



# PERFORMANCE AUDIT REPORT

**Reviewing State Agencies' Adherence to  
State Laws and Policies for Grants and Contracts**

## ***Executive Summary*** ***with Conclusions and Recommendations***

**A Report to the Legislative Post Audit Committee  
By the Legislative Division of Post Audit**

**State of Kansas  
August 2000**





# ***Legislative Post Audit Committee***

## ***Legislative Division of Post Audit***

**THE LEGISLATIVE POST** Audit Committee and its audit agency, the Legislative Division of Post Audit, are the audit arm of Kansas government. The programs and activities of State government now cost about \$8 billion a year. As legislators and administrators try increasingly to allocate tax dollars effectively and make government work more efficiently, they need information to evaluate the work of governmental agencies. The audit work performed by Legislative Post Audit helps provide that information.

We conduct our audit work in accordance with applicable government auditing standards set forth by the U.S. General Accounting Office. These standards pertain to the auditor's professional qualifications, the quality of the audit work, and the characteristics of professional and meaningful reports. The standards also have been endorsed by the American Institute of Certified Public Accountants and adopted by the Legislative Post Audit Committee.

The Legislative Post Audit Committee is a bipartisan committee comprising five senators and five representatives. Of the Senate members, three are appointed by the President of the Senate and two are appointed by the Senate Minority Leader. Of the Representatives, three are appointed by the Speaker of the House and two are appointed by the Minority Leader.

Audits are performed at the direction of the Legislative Post Audit Committee. Legislators or committees should make their requests

for performance audits through the Chairman or any other member of the Committee. Copies of all completed performance audits are available from the Division's office.

### **LEGISLATIVE POST AUDIT COMMITTEE**

Senator Lana Oleen, Chair  
Senator Anthony Hensley  
Senator Pat Ranson  
Senator Chris Steineger  
Senator Ben Vidricksen

Representative Kenny Wilk, Vice-Chair  
Representative Richard Alldritt  
Representative John Ballou  
Representative Lynn Jenkins  
Representative Ed McKechnie

### **LEGISLATIVE DIVISION OF POST AUDIT**

800 SW Jackson  
Suite 1200  
Topeka, Kansas 66612-2212  
Telephone (785) 296-3792  
FAX (785) 296-4482  
E-mail: LPA@lpa.state.ks.us  
Website:  
<http://skyways.lib.ks.us/ksleg/PAUD/homepage.html>  
Barbara J. Hinton, Legislative Post Auditor

The Legislative Division of Post Audit supports full access to the services of State government for all citizens. Upon request, Legislative Post Audit can provide its audit reports in large print, audio, or other appropriate alternative format to accommodate persons with visual impairments. Persons with hearing or speech disabilities may reach us through the Kansas Relay Center at 1-800-766-3777. Our office hours are 8:00 a.m. to 5:00 p.m., Monday through Friday.



LEGISLATURE OF KANSAS

**LEGISLATIVE DIVISION OF POST AUDIT**

MERCANTILE BANK TOWER  
800 SOUTHWEST JACKSON STREET, SUITE 1200  
TOPEKA, KANSAS 66612-2212  
TELEPHONE (785) 296-3792  
FAX (785) 296-4482  
E-MAIL: [lpa@lpa.state.ks.us](mailto:lpa@lpa.state.ks.us)

August 11, 2000

To: Members of the Kansas Legislature

This executive summary contains the findings and conclusions, together with a summary of our recommendations and the agency responses, from our completed performance audit, *Reviewing State Agencies' Adherence to State Laws and Policies for Grants and Contracts*.

The report includes several recommendations for improving State employees' awareness and understanding of the applicable laws and policies through brochures, memorandum, and training. We also recommended steps to ensure that the Division of Purchases publishes a complete manual and has adequate staff to provide contract administration services. We'd be happy to discuss these recommendations or any other items in the report with you at your convenience.

If you would like a copy of the full audit report, please call our office and we will send you one right away.

Barbara J. Hinton

Legislative Post Auditor



# EXECUTIVE SUMMARY

LEGISLATIVE DIVISION OF POST AUDIT

## **Question 1: Have the Department on Aging and Other State Agencies Inappropriately Procured Services or Tangible Assets Through Grants Instead of Contracts?**

**State agencies should issue a contract instead of a grant . . . . page 3**  
**when acquiring goods or a direct service.** *Grants aren't required to go through the Division of Purchases for review, or to be competitively awarded. As a result, agencies may have an incentive to issue grants, when a contract is appropriate, because they require less scrutiny, and generally can be issued in less time. The Division of Purchases has provided State agencies with guidelines for making determinations about whether to award a grant or contract. A grant may be awarded in cases where the disbursing agency receives no direct service or tangible asset, otherwise the agency should issue a contract.*

**We found only one grant that should have been issued . . . . page 4**  
**as a contract.** *Out of a sample of 144 grant payments State agencies made in fiscal year 1999, the grant issued by the Department on Aging to its former Deputy Secretary, Terry Glasscock, was the only one that should have been issued as a contract.*

**Improvements could be made to minimize the risk that . . . . page 5**  
**contracts will be inappropriately awarded as grants.**  
*These improvements fall into the two following areas:*

*The Division of Purchases could provide further clarification regarding the distinction between a grant and contract. Even though the 2000 Legislature defined what a grant was in law, Division officials told us there was still some misunderstanding among State agencies.*

*State agencies could adopt procedures that would help ensure purchasing requirements are met. Of 122 State agencies we surveyed, only a handful had procedures to ensure that grants are awarded appropriately. State agencies that issue grants should include procedures in their purchasing manuals that spell out when a grant or contract should be used. They should also require a top-level manager who understands this distinction to review and sign off on all grants and contracts issued.*

**Question 1 Conclusion:** *While most State agencies appear to be issuing grants appropriately, there's an inherent risk for misuse, and perhaps abuse, when guidelines are unclear. Further clarification of when grants and contracts should be used can help agency officials understand the difference, and may help prevent unintentional misuse of grants. However, nothing short of requiring all grants and contracts to be reviewed by the Division of Purchases can completely prevent agency officials from circumventing the purchasing process if they are inclined to do so. Given the lack of abuse we found, that would be an unnecessary burden to place on the Division.* . . . . page 6

**Question 1 Recommendations:** *We recommended that the Department of Administration write clarifying language on the difference between grants and contracts, including examples, and send it to all State agencies for inclusion in their policy and procedure manuals. In general, the agency concurred with the recommendation.* . . . . page 7

---

**Question 2: Are Agencies' Employees Who Helped Develop Grants or Contracts Receiving Those Grants or Contracts Or Going to Work for An Entity That Did?**

---

**State ethics laws generally don't allow State employees to benefit from contracts they've participated in developing or awarding.** *State agencies often contract with their former employees and, in many cases, there are legitimate reasons to do so. However, with some exceptions, the State ethics law limits situations in which a State employee can sign a contract with the State. According to the law, a State employee who has participated in making a contract can't receive that contract or go to work for the vendor who was awarded the contract for a period of 2 years after terminating employment with the State agency, or 2 years after the contract has been completed, whichever is sooner. For such circumstances to constitute a violation of the law, there is an intent component that must be met. The Ethics Commission determines whether an employee intentionally violated the law through its hearing process.* . . . . page 8

**We reviewed one contract where the Ethics Commission determined an employee violated the law, and identified 2 situations for the Commission to review.** *We reviewed 91 grants and contracts involving former employees, including the grant agreement between the Department on Aging and the former Deputy Secretary, Terry Glasscock. The Ethics Commission had already found that arrangement violated the ethics laws. We also identified 2 cases where State employees appeared to have partici-* . . . page 10

*pated in the making of the contract, and subsequently received that contract or went to work for the vendor who received the contract within 2 years. We saw no evidence that either party intended to violate the law, but we'll refer these cases to the Ethics Commission for review. We also found a number of payments to former State employees for services that were ongoing and should have been based on a written contract, but weren't.*

**State agencies could strengthen their procedures to minimize the risk of violating the ethics laws.** *According to our survey of executive agencies, and the results of our file review, very few agencies have taken steps to ensure that the ethics laws are followed. Although we didn't find many instances in which contracts with former employees violated the State's ethics laws, agencies still could take steps to ensure that these laws are followed.*

... page12

**Question 2 Conclusion:** *State employees can sometimes be in a position to use their role as an employee to benefit personally at the expense of the State. To avoid these types of situations, the Legislature has adopted ethics laws that limit the situations in which an employee can benefit from a contract with the State. Applying these laws to actual cases often is very complex, partially because of the specific intent component of the law. Agencies can do little to systematically prevent the willful violation of the ethics laws. On the other hand, agencies could do more to ensure that their employees are familiar with those legal requirements.*

... page 13

**Question 2 Recommendations:** *We recommended that the Governmental Ethics Commission staff periodically provide brochures or a memorandum to State agencies explaining the prohibitions in plain language. We also recommended that the Secretary of Administration direct agencies to include information from the Ethics Commission to new employees, and to periodically review the ethics requirements with all staff. Both agencies generally concurred with these recommendations.*

... page 13

---

### **Question 3: How Did the Agreement with Mr. Glasscock Come About and What Work Did He Accomplish?**

---

**The agreement with Mr. Glasscock originated from early work he did to prepare the Department for the baby boom generation.** *Mr. Glasscock began working for the Department in 1997, and began to look into "re-engineering" its processes. He made several presentations to the Legislature about the need for the Department to revamp its ways to prepare for the aging baby-boomer generation. In Spring 1999, Mr. Glasscock announced he*

... page 14

was moving out of State. Former Secretary Gordon reportedly approached Mr. Glasscock about continuing his re-engineering work on a contractual basis.

**Originally the agreement was going to be a contract, but it was changed to a grant after the Department's attorney pointed out the ethics laws.** . . . page 15  
*At first, the parties discussed entering a contract for these services. However, the Department's attorney pointed out several ethics laws that may apply to the situation. After that, the parties agreed to pursue a grant instead. The attorney reasoned that a grant was appropriate because Mr. Glasscock's work would be benefitting the future customers of the Department. Mr. Glasscock was awarded a 3-year grant in June 1999, and was paid \$135,000 for the first year on June 23, 1999.*

**The Ethics commission has ruled that this arrangement violated the State's ethics laws.** . . . page 16  
*In its hearing on April 20, 2000, the Commission ruled that Mr. Glasscock violated the State's ethics laws by participating in the "making of a contract" between the Department and himself. The Commission imposed a civil fine of \$500, and Mr. Glasscock is appealing that decision.*

**In reviewing the grant and the process for issuing it, we noted several additional areas of concern.** . . . page 17  
*The Department's decision to award Mr. Glasscock a grant rather than a contract meant the agreement didn't receive any outside scrutiny. Grants aren't required to be reviewed by the Division of Purchases or be competitively bid. The Department on Aging and Mr. Glasscock didn't follow normal internal procedures in awarding this grant. The grant agreement wasn't routed through normal Department review channels, and Mr. Glasscock didn't submit a grant proposal in advance and never submitted a detailed project budget, like other grantees are required. Given the nature of work to be performed in the first year of the grant, \$135,000 seemed high to us. Much of the work the first year was preliminary in nature, and some of it had already been started before he left the Department.*

**Mr. Glasscock was allowed to keep \$45,000 of the original grant based on the work he'd completed through October 1999.** . . . page 22  
*The Governor cancelled the grant on November 1, 1999. The Department's attorney, at the request of the Governor, had to quickly determine the amount owed Mr. Glasscock. This amount was based on the number of tasks he'd completed. The attorney identified 9 tasks due in year 1, and determined that Mr. Glasscock had completed 3. Therefore, Mr. Glasscock was allowed to keep one-third of the \$135,000. Although the calculation was cursory, good information doesn't exist that would allow someone to independently determine the relative "value" of the work completed versus work not completed.*

**Question 3 Conclusion:** *For us, this situation highlights the risks involved when an agency head is willing to circumvent established procedures—both internal and external—to make something happen. Regardless of the merits of the 3-year agreement with Mr. Glasscock, the former Secretary appears to have gone to great lengths to ensure that he got it. The Department also appears to have fallen down in its responsibility to ensure that appropriate Division of Purchases policies regarding State contracts were followed. Had this transaction been handled as a contract, as it should have been, the State would have had a much better basis for knowing whether the amount being paid for this work was reasonable. That’s something that really can’t be determined at this point.* . . . page 25

---

**Question 4: To What Extent has the Division of Purchases Implemented the Recommendations Made in the 1996 Contracting Audit To Improve the State’s Contracting Procedures?**

---

**Our 1996 audit made recommendations in 6 main areas.** . . . page 26  
*The Division hasn’t implemented 2 of 6 major recommendations. The 2 recommendations yet to be implemented are the development of a policy manual and increased efforts in contract monitoring and contract management.*

**The Division still hasn’t issued a policy manual, and hasn’t had one since 1993.** . . . page 26  
*Before May 1993, the Division had an extensive set of purchasing policies for agencies to follow. The Division subsequently rescinded the manual because the policies were becoming outdated, and Division officials thought that if the policies weren’t followed, the State’s liability would increase in the event of a lawsuit. At the time of the 1996 audit, the Director of Purchases was working on a new policy manual, but as of June 2000 the manual was still in draft form. Without a Statewide policies and procedures manual, there’s no uniform, up-to-date, centralized guidance for agencies to follow.*

**The Division hasn’t provided increased guidance to State agencies in the areas of contract monitoring and contract management.** . . . page 28  
*At the time of our fieldwork, the Division had no policies and procedures in its draft manual on contract-management issues. The draft policy manual had a section entitled contract management, but it was entirely blank, so we had nothing to review. Division officials told us that they would assist agencies on contract management issues if asked to do so.*

**Division officials cited a lack of staff as the reason for the delay in implementing the recommendations from our 1996 audit.** *According to Division officials, a staffing level decrease from 37 to 26 over the last five years only allows the Division Director to work on the policy manual in his spare time. Also, the lack of staff precludes the Division from providing proactive contract monitoring services.* . . . page 29

**Question 4 Conclusion:** *After 4 years, there's still significant work to be done to implement the recommendations of our 1996 report. One of the key things that still remains is the development and adoption of a purchasing manual. Without such a manual, State agencies lack the guidance they need to be able to consistently conform to the State's purchasing requirements.* . . . page 29

**Question 4 Recommendations:** *We recommended that the Division of Purchases include specific components in its policy manual, finalize the manual and make it available to all State agencies by December 2000. We recommended that the Division continue to offer training classes, with more slots available for participants or more dates available for participants to attend. We also recommended that the Director of Purchases request the 2001 Legislature to create and fund a contract administration section within the Division. The agency generally concurred with these recommendations. The Division of Purchases is planning a training program to certify agency officials in contract management with the hope that this program will eliminate the need for additional Division staff.* . . . page 29

**Appendix A: Scope Statement:** . . . page 31

**Appendix B: Audit Responses:** . . . page 34

This audit was conducted by Chris Clarke, Katrin Osterhaus, Kate Watson, and Scott Frank. Leo Hafner was the audit manager. If you need any additional information about the audit's findings, please contact Ms. Clarke at the Division's offices. Our address is: Legislative Division of Post Audit, 800 SW Jackson Street, Suite 1200, Topeka, Kansas 66612. You also may call us at (785) 296-3792, or contact us via the Internet at LPA@lpa.state.ks.us.

