitoring and review functions. The current contracting laws, procedures and rules are summarized in **Appendix A**.

In addition, the Governor issued Executive Order 25, dated June 4, 2002, to emphasize State agencies' authority and responsibilities related to service contracting. Executive Order 25 also

A Review of Service Contracts

encourages agencies to use reasonable efforts to ensure they use public funds to purchase services in a way that obtains the best value and are subject to appropriate oversight. It also encourages agencies to submit to periodic review of service contracting procedures by the State Auditor. **Appendix B** includes a complete copy of Executive Order 25.

Also, the Department of General Services, in cooperation with other State agencies, developed and implemented administrative rules for service contracting, as required by the *Code of Iowa*, section 8.47. The service contracting administrative rules were to establish a system of uniform standards for purchasing services by State government and to provide a mechanism for agencies to seek approval to use special terms and conditions in their service contracts. The new administrative rules, effective October 1, 2002, are located in Iowa Administrative Code [401], Chapter 12, Purchasing Standards for Service Contracts, and Chapter 13, Uniform Terms and Conditions for Service Contracts.

In addition, service contracting guidelines were developed by a service contracting group coordinated by the Department of General Services. The guidelines are contained in the State of Iowa Service Contracting Guide 2002, which was specifically developed to help State agencies implement appropriate contracting processes of the Service Contracting Guide 2002 when planning, soliciting, awarding and administering service contracts. Chapter 9, Administrative Requirements for Service Contracts provides information about some of the administrative requirements adopted to help ensure agencies are responding to the concerns raised by the General Assembly. The remainder of the Service Contracting Guide presents detailed guidance for planning and preparation, drafting a scope of work, locating service providers, selecting service providers, completing the pre-contract questionnaire, formalizing the contract, and managing/monitoring the contract and several appendices with relevant information.

As State agencies have begun using the new rules and the Service Contracting Guide, additional questions and concerns have been raised by agency staff members. The Director of the Department of Administrative Services has identified work groups to help review the service contracting process and related rules. The work groups are tasked with suggesting better ways to report on and write service contracts and implement provisions of the 2001 legislation. Work groups were scheduled to begin meeting in late 2003.

Specifically, Chapter 13 requires the following:

13.4(1) Payment clause. The contract shall include a clause or clauses describing the amount or basis for paying consideration to the party based on the party's performance under the service contract. The payment clause(s) should be designed to work in harmony with any monitoring clauses and any post contract review procedures. All payment clauses shall be consistent with *Iowa Code*, section 421.40. The payment clause(s) should also be designed to work in harmony with the outputs, outcomes, or any combination thereof desired by a department or establishment. The payment clause should be appropriate to the nature of the contract as determined by the department or establishment.

13.4(2) Monitoring clause. The contract shall include a clause or clauses describing the methods to effectively oversee the party's compliance with the service contract by the department or establishment receiving the services during performance, including the delivery of invoices itemizing work performed under the service contract prior to payment. Monitoring should be appropriate to the nature of the contract as determined by the department or establishment. Acceptable methods of monitoring may include the following. However, these descriptions are not intended to be an exhaustive or prescriptive list; they are provided as examples.

- a. One hundred percent inspection.
- b. Random sampling.

A Review of Service Contracts

- c. Periodic inspection.
- d. Customer input.
- e. Invoices itemizing work performed.
- f. A monitoring plan determined by the department or establishment to be appropriate for purposes of the service contract and includes methods to effectively oversee the service provider's compliance with the service contract by the department or establishment.

13.4(3) Review clause. The contract shall include a clause or clauses describing the methods to effectively review performance of a service contract including but not limited to performance measurements developed pursuant to *Iowa Code Chapter 8E*. Performance measurement should be appropriate to the nature of the contract as determined by the department or establishment. The measures below are not intended as an exhaustive or prescriptive list; they are provided as examples. The review clause for performance may include:

- a. Outcome measures.
- b. Output measures.
- c. Efficiency measures.
- d. Quality measures.
- e. A review plan determined by the department or establishment to be appropriate for the purposes of the service contract and that includes methods to effectively review performance of a service contract.

13.4(4) Other terms. The contract shall include:

- a. Where appropriate, a non-appropriation clause;
- b. A clause describing the duration of the contract;
- c. Clauses requiring the service provider to comply with all applicable laws;
- d. Where appropriate, an insurance clause;
- e. A clause, exhibit, or other document that describes the scope of services to be performed;
- f. A termination clause;
- g. A default clause, where appropriate;
- h. An independent service provider clause;
- i. Where appropriate, a clause prohibiting inappropriate conflicts of interest on behalf of the service provider;
- j. Other clauses as deemed appropriate by the department or establishment entering into a service contract.

The current contracting rules and guidelines do not require legal review of requests for proposals (RFPs) and contracts written by State agencies. Rather, the rules and guidelines state a legal review by representatives of the Attorney General's Office is available, if desired. We suggest this issue be addressed by one of the work groups formed by the Director of DAS. The work group should consider identifying specific criteria to determine when a review by the Attorney General's Office is recommended.

Service Contracts Reporting – General Services was asked by the Legislature to collect information relating to the State's service contracting practices so it can compile reports on the status of service contracting by State agencies. Specifically, General Services has requested State agencies complete two separate reports on service contracting, the Annual Services Contracting Report and the Quarterly Sole Source Report. Status of the reports is summarized as follows:

- State agencies were asked to return the Annual Services Contracting Report for fiscal year 2001 by early December 2001. According to General Service's staff, a finalized fiscal year 2001 Annual Service Contracting Report has not been released to date and no State agencies were asked for similar reports for fiscal year 2002.
- On December 21, 2001, State agencies were asked by General Services to respond with information on an electronic Excel spreadsheet for sole source contract service information for the first and second quarter of fiscal year 2002. The information was summarized into a similar Excel spreadsheet, but has not been shared with any other State agencies or the Legislative Oversight Committee. The Sole Source Report should include information from the Sole Source Procurement Justification forms, although General Services may request more detail. No additional sole source information has since been requested or collected by General Services.

General Services intends to re-address their responsibilities relating to service contracting reporting and to share the information with the proper oversight entities.

Findings and Recommendations

The Departments of Agriculture, Commerce, Economic Development, Education, General Services, Human Services, Natural Resources, Public Health and Workforce Development enter into service contracts to aid in carrying out programs, assisting with specialized services, assisting with administrative and technical duties, consulting and investigation services, and promoting of programs. We judgmentally selected several service contracts from each of these State agencies to assess the agencies' contract management practices and determine compliance with applicable laws, procedures, rules and guidelines. Specifically, we determined whether:

- The significant factors considered during the contract decision-making process were documented,
- The service contracts were sufficiently monitored and evaluated by the State agencies' staff to help ensure the service providers were held accountable and the State received the services contracted for, and
- The service contracts were in the best interest of the State.

Generally, the State agencies' service contracts we reviewed were selected through competitive bidding procedures, sole source rules, or intergovernmental agreements. Additionally, some of the service contracts reviewed were procured through General Services for the State agencies' use. Occasionally, the State agencies used services under General Services' contracts through the issuance of agency purchase orders or work authorizations.

As a result of our review, we identified the following findings and recommendations common to and which should be considered by each of the State agencies included in the review of service contracts. Additionally, **Schedule 3** presents a quantitative summary of findings by type for each of the reviewed State agencies. The State agencies' responses to our findings are included in **Appendix D**.

While our findings are based on proper contract management practices and the rules in effect at the time the contract was established, our recommendations take into consideration the current rules for establishing service contracts in addition to proper contract management practices. Where applicable, we have referred to the appropriate rules. Because our recommendations are meant to improve the entire contract management process followed by State agencies, it is not our intent to simply recommend the agencies follow the rules.

A Review of Service Contracts

Our recommendations are directed at future contracts established by the State agencies. In addition, the recommendations should be applied, as appropriate, to existing contracts that are still in effect. For instance, we would expect recommended improvements to contract monitoring be applied to all new and existing contracts while recommendations to improvements to locating and soliciting bids would be applied only to new contracts pursued by the agencies.

In addition to the following recommendations and as stated on page 21, we suggest one of the work groups formed by the Director of DAS consider identifying specific criteria to determine when a legal review of RFPs and contracts should be performed.

FINDING 1 – Sole source not sufficiently justified

Over 47% of the service contracts reviewed were identified as sole source contracts. A significant percentage of those, more than 70%, did not have reasonable justifications for being sole source. Also, 23% of the sole source service contracts did not have the sole source justification documented.

The Department of Revenue and Finance's Accounting Policy and Procedures Manual, section 240.102, dated April 1, 1999 and updated April 1, 2001, which was used for testing criteria as applicable, states the following:

April 1, 1999 version

Sole source selection is justified when one of the following conditions exist:

- ♦ *A single source is determined to be the only one qualified or eligible, or is obviously the most qualified or eligible to perform the service.*
- ♦ *The work is of such a specialized nature or related to a specific geographic location that only a single source, by virtue of experience, expertise, or proximity to the project, could most satisfactorily provide the service/product.*

The justification for use of sole source selection and the basis upon which a particular source is selected shall be documented, attached to the contract and maintained in the contracting department (State agency).

Additional emphasis and requirements of the April 1, 2001 version of Procedure 240.102

- ♦ ***Sole source procurement is the contracting method of last resort.*** *Sole source procurement is justified only when the department or agency determines that one of the [conditions listed above exists].*
- ♦ *The agency or department shall attach a copy of the Report of Sole Source Procurement to the contract submitted to the DRF when the first payment is made to the vendor. The Report must provide justification for the sole source procurement and must specify the duration of the procurement.*
- ♦ *Sole source procurement must be avoided unless absolutely necessary and clearly justifiable.*

The State agencies we reviewed chose to contract under sole source rules for certain contracts rather than pursuing the services through a competitive process. There are certain risks associated with the use of sole source service providers including, but not limited to, the most qualified service provider may not be selected and the best price for the service contract may not be obtained.

We reviewed selected contracts for compliance with applicable laws, administrative rules and procedures for service contracts established by General Services and the Department of Revenue and Finance. Seven of the eight State agencies reviewed had findings relating to the use of sole source service contracts. **Table 8** summarizes the total number of service contracts reviewed, number of sole source contracts, number of sole source justifications not considered sufficient and the number of sole source justifications that were not documented.

A Review of Service Contracts

Table 8

	Total # of		Sole Source Justifications	
	Service Contracts Reviewed	Sole Source Contracts Reviewed	# Not Sufficient	# Not Documented
Agriculture	13	5	5	0
Commerce	11	5	5	0
Economic Development	23	16	13	3
Education	73	54	40	13
Human Services	32	12	6	6
Natural Resources	29	3	0	0
Public Health	40	3	1	0
Workforce Development	28	20	13	3
Totals	249	118	83	25

Generally, the State agencies used sole source selections for some contracts if the services, abilities, and/or personnel of a specific service provider were believed to be more reputable and experienced than other service providers and if specific expertise was necessary to help with the work. While these are important considerations, the use of those criteria, in and of themselves, without giving competition a chance is not an acceptable practice. The sole source justifications reviewed were considered to be insufficient because the justifications did not clearly justify why the selected service providers were the only ones able to perform the service and/or why it was absolutely necessary to use sole source procurement. Also, it was not evident competition was given a chance for most of the sole source contracts reviewed. The following specific examples include some of the State agencies' sole source justifications we considered insufficient and why:

Agriculture

- *The service provider was chosen as sole source service provider because of: specialized expertise on wetlands and water policy issues in Iowa and nationwide; previous experience with many of the participants in the Iowa Wetlands Planning Process; familiarity with many of the programs that relate to wetlands and watersheds; and the availability of human resources with unique technical capabilities.*
- ◆ The justification is not considered sufficient because it was not evident from a review of the Department's contract file information the service provider was the only source that could provide the service, nor did the documentation indicate other options were pursued prior to executing a sole source contract.

Commerce

- *The service provider, founded in Iowa, is the seventh largest accounting firm in the country and conducts a banking practice in 16 states. It has seven offices in Iowa. Because it is auditor of more Iowa banks and assists more Iowa banks in acquisitions, mergers, planning and operations than any other organization furnishing the same or similar services, the service provider is best informed concerning laws of the State of Iowa relating to banking and other financial services and is the most familiar with the responsibilities, procedures and practices of the Division of Banking. The service provider is an "approved vendor" for the State of Iowa and has performed work for the General Services and Workforce Departments and the Vocational Rehabilitation Division and has served as a resource for the Department of Economic Development.*
- ◆ The justification is not considered sufficient because other accounting firms perform the same services attributed to the service provider.

Economic Development

- *The service provider has worked under contract or as a co-employee with Iowa Department of Economic Development since 1995. The service provider was selected in 1995 under normal selection procedures. Knowledge and understanding of the Main Street Program are of paramount importance to this position. The service provider has experience implementing Main Street at the local level as well as with Main Street Iowa. The service provider has over eight years of Main Street experience.*
- ◆ *The fact the service provider performed the service in the past is not sufficient justification for sole source. The contract file documentation did not indicate other options were considered or pursued. Additionally, consideration should be given to whether it would be better for the Department to hire a staff person to perform the service rather than to continue to contract.*

Education

- *After contacting two other service providers, neither of which was able to provide for all the requirements of the proposed contract dates or equipment needed for the project, the service provider was selected because it agreed to do the project at a reasonable price, was available for all dates and could provide the crews needed for the project. The service provider also had the expertise from having developed similar video projects.*
- ◆ *The justification is not considered sufficient because there are other service providers that could perform the services. Further, the determination of “reasonable price” was not documented.*
- *The service provider completed original videotaping of the early childhood classroom and teachers’ instruction with the students. Videotape clips need to be made of short segments of these tapes to demonstrate strategy during the ECRBR training. The service provider has completed previous editing of training segments and work has been most professionally completed within reasonable rates.*
- ◆ *The justification is not considered sufficient because there are other videotaping service providers available. Also, it was evident other sources were available based on our review of the Department of Education’s documentation for similar contracted services.*

Human Services

- *The service provider has conducted several other customer satisfaction telephone survey research projects for the Bureau of Collections and is very knowledgeable about Iowa Child Support Recovery’s policies and procedures. The Bureau has been very satisfied with past survey research work completed by the service provider and is confident in their ability to complete the projects to the Bureau’s satisfaction. The immediate needs of the Department do not allow for an RFP process to select this vendor. The Department believes this is the only viable service provider with child support research experience, specialized statistical expertise and availability to assist the Department at this time of transition to a new Specialized Customer Service Unit vendor.*
- ◆ *Past performance of the services, in and of itself, is not sufficient justification for sole source. Also, it is not clear from the contract file documentation if the service provider was the only source.*

Workforce Development

- *The Department recommends sole source selection based on the unique qualifications of the service provider. The service provider has been involved with the State of Iowa through work as a trainer and independent service provider with the Department of Personnel. The service provider has been involved with labor market information through*

A Review of Service Contracts

previous contracts with the Department, and has developed a working knowledge of both labor market information and the one-stop concept. This contract will build on and continue training efforts from the previous fiscal year. A combination of training experience, employment and training programs experience and previous labor market information training knowledge and experience will enable the service provider to effectively accomplish the desired project objectives within the time frame outlined.

- ◆ Past performance of the services, in and of itself, is not sufficient justification for sole source. Also, it is not clear the service provider was the only source available.
- *The service provider has extensive experience in the field of Workforce Development Training and is nationally recognized as a speaker on the Workforce Investment Act, the One Stop System, Maximizing Partnerships, and the Workforce Development System, just to name a few. Sole source was chosen due to the specific nature of the training, efficient use of timeframe of the conference, and appropriate and timely presentation for conference.*
- ◆ The justification is not considered sufficient because it was not clear the service provider was the only available source. Also, contract file documentation did not indicate other options were considered prior to making the determination.

Recommendations –

Specific sole source criteria are identified in the current procurement rules. State agencies should evaluate each individual contract under consideration and determine whether or not the sole source criteria have been met while investigating and documenting whether the prospective service provider is, in fact, the only and best source. Also, State agencies should consider a competitive procurement process when evaluating future contracts similar to those we identified as having insufficient sole source justification.

FINDING 2 – Monitoring and evaluation of service provider performance is not consistently documented and/or needs improvement

Contract management procedures reviewed at the selected State agencies were not sufficient for holding the service providers accountable for the agreed-upon services. Of the service contracts reviewed, 59% did not have evidence of monitoring and evaluation of services for the duration of the contract. Also, approximately 54% did not have evidence of a final overall evaluation of services received.

All eight of the State agencies reviewed had findings related to the monitoring and evaluation of service provider performance. Based on the contract documentation reviewed and inquiry, the State agencies had few documented examples of contract monitoring and evaluation of services performed for the duration of the contracts or after the contracts were completed. According to the State agencies' staff and review of contract files, much of the monitoring was done via phone, e-mail, meetings, and day-to-day activities, such as reviewing service provider progress reports. However, many of the service contracts reviewed did not have any documented methods or results of monitoring and evaluation of service provider performance.

Also, no evaluation of contracted services received was done by the State agencies for many of the service contracts reviewed. Additionally, it was determined through inquiry some evaluation of services was occasionally done by the State agencies during the performance of the contracts, but in many instances it was not documented, nor was it adequate to determine the overall quality and extent of services received. **Table 9** presents the types and quantity of monitoring and evaluation of service contract findings for each of the selected State agencies.

A Review of Service Contracts

Table 9

State agency	# of Service Contracts Reviewed	# of contracts with monitoring & evaluation for duration of contract not documented	# of overall final evaluation of services not done or documented
Agriculture	13	6	13
Commerce	11	6	6
Economic Development	23	22	17
Education	73	51	51
Human Services	32	22	21
Natural Resources	29	26	13
Public Health	40	1	2
Workforce Development	28	12	12
Totals	249	146	135

Additionally, some of the monitoring and evaluation of service contracts completed was not considered sufficient. The following includes detailed information regarding two service contracts that demonstrate the lack of effective monitoring of service contracts and the resulting increased costs.

Commerce

The Department of Commerce did not effectively monitor and evaluate six of the service contracts reviewed. Also, the related documentation submitted for payment under the contracts did not include sufficient detail to allow for effective monitoring of services received in relation to the associated costs. In such cases, there is the risk the service provider could submit charges for services in excess of what was allowed or for services not performed.

Specifically, one service contract was entered into with a consulting group for May and June 2000. The contract was established to assist the Division of Banking in reviewing the practices, procedures, technology and organization of the Division and to make recommendations to improve efficiency, research capabilities, effectiveness and employee dedication, satisfaction and morale. Concerns with the Department's establishment and monitoring of the contract are summarized as follows:

- ♦ The contract was initially identified by the Department of Commerce as an emergency procurement, but was later in the same document identified as a sole source contract. It is apparent from reviewing the timeline of actual services provided that the services were not an emergency. In addition, the sole source procurement method was not appropriate because there are other vendors that provide similar services. The original contract was for \$158,000 through June 30, 2000 and was justified as follows:

"The reason for a sole source contract is that for budgetary reasons, the work called for must be completed and paid for by the close of the current fiscal year ending June 30, 2000. The service provider is believed to be the best qualified to perform the work and is prepared to complete the work within the less than 60 days remaining in this fiscal year."

The use of sole source and emergency selection of the service provider for the contract effectively eliminated the possibility of competition. Better planning for such services could have been utilized to avoid the urgency that apparently led to the emergency and sole source selection decision and a competitive process could have been utilized.

A Review of Service Contracts

- ♦ The service provider continued to provide services under amendments to the original contract through June 30, 2002. This would indicate the initial procurement was not a true emergency. The cost of providing the additional services to the Department of Commerce was \$353,292, bringing the total contract cost to \$511,292, an amount greatly exceeding the amount originally anticipated. There were some cost savings identified as a result of the Division's reorganization that offset some of the service provider costs and some future savings that could be realized due to operational and organizational changes.
- ♦ The original service contract did not include clear statements regarding the services to be provided or service provider responsibilities. Therefore, from the outset, it would be difficult to effectively monitor the service contract and hold the service provider accountable for the agreed upon services because the scope of work was too vague.
- ♦ Lack of detail on the service provider invoices made it difficult to monitor and evaluate the services received.

Emergency and sole source selections should be kept to a minimum and used only as a last resort and in rare situations. If a competitive process is not viable, the service provider may be selected under either emergency selection rules or under sole source rules, if warranted and appropriately justified. Although, this contracting situation did not seem to be either an emergency or a sole source situation, the Division justified it as both.

This service contract is also one of the sole source justifications not considered sufficient in **FINDING 1**.

Education

The Department of Education did not have any documentation that monitoring or evaluation of services was done for a service contract that was amended and extended a few times. The service contract ended up costing much more than originally anticipated. **Table 10** shows that the contract increased in cost by \$61,150, or 86%, while being extended for an additional year.

Table 10

Date approved	Description	Cost	Cumulative Cost
Sept. 19, 2000	Original contract to provide development and writing of the Iowa Rules and Regulations for Early ACCESS from October 1, 2000 through September 30, 2001.	\$71,150	\$71,150
March 5, 2001	Amended by \$10,000 for increased travel costs.	10,000	81,150
Nov. 16, 2001	Amended through September 30, 2002 at an additional cost of \$51,150, of which \$11,150 was for travel.	51,150	132,300

It is critical State agencies appropriately monitor and evaluate service contracts while they are in progress and evaluate the services received at the end of each contract to hold the service providers accountable and to determine services contracted for are received and adequate.

Recommendations–

The current procurement rules require State agencies to include monitoring and review clauses in the contract. Inclusion of the clauses should aid State agencies in administering contracts in a proper manner. In addition to complying with the rules and including the contract clauses, State agencies should:

A Review of Service Contracts

- Implement policies and procedures for how contracts are to be monitored to ensure services contracted for are received and are adequate to meet the needs of the State agencies and any clients the State agencies are serving.
- Monitor activity for the duration of the contracts and document and review the service providers' performance by using the monitoring and performance review clauses as a guide to help determine service provider compliance with the service contract and effectively review performance of the service contracts.
- Implement formal procedures to ensure service providers take proper corrective action when problems are identified.
- Monitor performance by effectively monitoring whether a service provider is complying with contract terms and meeting the performance criteria. State agencies should require, for instance, detailed invoices itemizing work performed under the contract prior to making periodic or final payments to a service provider. Disputes with service providers can be eliminated, or at least minimized, by clearly defining the scope and timing of work to be performed and the criteria against which the service provider's performance will be judged. If the scope and timing of work is clear, it will be easier to identify the criteria that should be applied in assuring contract terms are being fulfilled.

FINDING 3 – Contract signed after start date/not signed

For almost 46% of the service contracts reviewed, the State agencies allowed service providers to begin work before the contracts were signed.

We reviewed the selected service contracts to determine whether the contracts were signed prior to the start of work. Seven of the eight State agencies reviewed allowed service providers to start work before the service contracts were signed. Department of Revenue and Finance Procedure 240.102 states contracted services should not be performed until all signatures are obtained and distribution of the contract is made to the parties. **Table 11** presents a summary of the number of contracts signed after the contract start date for each of the State agencies, along with the range of the number of days elapsed from the start date prior to being signed.

Table 11

State agency	# of Service Contracts Reviewed	# of Contracts signed after start date	% of contracts not signed prior to contract start	Range of # of days from contract start date until signed
Agriculture	13	2*	15.4%	26 days
Commerce	11	0	0.0%	-
Economic Development	23	11	47.8%	11 to 81
Education	73	59	80.8%	4 to 299
Human Services	32	7	21.9%	9 to 118
Natural Resources	29	1	3.4%	17 days
Public Health	40	30	75.0%	17 to 317
Workforce Development	28	4	14.3%	8 to 138
Totals	249	114	45.7%	4 to 317

* - One of the two contracts was not signed at all.

Recommendation –

The revised Department of Revenue and Finance Procedure 240.102, effective October 1, 2002, also states “contracted services are not to be performed until all signatures are obtained and distribution of contract copies is made to the parties. State agencies should implement

A Review of Service Contracts

procedures to ensure contracts are signed, dated and appropriately distributed prior to contracted services being started. Also, a copy of each contract that is appropriately signed and dated should be maintained in the contract files. It is important there is documented approval of service contracts prior to the start of work under the contracts.

FINDING 4 – Contract amendments

Almost 20% of the service contracts reviewed were amended and approximately 47%, or 23 of 49, of the amended contracts were increased for both the cost and contract duration.

We examined the extent to which the State agencies amended the service contracts included in this review. All of the eight State agencies reviewed had service contracts with amendments. **Table 12** presents the number of amendments reviewed for the selected service contracts and the amendment type.

Table 12

State Agency	# of Service Contracts					
	Reviewed	Amended	%	Amendment Type		
				Cost and Duration Increased	Cost Only Increased	Duration Only Increased
Agriculture	13	4	31%	2	0	2
Commerce	11	1	9%	1	0	0
Economic Development	23	3	13%	0	1	2
Education	73	19	26%	12	5	2
Human Services	32	6	19%	5	0	1
Natural Resources	29	6	21%	1	0	5
Public Health	40	8	20%	2	2	4
Workforce Development	28	2	7%	0	0	2
Totals	249	49	20%	23	8	18

We also reviewed the contract amendment documentation related to the service contracts selected for review. The contract amendments were reviewed for reasonableness in terms of dollar amount, timeline and purpose as related to the original purpose of the service contracts. Also, the contract amendment documentation was evaluated as to whether it was reviewed and approved. Most of the amendments reviewed were reasonable as related to dollar amount, timeline, purpose and were appropriately documented.

However, the Department of Education does not have a formalized contract amendment process for service contracts. For most of the service contracts reviewed, the contract amendments consisted of copies of e-mails with signatory approval and date noted. In some instances, an amendment was executed by completing a pre-contract questionnaire, in addition to the use of e-mails with the signatory approval and date. Changes resulting from the amendments were manually documented on some of the original contracts, but in other instances, the changes were not noted on the original contracts. The inconsistencies identified during our review would make it difficult to track and monitor changes to the original service contracts.

There are often legitimate reasons for service contracts to be amended. Projects may take longer than anticipated or other unexpected issues may arise. However, if service contracts are amended too easily and frequently, the competitive process could be hindered. If amendments to increase contract costs and time of performance are relatively easy to obtain for the service providers under contract, some of the service providers may develop the perception it is common practice by State agencies. Subsequently, they may use it as a factor in considering the bid amount they submit through the request for proposal process for service contracts. This could reduce the fairness of the competitive process by placing other competitors who were not aware

A Review of Service Contracts

of this practice at a disadvantage and could result in increased costs to State agencies, particularly if the practice of allowing multiple cost amendments continues or increases. Two specific examples of the effects of allowing multiple amendments to service contracts for increased costs and time of performance have been included in **FINDING 2**.

If the service providers with the amended service contracts were selected through the sole source method, those service providers may also have too much impact on the contract cost. Sole source service providers could take advantage of the situation due to the fact they know they are apparently the only service provider available to meet the State agencies' needs and may increase the cost. Another possibility is the State agencies' contract managers may continue to use sole source service providers for convenience.

Table 13 presents the number of service contract selection methods used to execute the service contracts with amendments.

Table 13					
State agency	# of Service Contracts Amended	Service Contract Selection Method			Exception to Statewide Policies
		Sole Source	Competitive	Intergovernmental Agreement	
Agriculture	4	0	4	0	0
Commerce	1	1	0	0	0
Economic Development	3	1	2	0	0
Education	19	14	0	4	1
Human Services	6	2	4	0	0
Natural Resources	6	1	5	0	0
Public Health	8	0	2	6	0
Workforce Development	2	2	0	0	0
Totals	49	21	17	10	1

One of the most significant items **Table 13** presents is 74%, or 14 of 19, of Department of Education service contracts amended were selected through the sole source method. Therefore, those service providers may have leverage to demand higher pay under the contracts.

Recommendations –

Current contracting rules do not specifically address contract amendments. State agencies should implement procedures to ensure service contract amendments are kept to a minimum and amendments go through a formal process, including appropriate approval, tracking and documentation. Because amendments may be periodically required, a formal amendment and approval process should be followed and documented.

Additionally, the Department of Education needs to improve its service contract amendment process so it is more formal, clearly documents and tracks changes resulting from amendments to the original contracts and then implement procedures to ensure a standard service contract amendment process is consistently used by Department staff.

FINDING 5 – Contract clauses

Approximately 17% of contracts reviewed contained a scope of work clause that was too vague. In addition, some contracts did not contain other required clauses.

We reviewed the selected service contracts to determine whether they contained provisions and sanctions sufficient to hold the service providers accountable and for measuring contract performance. All eight of the State agencies reviewed had some findings in this area. To develop testing criteria, we used Department of Revenue and Finance Procedure 240.102, which includes a listing of required contract clauses. **Table 14** presents the types and quantity of required contract clauses not included in some of the service contracts reviewed.

A Review of Service Contracts

Table 14

State agency	# of Service Contracts Reviewed	# of Required contract clauses not included			Compliance with laws & regulations
		Scope of work was too vague	Indemnification	Termination	
Agriculture	13	0	4	0	2
Commerce	11	1	0	0	0
Economic Development	23	0	1	0	3
Education	73	42	0	0	0
Human Services	32	0	2	0	0
Natural Resources	29	0	0	0	0
Public Health	40	0	1*	1*	1*
Workforce Development	28	0	4	3	3
Totals	249	43	11	3	9

* - The service contract associated with the findings listed for Public Health in **Table 14** was a General Services contract.

Scope of work clause

Of the Department of Education service contracts reviewed, 57% included a scope of work that was too vague because they did not include a detailed description of the specific work to be completed. Therefore, we were not able to determine if the agency received the specific services for which it contracted or whether the agency was able to ensure the services received met the intended objectives. For example, the following excerpts describe the scope of three contracts established by the Department of Education:

- A contract with an area education agency was established to “continue to provide Technical Services in the area of Special Education. Such services include School Social Work and Physical Therapy.” The Department paid \$164,509 for the services. The contract was amended twice.
- A contract was established with a vendor “to provide technical support, training and customization for AEAs implementing an electronic version of the statewide IEP [individual education plan] form standardized using FileMakerPro.” The contract was initially established for \$10,500, amended to \$17,000, then amended again to \$27,500.
- A contract was established with an individual to “continue development and writing of Iowa Rules and Regulations as Interagency rules between Department of Health, Human Services and Education. Develop and write state policy and procedures for Early Access based upon previous interagency work. Anticipate four 2-day trips to Des Moines.” The contract was initially established for \$71,150, amended to \$81,150, then amended again to \$132,300.

Developing the scope of work is the most critical part of the entire service contracting process. The scope of work should be used for both selecting a service provider and formalizing the contract with the selected service provider. It is important the scope of work is clear, understandable and precise so prospective service providers can understand what the State agencies want to buy. If the scope of work is vague, it is more difficult to make the service provider comply with expectations and can also result in higher prices.

Other required contract clauses and service contracting requirements

In addition to the items identified in **Table 14**, we identified the following items:

Human Services had one contract that did not clearly state the minimum service requirement and one contract term was for four years, which exceeded the term allowed by Department of Revenue and Finance Procedure 240.102 that was effective prior to October 1, 2002.

A Review of Service Contracts

Natural Resources had one contract with a contract term that exceeded the allowable term by two years.

Also, Workforce Development contracts did not include the following required clauses:

- One did not include a statement about the minimum service required.
- One did not include a maximum dollar amount to be paid to the service provider.
- One did not include a schedule of payments to be made to the service provider.
- Two were not for a fixed or determinable period. One of these contracts did not include a termination date and exceeded the contract term allowed by the service contracting procedures that were effective prior to October 1, 2002.

Desirable contract clauses

We also reviewed the State agencies' service contracts for inclusion of what we consider to be desirable clauses. While the desirable contract clauses were not required by the service contracting laws, administrative rules and procedures in effect when these service contracts were established, good business practice dictates the inclusion of such contract clauses. Some of the more significant clauses we consider desirable include: clearly defined performance standards and measurable outcomes, clear statements of how service provider performance would be monitored and evaluated, and sanctions sufficient to hold service providers accountable for failing to meet intended objectives. Each of these clauses are now required to be included in service contracts and are commonly referred to as the payment, monitoring and review clauses. We identified the following contract clauses that were not included in the service contracts reviewed, for each of the State agencies listed below:

Agriculture

- Three of the thirteen reviewed, or 23%, did not contain clearly defined performance standards and measurable outcomes.
- Five of the thirteen reviewed, or 38%, did not contain clear statements of how service provider performance would be monitored and evaluated.
- Three of the thirteen reviewed, or 23%, did not contain sanctions sufficient to hold service providers accountable for failing to meet intended objectives.

Commerce

- Five of the eleven reviewed, or 45%, did not include clear statements of how service provider performance would be monitored and evaluated.
- Four of the eleven reviewed, or 36%, did not contain sanctions sufficient to hold service provider's accountable for failing to meet intended objectives.

Education

- Sixty-five of the seventy-three reviewed, or 89%, did not include clear statements of how service provider performance would be monitored and evaluated.
- Fifty-three of the seventy-three reviewed, or 73%, did not include clearly defined performance standards and measurable outcomes.
- Fifty-nine of the seventy-three reviewed, or 81%, did not contain sanctions sufficient to hold the service provider accountable for failing to meet intended objectives.

Human Services

- One of the thirty-two reviewed, or 3%, did not contain sanctions sufficient to hold the service provider accountable for failing to meet intended objectives.
- Six of the thirty-two reviewed, or 19%, did not include clear statements of how service provider performance would be monitored and evaluated. Three of the six were service contracts procured through General Services to be available for State agencies' use. The Department of

A Review of Service Contracts

Human Services used services under the General Services contracts through the issuance of work authorizations.

- Seven of the thirty-two reviewed, or 22%, did not include clearly defined performance standards and measurable outcomes.

Natural Resources

- One of the twenty-nine reviewed, or 3%, did not contain a clear statement regarding how service provider performance would be monitored and evaluated.
- Two of the twenty-eight reviewed, or 7%, did not include clearly defined performance standards and measurable outcomes.

Workforce Development

- Three of the twenty-eight reviewed, or 11%, did not contain sanctions sufficient to hold the service provider accountable for failing to meet intended objectives.
- Two of the twenty-eight reviewed, or 7%, did not include clear statements of how service provider performance would be monitored and evaluated.

Recommendation -

Current contracting rules require services contracts to contain a clause, exhibit or other documentation describing the scope of services to be performed. State agencies should implement procedures to ensure all contracts contain the clauses required by applicable administrative rules. Additionally, State agencies should ensure the duration of service contracts do not exceed parameters established by the service contracting administrative rules.

FINDING 6 – Questionable expenditures

We reviewed expenditures related to the selected service contracts for reasonableness as compared to other similar contracts and relevant contracting procedures for similar situations. As a result, we identified one service contract we considered questionable.

Agriculture

The expenditures relating to one of the contracts reviewed seemed questionable as compared to the results achieved. Also, it is questionable whether the following types of expenditures are prudent, particularly during a period when there are significant state budget problems.

The Department of Agriculture paid a service provider \$12,200 to prepare administrative rules and related program form applications for the Agriculture Remediation program. The Iowa Agriculture Remediation Act established an Agri-chemical Remediation Board to administer the program. The Board contracted with a consultant to prepare the administrative rules and related program form applications. The consultant prepared the rules but did not complete the program form applications. While this was occurring, the Legislature did not provide funding to continue establishing the program. However, the consultant was paid the entire contracted amount, even though not all services contracted for were received.

Recommendations–

State agencies should carefully and consistently scrutinize proposed service contracts to determine if those services are critical for accomplishing their mission and whether the expenditure is in the best interest of the State. Also, State agencies need to seriously consider whether the work could be handled in-house. Additionally, if State agencies do contract for services, they need to ensure everything contracted for is received, it is of sufficient quality and it complies with all of the other service contracting laws, procedures and rules.

FINDING 7 – Analysis of factors or rationale involved in deciding whether to contract was not documented

Almost 76% of the State agencies service contracts reviewed did not have documentation of an analysis of factors or rationale involved for deciding whether to contract for services or use in-house resources to meet the needs.

Before State agencies enter into a service contract, it is important to determine the services are needed and will benefit the State. Also, State agencies should evaluate the extent to which State employees may be used to provide the services. All eight of the State agencies reviewed had findings for not documenting what was done to determine the need for service contracts or consideration of other alternatives, including the use of State employees.

Procurement actions cannot be carried out successfully without sufficient planning and preparation. Planning lays the groundwork for an efficient and effective process. It provides information that enables staff to decide how best to accomplish the procurement, what specific actions need to be taken to obtain the service, and how to assure contract performance is accomplished to meet program requirements. Advance planning also provides the means for State agencies to assure full compliance with state statutes, regulations, policies and procedures. Good analysis and good planning are the best ways to ensure selection of a qualified service provider.

We reviewed the State agencies service contract files for the selected service contracts and inquired about the existence of any type of analyses. Analyses include, but are not limited to, cost analysis/cost effectiveness determination performed prior to making a decision on whether the service should be contracted or accomplished utilizing the State agencies' in-house resources. The State agencies either did not perform or did not maintain documentation of the performance of any pre-contract analyses for determining if the services were needed, could be handled in-house or whether contracting was in the best interest of the State for most of the service contracts we reviewed. Also, the State agencies' staff confirmed through inquiry such analyses generally were not done prior to contracting for services.

Unlike the other agencies included in this review, the Department of Education has many consultants on staff. Based on a comparison of job descriptions to descriptions of contracted services, the administrative and education program consultants on the Department's staff should have been able to perform some of the services that were contracted out.

A function of the Department of Education is to provide training and technical services to the Local Education Agencies, Area Education Agencies and Community Colleges. The Department of Education's various bureaus entered into several service contracts to (1) provide technical services and technical writing and (2) facilitate discussions, meetings and promote programs. Many of those contracts did not include adequate detailed descriptions of what services were to be performed.

Further, the Department of Education did not clearly document why their staff could not have performed at least 19 of the contracted services reviewed, and it is questionable whether nine of the service contracts reviewed were in the best interest of the State. The comparison of descriptions of contracted services to the job descriptions for the Department's administrative consultants and education program consultants shows some of the contracted services did not require special expertise beyond what the Department's consultants are to possess. For example, there was a \$4,000 service contract to facilitate five meetings relating to monitoring special education needs across the State. Since several of the Department's staff attended those meetings, it is not clear why they did not facilitate the meetings. Another example is a \$15,400 contract to encourage public awareness of the Every Child Reads Birth to Kindergarten initiative. It is not clear why the Department's administrative consultants could not have done this since work examples in their job descriptions include "Promotes the Department's program initiatives by serving in a leadership capacity or as a key player in activities that involve community, business, political and service provider representatives."

Recommendation–

Current contracting rules do not require documentation of preliminary planning State agencies should be performing. State agencies should implement procedures to help ensure

contracting decisions include a determination of whether the contract is really needed. If so, State agencies should determine whether it is more cost effective to contract for the services or have agency staff, if possible, perform those services, in whole or in part. Also, State agencies should document who made the contracting decisions.

FINDING 8 – No documentation of employer/employee relationship determination

Department of Revenue and Finance Procedure 240.102 requires, prior to signing a contract, a determination be made as to whether or not the service provider has an employer/employee relationship with the State. Also, if applicable, an Internal Revenue Service Form SS-8, Determination of Employee Work Status for Purposes of Federal Employment Taxes and Income Tax Withholding, must be completed. Contracts that create an employer/employee relationship are not to be authorized. Related documentation must be included in the applicable service contract file.

Two of the eight State agencies reviewed had findings regarding the lack of documentation for the employer/employee relationship determination. Specifically, two of the Department of Agriculture's service contracts did not include documentation of a determination of an employer/employee relationship. Also, one of the Department of Workforce Development's service contract files did not include documentation of a determination of an employer/employee relationship or an IRS Form SS-8.

An essential criterion in the use of services is the independent entrepreneurial relationship between the service provider and State agencies. State agencies could potentially be subject to payment of fines by the Internal Revenue Service and the Social Security Administration if a determination of "employee" status is made regarding the State agencies' contracts.

Recommendation –

Current contracting rules continue to require determination of an employer/employee relationship. State agencies should consistently complete and document a determination of employer/employee relationship prior to contracting for services.

FINDING 9 – Pre-contract questionnaire was not completed

We reviewed contract files for compliance with documentation required by Department of Revenue and Finance Procedure 240.102, including, but not limited to, completion of a pre-contract questionnaire (PCQ). Two of the eight State agencies reviewed had a finding in this area. One service contract file reviewed at the Departments of Commerce and Workforce Development did not include documentation a pre-contract questionnaire was completed.

Recommendation –

Current contracting rules continue to require completion of a PCQ. State agencies should consistently comply with all service contract requirements and ensure all required contract documentation is completed prior to contracting for services. All related documentation should be maintained in the contract files.

FINDING 10 – Required documentation relating to the competitive bidding process was not maintained

We reviewed the selected service contract files of the State agencies for inclusion of documentation required by the contract preparation procedures contained in Department of Revenue and Finance Procedure 240.102. Only the Department of Economic Development's service contract files did not contain the score sheets summarizing the results of the evaluation of the contract proposals submitted by various service providers and showing the successful proposer.

Recommendation –

State agencies should consistently comply with all service contract requirements and ensure all required contract documentation, as applicable, for evaluation of competitive bidding proposals, as summarized on score sheets, be maintained in the contract files.

FINDING 11 – Service provider selection method not documented

We reviewed the selected service contract files of the State agencies for inclusion of documentation of the service provider selection method as required by Department of Revenue and Finance Procedure 240.102. Two of the eight State agencies reviewed had some service contracts that lacked documentation.

Education

The Department of Education used sole source rules for selecting most of the service contracts we reviewed and used a competitive selection process, intergovernmental agreement, or an exception to Statewide policies for the remainder. However, the method for selecting five of the service providers reviewed was not documented in the contract file. According to Department of Education staff, an informal process was used to compare service provider availability, cost and interest in doing the work for those five contracts.

Public Health

The Department of Public Health used intergovernmental agreements for several of the service contracts we reviewed and used a competitive selection process or sole source rules to contract for the remainder. However, the method for selecting four of the service providers reviewed was not documented in the contract file.

Recommendation–

State agencies should consistently document the service provider selection method used in accordance with Iowa Administrative Code [401]-Chapter 12, Purchasing Standards for Service Contracts, and maintain related documentation in the contract file for all future contracts.

FINDING 12 – Consider allowing competitive bidding for laboratory service

The Department of Natural Resources has contracted with one of the State's Universities, as allowed by the *Code of Iowa*, section 455B.103, subsection 3, which states the following:

“Contract, with the approval of the commission, with public agencies of this state to provide all laboratory, scientific field measurement and environmental quality evaluation services necessary to implement the provisions of this chapter. If the director finds that public agencies of this state cannot provide the laboratory, scientific field measurement and environmental evaluation services required by the department, the director may contract, with the approval of the commission, with any other public or private persons or agencies for such services or for scientific or technical services required to carry out the programs and services assigned to the department.”

The service contract reviewed was for the time period October 1, 2000 through September 30, 2001 at a total cost of \$1,581,033 for water quality monitoring, including collection, analysis and reporting on a multitude of water sites within the State.

The Department has never competitively bid the contract which has consistently been awarded to the University of Iowa. According to representatives of DNR, they believe the *Code* requires DNR to contract with an agency of the State and would be allowed to contract with private persons or agencies only if no State agencies were able to provide the services specified.

Recommendation–

The General Assembly should consider re-examining the *Code of Iowa*, section 455B.103, subsection 3 to determine if it would be in the State's best interest to allow this service to be selected through a competitive bidding process. At a minimum, consideration should be given to allowing the Department of Natural Resources to have the flexibility to pursue other options for such services if the contracted public agency of the State was not performing up to the expectations of the Department or if the services could be obtained at a lower cost.

Service Contracts

Service Contracts

Statewide Professional Service Expenditures by State Agency
Fiscal Years 1990, 1995, 2000, 2001 and 2002

STATE AGENCY		PROFESSIONAL SERVICE EXPENDITURES (see Note)					
NAME	NUMBER	1990	1995	2000	2001	2002	
Agriculture & Land Stewardship	009	\$ 3,429,845	2,596,105	4,152,032	4,974,700	3,983,398	
State Fair Division	011	-	19,738	-	-	-	
Soil Conservation	013	3,207,176	3,639,205	3,027,876	3,158,278	2,378,569	
Agriculture Development Authority	014	88,786	91,909	64,998	104,937	104,577	
Corn Promotion Board	016	1,158,742	24,457	16,713	13,248	13,414	
Egg Council	018	1,457	-	-	-	-	
Soybean Promotion Board	020	2,998,357	-	-	-	-	
Turkey Marketing Council	021	13,633	-	-	-	-	
State Fair	034	-	-	265,665	291,268	259,618	
Attorney General	112/113/114	417,858	2,897,862	4,011,939	3,848,453	3,946,495	
Auditor of State	126	115,504	95,228	107,351	51,623	45,639	
Department for the Blind	131/133	46,091	126,692	442,788	900,749	387,418	
Ethic & Campaign Disclosure Board	140	1,470	7,501	6,362	1,622	1,641	
Civil Rights Commission	167	77,797	47,615	16,088	22,591	16,501	
Commerce Department:							
Administration	211	4,671	84	16,203	476	999	
Alcoholic Beverages Division	212	72,902	1,621,682	2,369,106	3,280,541	3,270,630	
Banking Division	213	2,729	3,601	144,218	254,995	133,114	
Credit Union Division	214	230	3,234	159,612	17,584	853	
Insurance Division	216	49,370	98,871	434,486	383,448	269,212	
Professional Licensing Division	217	26,310	39,338	50,053	56,425	28,145	
Utilities Division	219	254,240	1,384,847	1,480,601	1,439,401	1,911,749	
Community Based Corrections	229	71,149	77,952	135,994	28,083	(1,660)	
Department of Corrections	238/255	980,030	868,491	6,698,999	5,491,728	5,826,312	
Corrections Training Academy	239	8,171	13,475	4,779	4,393	6,733	
Correctional Institutions:							
Fort Madison	242	1,648,733	1,760,652	1,661,436	291,360	209,785	
Anamosa	243	549,461	164,904	540,370	340,295	450,722	
Oakdale	244	126,992	233,857	866,714	773,869	541,495	
Newton	245	85,905	101,811	684,739	645,223	402,718	
Mt Pleasant	246	249,033	252,950	751,642	775,718	284,422	
Rockwell City	247	54,823	214,701	341,306	253,754	192,853	
Clarinda	248	85,347	84,473	1,285,757	1,064,379	1,303,847	
Mitchellville	249	191,341	210,346	486,840	413,581	433,435	
Fort Dodge	252	-	-	1,397,492	1,960,720	1,444,299	
Iowa Prison Industries	250/251	176,555	265,303	365,178	253,198	219,708	
Cultural Affairs	259	1,406,117	462,744	811,689	997,578	958,782	
Iowa Public Television	260/285	1,039,912	2,548,182	9,719,703	9,131,570	8,093,257	
State Historical Society	265	-	-	90,170	103,872	171,636	
Economic Development	269	53,512,181	1,486,168	3,098,913	1,806,134	1,865,767	

Schedule 1**Service Contracts****Statewide Professional Service Expenditures by State Agency
Fiscal Years 1990, 1995, 2000, 2001 and 2002**

STATE AGENCY		PROFESSIONAL SERVICE EXPENDITURES (see Note)				
		FISCAL YEAR				
NAME	NUMBER	1990	1995	2000	2001	2002
Iowa Finance Authority	270	404,449	448,014	1,007,392	1,244,187	739,165
Wallace Technology	272	-	4,457	-	-	-
Iowa Seed Capital Corporation	273	-	25,105	-	-	-
Education	282	3,296,540	6,215,695	10,002,421	8,495,738	9,749,521
Vocational Rehabilitation	283	1,418,437	4,138,724	3,056,324	3,849,716	3,537,342
College Aid Commission	284	2,548,348	5,579,158	5,398,540	6,214,661	6,530,841
Elder Affairs	297	34,785	6,631	206,047	505,303	1,381,209
Workforce Development	309	757,417	2,256,157	32,256,567	31,736,427	32,053,711
Executive Council	321	87,131	37,473	-	-	-
Information Technology Department	333	-	-	3,811,619	6,070,699	4,426,655
Iowa Telecommunications	336	-	4,871,483	11,502,481	10,210,357	5,150,994
General Services	337/338/339	798,281	1,711,663	1,288,505	1,067,086	792,240
Governor's Office	350	11,450	13,753	10,124	20,815	4,687
Iowa Sesquicentennial Commission	352	-	38,648	-	-	-
Human Rights	379	36,125,422	41,419,594	44,680,225	77,516,577	49,582,905
Human Services Administration	401	2,163,026	10,151,462	10,806,848	11,117,628	7,735,710
Human Services Community Services	402	1,089,866	5,765,635	20,044,671	13,844,920	8,767,229
Sex Predator Civil Commitment	406	374,894	-	42,028	65,843	75,071
Human Services Institutions:						
Juvenile Home - Toledo	404	144,943	237,647	421,310	456,887	307,391
Training School - Eldora	405	196,474	531,477	882,826	925,306	679,736
Cherokee	407	284,640	283,138	646,946	556,393	646,267
Clarinda	408	245,527	139,161	230,185	193,448	315,031
Independence	409	170,895	959,565	1,378,335	1,184,458	982,637
Mt Pleasant	410	904,103	236,556	484,112	279,370	310,858
Glenwood Resource Center	411	343,560	415,047	638,126	684,659	584,733
Woodward Resource Center	412	236,197	206,887	741,317	684,282	578,321
Human Services Assistance Pymts	413	16,823,401	35,000,780	80,017,707	85,863,788	63,992,474
Inspections & Appeals	427	11,088,449	13,442,291	1,008,460	845,637	666,468
State Public Defender	428	128,359	630,804	20,001,660	22,857,380	22,706,661
Racing Commission	429	763,257	577,492	931,759	1,162,944	1,007,182
Judicial Department	444/446	2,908,639	1,488,828	3,442,346	8,199,954	1,326,870
Law Enforcement Academy	467	87,143	137,680	233,314	466,123	286,209
Legislative House	500	13,034	1,190	4,971	4,596	9,379
Legislative Senate	501	10,608	11,606	13,878	7,806	1,368
Legislative Joint Expense	502	646,665	234,663	117,209	149,395	30,174
Legislative Citizens Aide	503	7,196	3,098	43,234	50,433	25,787
Legislative Computer Support	505	35,503	10,147	1,741	54,897	25,173
Legislative Fiscal Bureau	506	19,356	12,499	87,703	131,065	159,512

Service Contracts

Statewide Professional Service Expenditures by State Agency
Fiscal Years 1990, 1995, 2000, 2001 and 2002

STATE AGENCY		PROFESSIONAL SERVICE EXPENDITURES (see Note)				
		FISCAL YEAR				
NAME	NUMBER	1990	1995	2000	2001	2002
Legislative Service Bureau	507	9,858	231,097	194,748	293,384	151,887
Legislative Capital Management	510 532	- 37,497	- 1,519,464	- 3,303,559	74,383 3,288,255	105,212 3,275,538
Natural Resources	542/543	12,039,804	11,487,096	18,086,590	21,001,788	17,909,317
Parole Board	547	-	4,807	70,068	40,929	1,554
Personnel	552	464,156	1,109,898	2,418,890	3,019,515	4,179,873
IPERS	553	13,358,546	15,975,465	24,467,861	36,146,267	30,068,960
Public Employment Relations Board	572	67,912	37,155	29,553	69,090	33,622
Public Defense	582	1,312,300	1,011,716	2,705,081	9,303,627	14,324,834
Emergency Management	583	-	1,410,468	654,705	1,435,065	536,992
Public Health	588	40,966,163	65,065,427	66,537,908	81,067,092	83,828,540
Public Safety	595/596	1,414,131	2,832,775	5,003,189	6,035,059	4,891,397
Board of Regents	615	16,801	35,637	320,263	329,826	273,888
Revenue and Finance	625	298,709	1,232,812	4,100,278	8,193,428	10,972,029
Lottery	627	3,614,103	5,281,057	4,681,092	4,960,794	5,518,606
Secretary of State	635	12,599	19,111	201,357	387,332	308,931
Office of State/Federal Relations	640	-	794	-	-	-
Governor's Office of Drug Control Policy	642	-	2,828,792	6,729,426	7,076,943	5,995,162
Transportation	645	34,359,388	52,342,393	77,876,738	108,327,367	78,973,677
Executive Council	654	-	-	511,071	629,903	587,183
Treasurer of State	655	1,714,293	524,347	4,202,738	1,478,791	12,578,000
Treasurer of State - Underground Storage Tank	656	-	2,782,773	3,534,973	2,693,708	2,133,527
Treasurer of State - Tobacco Settlement	657	-	-	-	-	51,412
Veterans Affairs	671/672	-	4,521,512	3,914,668	2,760,516	2,618,010
Totals		266,007,173	328,942,782	530,693,499	638,467,634	543,643,745
Regents, School for Blind	617	*	168,328	357,883	285,504	318,638
University of Iowa	619	*	99,584,219	165,297,090	157,845,471	141,333,700
Iowa State University	620	*	23,264,283	36,303,018	35,689,375	41,114,153
University of Northern Iowa	621	*	5,349,443	15,660,565	19,168,129	21,887,015
Totals		-	128,366,273	217,618,556	212,988,479	204,653,506
State wide Totals		\$266,007,173	457,309,055	748,312,055	851,456,113	748,297,251

* - Fiscal year 1990 data for the Board of Regents Institutions was not available from the State's IFAS system.

Note: State agencies included in the review of service contracts are highlighted above.

Service contracts were selected from the fiscal year 2001 IFAS expenditures download for class 405, professional and scientific services, and class 406, outside services.

Service Contracts

Professional Service Expenditures for the Reviewed State Agencies
Fiscal Years 1990, 1995, 2000, 2001 and 2002

State Agency		Professional Service Expenditures			
		Fiscal Year			
Name	Number	1990	1995	2000	
Agriculture:					
Agriculture & Land Stewardship	009	\$ 3,429,845	2,596,105	4,152,032	
Soil Conservation	013	3,207,176	3,639,205	3,027,876	
Totals		6,637,021	6,235,310	7,179,908	
Commerce:					
Administration	211	4,671	84	16,203	
Alcoholic Beverages Division	212	72,902	1,621,682	2,369,106	
Banking Division	213	2,729	3,601	144,218	
Credit Union Division	214	230	3,234	159,612	
Insurance Division	216	49,370	98,871	434,486	
Professional Licensing/Division	217	26,310	39,338	50,053	
Utilities Division	219	254,240	1,384,847	1,480,601	
Totals		410,452	3,151,657	4,654,279	
Economic Development	269	53,512,181	1,486,168	3,098,913	
Education	282	3,296,540	6,215,695	10,002,421	
Workforce Development	309	757,417	2,256,157	32,256,567	
Human Services:					
Administration	401	2,163,026	10,151,462	10,806,848	
Community Services	402	1,089,866	5,765,635	20,044,671	
Assistance Payments	413	16,823,401	35,000,780	80,017,707	
Totals		20,076,293	50,917,877	110,869,226	
Natural Resources	542/543	12,039,804	11,487,096	18,086,590	
Public Health	588	40,966,163	65,065,427	66,537,908	
Totals		\$ 137,695,871	146,815,387	252,685,812	

		Percentage change from fiscal year 1990			
		Fiscal Year			
2001	2002	1995	2000	2001	2002
4,974,700	3,983,398				
3,158,278	2,378,569				
8,132,978	6,361,967	(6.1%)	15.1%	22.5%	(4.1%)
476	999				
3,280,541	3,270,630				
254,995	133,114				
17,584	853				
383,448	269,212				
56,425	28,145				
1,439,401	1,911,749				
5,432,870	5,614,702	667.9%	47.7%	1223.6%	1267.9%
1,806,134	1,865,767	(97.2%)	108.5%	(96.6%)	(96.5%)
8,495,738	9,749,521	88.6%	60.9%	157.7%	195.8%
31,736,427	32,053,711	197.9%	1329.7%	4090.1%	4132.0%
11,117,628	7,735,710				
13,844,920	8,767,229				
85,863,788	63,992,474				
110,826,336	80,495,413	153.6%	117.7%	452.0%	300.9%
21,001,788	17,909,317	(4.6%)	57.5%	74.4%	48.8%
81,067,092	83,828,540	58.8%	2.3%	97.9%	104.6%
268,499,363	237,878,938	6.6%	72.1%	95.0%	72.8%

Service Contracts
Findings Summary by Type

Finding Number	Description of finding	Agriculture	Commerce	Economic Development
	Number of service contracts reviewed:	13	11	23
1	<i>Sole source not sufficiently justified and/or documented</i>			
	Not sufficiently justified	5	5	13
	Not documented	-	-	3
2	<i>Monitoring & evaluation of contractor performance not consistently documented and/or needs improvement</i>			
	Monitoring & evaluation for duration of contract not documented	5	6	22
	No final overall evaluation of services received was documented	13	6	17
3	<i>Contract signed after start date or not signed</i>			
	Signed after start date	1	-	11
	Not signed	1	-	-
4	<i>Service Contract Amendments</i>			
	Amended	4	1	3
	Cost & term increased	2	1	-
	Cost increased	-	-	1
	Term increased	2	-	2
5	<i>Contract clauses not included/not sufficient</i>			
	<u>Required:</u>			
	Scope of work was too vague	-	1	-
	Indemnification	4	-	1
	Termination	-	-	-
	Compliance with laws & regulations	2	-	3
	Minimum service requirement not clearly stated	-	-	-
	Contract term exceeded five years	-	-	-
	Maximum amount to be paid	-	-	-
	Schedule of payments	-	-	-
	Fixed or determinable period	-	-	-

* General Services Enterprise contract used by Public Health

Education 73	Human Services 32	Natural Resources 29	Public Health 40	Workforce Development 28	Totals 249
40	6	-	1	13	83
13	6	-	-	3	25
51	22	26	1	12	145
51	21	13	2	12	135
59	7	1	30	4	113
-	-	-	-	-	1
19	6	6	8	2	49
12	5	1	2	-	23
5	-	-	2	-	8
2	1	5	4	2	18
42	-	-	-	-	43
-	2	-	1*	4	11
-	-	-	1*	3	3
-	-	-	1*	3	9
-	1	-	-	1	2
-	1	1	-	1	3
-	-	-	-	1	1
-	-	-	-	1	1
-	-	-	-	2	2

Service Contracts
Findings Summary by Type

Finding Number	Description of finding	Agriculture	Commerce	Economic Development
	Number of service contracts reviewed:	13	11	23
5	Contract clauses not included/not sufficient (continued) <u>Desirable clauses not included:</u> Clearly defined performance standards and measurable outcomes Clear statements regarding how contractor performance would be monitored and evaluated Sanctions sufficient to hold the contractor accountable for failing to meet intended objectives	3 5 3	- 5 4	- - -
6	Questionable expenditures	1 @ \$12,200	-	-
7	Analysis of factors or rationale involved in deciding whether to contract was not documented	13	11	22
8	No documentation of employee/employer relationship determination	2	-	-
9	Pre-contract questionnaire was not completed	-	1	-
10	Required documentation relating to the competitive bidding process was not maintained	-	-	1
11	Contractor selection method not documented	-	-	-
12	Consider allowing competitive bidding for service	-	-	-

**** 3 of the 6 relate to General Services Enterprise contracts used by Human Services**

Education	Human Services	Natural Resources	Public Health	Workforce Development	Totals
73	32	29	40	28	249
53	7	2	-	-	65
65	6**	1	-	2	78
59	1	-	-	3	70
-	-	-	-	-	
59	25	28	17	14	189
-	-	-	-	1	3
-	-	-	-	1	2
-	-	-	-	-	1
5	-	-	4	-	9
-	-	1	-	-	1

A Review of Service Contracts

Staff

This review was conducted by:

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A handwritten signature in black ink, reading "Tamera Kusian". The signature is written in a cursive style with a large, sweeping initial 'T'.

Tamera S. Kusian, CPA
Deputy Auditor of State

A Review of Service Contracts

Summary of Current Service Contracting Laws, Procedures and Rules

Service Contracting Laws, Procedures and Administrative Rules	
	Highlights of Changes and Additional Emphasis
Legal Authority for services contracting	<p>Either the State agency's own enabling legislation or from Executive Order 25. Executive Order 25 replaces Executive Order 60 and emphasizes the following:</p> <ul style="list-style-type: none"> ◆ State agencies are responsible for providing efficient and effective services in the best interest of Iowans, ◆ Service contracts obtained should be the best value and subject to appropriate oversight. ◆ All agencies in the Executive branch of State government must procure services in accordance with the <i>Code of Iowa</i>, sections 8.47 and 18.3, and all administrative rules developed in accordance with 2001 legislation.
<i>Code of Iowa</i>	<p>Legislation enacted in 2001 imposed new responsibilities on State Agencies when contracting for services. Section 8.47 of the <i>Code of Iowa</i> was created as a result of the legislation. The new <i>Code</i> section requires the adoption of uniform terms and conditions for service contracts executed by State agencies. The service contract terms and conditions must include, but are not limited to, all of the following:</p> <ul style="list-style-type: none"> ◆ The amount or basis for paying consideration to the party based on the party's performance under the service contract. ◆ Methods to effectively oversee the service providers compliance with the service contract by the State agency receiving the services during performance, including the delivery of invoices itemizing work performed under the service contract prior to payment. ◆ Methods to effectively review performance of a service contract.
Procedures	<p>Department of Revenue and Finance Procedure 240.102 for Service Contracting was updated and substantially revised, effective October 1, 2002, as follows:</p> <ul style="list-style-type: none"> ◆ Currently, Procedure 240.102 contains procedures related to service pre-contract questionnaire, determination of employer/employee relationship, and contract payments. The purpose of Procedure 240.102 is to provide general guidelines to be used by State agencies in the employer/employee relationships, pre-contract questionnaire, IRS form SS-8 and payment processes. ◆ The procedures required for service contracting competitive selection, sole source selection, emergency selection and contract clauses are no longer included in Procedure 240.102 for Service Contracting. Comparable service contracting procedures are now included in the new Administrative Services' administrative rules [11]-Chapters 106 and 107. The new administrative rules integrate the requirements of section 8.47 of the <i>Code of Iowa</i> in addition to revising and updating the previous service contracting procedures.

A Review of Service Contracts

Summary of Current Service Contracting Laws, Procedures and Rules

Service Contracting Laws, Procedures and Administrative Rules	
	Highlights of Changes and Additional Emphasis
Iowa Administrative Code (IAC)	<p>Administrative Services' (DAS) administrative rules found in IAC [11]-Chapter 106, Purchasing Standards for Service Contracts, effective October 1, 2002</p> <ul style="list-style-type: none"> ◆ Establish a system of uniform standards for purchasing services in State government. ◆ Address when State agencies must use competitive selection to purchase services and when it is acceptable to use a sole source or emergency procurement instead of a competitive selection process. ◆ Provide a mechanism that allows State agencies to use an informal competitive process for purchases of services when the estimated annual value of the contract is less than \$50,000 and when the estimated value of the multiyear contract in the aggregate, including renewals, is less than \$150,000. ◆ Include guidance to State agencies about additional requirements and procedures they should follow when purchasing services.
	<p>The new administrative rules contained in IAC [11]-Chapter 106 also revise and update previous procedures required for service contracts:</p> <p><u>Sole source selection:</u> Sole source procurements must be avoided unless clearly necessary and justifiable. It is a contracting method of last resort. Emphasis has been added as follows:</p> <ul style="list-style-type: none"> ◆ Use of sole source procurement does not relieve State agencies from negotiating a fair and reasonable price and thoroughly documenting the procurement action. State agencies should carefully consider whether there is an adequate justification for using sole source procurement instead of a competitive process. A list of justifications for using sole source procurement is included in administrative rules found in IAC [11]-subrule 106.7(1). The rules also establish additional administrative requirements state agencies must comply with when using sole source procurement. These additional requirements include: ◆ Completing the sole source justification form mentioned above if the value of the purchase exceeds \$5,000 or \$15,000 for a multi-year contract. Working through the sole source justification form should help determine whether there is adequate justification for sole source procurement. ◆ State agency directors must sign the sole source justification form, and the director or the director's designee must sign the sole source contract as required by administrative rules found in IAC [11]-section 106.7(2). ◆ <u>Special procedures required for sole source procurements:</u> <ol style="list-style-type: none"> a. The head of a State agency must sign the sole source contract and the amendment when the annual value of the service contract exceeds \$5,000 or when the estimated value of the multi-year service contract in the aggregate, including renewals, is equal to or greater than \$15,000. b. The director of the State agency must sign the completed sole source justification form when the annual value of the service contract exceeds \$5,000 or when the estimated value of the multi-year service contract in the aggregate, including renewals, is equal to or greater than \$15,000. c. The contract for the sole source procurement must comply with the administrative rules contained in IAC [11]-Chapter 107, Uniform Terms and Conditions for Service Contracts.

A Review of Service Contracts

Summary of Current Service Contracting Laws, Procedures and Rules

Service Contracting Laws, Procedures and Administrative Rules	
	Highlights of Changes and Additional Emphasis
	<p><u>Emergency selection</u> Emergency procurements must be limited in scope and duration to meet the emergency. When considering the scope and duration of an emergency procurement, State agencies may consider price and availability of the service procured so the best value is obtained for the funds spent under the circumstances. Also, State agencies should attempt to acquire services with as much competition as practicable under the circumstances.</p> <p><u>Special procedures required for emergency procurements</u></p> <ul style="list-style-type: none"> ♦ The head of a State agency must sign all emergency contracts and amendments regardless of value or length of term. If the head of a State agency is not available, a designee may sign an emergency contract or amendment. Use of an emergency procurement does not relieve a State agency from negotiating a fair and reasonable price and documenting the procurement action. ♦ State agencies must complete an emergency justification form when the service contract exceeds \$5,000. The State agency director or designee must sign the justification form. ♦ If an emergency procurement results in the extension of an existing contract that contains performance criteria, the contract extension must comply with DAS' administrative rules found in IAC [11]-Chapter 107, Uniform Terms and Conditions for Service Contracts.
	<p>DAS' administrative rules found in IAC [11]-Chapter 107, Uniform Terms and Conditions for Service Contracts, effective October 1, 2002, includes some new terms and conditions required for service contracts, as follows:</p> <p><u>Payment clause</u> – Describes the amount or basis for paying consideration to the party based on the party's performance under the service contract. The payment clause(s) should be:</p> <ul style="list-style-type: none"> ♦ Desired by a State agency, and ♦ Appropriate to the nature of the contract as determined by the State agency. <p><u>Monitoring clause</u> –Describes the methods to effectively oversee the party's compliance with the service contract by the State agency receiving the services during performance, including the delivery of invoices itemizing work performed under the service contract prior to payment. If the scope and timing of work is clear, it will be easier to identify the criteria that should be applied in assuring contract terms are being fulfilled by the service providers. Monitoring should be comprehensive, systematic, and well documented. Also, monitoring should be appropriate to the nature of the contract.</p> <p><u>Review clause</u> – Describes the methods to effectively review performance of a service contract, including, but not limited to, performance measurements developed pursuant to the <i>Code of Iowa</i>, Chapter 8E. Performance measurement should be appropriate to the nature of the contract as determined by the State agencies.</p>

A Review of Service Contracts

Summary of Current Service Contracting Laws, Procedures and Rules

Service Contracting Laws, Procedures and Administrative Rules	
	Highlights of Changes and Additional Emphasis
	<u>Other required clauses</u> <ul style="list-style-type: none">◆ Non-appropriation clause, where appropriate◆ Insurance clause, where appropriate◆ Clause, exhibit, or other document that describes the scope of services to be performed◆ Default clause, where appropriate◆ Independent service provider clause◆ Clause prohibiting inappropriate conflicts of interest on behalf of the service provider, where appropriate◆ Other clauses as deemed appropriate by State agencies entering into service contracts.
	<u>Duration of service contracts</u> <p>DAS' administrative rules found in IAC [11]-106.11 emphasizes a service contract:</p> <ul style="list-style-type: none">◆ Should be competitively selected on a regular basis so a State agency obtains the best value for the funds spent, avoids inefficiencies, waste or duplication and may take advantage of new innovations, ideas and technology.◆ Shall not exceed a term of six years, including all optional renewals, unless the State agency obtains a waiver of this provision.

A Review of Service Contracts

EXECUTIVE ORDER NUMBER 25

WHEREAS, state agencies are charged with the responsibility of performing their assigned functions as efficiently and effectively as possible to achieve maximum results for Iowans; and

WHEREAS, state agencies are authorized to contract for services that promote the policies of the agency and serve the best interest of Iowans; and

WHEREAS, services contracting has become a major category of expenditures as the operations of state government have become increasingly complex; and

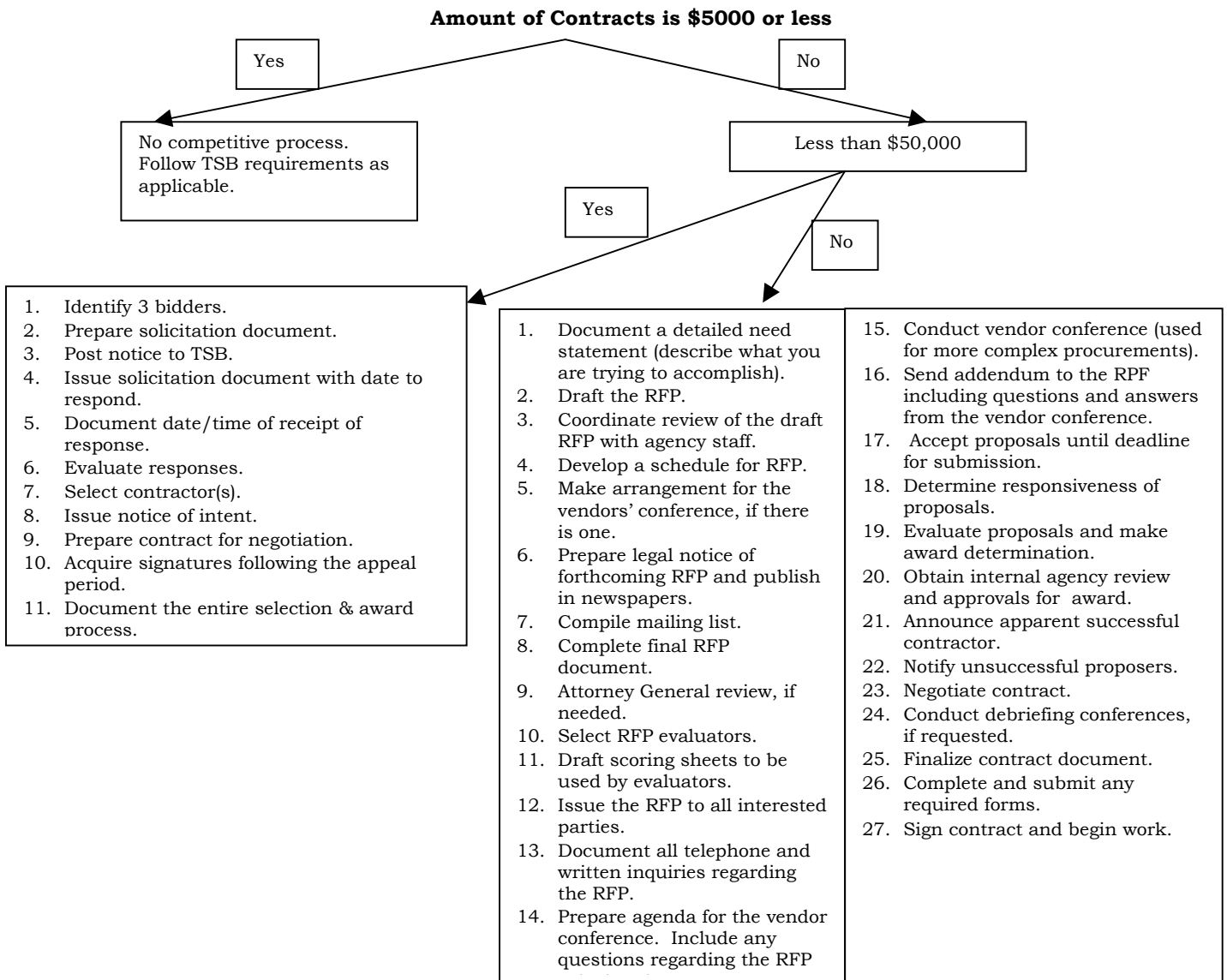
WHEREAS, to maintain public confidence, every reasonable effort must be made to ensure that public funding commitments for service contracts are obtained at the best value and are subject to appropriate oversight:

NOW, THEREFORE, I, Thomas J. Vilsack, Governor of the State of Iowa, hereby declare my commitment to provide Iowans with the most efficient and effective state services available by directing state agencies to participate in the state service procurement program outlined in this Order. I hereby order and direct that:

1. Executive Order Number 60, issued by Governor Terry E. Branstad on May 19, 1997, is rescinded.
2. All agencies in the executive branch of state government shall procure services in accordance with Iowa Code §§ 8.47 and 18.3, and all administrative rules developed in accordance with the Iowa Accountable Government Act.
3. All agencies in the executive branch shall procure services in a manner that facilitates cooperative service purchasing across state government whenever possible. The goal of this enterprise-wide approach shall be to reduce waste, duplication, and inefficiency in procurement of services across state government, and to achieve the best value for public fund expenditures.
4. All agencies in the executive branch of state government are encouraged to consider purchasing services from targeted small businesses in accordance with the provisions of Iowa Code §§ 73.15 through 73.21.
5. All agency employees who engage in contracting for services shall receive procurement training from the Department of Personnel, in partnership with other state agencies. The agencies designated by the governor's office to provide procurement training shall develop programming that addresses issues pertinent to service contracting, which shall include, but not be limited to, competitive selection, contract development, contract negotiation, performance measures, and contract monitoring.
6. Upon request, the Department of General Services may assist state agencies that contract services by managing the selection process, and providing technical advice or facilitating the selection process.
7. Agencies are encouraged to submit to a periodic review by the state auditor of service contracting procedures to assess whether the agency is compliant with Iowa Code §§ 8.47 and 18.3, and all administrative rules developed in accordance with the Iowa Accountable Government Act.

Source: Governor's website: http://www.governor.state.ia.us/legal/21_25/Executive_Order_25.pdf

A Review of Service Contracts
Purchasing Methods Flow Chart



Source: State of Iowa Service Contracting Guide 2002, Appendix N. Administrative rules that are summarized in the Purchasing Methods Flow Chart are effective October 1, 2002

State Agency Responses



PATTY JUDGE
SECRETARY OF AGRICULTURE

IOWA DEPARTMENT OF AGRICULTURE
AND LAND STEWARDSHIP

Annette K. Campbell, CPA
Director, Performance Investigation Division
Office of Auditor of State of Iowa
State Capitol Building
Des Moines, Iowa 50319-0004

Dear Ms. Campbell:

This letter is sent in response to the report entitled "Review of Service Contracts....Findings and Recommendations", dated August 18, 2003.

At the conclusion of his review, Mark Moklestad met with Kay Anderson, our Accounting Bureau Chief to share the scope of his work, his findings and clear any pending items. From this meeting March 26, 2003, we discerned the following:

This review was based on a download of expenses for expense classes 405 and 406 during SFY 01 and extending into SFY 02 to accommodate a variety of contracts. Our department was one of the eight chosen for this work.

The objectives were to review procedures including contractor selection, reimbursement methods and oversight (defined as monitoring and evaluation of services received) related to the 13 contracts chosen.

This review was being done on a prospective basis for future implementation, in anticipation of the new contract rules which became effective in October of 2002.

Kay's meeting with Mark was quite thorough with regard to Mark's findings. Each finding was discussed individually, pending items were cleared and recommendations were shared with me. With consideration to the intent, scope and time period of this review, we have accepted the findings and recommendations of this report. We feel that our current procedures are in compliance with your recommendations and the Service Contract Guide disseminated in 2002.

Sincerely,

A handwritten signature in cursive script that reads "Mary Jane Olney".
Mary Jane Olney
Director, Market Development &
Administrative Services Division

State Agency Responses



STATE OF IOWA

THOMAS J. VILSACK
GOVERNOR
SALLY J. PEDERSEN
LT. GOVERNOR

IOWA DEPARTMENT OF COMMERCE
THOMAS B. GRONSTAL
DIRECTOR

October 9, 2003

Annette K. Campbell
Director
Office of Auditor of State
State of Iowa
State Capitol Building
Des Moines, Iowa 50319-0004

Dear Ms. Campbell:

This is a revised response to your office's findings and recommendations in connection with your review of service contracts referenced in your letter dated August 14, 2003.

The Department of Commerce is comprised of six divisions, each with its own administrator appointed by the Governor and confirmed by the Senate. The Director of the Department of Commerce is one of the division administrators and is appointed by the Governor. As Director, I do not evaluate the performance of the other division administrators, or have control over their budgets. I do not supervise or approve contracts for divisions other than the Banking Division. I have collected responses from the other divisions regarding their contracts and am attaching them to this reply. The rest of my comments refer to the Division of Banking contract with RSM McGladrey, Inc. (McGladrey).

The only Commerce Department contract specifically referred to in the auditor's report is the Division of Banking's contract with McGladrey. This contract covered services for a complete reorganization of the Division of Banking, and was initiated by the Superintendent of Banking because he believed drastic changes needed to be made to improve the efficiency and effectiveness of the division. The contract was signed May 8, 2000.

The first finding states that the justification for sole source contracting was not sufficiently documented. Superintendent of Banking Holmes Foster wrote a memo he believed justified the reasons for hiring McGladrey for the project. The Auditor apparently does not agree with Mr. Foster's memo. The Division of Banking will follow the General Services administrative rules [401]-section 12.3, effective October 1, 2002, if those rules are in effect when the Division deems it necessary to employ a sole source contractor after the date of this letter.

200 EAST GRAND AVENUE, SUITE 300 / DES MOINES, IOWA 50309-1827
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www.state.ia.us/government/com

State Agency Responses

Annette J. Campbell Letter
October 9, 2003
Page 2

The recommendation regarding Finding 2 for the Division of Banking contract with McGladrey directs the implementation of policies and procedures to monitor contractor performance and effect corrective action when problems are identified. The Division of Banking will implement policies and procedures to monitor contractor performance if a contract for professional services is necessary in the future.

Finding 3 was not applicable to the Department of Commerce.

The recommendation for finding 4 regarding service contract amendments directed the implementation of procedures to keep amendments to a minimum and to institute a formal process for amendment approval. The Division of Banking will implement procedures to ensure that contract amendments are kept to a minimum and that amendments go through a formal process if professional service contracting is needed in the future.

Finding 5 determined that the Division of Banking contract with McGladrey had a scope of work that was too vague. While the contract may not have enumerated specific performance standards, it did require the contractor to provide consulting services to the Division of Banking in reviewing the practices, procedures, technology, and organization of the Division and in making recommendations to improve efficiency, research capability, effectiveness and employee dedication, satisfaction and morale. The reviews were conducted and the recommendations were made and implemented. If the Division of Banking deems contracting for professional services appropriate in the future, all appropriate contract clauses will be included in the contract.

Finding 6 did not apply to the Department of Commerce.

The recommendation of Finding 7 stated the process followed by the Department when the contract was established did not include a documented analysis of contracting versus other options. The Superintendent of Banking determined there was a need for a complete reorganization of the Division of Banking. While I was not employed by the Division of Banking at the time the decision was made, I conclude from my experience as Superintendent of Banking the reorganization could never have been accomplished without the consultants. The lack of documentation for the process validates the need for the reorganization of the Division of Banking. Improved documentation procedures employed by the Division of Banking should ensure compliance with the recommendation in future contracts.

Finding 8 was not applicable to the Department of Commerce.

Finding 9 determined that the Division of Banking did not complete a pre-contract questionnaire before entering into the contract with McGladrey. The Auditor is correct in this finding. The Division of Banking will comply with State Accounting Enterprise's Procedure 240.102 if it determines contracting for professional services is warranted in the future.

State Agency Responses

Annette J. Campbell Letter
October 9, 2003
Page 3

The response of the Alcoholic Beverage Division is as follows:

**Iowa Alcoholic Beverages Division
September 2, 2003**

Response to the "Review of Service Contracts" report issued by the Office of Auditor of State issued August 24, 2003

Section One: PROZ Contract / ABD Tobacco Enforcement & Education Initiative

In Response to "Review of Service Contracts" report, Finding #1, "Sole source was not sufficiently justified"

"The following document was prepared in August, 2000 as agency justification to pursue a sole source contract with PROZ: (editor's note: the following document was changed slightly to reformat the document into this report. No substantive changes were made)."

JUSTIFICATION FOR SOLE SOURCE / EMERGENCY PERSONAL SERVICES CONTRACT FOR STATE OF IOWA TOBACCO INITIATIVE EDUCATION PROGRAM

The 2000 Iowa General Assembly passed House Files 2555 and 2565 creating the "Comprehensive Tobacco Use Prevention and Control Initiative" aimed at achieving the following main goals:

- Reduction of tobacco use by youth and pregnant women
- Promotion of compliance by minors and retailers with tobacco sales laws and ordinances, and
- Enhancement of the capacity of youth to make healthy choices

As part of the "initiative" the legislation directed the Iowa Dept. of Health (DPH) to enter into contracts with the Alcoholic Beverages Division (ABD) to expand activities that ensure compliance with the state's tobacco laws and ordinances prohibiting the sale of tobacco products to youth. The legislation also mandates that "such contracts shall require that enforcement efforts include **training of local authorities who issue retailer permits and education of retailers**" (emphasis added).

As a result of this legislation and negotiations with DPH, the resulting 28E agreement mandates that the ABD:

... "shall offer and provide training to local permit-issuing authorities with respect to the local authorities duties and responsibilities with respect to the local laws and ordinances, local law enforcement agencies and youth involved with compliance checks, and shall educate retailers of tobacco products with respect to cigarette and tobacco laws and ordinances and methods of achieving compliance with said laws and ordinances".

State Agency Responses

Annette J. Campbell Letter

October 9, 2003

Page 4

The ABD was appropriated only 2 fte to perform the primary tasks of (1) enforcing the state's tobacco statutes by performing over 8,000 compliance checks at retail establishments and conducting youth enforcement of tobacco laws and (2) educating law enforcement agencies, local permit-issuing authorities and retailers with respect to laws and ordinances...in other words, an extremely difficult if not impossible task with only 2 fte. The Division has determined that the 2 fte positions will primarily focus on the law enforcement component of the program and assist, when possible, with the educational effort.

Consequently, to effectuate the educational component of the 28E agreement with DPH and to help ensure success of the training component of the tobacco initiative, the ABD has made the determination to contract with a professional consulting and management company to design a comprehensive education program and implementation strategy on behalf of the ABD.

The major components of the services include the following:

A. Consultation Services

Provide consultation and input for the overall strategy of reducing illegal tobacco sales to youth.

- Work in conjunction with ABD staff to develop a timeline/strategic plan of enforcement and education activities for FY01
- Work in conjunction with ABD staff to execute strategic plan for tobacco activities
- Coordinate communications between the ABD and the Department of Public Health to ensure consistent messaging and organization of programs.
- Provide strategic direction and oversight for all activities relating to the project to maintain consistency in message and maximize opportunities

B. Enforcement Training

Provide training methods, process and evaluation for enforcement activities

- Work in conjunction with ABD and State police to develop training material for enforcement activities
- Work in conjunction with ABD and State police to coordinate training workshops, including agenda development, role playing scenarios, and informational material
- Assist in coordinating activities with Community Partnerships.

State Agency Responses

Annette J. Campbell Letter
October 9, 2003
Page 5

- Develop a community handbook for enforcement resources
- Develop an evaluation tool for law enforcement use

C. Iowa Tobacco Advisory Committee (ITAComm)

Assist with the creation and coordination of a private sector advisory consortium.

- Identify appropriate industry leaders to participate on committee
- Coordinate invitations and agenda for committee meetings
- Facilitate Committee discussion to develop agenda for reducing sales of tobacco products to youth
- Develop communication method to keep committee informed of ABD Tobacco activities
- Develop and manage relationships with the committee, partner communities, state agencies, and vendors to ensure consistency of key messages, efficiency of project implementation
- Assist in coordinating activities with Community Partnerships.

D. Vendor Education

- Develop collateral materials, excluding printing; implementation of statewide training
- Design local media strategy
- Coordinate regional/local training programs. Work in conjunction with ITAComm and assist in coordinating activities with Community Partnerships.
- Assist with the development of an Evaluation tool following the project including an analysis of implemented activities, and recommendations for follow-on activities
- Coordinate communications between the ABD and the Department of Public Health to ensure consistent messaging and organization of programs.

E. Promotion

Provide assistance in local and statewide promotional activities, including drafting press releases, coordinating media interviews and press conferences, and other related matters.

- Develop and execute a marketing plan to meet the project's objectives

State Agency Responses

Annette J. Campbell Letter

October 9, 2003

Page 6

- Achieve media coverage of the project's key messages that will positively influence the media's attitudes about reducing the sales and use of tobacco to youth
- Provide strategic direction and oversight for the overall public relations strategy
- Coordinate, in cooperation with ABD, a news conference to kick off the project
- Provide strategic counsel and media briefing for spokespeople as necessary
- Edit media materials such as releases, advisories, and news kits by agency to ensure consistency in messages delivered to media
- Collect and monitor press activities regarding the project's activities
- Coordinate communications between the ABD and the Department of Public Health to ensure consistent messaging and organization of programs.
- Assist in coordinating activities with Community Partnerships.

F. Coordinate Web site development for vendors, youth, media and the general public.

Assist in the development of content for the Web site.

The Alcoholic Beverages Division is requesting authorization to contract with PROZ, a limited liability corporation, using the "emergency" and "sole source" conditions allowed in the personal services contract provisions for the following reasons:

EMERGENCY

Before the ABD can begin the process of performing compliance checks and issuing criminal and civil citations for violation of tobacco statutes, the Division has the responsibility to inform retailers and youth of tobacco laws, their respective responsibilities of adhering to laws and the Division's plan for enforcing tobacco laws.

The Division has neither the staff nor time to simultaneously create both an enforcement plan and an education plan and be operational and successful within a 10-month period (end of fy01).

The Division estimates that it will take approximately 3 months alone to create and implement the educational component of the program before even one compliance check can be performed. The Division's 2 fte can be creating a plan and strategy for the enforcement component of the program to be prepared for field compliance activity while the education program is being implemented.

The Division does not have adequate time to extend this process to the normal state bidding process. The consequences of delaying this initiative is the inability of ABD to meet contractual obligations (28E) and failure to meet expectations of the legislation created to reduce the illegal use of tobacco by Iowa's youth.

State Agency Responses

Annette J. Campbell Letter
October 9, 2003
Page 7

SOLE SOURCE

PROZ, to the Division's knowledge, is the only local company that possesses the background, unique skills and experience associated with tobacco education techniques to ensure the level of success within the timeframe required by the Division.

One of the principal partners of PROZ gained extensive experience in youth and retailer tobacco education as the manager for the State of Illinois' successful effort to reduce youth access to tobacco products. This principal partner also possesses extensive experience as the Communications Manager for the State of Iowa Dept. of Economic Development, including experience in media management, publication production and web site development, all vital skills necessary for the success of the Division's education program.

Both principal partners of the company have personal and extensive knowledge of Iowa's Tobacco Use Prevention and Control Initiative, which will enable the company to immediately begin development of the program without the necessity of becoming familiar with this comprehensive legislation.

"End of agency justification for sole source contract."

The "Recommendations" section of the "Review of Service Contracts" report, Finding #1 contains the following:

"The Department should evaluate each contract under consideration on an individual basis and determine whether or not the sole source criteria have been met while investigating and documenting whether the prospective service provider is in fact the only and best source."

The section continues...

"Additionally, the Department should follow the current guidance contained in the following General Services' administrative rules and utilize the guidance contained in the State of Iowa Service Contracting Guide developed during fiscal year 2002 for determining and justifying sole source contract vendors as follows.

General Services' administrative rules [401]-section 12.3, effective October 1, 2002, defines "sole source procurement" as "a purchase of services in which the department or establishment (State agency) selects a service provider without engaging in a competitive selection process." Rule 12.7 spells out the justifications for using sole source procurement and also imposes some additional documentation and reporting requirements if you choose to do sole source procurement. The rule specifically states, "[A] sole source procurement shall be avoided unless clearly necessary and justifiable"

There are six justifications found in the new administrative rules [401]-section 12.7(1) that allow the State agencies to use sole source procurement:

v State Agency Responses

Annette J. Campbell
 August 9, 2003
 Page 8

1. An agency determines that one service provider is the only one qualified or eligible or is quite obviously the most qualified or eligible to perform the service; or
2. The services being purchased involve work that is of such a specialized nature or related to a specific geographic location that only a single source, by virtue of experience, expertise, proximity to the project, or ownership of intellectual property rights, could most satisfactorily provide the service; or
3. An agency is hiring a service provider to provide peer review services for a professional licensing board pursuant to the *Code of Iowa*, chapter 272C; or
4. An agency is hiring the services of experts, advisors, counsel or consultants to assist in any type of legal proceeding including but not limited to testifying or assisting in the preparation of quasi-judicial or judicial proceedings; or
5. The federal government or other provider of funds for the services being purchased (other than the State of Iowa) has imposed clear and specific restrictions on the agency's use of the funds in a way that restricts the agency to only one service provider; or
6. Applicable law requires, provides for, or permits use of sole source procurement."

The Iowa Alcoholic Beverages Division believes that "justifications" 1 & 2 support the decision to sole source contract with PROZ. The ABD and Administrator Lynn Walding, in particular, spent a considerable amount of time working with legislative leaders, committee chairpersons, lobbyists representing state agencies and private-sector companies, the Iowa Dept. of Health, health advocacy groups and other "experts" involved in tobacco prevention to help craft House Files 2555 and 2565.

It should be recognized that House Files 2555 & 2565 created a comprehensive new law steeped in high expectations and result expectations tethered to a short timeline. The legislation was also enacted at a time when a limited number of other jurisdictions were either just passing tobacco initiatives or were in the initial phases of implementing tobacco legislation initiatives. During the Iowa legislative process, Mr. Walding contacted other states that had recently passed legislation to gain insight on "best practices" used to create and implement tobacco prevention programs. Although helpful, the contacts did not provide a "roadmap" for ABD to successfully launch the initiative. In some cases, state legislatures appropriated sufficient personnel to state agencies to personally perform the tasks of tobacco law enforcement and education. In other cases, the duties of tobacco enforcement and tobacco education were split between two agencies. In Iowa, the decision was made to empower the ABD to perform both tobacco enforcement and education activities, but with an authorization of only 2 full time employees.

Throughout the legislative process and the process of contacting other jurisdictions, the Administrator uncovered no other service companies, other than PROZ, that had the level of experience in designing and implementing tobacco enforcement and education programs. Due to the fact that the ABD could find no other company that was qualified and available, led the ABD to determine that **"one service provider is the only one qualified or eligible or is quite obviously the most qualified or eligible to perform the service"** as outlined in "justification #1", and, the fact that the newly created legislation required specialized services that were not available "in-house" led the ABD to determine that **"the services being purchased involve work that is of such a specialized nature...that only a single**

State Agency Responses

Annette J. Campbell Letter
October 9, 2003
Page 9

source, by virtue of experience, expertise, proximity to the project,...could most satisfactorily provide the service" as outlined in "justification #2."

In addition to the efforts undertaken by the ABD to ensure that PROZ was the only and best-qualified service provider to perform the scope of work, the ABD consulted with the Dept. of General Services prior to the selection of PROZ. The following e-mail correspondences are on file in the ABD archives:

From: Stanley Kuhn [Stanley.Kuhn@dgs.state.ia.us]
Sent: Tuesday, August 29, 2000 2:09 PM
To: Jim Kuhlman
cc: Kenneth Paulsen
Subject: Sole source for Tobacco program

Jim, you may use this e-mail note as DGS concurrence in ABD's finding that the expertise available through PROZ is unlikely to be available otherwise through a competitive process, and that time is of the essence.

I'm not sure that you need our "approval" on this. With some exceptions, agencies are generally free to proceed directly with personal services contracts under Executive Order 60 and the related DRF policy guidance in the pre-audit manual. However, competition is the rule, unless there are good arguments to the contrary.

We are willing to provide whatever assistance we can. We have some "boilerplate" that can be modified as needed.

In the long run, I hope to take a more proactive stance on this, but it will be based on providing help. I hope, within several months, to post a model RFP process on the Intra-net, complete with model RFP's which then an agency might use if they wish.

Stan Kuhn
Purchasing Division Administrator
Office Phone 515-281-5802
FAX 515-242-5974 Cell 229-9325

AND...

From: Stanley Kuhn [Stanley.Kuhn@dgs.state.ia.us]
Sent: Tuesday, August 29, 2000 4:46 PM
To: Jim Kuhlman
Subject: RFP

DOPPERFM.DOC
<<DOPPERFM.DOC>> You have the approval of DGS to proceed with a sole source/emergency procurement based on the information previously provided relating to PROZ and Tobacco Education. I'd strongly recommend you document in detail for the file your efforts and lack of success in locating other potential vendors with similar qualifications. If you could, please share that with me so that I may easily respond to any questions, which may arise. As I explained by phone, it would be the responsibility of your agency to prepare and sign the contract with PROZ, but we'd help you as possible.

Attached is a copy of our initial draft of an RFP for a DOP procurement. DOP asked us to manage this because it is a competitive procurement and DOP wanted the process to be as "bullet proof" as possible so as to withstand a possible vendor appeal.

Thus, we are managing it for them. Subsequent to this draft, DOP has modified the language, particularly in chapter 3 and it is on the street.

State Agency Responses

Annette J. Campbell Letter

October 9, 2003

Page 10

The next step in the RFP process involves receiving vendor questions, responding to questions with written addenda, and proceeding to final selection. When the final selection is made, the RFP and addenda are typically incorporated into the contract by reference.

Since you are not going through a competitive process (other than your research that lead to your conclusion to ask for sole source/emergency approval), you will need to draft a contract. Language in the RFP could serve as an aid to your agency doing that.

Let me know if we can provide additional assistance.

"End of embedded e-mail messages"

In Response to "Review of Service Contracts" report, Finding #2, "No documented methods or results of Department monitoring of the contract were available. Evaluation of contractor performance for the duration of the contract was not documented", and, "Review of Service Contracts" report, Finding #2, "No formal procedures were used to evaluate contractor performance. Also, if any evaluation was done, it was not documented", and, In Response to "Review of Service Contracts", Finding #5, "Contract did not include clear statements of how service provider performance would be monitored and evaluated".

The ABD effectuated a contract with PROZ that contained an extensive scope of work and expected results. The ABD staff met frequently with the PROZ partners, often numerous times within the same week, to discuss and formulate strategy for the launch of the initiative. Initiative progress and strategies were discussed during each meeting. Changes in strategy and implementation methods were communicated to PROZ during each meeting.

In the end, the ABD ensured that a quality and highly successful tobacco prevention initiative was launched on schedule and has been well received by legislators, advocacy groups, business associations, law enforcement agencies, local officials and tobacco retailers.

The "Review of Service Contracts" report states "It is critical that the Department appropriately monitor and evaluate service contracts while they are in progress and evaluate the services received at the end of each contract to hold the service providers accountable, and to determine that services contracted for are received and adequate".

As stated above, the ABD performed continual monitoring and evaluation of services provided by PROZ to ensure compliance with the contracted scope of work, regardless of the fact that the compliance monitoring was not in the form of "written documentation". It should be noted that the contract with PROZ contained a provision to pay for services in four equal installments, with the last payment scheduled to be made on the June 30, 2001 contract expiration date. The ABD purposely included this clause to ensure that the contracted services were indeed provided by the contract termination date and that the final contract payment would be available to withhold in the event services were not performed or were not satisfactory. At the end of the contract term and when the ABD decided that provided services were satisfactory, final payment was made to PROZ.

v State Agency Responses

Annette J. Campbell Letter
October 9, 2003
Page 11

In Response to "Review of Services Contracts" report, Finding # 5, "Contract did not contain clear restrictions regarding the use of public funds"

The contractor did not have access to state funds and was not authorized to encumber funds on behalf of the ABD. The finding does not apply to the ABD contract with PROZ.

The contractor did not have access to state funds and was not authorized to encumber funds on behalf of the ABD. The finding does not apply to the ABD contract with PROZ.

In Response to "Review of Services Contracts" report, Finding #7, "Analysis of factors or rationale involved in deciding whether to contract was not documented".

The "Review of Service Contracts" report, finding 7, states in part: "Before the State agencies enter into a service contract, it is important to determine that the services are needed and will benefit the State. Also, the State agencies should evaluate the extent to which State employees may be used to provide the services."

The ABD believes it has demonstrated the need for service in the section Response to "Review of Service Contracts" report, Finding #1, "Sole source was not sufficiently justified"

The ABD was appropriated 2 FTE to create a comprehensive statewide tobacco enforcement and education initiative. The 28E Agreement between the Iowa Alcoholic Beverages Division and the Iowa Dept. of Public Health, negotiated and signed June 2000, held the ABD to standards that required both the education component and the enforcement component to be operational with measurable outputs achieved by the end of fiscal year 2001. The ABD did not have in-house staff with sufficient expertise or available time to completely create and implement the statewide initiative. The ABD recognized that existing ABD staff could be involved in the formulation of the program and to provide logistical support, and used those resources to help limit the overall scope of work and cost of the PROZ contract. The ABD believes it gave full consideration as to the need for contracted service and the ability to use existing staff where appropriate.

Section Two: Smith Decorating / RFP

Smith Decorating Company was awarded a contract after the issuance of an RFP, and in consultation with the Iowa Dept. of General Services, to provide painting services within the Dept. of Commerce Facility, Ankeny, Iowa.

In Response to "Review of Service Contracts" report, Finding #2, "No documented methods or results of Department monitoring of the contract were available. Evaluation of contractor performance for the duration of the contract was not documented", and, "Review of Service Contracts" report, Finding #2, "No formal procedures were used to evaluate contractor performance. Also, if any evaluation was done, it was not documented"

The purpose of the Smith Decorating Company contract was to paint the interior walls on both floors of the Dept. of Commerce facility in Ankeny, Iowa. ABD expectations were that the paint would be professionally applied, the paint would dry in due time, and the new paint color would cover the old

State Agency Responses

Annette J. Campbell Letter
October 9, 2003
Page 12

paint color. Although there was no "documented" monitoring of the contract and no "formal" evaluation of contractor performance, the ABD will assure that monitoring and evaluation functions were performed. At the completion of the paint job and before final payment was made, the ABD maintenance engineer conducted a complete "walk through" of the facility with the contractor to ensure the degree of quality expected was achieved.

In Response to "Review of Service Contracts" report, Finding #7, "Analysis of factors or rationale involved in deciding whether to contract was not documented".

Although not formally documented, the ABD did consider the use of a state employee to complete this work. The ABD has one FTE who manages the 175,000 square-foot facility and 4 acres of grounds. It was determined that it would take in excess of 2 years, an unacceptable period of time, for the maintenance employee to paint the interior of the facility and complete normal job duties.

The ABD used "routine maintenance funds" as authorized by the Iowa General Assembly and distributed by the Dept. of General Services to perform this work.

The response of the Credit Union Division is as follows:

The Credit Union Division plans to implement the following:

- Methods or results of Division monitoring of any future contracts will be put in place;
- procedures will be documented to control costs and timeliness of work completion;
- procedures will be documented to evaluate contractor performance that will be stated in future contracts;
- procedures will be documented of restrictions regarding the use of public funds.

In addition to implementing the above, I plan to attend a "service contracting" course this fall.

The response of the Insurance Division is as follows:

We have had a long-standing contract with Silicon Plains. They handle all computer technology for the Division as it relates both in-house and with outside entities such as the NAIC, NASD, etc. We update the contract but often do not include the language as to the necessity of the contract as that is spelled out in existing documents.

The criticism on sole source is based on administrative rules, which took effect on October 1, 2002. The Cheryl Marsh Marketing, Professional Video, Inc., and Media Management. contracts were all entered into and all services were performed prior to October 1, 2002. For this reason, the contract in question is not subject to the administrative rules quoted. All vendors were closely supervised by this office. While there may not always be written reports summarizing this monitoring, the monitoring did occur. These contracts were all entered into to obtain services and expertise not available within the IID.

State Agency Responses

Annette J. Campbell Letter
October 9, 2003
Page 13

The response of the Professional Licensing Division is as follows:

Professional Licensing does not competitively bid services for expert opinions or testimony, given the obvious need for specialized background and expertise. As for the monitoring of the contract the Board submits a complaint to the investigator and the investigator submits a report to the Board. No complaints no reports. It was felt this section of the contract covered the use of State funds: Contractor agrees that for the duration of and as a condition of the Division's duty to perform under the terms of this Agreement, that it will be in compliance with applicable laws, regulations and executive orders of the State of Iowa, federal government, and local jurisdictions, including but not limited to, Equal Employment Opportunity provisions, Occupational Health and Safety Act, records retention, audit requirements, allowable costs, and civil rights laws.

The Attorney General's office assisted the Division with the draft of the contract.

The response of the Utilities Division is as follows:

Department of Commerce
Utilities Division Response

US Sprint TRS Contract

Finding 1 – Sole source was not sufficiently justified.

The above contract was granted out of a request for proposals (RFP) issued on June 29, 1999. US Sprint and Hamilton Telephone Company both responded to the RFP. Pursuant to its advisory duties under IOWA CODE § 477C.5, the Dual Party Relay Council (Council) reviewed the two bids on August 31, 1999. The Council recommended to the Iowa Utilities Board (Board) that Sprint be awarded the contract. Upon reviewing the bidders' responses, clarification letters, and the advice and recommendation of the Council, the Board awarded the contract to provide statewide telephone relay service from January 1, 2000 to December 31, 2002, with a possible option for an additional two-year term, to Sprint.

On May 21, 2002, the Council discussed the possibility of extending the Sprint contract for another two years. After hearing comments from the Board's Project Manager and some discussion, the Council unanimously agreed to recommend to the Board that the Sprint contract be extended. The Board accepted the Council's advice and the contract extension was granted.

Finding 7 – Analysis of factors or rationale involved in deciding whether to contract was not documented.

It is simply not feasible for state employees to provide the 24/7 Telecommunications Relay Service (TRS) of full telephone accessibility to people who are deaf, hard-of-hearing or speech disabled. The state of Iowa does not have the facilities or specifically trained Communication Assistants (CAs) to process relay calls and stay on the line to relay conversations electronically, over a Text Telephone (TTY) or verbally to hearing parties. TRS call centers owned and

State Agency Responses

Annette J. Campbell Letter
October 9, 2003
Page 14

operated by Sprint are not located in Iowa. Iowa relay calls are routed to several different regional call centers based on the call traffic at the time, and in some cases, by the type of call. All states contract with outside providers for this service.

The Relay Iowa program was commenced in August of 1992. The structure of the program was based on years of study by a task force established by Governor Branstad and by Utilities Board staff. The Board has extensive documentation regarding the study and establishment of the program if the state auditor's office wishes to come to the Board office and review it.

Deaf Services Unlimited, Inc.

Finding 7 – Analysis of factors or rationale involved in deciding whether to contract was not documented.

Iowa Code section 477C.4 gives the Board the authority to plan, establish, administer, and promote a program to secure, finance, and distribute telecommunications devices for the deaf. The equipment distribution program was approved in 1993 (operations began in 1995) and none of the staff involved in deciding whether to contract for the program works for the Board. As shown by documents in the Board's possession, the program's structure was based on years of study by a task force established by Governor Branstad and by Utilities Board staff. The Board has extensive documentation regarding the study and establishment of the program if the state auditor's office wishes to come to the Board office and review it.

In the documents, the explicit statement giving the rationale for contracting is brief. In a memo to the Board dated November 3, 1993, Nancy Boyd stated the Council was "comfortable with the idea of putting the program out for bid on an RFP. I believe they felt this achieved good results with the relay and could be replicated. Individual comments supported alternatively a preference for private enterprise, an opportunity for hearing impaired persons to be employed, the advantages of the existing network of the Deaf Services Commission." The Board approved the program, and it was established using an outside contractor.

In 1998, through the Council, a workgroup studied the administration of the equipment distribution program, including who administers the program. The workgroup gathered information from other states and multiple sources. The workgroup stated the following as its recommendation regarding who administers the program: "The workgroup feels that having a contract with a private vendor to administer the program should continue. There has been no sense of a need for change."

The equipment distribution program has been operated by outside contractors successfully since its inception. The program provides specialized telephone equipment through a voucher system using private equipment dealers. It is simply not economically feasible for state employees to provide some of the essential functions of the administrator of the Iowa Equipment Distribution Program. Examples include:

- Maintaining a show-room type facility to display and demonstrate various types of equipment offered through the program. Renting space for such a showroom could exceed the total annual contract amount for all services provided by the administrator.

State Agency Responses

Annette J. Campbell Letter
October 9, 2003
Page 15

- Providing outreach to various groups regarding the program. Much of the outreach is to members of the deaf community, and the contractor has a deaf employee who is able to communicate in American Sign Language and has expertise in deaf culture.
- The contractor also answers many questions from equipment users and their families, dealers, and others, and has expertise in the specialized telephone equipment provided by the program. The contractor stays up-to-date on new technologies for this equipment and provides information to the Board so the list of eligible equipment remains current.

A copy of the required activities for the equipment distribution program is provided. If the state auditor's office would like to meet with Board staff to understand what these programs involve and why use of outside contractors is the most efficient and cost-effective method of administration, and in the case of relay, the only option, we would be happy to do so.

FUNCTIONS OF THE ADMINISTRATOR OF THE IOWA EQUIPMENT DISTRIBUTION PROGRAM

The purpose of the equipment distribution program is to make Relay Iowa accessible to persons who would not be able to use the relay effectively without appropriate equipment. As a part of the outreach function, applications should be widely available so that as many as possible of those qualified to be equipment recipients have applications on file.

Application Process:

The administrator will perform the following functions relating to applications:

Design and print application forms, subject to Board approval.

Distribute application forms to individuals upon request and as broadly as possible to the public through the outreach program, including an application form that is accessible from an Internet website.

Organize, number, and maintain files with respect to all applications received. Track applications by individual and by household, keeping historical records for repeat applications in which a voucher was issued. NOTE: In general, these files will be public records, except for matters held confidential by the Utilities Board pursuant to IOWA CODE § 22.7 (2001). All requests by the public to view these files will be handled by the Utilities Board.

Review applications for compliance with Board eligibility requirements and to determine appropriate equipment needs. Institute a program to verify the legitimacy of the impairment certifier. Make an initial eligibility ruling within 30 days of the application.

Acknowledge all applications with notification of approval, rejection (with reasons), or status in queue. All applications will be reviewed and grants made on a first-filed basis.

Annually review the application format and the effectiveness of the application process in achieving the goal of widespread identification of qualified recipients and inform the Board of any desirable changes.

State Agency Responses

Annette J. Campbell Letter
October 9, 2003
Page 16

Conduct a follow-up survey of all applicants.

Voucher Process:

1. For applications meeting eligibility requirements, determine the sufficiency of the budget for the requested equipment.
2. Develop a standard voucher amount, to be approved by the Board, for each type of equipment through a periodic market survey. Maintain documentation to support the standard voucher amount. The voucher amount shall be five percent less than the market price for the piece of equipment, unless the market price is over \$1,000, in which case the amount shall be one percent less than the market price. The purchase of telecommunications equipment for the deaf/blind must be submitted to the Board for approval.
3. Fill in all information on the vouchers and issue vouchers, voucher instructions, and the equipment vendor list to eligible recipients if funds are available. (Note: All transfers of funds under the program will be by state warrants. The program administrator will not be responsible for issuance of warrants, other than through providing accurate voucher information to the responsible state employees who will authorize the issuance of warrants.)
4. Respond fully to any inquiries from applicants, recipients, or equipment vendors concerning applications, vouchers, or the equipment available under the program.
5. Maintain files tracking all vouchers issued by applicant and by household, including outstanding vouchers. Coordinate with the application files and information from the Utilities Division staff concerning warrants issued. Maintain a list of vouchers issued and outstanding. Forward all copies of voided or mutilated vouchers to the Board.
6. Establish an appropriate system to verify the physical existence of equipment purchased with vouchers.
7. Provide a written report weekly to the Utilities Board showing full details concerning all vouchers issued, including a copy of the vouchers and the related applications.
8. Cooperate fully with any auditing processes for the Utilities Board and the State of Iowa.

Maintenance of Provider List:

1. Determine the name, address, and telephone number of equipment vendors supplying the equipment covered by the program, who are willing to accept vouchers. Pursue an appropriate geographical spread within the state for listed vendors.
2. Prepare a provider list showing contact information, equipment available, prices, and warranties for equipment covered by the program. Update this list at least semi-annually.
3. Print and distribute the provider list to all voucher recipients so requesting.

State Agency Responses

Annette J. Campbell Letter
October 9, 2003
Page 17

4. Develop a thorough understanding of the capabilities of the equipment available and continuously update that understanding to reflect advances in the equipment. Prepare a written report to the Board annually on new equipment available.
5. Determine the standard market warranty term for each type of equipment.

Complaint Resolution:

1. The administrator shall make an effort to resolve complaints from any source informally.
2. As a final step in the informal handling of a complaint, the administrator shall provide the complainant with a written proposed resolution. The resolution shall include notice that the complainant can appeal the administrator's proposed resolution to the Utilities Board.
3. The administrator or other personnel may be required to provide written testimony and appear as witnesses in complaint proceedings before the Board.

Statewide Outreach:

1. Prepare, print, and distribute promotional literature and materials, including paid advertising with a budget, explaining the purpose and procedures for the equipment distribution program.
2. Initiate appropriate and geographically diverse public service announcements on electronic and print media concerning the program. Ensure availability of program information on the Board's Internet website.
3. Make presentations to geographically and age-diverse groups of potential applicants, including deaf, hard-of-hearing, deaf-blind, and speech-impaired persons, as well as presentations to their information and care networks and providers.
4. Maintain regular and continuing contact with potential and actual equipment recipients and their families. Provide or arrange for training for those persons requiring training to use the equipment effectively.
5. Maintain regular and continuing contact with persons and agencies in a position to assist and refer potential applicants including, but not limited to, the Department of Human Rights, deaf and hard-of-hearing clubs, Vocational Rehabilitation Division counselors, Department of Elder Affairs, community action programs, Department for the Blind, Department of Education, Iowa School for the Deaf, public and private health care and rehabilitation counselors, Department of Human Services, private social workers, Iowa Telephone Association, community organizations, major employers, and others across Iowa.
6. Conduct joint outreach with the Relay Iowa provider.
7. Maintain regular and continuing contact with equipment vendors, providing them with written materials explaining the procedures used in administering the program.
8. Maintain a current list of repair persons across the state, available upon request.

State Agency Responses

Annette J. Campbell Letter
October 9, 2003
Page 18

9. Explore the possibilities for cost sharing with other sources of funds in regard to telecommunication equipment for the deaf/blind.
10. The administrator will make presentations at Dual Party Relay Council meetings regarding outreach, equipment statistics, and other relevant topics as requested by the Board or Council.
11. Develop and implement a continuing method to monitor public awareness and satisfaction with the equipment distribution program and provide recommendations to the Board on revisions.
12. Issue a post-application survey that follows up on all applicants, regardless of whether the applicant received equipment or not.

Other Administrative Functions:

1. Provide a monthly written report by the 20th of the following month to the Project Manager concerning the administrator's activities (including statewide outreach); monthly and year-to-date totals of 1) pieces of equipment issued by category and 2) total cost of equipment issued by category; applications received; vouchers issued; information about the number, nature, and handling of complaints; and other information the administrator or the Board deems necessary. The Project Manager will disseminate this report to the Board and the Council.
2. Notify the Project Manager of any fundamental problems with the program encountered within a week of its occurrence. Provide quarterly reports to the Project Manager regarding any problems or opportunities for improvement concerning the equipment distribution program.
3. The administrator must be available via Internet email.
4. Attend and participate in the annual Telecommunications Equipment Distribution Program Administrators (TEDPA) national conference. Ensure administrator's Internet email address is included on the TEDPA listserve.
5. The administrative office must be located in the Des Moines area in order to facilitate coordination of activities with both the Board's office and the Relay Iowa office. A showroom-type facility, which displays and demonstrates various types of equipment offered through the equipment distribution program, must be included as part of the administrative office.
6. While the administrator will be responsible for carrying out the functions described herein, ultimate authority over the equipment distribution program resides with the Utilities Board, acting with advice from the Dual Party Relay Council.

State Agency Responses

Annette J. Campbell Letter
October 9, 2003
Page 19

7. The administrator must maintain a website. The website must include at a minimum: a description of the equipment distribution program, contact information for the program administrator and Board project manager, an online re-printable application form, a description of the basic types of available equipment, an explanation of the voucher process, contact information for dealers known to participate in the program, and a link to the Relay Iowa website.

Sincerely,



Thomas B. Gronstal
Director

State Agency Responses

Review of Service Contracts

Page 1 of 2

Review of Service Contracts

Department of Economic Development

Findings & Recommendations

Fiscal Years Ending 06-30-01 & 06-30-02

FINDING 1 – Sole Source not sufficiently justified.

Response:

The department will improve its procedures for determining whether or not a sole source is needed. This will include documentation of the actual consideration, research performed including whether or not current or additional staff could perform these functions at a lower cost.

FINDING 2 – Monitoring & Evaluation of service provider performance is not consistently documented and/or needs improvement.

Response:

The department's contract officer will develop (as near as it can be) methodology standards along with a spreadsheet for responsible staff to evaluate performance as needed. On large service contracts this would be done at least quarterly or more frequent as needed, whereas on smaller contracts the evaluation could be quarterly or on a one-time basis.

FINDING 3 – Contract signed after start date.

Response:

We will improve time efficiencies via our Contract Review Process (CRO) in order to minimize these occurrences. Some of the findings under this rule were as a result of extremely late notice on funding from the legislature and from conducting business with foreign representatives.

FINDING 4 – Service contract amendments.

Response:

While the department does have a very solid contract review process for both contracts and amendments we will strive to improve the decision-making timeframe and reduce the number of service contract amendments needed.

FINDING 5 – Contract clauses not included.

Response:

The department contract officer and legal counsel have established "shell" service contracts which are available for all appropriate staff to utilize when writing a professional service contract which contain all necessary clauses as per the State of Iowa Service Contracting Guide. The contract officer will enforce the use of this shell more stringently.

FINDING 7 – Analysis of factors or rationale involved in deciding whether to contract was not documented.

Response:

The department will implement a "service contract analysis sheet" to assist staff and management in determining whether or

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State Agency Responses

Review of Service Contracts

Page 2 of 2

not a particular service contract is justified and monetarily feasible. It will also include analysis of whether or not the services could be provided at a lower cost via FTE.

FINDING 10 – Required documentation relating to the competitive bidding process was not maintained.

Response:

The department contract officer will not approve contracts during the review process if there is no documentation related to the bidding/selection. He will also assist staff in developing a sheet for such documentation as telephone calls, emails, etc.

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State Agency Responses



THOMAS J. VILSACK, GOVERNOR
SALLY J. PEDERSON, LT. GOVERNOR

STATE OF IOWA

DEPARTMENT OF EDUCATION
TED STILWILL, DIRECTOR

September 15, 2003

David A. Vaudt, CPA
Auditor of State
State Capitol Building
Des Moines, IA 50319

Dear Mr. Vaudt:

The Department of Education would like to acknowledge the recommendations made by the Auditor's Office regarding our processes and practices in service contracting. The department continues to strive to improve its procedures and processes in this area. We believe improvements were made in both fiscal year 2002 and 2003 with the establishment of an internal task force on contracting and with the guidance provided in the State of Iowa Service Contracting Guide developed in fiscal year 2002. The members of the department's internal working group were charged with reviewing, revising, and updating our department policies regarding various aspects of service contracting and have been working to meet those expectations.

The department would also like to specifically comment on several of the recommendations. With respect to sole source contracts, the department agrees that we should be evaluating each contract individually to determine whether sole source criteria have been met and to determine if all potential service providers have been identified. Our past practice has been that each work unit is responsible for undertaking this step of the contracting process and that they are thoroughly investigating where there are multiple providers for any contracted service. We feel that many of our contracts that are issued as a sole source contract fall under the guideline of specialized nature by virtue of experience and expertise. This is particularly true of individuals with whom we contract for conferences, presentations, and special projects such as evaluations. We also have a large number of contracts with Regents institutions, community colleges, and local school districts that are permitted as sole source procurements. The task force is reviewing the use of sole source contracts and how this fits into requirements for competitive bidding.

The department agrees with the importance of monitoring and evaluating the work completed on contracts both to justify payments made on contracts and to ensure that the work is being completed in a manner satisfactory to meet the department's needs. Our

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internal task force on contracting is discussing how contract monitoring and compliance language can be included as part of the scope of work and payment clauses of the contract and how that documentation will become part of the contract file. Those contracts that are competitively bid are to have the monitoring and evaluation language built into the bid information that is supplied to each potential bidder. Our discussions have also included ways of documenting that services have been provided. Currently, each work unit in the department is responsible for monitoring and evaluating the contracts that they issue. All payments made against contracts are required to be signed by the supervisor of the work unit before the payment is made. This signature denotes their agreement that the claim is appropriate and should be paid.

The department agrees with the recommendation that all contracts must be signed and dated prior to the start of work. The department maintains a database that tracks all contracts through the approval process and maintains a central contract file of all open and completed contracts for the department. Staff have been informed of the importance of completing contracts in a timely manner and we will continue to reinforce this requirement.

The department agrees with the importance of having a documented contract amendment process. Currently, the responsible party to a contract sends a request either in memorandum or e-mail format to the Bureau Chief for Internal Operations. This request is reviewed and approved or denied. Once a contract amendment has been approved, the department's copy of the contract is updated to reflect the purpose of the amendment and the signed amendment becomes an attachment to the contract. The department's contract database is also updated at the same time to reflect the amendment. A copy of the signed amendment is sent back to the originating party. On substantial amendments or amendments requesting expanded services or timelines, a more formal process is required. This process requires the contractor signature as well as internal signatures.

Our contracting task force continues to look at ways to improve and document our amendment procedures. As an interim step, we are requiring more in-depth explanations of the need for an amendment and a revised scope of work if an amendment adds to the dollar value of a contract.

In reviewing the need for more specific language in our contracts, our internal task force has spent considerable time reviewing the suggested contract clauses and sample contract that was provided as part of the AGA Service Contract Guide. Our intent is to identify and include those clauses that pertain to the types of contracts issued by the department and to create standard forms for staff to use. Our concern with the sample provided in the guide is the length and complexity of that sample. Many of the items included in that are not relevant to service contracts but to construction contracts and our goal is to pare the sample down to the relevant clauses needed for the contracts we issue.

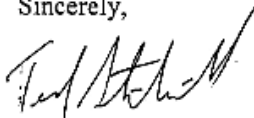
The determination of the need to pursue a service contract has been delegated to the bureau and/or division responsible for the performance of the contract. Since that responsibility has been delegated to that level, we do not keep centralized documentation

State Agency Responses

of the process undertaken to determine the need for the issuance of a service contract. In addition to the other service contract procedures that are being reviewed and revised by our contract task force, we will also include the review and development of a process for needs analysis prior to undertaking a service contract and how that process will be documented.

Thank you for the opportunity to reply. If you have questions regarding the department's response, please do hesitate to contact us.

Sincerely,



Ted Stilwill
Director

cc: Annette Campell
Mark Moglestad
Leland Tack
Roger Stirler
Managers Council

State Agency Responses

**Department of Human Services Response to Auditor of State
Review of Service Contracts
Findings & Recommendations**

The State Auditor's Office conducted a review of SFY 2001 services contracts. The following is the response of the Department of Human Services to the findings of that review.

Please note that the Department is a designated Charter Agency. The Department is in the process of determining if the status as a charter agency will result in any changes in contracting practice in order to gain the flexibility intended by charter agency designation.

1. Sole source procurement.

Finding

Sole source not sufficiently justified. We reviewed 32 of the Department's service contracts for compliance with applicable laws, administrative rules and procedures for service contracts established under General Services and State Accounting Enterprise of the Department of Administrative Services. Of the 32 services contracts reviewed, 12 were contracted under sole source rules. The sole source justification was not considered sufficient for 6 of the sole source contracts reviewed. Also, 8 contracts did not have documentation of sole source justification.

Response

In January, 2000, The Department of Human Services established a position to focus on strengthening the Department's contracting procedures and to assure consistency in practice and compliance with state policy and procedures. One of the responsibilities of this position is the review of all requests for sole source procurement of services. Department staff are required to complete a form, "Report of Sole Source Procurement". This form is reviewed for completeness and a determination if the justification for sole source procurement meets the criteria established in 401 IAC—12.7. A recommendation is developed for consideration by the Director, who has the final decision on approval of the sole source procurement.

2. Monitoring & evaluation of service provider performance.

Finding

Monitoring & evaluation of service provider performance is not consistently documented and/or needs improvement. Based on the contract documentation reviewed and inquiry, the Department had few documented examples of contract monitoring and evaluation of services that was performed for the duration of the contracts or after the contracts were completed. According to Department staff and review of contract files, much of the monitoring was done via phone, e-mail, meetings, and day-to-day activities, such as reviewing service provider progress reports.

State Agency Responses

However, 22 of 32 service contracts reviewed did not have any documented methods or results of monitoring and evaluation of service provider performance for the duration of the contracts. Also, no evaluation of contracted services received was done or documented for 21 of the service contracts reviewed.

It is critical that the Department appropriately monitor and evaluate service contracts while they are in progress and evaluate the services received at the end of each contract to hold the service providers accountable, and to determine that services contracted for are received and adequate.

Response

Administrative rules (401 IAC--Chapter 13) which became effective October 1, 2002 require the inclusion of monitoring and review clauses in all services contracts. Department staff have been made aware of the rules, and the expectation that all services contracts comply with those rules. The Department will be establishing an additional position whose duties will include random review of services contracts to assure that they include all required terms and conditions and to determine if monitoring and review clauses are being implemented.

3. Contract signatures

Finding

Contract signed after start date/not signed. We reviewed the selected service contracts to determine whether the contracts were signed prior to the start of work. The previous versions of the State Accounting Enterprise Procedure 240.102 stated that contracted services should not be performed until all signatures are obtained and distribution of the contract is made to the parties.

Of the 32 service contracts reviewed, 7 were signed after the contract start date, ranging from 9 to 118 days.

Response

Department staff have been made aware of the need to have all signatures on the contract before services are provided.

4. Service contract amendments

Finding

We have examined the extent to which the State agencies amended the service contracts included in this review. Of the Department's 32 service contracts reviewed, 6 included amendments. Of the 6 amendments, 5 increased both the contract cost and term and the other 1 increased the contract term.

We also reviewed the contract amendment documentation related to the service contracts selected for review. The contract amendments were reviewed for reasonableness in terms of dollar amount, timeline, and purpose as related to the original purpose of the service contracts. Also, the contract amendment

State Agency Responses

documentation was evaluated as to whether it was processed through a sufficient formal process.

Response

As the audit report pointed out, there were often legitimate reasons for service contracts to be amended. Projects may take longer than anticipated or other unexpected issues may arise. There is no rule which prohibits extension of current contracts. Department staff are aware of the need to be cognizant of the principles of the competitive process and assure that practice is consistent with those principles.

5. Contract Clauses

Finding

Contract clauses not included. We reviewed the selected contracts to determine whether they contained provisions and sanctions sufficient to hold the service provider accountable and for measuring contract performance. The previous version of the State Accounting Enterprise Procedure 240.102, which was used to help develop testing criteria, included a listing of required contract clauses.

Of the 32 contracts reviewed:

- 2 did not contain an indemnification clause.
- 1 did not clearly state the minimum service requirement.
- 1 contract term was for four years, which exceeded the term allowed by the State Accounting Enterprise Procedure 240.102 that was effective prior to October 1, 2002.

Response

The Department has developed a contract shell in coordination with the Office of Attorney General which identifies needed terms and conditions. Those who develop contracts have received training on writing a comprehensive scope of work which includes establishment of performance criteria and payment provisions which tie payment to performance. The Department will remind Department staff of the required terms and conditions to be contained in all contracts based on current administrative rules for services contracting. See response #4.

6. Questionable Expenditures

Findings

Not applicable to the Department of Human Services.

7. Analysis of factors or rationale involved in deciding whether to contract

Findings

Analysis of factors or rationale involved in deciding whether to contract was not documented. Before the State agencies enter into a service contract, it is important to determine that the services are needed and will benefit the State. Also, the State agencies should evaluate the extent to which State employees may be used to provide the services.

State Agency Responses

We reviewed the Department's services contract files of the selected service contracts and inquired about the existence of any type of analyses. Analyses include, but are not limited to, cost analysis/cost effectiveness determination, being performed prior to making a decision on whether the service should be contracted or accomplished utilizing the Department's in-house resources. The department did not perform nor have any documentation of the performance of any pre-contract analyses for determining if the services were needed, could be handled in-house or whether contracting was in the best interest of the State for most of the service contracts we reviewed.

Response

The Department is not aware of any requirement to document the factors taken into consideration in deciding to contract for services. While the Department does not have a formal process for deciding whether to contract, the Department makes business decisions based on a number of factors, including time frames in which the work is to be done, whether there is ongoing need for the specific expertise required to carry out the work, if the expertise is currently available within current resources, etc.

Findings 8 through 13 are not applicable to the Department.

Service Contracts



THOMAS J. VILSACK, GOVERNOR
SALLY J. PEDERSON, LT. GOVERNOR

STATE OF IOWA

DEPARTMENT OF NATURAL RESOURCES
JEFFREY R. VONK, DIRECTOR

January 16, 2004

Ms. Annette K. Campbell, Director
Office of the State Auditor
State Capitol Building
LOCAL

Dear Ms. Campbell:

As requested by Mr. Mark Moglestad in his January 15, 2004 email, this letter constitutes the Department of Natural Resources revised response to the auditor's comments associated with the statewide audit of service contracts. This revised response is a result of changes made to the original audit findings. Overall the audit validated many of the procedures that we currently use. Contracting process, procedures, content and for the most part documentation were considered good. Work continues to be needed on developing performance measures and documenting final results of contractual activities as well as contractor performance. The Department is currently evaluating actions which it can take to improve in these areas.

We feel that some of the comments included, as they pertained to this department, were more editorial in nature. For example, one finding cautioned against the use of contract amendments. Amending contracts could hinder competition. The Departments audited contract amendments were found by the auditors to be reasonable as related to dollar amount, timelines, and purpose and were appropriately documented. We feel that we are in compliance with many of these editorial comments.

The responses contained in this letter are overall in nature as requested in your August 14, 2003 letter. They characterize the types of issues addressed in the audit. If a response to each finding is necessary for inclusion within the report please let us know.

If you have any questions or require additional information, please contact me at 281-5697.

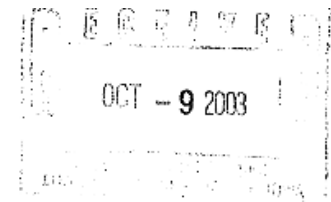
Sincerely,

A handwritten signature in dark ink, appearing to read "Mark J. Slatterly".

Mark J. Slatterly, Chief
Budget and Finance Bureau

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State Agency Responses



October 9, 2003

Annette K. Campbell, Director
Office of Auditor of State
State Capitol Building

Dear Ms. Campbell:

This letter is in response to the findings and recommendations your office made in connection with the review of service contracts. The Iowa Department of Public Health is committed to complying with applicable laws and administrative rules regarding service contracting and has implemented numerous actions to meet the requirements of Iowa Administrative Code 401- Chapters 12 and 13 implemented in October 2002.

In anticipation of these rules, the department employed a contract administrator who is responsible for ensuring that all of the requirements of the rules are met. Various standardized contract template forms were developed in conjunction with the department's Assistant Attorney General in order to provide consistency of application of the rules by departmental staff.

Formal education of the management team and departmental staff responsible for the development of competitive selection and the resultant contractual agreements occurred in the late summer of 2002 and were repeated in July of 2003. Ongoing educational training sessions will be held every quarter in ensure that the needs of our employees are met. In addition, numerous employees from the department attended the service contract training sponsored by the Department of Management in July of 2002 prior to the implementation of the Administrative rules in October 2002.

The department's specific responses to the findings and recommendations follow:

Finding 1. The Department has developed and published a Sole Source Justification form that includes the specific guidance contained in IAC 401-12.7 for internal use. The Contract Administrator and the Department Director evaluate each request for adequate demonstration of meeting the stated criteria prior to signature.

Finding 2. Program staff have been informed that review of monitoring activities including program site visits, progress reports, annual reports, etc. and acceptance/request for corrective action must be documented in writing. This documentation is to be maintained in the program contract file.

Finding 3. The management team and departmental staff have been informed all contractual agreements are to be signed prior to the implementation of the service provision.



Promoting and protecting the health of Iowans.

State Agency Responses

Finding 4. The Bureau Chief, Division Director and Contract Administrator formally review contractual amendments for appropriateness.

Finding 5. The Department of Administrative Services, General Services Enterprise, issued the contract associated with this finding. The Department of Administrative Services should address findings regarding this contract.

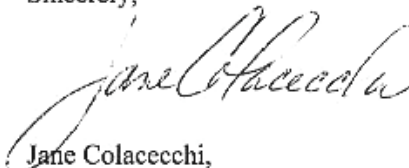
Finding 7. . Program staff have been informed that documentation regarding the decision to contract is to be maintained in the program contract file.

Findings 8 through 10 were not applicable for the department.

Finding 11. The competitive selection method used to determine the service provider is documented on the Contract and Amendment Route Slip (prior to the signature of the Bureau Chief, Division Director and Contract Administrator) and is maintained in the contract file.

Findings 12 and 13 were not applicable for the department.

Sincerely,



Jane Colavecchi,
Chief Deputy Director

State Agency Responses



Putting Iowa
to Work



Thomas J. Vilsack, Governor

Sally J. Pederson, Lt. Governor

Richard V. Running, Director

September 5, 2003

Office of the Auditor of State
State of Iowa
Lucas State Office Building
L O C A L
Attn: Annette K. Campbell, Director

Dear Ms. Campbell:

This letter is in response to your correspondence, dated August 14, 2003, relating to findings and recommendations of the Auditor of State's review of Iowa Workforce Development's service contracts.

We will take this opportunity to respond to the findings and recommendations, but first let me assure you that Iowa Workforce Development takes its fiduciary responsibilities seriously, including contracting for services. IWD has had contracting procedures in place for a number of years, including contract templates approved by the Attorney General's Office and a contract review process. But, while we may have some issues with the report as written, IWD will use this opportunity to review its contracting procedures and update where needed.

Finding 1, Sole Source not sufficiently justified states 20 sole source contracts were reviewed. Thirteen (13) of the sole source contracts were not sufficiently justified. Three (3) of the 13 selections that were not sufficiently justified did not have agency documentation of the justification in the contract file. All contracts noted as reviewed by the auditor started prior to October 1, 2002, when the new contracting rules went in to effect and the majority had terminated prior to that date. Two of the contracts were for software licensing or maintenance and procured with the assistance of ICN and then ITD and the vendor provides the contract format. One contract was for an expert witness for the IOSH program for a legal proceeding.

State Agency Responses

While sole source procurement is not IWDs preferred method of contracting, there are times it is the method of procurement for accomplishing a task. Justification can at times be subjective in nature and open for various interpretations.

As we review our contracting procedures, we will reiterate and increase the emphasis on justification of any sole source procurement, as outlined in the Administrative Rules.

Finding 2, Monitoring and evaluation of service, states that a number of the contracts had no documented method of monitoring or evaluating the services received. Please note again that all of the contracts referenced started prior to October 1, 2002 with the majority terminating prior to the same date. The contracts did contain a scope of service or statement of work, which was the requirement at the time.

Iowa Workforce Development will insure incorporation of methods to monitor and evaluate contracts, as it reviews and updates its contracting procedures, as outlined in the Administrative Rules.

Finding 3, Contract signatures addressed the concern of contract signature dates.

Iowa Workforce Development will develop and implement a procedure to insure that contract signatures are obtained within the time constraints, as outlined in the Administrative Rules.

Finding 4, Service contract amendments. The auditor's comment seems to question the use of contract amendments and recommends that amendments be kept to a minimum and that the amendments need to go through a formal review process. But, the auditor states that the amendments reviewed, "were reasonable as related to dollar amount, timeline and purpose, and were appropriately documented."

Use of contract amendments is a part of business and minimizing use of amendments could unduly impede the agency from receiving the service originally contracted for. Amendments, as with contracts, are not entered into without forethought and formal review. The agency will continue to use contract amendments where legitimately required.

Finding 5, Contract clauses not included. Staff has reviewed the contracts noted by the auditor against the comments and the consensus is that the same 4 contracts make up the totality of the comments. Two of the contracts were in a letter of agreement format and the other 2 were software licensing and maintenance agreements, which the vendor supplied the format. The other contracts were on one of two templates that IWD had approved by the Attorney

State Agency Responses

General's Office prior to October 1, 2002. Examples will be provided upon request. IWD feels that those templates cover the required elements at the time.

Iowa Workforce Development will review the contract templates for compliance and will make the needed changes required by the current Administrative Rules and insure the Attorney General's office reviews the templates.

Finding 7, Analysis of factors or rationale. As stated previously, Iowa Workforce Development does not enter into contracts without forethought or review. The process and procedures in place require a review of a contract not only at the programmatic level but at the fiscal level. At the program level the program manager signs off on the review sheet and then forwards the contract to the Division Administrator. After programmatic sign-off the contract is forwarded to the Financial Services Bureau for review of dollar availability. All of these reviews must be completed prior to the contract being implemented. A copy of the contract review sheet is available upon request. Any staff statement that, "analyses (sic) generally were not done prior to contracting for services," is incorrect. If a staff person does not realize they are doing an analysis prior to contracting, then it is incumbent on management to provide training for that staff.

The auditor's recommendation that IWD should use the section of the State of Iowa Service Contracting Guide related to contract planning is noted. But it must also be noted that this section of the Guide is just that, a guide and not a required step-by-step procedure. As IWD reviews its contract procedures and templates it will also consider what portions of the Guide's contract planning section to include.

Finding 8, No documentation of employee/employer relationship determination, and Finding 9, Pre-contract questionnaire was not completed. We will address both findings at the same time because we have determined that the same contract was used in both findings and recommendations. We agree that this contract did not have a determination made of employee/employer relationship or a pre-contract questionnaire but, we feel that his contract is an anomaly and not representative of IWDs procedures. We will address the issues of this contract and insure that corrective action is taken.

IWDs procedures do require that a pre-contract questionnaire is completed and that includes insuring that a determination of employee/employer relationship of been completed. Part of the fiscal review is to check the Department of Administrative Services Accounting Enterprise's (formally DRF) PCQT file for name and number and if the contractor/vendor appears on that list then an employee/employer relationship has already been determined. The number given the contractor/vendor is then placed on the pre-contract questionnaire. If there is no listing for the contractor/vendor then a determination is made through a W-9 to determine whether or not the contractor/vendor is a corporation or a sole proprietorship. If the determination is made that the contractor/vendor is a

State Agency Responses

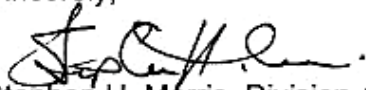
sole proprietor, then a form SS-8 is completed. Documentation of this is in the files.

As Iowa Workforce Development reviews its contracting procedures it will insure that re-emphasis will be made relating to completion of the pre-contract questionnaire and determining employee/employer relationships.

It is felt that Auditor's report gives a general impression that Iowa Workforce Development had no contracting controls in place. This is not the case. The agency has had contracting procedures, contract review processes, and contract templates in place since SFY 96. With passage of the Accountable Government Act and implementation of the new Administrative Rules the agency's procedures do need to be reviewed and possibly updated. This effort will begin shortly and be completed as soon as possible.

If you have any questions or comments relating to this response, please feel free to contact me at 281-5095.

Sincerely,



Stephen H. Morris, Division Administrator
Administrative Services

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