



# Legislative Post Audit Performance Audit Report Highlights

## Sole-Source Contracts: Determining Whether Sole Sourcing Is Being Used When Other Vendors Could Supply the Goods or Services

### Report Highlights

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#### **Audit Concern**

*Legislative concerns have been raised that State agencies are sole-sourcing contracts that should be competitively bid, and that the State may be paying more than necessary as a result.*

#### **Other Relevant Facts**

*Kansas law gives the Director of Purchases the authority to approve many of the purchases and services most State agencies make. Some State agencies, such as legislative agencies, aren't required to go through the Division of Purchases, although they are required to comply with the laws that govern purchasing.*

*State law generally requires agencies to competitively bid for the goods and services they buy. The type of bid (phone or sealed), the number of bids, and the length of time the bid must be publicly posted varies by the dollar amount of the purchase.*

*State law describes several circumstances where a good or service doesn't have to be bid. When a good or service meets any of the exceptions in law and doesn't have to be competitively bid, it results in a sole-source purchase.*

**AUDIT QUESTION:** *Has the Division of Purchases authorized sole-source contracts in instances where competitive bids should have been sought?*

#### **AUDIT ANSWER and KEY FINDINGS:**

- Division of Purchases' records show that, over the last five calendar years, it has authorized more than \$900 million in sole-source purchases. However, we have reservations about the accuracy of the Division's sole-source reports.
- We reviewed 30 emergency and non-emergency sole-source purchases to determine whether the purchase met one of the competitive-bidding exceptions defined in law. We found:
  - Of the 18 non-emergency purchases we reviewed, two didn't appear to meet any of the competitive bid exceptions described in law.
  - Two additional non-emergency purchases may have met a competitive bid exception, but because of lack of documentation they were difficult to assess.
  - The Division authorized all 12 emergency sole-source purchases appropriately.
  - In three of the emergency sole-source purchases, agency actions caused problems.
- We compared the National Association of State Procurement Officers' best practices to the Division's practices and found weaknesses in three areas:
  - a lack of any written policies and procedures
  - a lack of documentation regarding the actions Division officials had taken in response to agency requests for sole-source purchases
  - a lack of documentation regarding the actions agency officials had taken when they had to make emergency sole-source purchases
- The Division Director reported only two sole-source purchases greater than \$100,000 have been challenged in the last eight years. We reviewed both challenges and found they appeared to be reasonable as sole-source purchases. The details for those two purchases are below:
  - In 2007, Governor Sebelius issued an executive order designating the American Federation of State, County, and Municipal Employees (AFSCME) as the union representative of home child care workers. That order also directed SRS and KDHE to develop an agreement with AFSCME that addressed a number of issues relating to child care in the State. As part of that agreement, SRS, KDHE, and AFSCME agreed to jointly propose funding options for a Health and Safety Promotional Fund.

## **AUDIT ANSWERS:** *(continued)*

In 2009, SRS submitted a sole-source authorization form to the Division requesting that AFSCME be the administrator of that fund. The Kansas Association of Child Care Resource and Referral Agencies challenged the sole-source purchase because it thought it could also administer the fund. The Division Director denied the challenge.

We concluded the purchase was reasonable as a sole-source because the Governor's executive order specified that AFSCME would be the vendor for matters related to home child care workers.

- In 2005, the Center for Medicaid and Medicare Services required SRS to provide better access to mental health services for Medicaid recipients. To comply with this requirement, SRS created a new State plan that required a vendor to administer the program. Because of a legislative proviso, the new vendor was required to associate with community health providers.

In 2006 and 2008, SRS officials submitted a sole-source authorization form to the Division requesting the Association of Community Mental Health Providers administer the program. In 2008, Cenpatico (a managed health care organization) challenged the sole-source purchase because it thought it could also administer the program. The Division Director denied the challenge.

We concluded the mental health services contract appeared to be reasonable because of the requirement to work through the community mental health centers, and because it appeared no other vendor was capable of providing the services within the required framework.

### **We Recommended**

- The Division should develop a written policies and procedures manual after the State's new accounting system goes on-line in July 2010.
- The Division should implement procedures to make tracking purchases through the State accounting system easier and should make sure appropriate edits and checks are in place in the new accounting system to ensure accurate quarterly reports.

**Agency Response:** *The Department of Administration generally concurred with the report's findings and recommendations.*

#### **DO YOU HAVE AN IDEA FOR IMPROVED GOVERNMENT EFFICIENCY OR COST SAVINGS?**

If you have an idea to share with us, send it to [ideas@lpa.ks.gov](mailto:ideas@lpa.ks.gov), or write to us at the address shown. We will pass along the best ones to the Legislative Post Audit Committee.

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