



# **PERFORMANCE AUDIT REPORT**

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

**A Report to the Legislative Post Audit Committee  
By the Legislative Division of Post Audit  
State of Kansas  
April 2010**

# ***Legislative Post Audit Committee***

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## ***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 \$13 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. Government Accountability 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.

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

The Legislative Post Audit Committee and the Legislative Division of Post Audit have launched an initiative to identify ways to help make State government more efficient. 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 above.

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LEGISLATURE OF KANSAS

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April 21, 2010

To: Members, Legislative Post Audit Committee

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Representative John Grange, Vice Chair  
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This report contains the findings, conclusions, and recommendations from our completed performance audit, *Sole-Source Contracts: Determining Whether Sole Sourcing Is Being Used When Other Vendors Could Supply the Goods or Services*.

The report also contains an appendix showing sole-source purchases by agency for calendar year 2009.

The report includes several recommendations for the Division of Purchases. We would be happy to discuss these recommendations or any other items in the report with any legislative committees, individual legislators, or other State officials.

Barbara J. Hinton  
Legislative Post Auditor

# READER'S GUIDE

<b><i>The Big Picture</i></b>		<b><i>The Details</i></b>	
<b>Audit Highlights</b>	The highlights sheet, inserted in each report, provides an overview of the audit's key findings	<b>"At-a-Glance Box"</b>	Used to describe key aspects of the audited agency; generally appears in the first few pages of the main report
<b>Conclusions and Recommendations</b>	Located at the end of the audit questions, or at the end of the report	<b>Side Headings</b>	Point out key issues and findings
<b>Agency Response</b>	Included as the last Appendix in the report	<b>Charts, Tables, and Graphs</b>	Visually help tell the story of what we found
<b>Table of Contents, and lists of figures and appendices</b>	Lets the reader quickly locate key parts of the report	<b>Narrative Text Boxes</b>	Highlight interesting information or provide detailed examples

This audit was conducted by Heidi Zimmerman, Joe Lawhon, and Amy Thompson. Julie Pennington was the audit manager. If you need any additional information about the audit's findings, please contact Heidi Zimmerman at the Division's offices.

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

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The Division of Purchases provides a centralized purchasing service for most State agencies. State law provides that, with few exceptions, contracts for construction and repairs, and purchases of and contracts for supplies, materials, equipment, and contractual services that State agencies buy must be based on competitive bids. The law that creates the Division of Purchases goes on to specify seven instances in which competitive bids aren't required—such as when an emergency requires immediate delivery of services or supplies. In addition, State law also requires the Director of Purchases to prepare a detailed report at least once each calendar quarter that lists all contracts entered into over \$5,000 without competitive bids. That report is submitted to the Legislative Coordinating Council, the Senate Ways and Means Committee, and the House Appropriations Committee.

Legislative concerns have been raised that the Division of Purchases may be approving sole-source contracts that should be competitively bid and, as a result, the State may be paying more than necessary. This performance audit answered the following question:

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

To answer this question, we reviewed State law to determine the requirements placed on the Division of Purchases or on agencies. We reviewed purchasing guidance documents issued by the National Association of State Procurement Officers and others to identify best practices for awarding emergency and non-emergency sole-source contracts. We also obtained electronic copies of the quarterly reports created by the Division of Purchases for calendar years 2005 through 2009 and created a database of non-emergency sole-source and emergency sole-source purchases. In addition, we tested the accuracy of those data and queried the data to determine various totals.

Using those data, we selected a group of emergency and non-emergency sole-source transactions to review. The purpose of that review was to determine whether the Division of Purchases' decision to allow a State agency to acquire goods or services through a sole-source purchase was reasonable. We also reviewed two challenges to sole-source contracts filed by vendors in the last two years.

As a standard part of our preliminary review of the data, we visually reviewed the data for reasonableness, which included looking for inconsistencies in year-to-year totals and comparing control totals. Additionally, on a limited basis we compared the original prior authorization form to the amounts in the dataset. This testing revealed several data entry errors which raise doubts about the accuracy of the Division's quarterly reports. However, the main findings of this audit do not rely on the accuracy of the numbers contained in the quarterly reports.

We conducted this performance audit in accordance with generally accepted government auditing standards. The standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Our findings begin on page 7, following a brief overview of sole-source purchases.

A copy of the scope statement the Legislative Post Audit Committee approved for this audit is included in *Appendix A*.

## Overview of Sole-Source Purchases

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### ***The Division of Purchases Is Responsible For Overseeing Many of the State's Purchases***

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.

Most agencies have been "delegated" the authority to make purchases up to a certain dollar amount without the Division's approval. Delegated authority amounts differ from agency to agency, but most are \$2,000. **Figure OV-1** shows the delegated authority amounts for many agencies.

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### ***Under Certain Circumstances Goods And Services Don't Have To Be Bid, Resulting In "Sole-Source" Purchases***

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. The requirements for competitively bid purchases are as follows:

- purchases between \$5,000 and \$25,000 require phone, fax, or sealed bids after three-days notice on a public bulletin board
- purchases between \$25,000 and \$50,000 require sealed bids after three-days notice on a public bulletin board
- purchases greater than \$50,000 require sealed bids after 10-days notice in the Kansas Register and on a public bulletin board

However, K.S.A. 75-3739 describes seven circumstances where a good or service doesn't have to be bid. Those circumstances are as follows:

- when compatibility with existing services, supplies, materials or equipment is the primary concern
- when, in the judgment of the Director of Purchases, no competition exists
- when, in the judgment of the Director of Purchases, material or equipment for use in laboratories or experimental studies by State agencies are best purchased without competition, or where rates are fixed by law or ordinance
- when, in the judgment of the Director of Purchases, an emergency requires immediate delivery of supplies, materials or equipment, or immediate performance of services
- when, in the judgment of the Director of Purchases and the head of the acquiring State agency, not seeking competitive bids is in the best interest of the State
- when any statute authorizes another procedure or provides an exemption to this law
- when a used item becomes available and is subject to immediate sale

Figure OV-1 Amount of Delegated Authority Authorized by the Division of Purchases For Various Agencies	
Amount of Delegated Authority	Agency
\$25,000	Kansas Correctional Industries
	K-State, KU, KU Medical Center, Pittsburg, and Wichita State Universities (a)
	Transportation
\$10,000	Administration, Division of Printing
	Juvenile Justice Authority
	Wildlife and Parks
\$5,000	Adjutant General's Department
	Administration
	Aging
	Agriculture
	Corporation Commission (b)
	Corrections and Correctional Institutions
	Emporia and Fort Hays State University (a)
	Health and Environment
	Topeka Juvenile Correctional Facility
	Kansas Highway Patrol
	Kansas Lottery (c)
	Kansas Neurological Institute
	Kansas State Fair
	Labor
	Larned, Osawatomie, and Parsons State Hospitals
	Revenue
	School for the Blind (d)
Social & Rehabilitation Services, and its institutions	
Water Office	
\$2,000	Other Agencies

(a) HB 2433 passed during the 2010 session exempts all Regents institutions from State purchasing laws and regulations.  
(b) Limit is \$10,000 for well plugging.  
(c) Limit is \$10,000 for promotional items.  
(d) Limit is \$7,000 for adaptive technology.  
Source: Division of Purchases.

When a good or service meets any of the above exceptions and doesn't have to be competitively bid, it results in a sole-source purchase.

The box on page 5 shows other specific types of purchases or entities that are exempt from competitive-bidding requirements.

**Agencies must get the Division of Purchases' prior approval for any sole-source purchases they want to make above their delegated authority amount.** The Division requires agencies to submit a prior authorization form before making a purchase. That form asks for the following types of information:

- a description of the purchase
- the name of the vendor the agency has chosen
- an explanation of why the vendor is the only one that can provide the good or service
- a description of the work the agency did to ensure that no other competition exists

When the sole-source purchase is being requested for emergency situations—for example, to repair or replace a broken heating unit or storm damage to a building—Division officials still require agencies to submit a prior authorization form. Additionally, in emergency situations Division officials told us they expect the agency to contact a few different vendors when possible to try to ensure they are getting a good price.

**Division officials told us they take a number of steps to verify that the request for a sole-source purchase meets the criteria exempting a purchase from the competitive-bidding process.** To make that determination, Division staff told us they typically do some research, including conducting an Internet search to see if another vendor can provide the service, consulting the Division's approved vendor list, or reviewing existing contracts to determine if there's a need to continue using the same vendor.

### State Law Contains Other Exemptions To Competitive Bidding Requirements

In addition to the competitive bidding exemptions listed in K.S.A. 75-3739, additional exemptions are contained in other parts of State law. Some of those laws exempt specific types of purchases while others exempt whole State agencies from the usual purchasing process. While we didn't attempt to identify all exempt departments and purchases for this audit, here are a few of the exemptions we are aware of:

- Kansas, Inc. and the Kansas Technology Enterprise Corporation aren't subject to State purchasing laws.
- The University of Kansas and Fort Hays State University aren't subject to State purchasing requirements. A bill that was recently passed will exempt all State universities from most of the Division's purchasing requirements.
- The Department of Commerce is exempt when contracting for promotional advertising services related to economic development.
- The Department of Administration is exempt when contracting for any repair, restoration, or other improvement to a State historic building.
- Lottery gaming facility management contracts and racetrack gaming facility management contracts entered into as a result of the Kansas Expanded Lottery Act are exempt from competitive bidding requirements.

Division officials also told us they rarely deny a request for a sole-source purchase. Once they approve the request, they notify the agency that it's okay to make the purchase. However, if the cost of the purchase is greater than \$100,000, a notification must be placed on the Division's website for seven days before Division staff approve it.

Division of Purchases At-A-Glance		
<b>Authority:</b>	Created by K.S.A. 75-3737a.	
<b>Staffing:</b>	The Division had 12 full-time-equivalent positions in fiscal year 2009.	
<b>Funding:</b>	The Division's funding comes entirely from State General Fund appropriations.	
FY 2009 Expenditures		
Type	Amount	% of Total
Salaries & Wages	\$427,575	81%
Contractual Services	\$100,037	19%
<b>Total Expenditures:</b>	<b>\$527,612</b>	<b>100%</b>
Source: The Governor's Budget Report, Volume 2, FY 2011.		



**Question 1: Has the Division of Purchases Authorized Sole-Source Purchases In Instances Where Competitive Bids Should Have Been Sought?**

**Answer in Brief:**

*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. In all, 14 of 18 non-emergency sole-source purchases we reviewed appeared to be reasonable, but four were questionable. The Division authorized all 12 emergency sole-source purchases we reviewed appropriately, but in three instances the agency created problems. The Division of Purchases doesn't follow some best practices related to sole-source purchases, including having written policies and procedures. 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. These and related findings are discussed in more detail in the sections that follow.*

**Division Records Show That, Over the Last Five Years, It Has Authorized More Than \$900 Million In Sole-Source Purchases**

Every quarter, the Division of Purchases is required by law to send a report to the Legislative Coordinating Council and the chairs of the Senate Ways and Means and House Appropriations Committees that lists all purchases Division staff have authorized. A portion of that report identifies all contracts over \$5,000 entered into without competitive bids. Because this audit pertains to those purchases obtained without competitive bids, we analyzed only those data.

Those reports show that, over the last five calendar years, Division staff have authorized more than 6,800 emergency and non-emergency sole-source purchases totaling more than \$900 million. **Figure 1-1** shows both the emergency and non-emergency sole-source purchases the Division reported.

**Figure 1-1  
Number and Dollar Amount of  
Non-Emergency and Emergency Sole-Source Transactions  
Calendar Year 2005 to 2009 (a)**

Year	#	\$	#	\$	#	\$
	Non-Emergency Sole-Source		Emergency Sole-Source		Grand Total	
2005	1,197	\$71,490,524	75	\$2,881,605	1,272	\$74,372,129
2006	1,456	\$413,040,225 (b)	94	\$4,868,930	1,550	\$417,909,155
2007	1,299	\$93,079,686	135	\$9,409,528	1,434	\$102,489,214
2008	1,223	\$186,966,621	73	\$4,933,859	1,296	\$191,900,479
2009	1,182	\$116,722,708	121	\$7,417,989	1,303	\$124,140,697
<b>Total</b>	<b>6,357</b>	<b>\$881,299,764</b>	<b>498</b>	<b>\$29,511,911</b>	<b>6,855</b>	<b>\$910,811,675</b>

(a) Because of the data issues discussed on page 9, these numbers should be taken as estimates and not as facts.

(b) This year is significantly higher than the other years because of a single \$320 million purchase.

Source: LPA analysis of Division of Purchases' records

As the figure shows, the vast majority of sole-source requests and purchases were for non-emergency purchases.

**Appendix B** shows emergency and non-emergency sole-source totals by agency for calendar year 2009.

Division officials also report the basis they assign for the sole-source purchase. For example, a sole-source purchase for new software might list the compatibility exception as the reason for the sole-source purchase. Over the last five calendar years, specialized, copyright, or patented products has been the most common exception. **Figure 1-2** shows the number of times each exception has been cited over the last five years.

Rationale	2005	2006	2007	2008	2009	Total
Patented or Copyrighted Product, or Specialized Training or Consulting Service	378	354	409	427	458	<b>2,026</b>
Original Manufacturer Maintenance or Upgrade, Compatible with Existing Equipment or Services, or Computer Software Available Only From the Developer	393	460	372	356	357	<b>1,938</b>
Director of Purchases/Agency Head Determination	142	193	312	363	187	<b>1,197</b>
Only Known Provider	141	232	218	280	267	<b>1,138</b>
Used Equipment	29	61	62	50	34	<b>236</b>
Laboratory or Research Equipment and Supplies	49	63	40	40	29	<b>221</b>
University Press Book Publication Agreement with the Author	55	44	36	45	39	<b>219</b>
Other (Includes Utility and Statutorily Exempt Purchases)	46	86	36	23	19	<b>210</b>
<b>Total (a)</b>	<b>1,233</b>	<b>1,493</b>	<b>1,485</b>	<b>1,584</b>	<b>1,390</b>	<b>7,185</b>

(a) A few purchases had no rationale listed and others had multiple rationales listed. As a result, the yearly totals will not match the total number of purchases.  
Source: LPA Analysis of Division of Purchases' records.

**We identified a number of inaccuracies in the Division's sole-source report.** As we worked with the data in these reports, we found several significant errors, including instances where dollar amounts were incorrect, entered twice, or were missing from the data. Those mistakes included:

- A \$33.0 million purchase for a system to process new drivers' licenses that was entered as \$33,024
- A \$970,711 purchase of foster care training that was entered twice
- A \$93.9 million purchase of mental health services for Medicaid recipients that wasn't included in the report

Currently, the information is hand entered into a spreadsheet, which may contribute to some of the errors. Because of time constraints we weren't able to look at more purchases, so there could be other errors in the data. We also noted the following limitations with the information available on sole-source purchases:

- **The amounts reported represent what agency officials expected to spend when they submitted the prior authorization form.** If agency officials spent more than reported on the form, they're required to submit an amended form that specifies the new amount. However, if they spent less than that amount, they're not required to report that new amount to the Division.
- **Because we couldn't match many of the amendments to their original amounts, the amended amounts aren't included in our totals.** This could be the result of a number of factors, such as the original contract being outside of the five years we looked at, the vendor changing, or the original purchase not being included in the data. The inability to match the amendments to the original purchases prevents a purchase from being able to be tracked over time.
- **The amount reported as a single transaction in any given year actually may be for a multi-year contract.** When an agency enters into a multi-year contract, the total amount is reported in the year it was approved, even if the actual spending will be divided over multiple years.
- **The exception the sole-source purchase was based on didn't appear to make sense or was inconsistent from one year to the next.** For example, Kansas State University bought aviation fuel from the same vendor in three consecutive years but in each year Division staff listed a different exception (only known provider, requires compatible equipment, and item is patented or specialized).

Because of the above issues, the sole-source totals shown on the Division's reports to the Legislature and in this report should be taken as estimates only and not as absolute fact.

Division officials told us they use these data mainly for reference and not as a management tool. As a result, they may be less likely to uncover errors on their own. However, the Division Director told us he thought the new Statewide accounting system might improve the accuracy of the sole-source purchasing data by introducing additional controls and eliminating the need to hand enter the report each quarter.

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***In All, 14 of the 18  
Non-Emergency Sole-  
Source Purchases We  
Reviewed Appeared  
To Meet One of the  
Exceptions in Law,  
But Two Didn't Meet an  
Exception And Two Were  
Questionable***

To help identify sole-source purchases that may have been questionable, we quickly scanned all the sole-source purchases in the Division's quarterly reports. Many purchases we reviewed appeared on their face to be questionable as sole-source purchases. For example, purchases of crop insurance and fruit juice appeared questionable because a number of vendors probably can provide those products.

We selected 18 non-emergency and 12 emergency sole-source purchases from the last three calendar years to review in-depth. We chose those 30 based on their high dollar value, or because they seemed to be particularly problematic on the surface. Because our selection was not random, our results can't be projected.

As part of our review, we determined whether the purchase met one of the competitive-bidding exceptions defined in law (see page 3). To help us make that determination, we reviewed documents from the Division and from the agency that submitted the prior authorization form. We also interviewed agency officials and performed Internet searches looking for other potential vendors.

**Of the 18 non-emergency purchases we reviewed, two didn't appear to meet any of the competitive bid exceptions described in law.** Those situations are described below:

- In September 2007, Kansas State University wanted to buy a computer system to host its e-mail and electronic calendar service. The University formed a committee to analyze its needs and to create a list of criteria to judge several e-mail and calendar services. The University solicited price quotes and system specifications from four e-mail services, and selected the service they felt fit the University's needs. University officials then submitted a prior authorization form to the Division for e-mail services from Yahoo Zimbra for \$166,666 per year for three years. The Division approved the purchase, but informed University officials that the contract must be put out for formal bid at the end of the three years.

Under State law the University should have solicited sealed bids for these services or formed a procurement negotiating committee. Although the University may have received a good price from Yahoo Zimbra (the other two bids they received were both greater than \$250,000 per year), it didn't follow the law and the purchase does not appear to have met any of the sole-source exceptions. The Division should have required the University to follow the proper bid process.

- In March 2008, the State Fair needed to make a number of asphalt repairs to roads on the State fairgrounds. State Fair officials submitted a prior authorization form seeking a sole-source purchase for asphalt

repair services from APAC Shears. State Fair officials reported that they were seeking a sole-source purchase because, in the past, APAC Shears had been the only vendor to submit a bid. The Division approved this purchase as a sole-source purchase.

Based on our research, we identified several other local vendors who are in the asphalt or road repair business. Although other vendors may not have bid on this service before it doesn't mean there won't be any bidders in the future. Because there are other vendors and because this purchase doesn't meet any of the other competitive-bid exceptions, we concluded the Division shouldn't have approved this purchase as a sole-source.

**Two additional purchases we reviewed may have met a competitive bid exception, but because of lack of documentation they were difficult to assess.** In 2009, the Department of Health and Environment purchased bicycle helmets and smoke detectors through vendors associated with the Safe Kids Coalition. The Coalition is part of a nationwide network of organizations working to prevent unintentional childhood injuries by, among other things, providing safety equipment such as car seats, bicycle helmets, and smoke detectors.

The Department bought the following items:

- From Bell Sports, approximately 6,600 bicycle helmets for \$7.50 each for a total purchase price of \$50,000
- From BRK Brands, 4,000 10-year lithium battery smoke detectors and 40 smoke detectors for the hearing impaired for approximately \$14.85 each for a total purchase price of \$60,000.

The Department of Health and Environment submitted sole-source requests because these are the only vendors who offer these items through the Safe Kids Coalition.

Based on our research, the prices these vendors offered are excellent prices. Because the law makes a sole-source exception for when the head of a department and the Director of Purchases believes a sole-source purchase is in the best interest of the State, these purchase may have been fine as sole-source purchases. However, the files on both of these purchases have no documentation to indicate Division officials did any independent research to verify that the purchases, because of their excellent prices, were in the best interest of the State.

The remaining 14 non-emergency sole-source purchases we reviewed are summarized in *Figure 1-3* on page 12.

Figure 1-3

Summary of Sole-Source NON-EMERGENCY Purchases  
We Determined To Be Appropriate as Sole-Source Purchases  
Calendar Years 2007 to 2009

Agency/ Department	Amount, Vendor, and Description of Purchase	Details	LPA Assessment
Commerce	\$173,000 Chambers, Conlon, Hartwell LLC Renewal of lobbying services at the federal level	For the past few years, the Department of Commerce has contracted with Chambers, Conlon, and Hartwell for federal legislative liaison services related to economic development. When the original contract with this vendor was signed in 2003, the Department had researched other lobbying/consulting firms in the Washington, D.C. area, and determined that this vendor was best positioned to fill Kansas' needs.	The vendor has established a working relationship with Kansas and other federal lawmakers as well as a knowledge of the State and its needs. State law allows this contract to be renewed as a sole-source contract because of the exemption for compatibility of services.
Kansas Health Policy Authority	\$5,500,000 Health and Disability Advocates Provide a State and national media campaign to promote the hiring on individuals with disabilities	KHPA had unspent moneys available from a federal grant. KHPA officials asked the federal Department of Health and Human Services (HHS) for permission to use these uncommitted funds to participate in a national marketing campaign designed to promote the hiring of people with disabilities. HHS approved the request. This campaign includes a collaboration of states from across the country who had already selected Health and Disability Advocates, located in Illinois, to carry it out on both the national and state levels.	If the State wanted to participate in this project, it was required to use Health and Disability Advocates to provide the campaign. The Division of Purchases approved this sole-source contract because no other vendor was permitted.
Kansas Lottery	\$44,880 G & G Inc A 2008 model GMC Sierra pickup truck	The truck was given away as a "second-chance" prize at the 3I show (an agricultural show), which was exclusively sponsored by GMC. Lottery officials said the type of GMC truck and its specific features were determined after consulting with GMC on buyer purchasing patterns. Lottery officials also said the vehicle was purchased below dealer cost and the Kansas regional GMC distributor selected the dealer that would deliver the truck to the prize winner.	Because GMC sponsored the 3I show the vehicle given away needed to be a GMC.  We did some research on the price of the truck and found the base price for a 2010 Sierra truck is a little over \$43,000. Given that the truck the Lottery purchased included a variety of options, the price the State paid was probably reasonable.
Kansas Lottery	\$3,501,000 Kansas Speedway Corporation Advertising and promotional services related to specific events at the Kansas Speedway	According to the contract, the Lottery agreed to sponsor certain races held at the Kansas Speedway for advertising and promotion purposes.	The Speedway is a one-of-a-kind facility in Kansas. Because it is a unique facility, by definition, there can be no competition. We did not assess whether the Lottery could have purchased advertising/promotional services for less through a different type of venue, such as a baseball park.
Kansas Lottery	\$150,000 Dan Biles Attorney at Law Legal services from Gates, Biles, Shields & Ryan	Mr. Biles and his associates were retained to help with legal issues pertaining to issues the Lottery might face with the passage of the Kansas Expanded Lottery Act.	The Expanded Lottery Act exempts the Lottery from the typical competitive bid requirements for services specifically related to the Expanded Lottery Act. As such, this purchase was statutorily exempt from the competitive bidding requirements.
Kansas Neurological Institute	\$300,000 Heartland Homecare Pharmacy Inc. Pharmacy services for the people who reside at KNI	The Kansas Neurological Institute provides pharmacy services for its residents, many of whom have complex medical and pharmaceutical needs. In early 2007, KNI's pharmacy vendor gave 60-days notice that it would stop providing service. In response, KNI identified Heartland Homecare Pharmacy as a vendor that could start providing pharmacy services immediately. Heartland was awarded the contract on a temporary basis. In 2009, KNI put this contract out for bid, and Heartland was awarded the contract, which runs through April 2015.	Pharmacy services were needed on an emergency basis. Although the agency didn't label this sole-source purchase as an emergency, the law allows purchases needed in a timely manner to be exempt from the normal competitive bidding requirements.

**Figure 1-3  
Summary of Sole-Source NON-EMERGENCY Purchases  
We Determined To Be Appropriate as Sole-Source Purchases  
Calendar Years 2007 to 2009**

Agency/ Department	Amount, Vendor, and Description of Purchase	Details	LPA Assessment
Kansas State University	\$400,000  ConocoPhillips	For the past few years, Kansas State University has purchased aviation fuel from ConocoPhillips for its pilot programs on its Salina campus. ConocoPhillips appears to have been the sole provider of aviation fuel in and around the Salina area for a number of years.	Although there were several retailers of aviation fuel, information we collected suggests ConocoPhillips was likely the supplier for those vendors as well. As a result, this purchase was reasonable as a sole-source because no competition existed.
Revenue	Renewal of ongoing contract to supply 100LL aviation fuel  \$33,024,000 for 8-year contract  L-1 Secure Credentialing, Inc.	The State of Kansas has contracted with L-1 Secure Credentialing for the issuance of digital driver's licenses since 1994. Currently, L-1 is helping the State add additional security features to the driver's licenses issuance process.	The vendor has an established presence, and renewing this contract would allow the continuation and use of equipment and technology that is compatible with existing equipment and services. Ensuring compatibility of existing contractual services is an exemption allowed by law.
Revenue	\$2,934,901  Minnesota Mining and Manufacturing Company (3M)  Continuance of the contract for license plate and decal reflective sheeting	Center Industries Corporation in Wichita, Kansas, produces vehicle decals and license plates for the State of Kansas in conjunction with 3M. Center Industries is a protected agency within the State that hires severely disabled Kansans to produce license plates. 3M provides the reflective sheeting and decals the State uses on license plates.	The State has used 3M for these products since 1998. Because changing vendors would require all equipment and machines to be replaced and all workers to be re-trained, it makes sense to continue with 3M as the provider of decals and protective sheeting. Compatibility with existing equipment is an exemption allowed by law.
Social & Rehabilitation Services	\$94,158  Cosmos Corporation, Inc.  Evaluation of Smart Start grantees' effectiveness in using State tobacco settlement funds	In 2001, SRS needed someone to evaluate program results for children's programs funded with Smart Start moneys. SRS officials interviewed four potential vendors through a procurement negotiating committee and selected Cosmos Corporation. Since then, SRS has renewed the contract with this vendor each year to allow for the continuation of the creation of a database the vendor was creating.	This vendor is creating a database the State will be able to use to evaluate a number of children's programs. Because Cosmos set up and did the initial work on the database it would have been impractical to switch vendors in the middle of the project. Ensuring continuity and compatibility of existing contractual services is an exemption allowed by law.
Social & Rehabilitation Services	\$96,675  inDepth Learning  Develop an interactive motivational website focused on the detrimental effects of drug and alcohol	SRS contracted with InDepth Learning to develop and maintain an interactive motivational Website for current or former foster care youth, providing information on the effects of drugs and alcohol to motivate them to improve their attitudes, expectations, and behavior to avoid substance use.	This vendor has developed a specialized product for the State of Kansas. To keep the website up and running, it appears to be necessary for the State to continue to renew this contract with this vendor for compatibility purposes.
Social & Rehabilitation Services	\$1,283,547  Children's Alliance of Kansas  Training for people responsible for providing care to children placed in the custody of SRS	In 2006, SRS entered into a sole-source contract with the Children's Alliance to train people responsible for caring for children placed in foster care. The contract has been renewed for several years, and now runs through June 30, 2010. SRS officials told us Children's Alliance is the only Kansas vendor that owns the rights to the training program (the Model Approach to Parenting and Partnership) the State uses.	The Children's Alliance appears to be the only Kansas vendor who owns the rights to the Model Approach to Parenting and Partnership training program SRS requires. A sole-source purchase appears to be reasonable because no other competition exists.

Figure 1-3

Summary of Sole-Source NON-EMERGENCY Purchases  
We Determined To Be Appropriate as Sole-Source Purchases  
Calendar Years 2007 to 2009

Agency/ Department	Amount, Vendor, and Description of Purchase	Details	LPA Assessment
Transportation (a)	\$13,647  Intoximeters Inc.  Breath analyzers for Law Enforcement Incentive program	For the past few years, KDOT has purchased breath-analyzer equipment with funds from a federal program, and then distributed the equipment to local law enforcement agencies who perform sobriety check points. The federal program uses the money as an incentive for law enforcement agencies to conduct sobriety check points by offsetting some of the equipment costs.	Transportation officials told us they chose Intoximeters as the vendor for the breath analyzers because their breath analyzers are the ones that law enforcement officers already have been trained to use. Transportation officials also told us they feared less participation in the program if the Department insisted on a brand the agencies didn't already use. A sole-source purchase appeared to be reasonable in this case because compatibility is an exception allowed by law.
University of Kansas	\$8,300,000  Memorial Corporation  Consolidated food service operation	In 2004 the University merged its two food-service operations into the Memorial Corporation, which became the sole provider on the Lawrence campus. The Memorial Corporation is a component unit of the University (which is substantially controlled by the University) that acts as its concessionaire. Because it was established as a not-for-profit corporation, University officials submit a request each year to enter into a sole-source contract.	The Memorial Corporation operates under the administrative jurisdiction of the University and is subject to all of the regulations and administrative policies of the University. As a result, the University is essentially contracting with itself to provide food service operations.  Although the University does submit a sole-source authorization form because the Memorial Corporation is a not-for-profit corporation it doesn't need authorization from the Division to keep its food service function in-house.
(a) This purchase was under the agency's delegated authority limit and thus was not reviewed by the Division of Purchases. Source: LPA analysis of Division of Purchases and agency records.			

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***The Division Authorized  
All 12 Emergency Sole-  
Source Purchases  
Appropriately, but in  
Three Instances  
Agency Actions Created  
Problems***

To evaluate the reasonableness of emergency sole-source purchases, we developed criteria that defined circumstances that could legitimately constitute emergency situations. Those situations include:

- matters of public safety
- weather-related damages
- unforeseen and unanticipated events
- responses to emergency mandates
- events that require immediate attention to prevent further damage
- one-time events

The Division of Purchases properly approved all 12 purchases we reviewed as emergency sole-source purchases. However, in three instances we found problems with the requesting agency's handling of the purchase. These problems are summarized below:

- **One emergency sole-source purchase was caused by poor planning on the part of agency officials.** In 2007, officials at the Adjutant General's Department remodeled the east side of the Kansas Army National Guard Armory in Ottawa. Because the parking lot sloped toward the building, water started coming into the building, damaging the new carpeting and sheetrock after heavy rains. In order to fix the problem, agency officials hired Killough Construction to re-grade and resurface the parking lot to achieve proper drainage. Although this situation represented a real emergency, it could have been avoided altogether. Two years earlier the west side of the armory required re-grading because the parking lot sloped toward the building, causing water to come in to the building and damaging the carpet and sheetrock. Officials should have considered this issue when they made the plans for the east side of the armory.

Although it was appropriate for Division of Purchases staff to authorize this as an emergency sole-source purchase, we concluded the emergency was caused by poor planning on the part of agency officials.

- **In two cases, agency officials didn't submit a prior authorization form until after they made the purchase.** In one case, the Kansas Soldiers' Home bought temporary services from Clark Security Services to help address significant deficiencies inspectors had identified at the facility. These security services ensured residents did not leave without permission until new magnetic security doors could be installed. Once the magnetic doors were installed, these services were discontinued. Officials from the Kansas Commission of Veterans' Affairs didn't submit a prior authorization form authorizing this purchase until after they had submitted an invoice for payment.

In the second case, the chiller in the Finney State Office Building in Wichita had to be shut down because of refrigerant leaks. An inspection was needed to determine where repairs were needed, and repairs were made to correct the problems found during the inspection. Officials from the Department of Administration didn't submit a prior authorization form authorizing this purchase until after they had submitted an invoice for payment.

**Figure 1-4**  
**Summary of Sole-Source EMERGENCY Purchases**  
**We Determined To Be Appropriate as Sole-Source Purchases**  
**Calendar Years 2007 to 2009**

Agency	Amount, Vendor, and Description of Purchase	Details	LPA Assessment
Commission on Veterans' Affairs	\$52,000 Kansas Foundation for Medical Care Consultation services to develop a Quality Management Team and Quality Management indicators	The Department on Aging conducted an inspection of the Kansas Soldiers' Home in August 2007. During that inspection, inspectors found 28 deficiencies. Soldiers' Home officials had to act immediately to remedy certain deficiencies that impacted resident safety. The Soldiers' Home used this vendor to help improve quality and correct deficiencies cited during that inspection.	This appeared to be a reasonable emergency purchase because it was in response to an emergency mandate.
Department of Administration	\$32,214 BRW Paper, Inc. 52,000 lbs of 32" 35lb roll stock	Officials were in the process of printing KSA Supplementals when they discovered they would not have enough paper that matched what they were using to finish the job. In addition, the final page count was higher than previous years. The contract vendor wasn't able to provide the product by the time they needed so they sought another vendor. Staff found roll stock for about \$15 per hundredweight less than the current vendor.  The Department isn't able to use this cheaper vendor regularly because it is not the contracted vendor.	This appeared to be a reasonable emergency purchase because it was unforeseen and unanticipated.
Department of Administration	\$25,647 Mead Westvaco 954,000 printed #9 window envelopes and 940,000 printed #10 window envelopes	Another order of envelopes was needed after the original envelopes printed for the Department of Revenue were ruined when there was a flood at the warehouse where they were stored. Department of Administration officials noted the vendor could provide all envelopes needed faster than they could fulfill a partial order.	This appeared to be a reasonable emergency purchase because it was unforeseen and unanticipated.
Department of Health and Environment	\$50,000 Inmark, Inc. Insulated shipping containers for biological substances	The Kansas Health and Environment Lab needed specialized, insulated shipping containers for biological substances that have to be shipped to the lab for testing for H1N1 activity. Because of the recent H1N1 outbreak, additional containers were needed.	This appeared to be a reasonable emergency purchase because it was a matter of public safety and was unforeseen and unanticipated.
Department of Transportation	\$2,060,685 JP Morgan Chase Bank Replacement Liquidity Agent for 2002C Series Variable Rate Demand Bonds	After Standard and Poor's reduced the long-and-short term ratings on KDOT's Liquidity Agent, KDOT's financial advisor suggested switching to a new liquidity agent in order to minimize losses.	This appeared to be a reasonable emergency purchase because it was unforeseen and unanticipated.
Juvenile Justice Authority	\$43,850 Com-Tech Security 57 interior and 15 outdoor security cameras and DVRs	In July 2009, Juvenile Justice Authority officials decided to move all Beloit Juvenile Correctional Facility residents (all females) to the Kansas Juvenile Correctional Facility (all males) by the end of August because of budget cuts. The Kansas Juvenile Correctional Facility had to upgrade the security system to address safety issues that could occur from housing males and females at the same facility.	This appeared to be a reasonable emergency purchase because it was a matter of safety and was unanticipated.

**Figure 1-4**  
**Summary of Sole-Source EMERGENCY Purchases**  
**We Determined To Be Appropriate as Sole-Source Purchases**  
**Calendar Years 2007 to 2009**

Agency	Amount, Vendor, and Description of Purchase	Details	LPA Assessment
Social & Rehabilitation Services	\$20,000 FATB Construction  Hook up utilities and build ADA ramp and stairs for temporary office trailer.	A tornado destroyed the SRS office in Greensburg. After the tornado, agency officials purchased a trailer to serve as a temporary office to replace the building destroyed by the tornado. SRS officials used this vendor to help get the temporary SRS office ready for business.	This appeared to be a reasonable emergency purchase because it was caused by weather-related damages and needed to be resolved immediately.
Social & Rehabilitation Services	\$53,000 High Plains Roofing, Inc.  Temporary repair and entire roof replacement	A storm caused damage to the roof of the swimming pool at the Larned State Hospital (the pool is used for therapeutic and recreational purposes). The entire roof had to be replaced. Because the vendor couldn't replace the roof immediately, they provided some temporary repairs to prevent further damage until the entire roof could be replaced.	This appeared to be a reasonable emergency purchase because it was caused by weather-related damages and needed to be resolved immediately.
University of Kansas Medical Center	\$362,415 Epoxy Coating Specialists  Floor coating for animal care areas	In March 2009, inspectors from the U.S. Department of Agriculture (USDA) inspected the University of Kansas Medical Center animal facilities. Inspectors found several violations of the Animal Welfare Act. USDA officials informed Medical Center officials they could be fined up to \$10,000 per violation per animal per day if the violations were not corrected. In addition, USDA officials contacted the National Institute of Health's Office of Laboratory Animal Welfare about the violations. This vendor put a special, protective coating on the walls and floors to provide a clean and safe environment for the animal-care areas and to fix the violations noted.	This appeared to be a reasonable emergency purchase because it was in response to an emergency mandate.

Source: LPA analysis of Division of Purchases' records.

In both of these cases, the Division of Accounts and Reports rejected making the payment until the Division of Purchases approved the purchase. A Department of Administration official told us he didn't fill out the prior authorization form before the services were provided because he wasn't sure what repairs were needed or what they would cost. It was appropriate for the Division of Purchases staff to authorize both situations as emergency sole-source purchases, but the agencies should have sought authorization before the services actually were provided.

**Figure 1-4** on page 16 shows the results of the other nine purchases we reviewed.

***The Division of Purchases Doesn't Follow a Number Of Best Practices Related To Sole-Source Purchases***

The National Association of State Procurement Officers (NASPO) has established best practices for states to follow in making purchases, including sole-source purchases. These best practices relate to things like the policies and procedures purchasing officials should develop, the actions they should take, and the documentation they should maintain. Our comparisons of these best practices with the Division of Purchases' practices identified problems in three primary areas:

Figure 1-5 Summary of General Best Practices for Sole-Source Purchases		
Best Practice / Control Feature Description	Has Kansas Implemented This Best Practice?	What Kansas Does
<b>Policies and procedures should include...</b>		
... a requirement that the user agency making the request submit a written request to the chief procurement officer that meets the conditions spelled out in rules or policies.	Yes, but not a written policy	The prior authorization form serves as the written request, however, the Division of Purchases doesn't have any <u>written</u> policies about the use of this form.
... various levels of documentation according to the nature of the waiver or the extent to which competition must be limited.	Yes	The Division of Purchases requires the use of the prior authorization form as its documentation. That form, if filled out properly, describes the reasons why competition will be limited for each purchase.
... the establishment of a centralized decision making authority, so that the final decision rests outside the user agency. It also creates a central document repository.	Yes	KSA 75-3737 grants final decision powers to the Division of Purchases. Additionally, the Division maintains the prior authorization forms, which allows it to be considered the central document repository.
... written procedures requiring prior approval for various types of procurements involving waiver of competition or limited competition.	No	The Division of Purchases doesn't have written procedures or guidance documents pertaining to the use of the Prior Authorization form.
... written policies that identify circumstances permitting waiver of competition or allowing limited competition.	No	The Division of Purchases doesn't have written procedures or guidance documents pertaining to the waiver of competition.
... procedures for the using agencies regarding sole-source purchases.	No	The Division of Purchases has no policies or guidance documents for the agencies regarding sole source purchases.
... rules that address situations where prior approval of the chief procurement officer isn't feasible, such as on weekends. In such cases, the rules should permit user agencies to conduct emergency procurements and require them to report the circumstances to the chief procurement officer within a short period of time to obtain his or her approval after-the-fact.	Yes, but not a written policy	The Division has rules that permit agencies to purchase emergency items when prior approval isn't feasible. However, these rules aren't written in a policy or procedure manual.
Source: LPA analysis of the National Association of State Procurement Officers' best practices, K.S.A. 75-3737, and Division of Purchases' officials.		

- **a lack of any written policies and procedures.** Many of the practices Division officials told us they follow are in-line with NASPO's best practices. However, as shown in **Figure 1-5**, the Division has no written policies or procedures. That leaves both agency officials and Division staff with no written guidance on the actions they should take and the documentation they should provide. It also puts the Division at greater risk of inconsistency and error.

The Director of Purchases told us the Division had written policies in the past, but they were discarded because they didn't match actual practices. He also said an effort was made to rewrite the policies and procedures but because the new accounting system will change the policies, the effort has been postponed.

**Figure 1-6  
Results of File Review  
For the 30 Sole-Source Purchases We Reviewed**

Criteria	All Purchases (a)				Emergency Sole-Source Purchases Only	
	Was the prior authorization form in the file?	Was the prior authorization form filled out completely?	Was there any documentation showing Division staff tried to identify other vendors?	Was there any documentation showing Division staff tried to determine if this was a reasonable price or indicate why they couldn't?	Was there any documentation that the agency got verbal price quotes from multiple vendors before submitting the request?	Did agency officials appear to purchase only what was needed?
Yes	29	29	0	0	3	10
No	0	0	26	29	9	1
N/A	0	0	3 (b)	0	0	0
Can't Tell	0	0	0	0	0	1

(a) Although we reviewed 30 purchases, one of those purchases was within the agency's delegated authority. Because the Division didn't review the purchase, it was not included in this file review.  
(b) In these three cases the requesting agency included information on other vendors with their prior authorization form. As a result, it was not necessary for Division staff to also do this work.  
Source: LPA review of Division of Purchases' files.

- **a lack of documentation regarding the actions Division officials had taken in response to agency requests for sole-source purchases.** According to NASPO, the Division should maintain documentation in the procurement file for each purchase showing that Division officials had independently checked to see whether competing vendors existed, and whether the price the agency was paying was reasonable. As **Figure 1-6** shows, for the 29 sole-source purchases we reviewed in-depth, there was no documentation of either action. Although we didn't find documentation in the files, the Division Director told us his staff often make phone calls to the agencies to request additional information about their purchases.
- **a lack of documentation regarding the actions requesting agency officials had taken when they had to make emergency sole-source purchases.** According to NASPO, in emergency situations agencies should obtain verbal price quotes from more than one potential vendor

whenever possible, and should buy only the quantity of goods or services necessary to meet the circumstances. Division officials told us they also have these policies but they aren't written down as part of any formal policy or procedure manual.

**Figure 1-6** shows that, in 9 of the 12 emergency sole-source purchases we reviewed in-depth, there was no evidence in the file suggesting that the agency had sought price quotes. The figure also shows that in 10 of 12 purchases, it appeared the agency ordered only the amount necessary to meet the circumstance. In one of the cases, the agency replaced an entire stock of envelopes but it was faster than only ordering a partial order. In the other case we weren't able to tell if the agency purchased only what was necessary.

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***The Division Reported That Only Two Sole-Source Purchases Greater Than \$100,000 Have Been Challenged In the Last Eight Years***

As mentioned earlier, State law requires Division officials to post sole-source purchases over \$100,000 on the Division's website for seven days. If a vendor thinks it can provide that particular good or service and wants to challenge that purchase as a sole-source, the vendor can contact the Division of Purchases.

**In practice the Division's challenge process meets the requirements in State law, but the policies and procedures relating to investigating a challenge aren't documented in writing.**

When the Division receives a challenge from a vendor, the Director of Purchases indicated he requests information from the challenging vendor to verify the vendor's ability to provide the good or service. The Director said that, if he concludes the vendor is able to provide the good or service, then he requires the purchase to be competitively bid. Conversely, if the Director can't verify that the vendor is able to provide the purchase, he indicated he would deny the challenge and allow the sole-source purchase to go through. While the process the Director described meets what the law requires, it's not in writing. The lack of a written policy for this procedure increases the likelihood of inconsistent treatment.

**We reviewed both challenges and concluded they appeared to be reasonable as sole-source purchases.** Both challenges occurred in the last two years and involved purchases made by SRS.

- In July 2007, Governor Sebelius issued an executive order designating the American Federation of State, County, and Municipal Employees/ Child Care Providers Together (AFSCME) as the union representative of home child care workers. It also directed SRS and KDHE to develop a mutual agreement with the AFSCME that addressed things such as reimbursement rates for subsidized care, health and safety conditions, and any other matters that might improve child care in the State. In February 2009, SRS, KDHE, and the AFSCME signed that agreement. As part of that agreement, SRS, KDHE, and AFSCME agreed to

jointly propose funding options for a Health and Safety Promotional Fund, which would provide grants to help home child care providers get resources to improve the health and safety of children in home daycares. According to SRS officials, the initial \$1.5 million for this fund came from money received from the American Recovery and Reinvestment Act.

In mid-December 2009, SRS submitted a sole-source prior authorization form to the Division of Purchases requesting that AFSCME be the administrator of the fund. In late December 2009, the Kansas Association of Child Care Resource and Referral Agencies challenged this sole-source purchase because it thought it could also administer the fund. The Division Director denied the challenge because the executive order and subsequent agreement between the union, SRS, and KDHE established the fund with the AFSCME.

We concluded this purchase was reasonable as a sole-source because the Governor's executive order clearly specified that AFSCME would be the vendor for matters related to home child care workers. The Division's decision appeared to be appropriate in light of that executive order.

The second challenged purchase also involved SRS. The details of that challenge are below:

- 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 (called a Pre-Paid Ambulatory Health Plan) that required a vendor to administer this new program. In the State plan SRS submitted to the Center for Medicaid and Medicare, SRS officials specified they would be using only one vendor to administer the program, but would look for additional vendors over the next few years. Additionally, a legislative proviso in 2006 mandated that any program related to the State mental health plan must require the providers to associate with community mental health centers.

In December 2006, SRS submitted a sole-source prior authorization form to the Division requesting the Association of Community Mental Health Providers administer the program for \$320 million for one year. SRS officials said they chose this vendor because the Association already had a Statewide network of providers in place that worked with community mental health centers, as required by the legislative proviso, and the program needed to be implemented quickly. Division officials approved the sole-source request and no challenge was received.

In January 2007 the Association of Community Mental Health Providers created a subsidiary, called Kansas Health Solutions, to administer the program. SRS and Kansas Health Solutions signed a two-year contract (starting with fiscal year 2008) with the option for three one-year extensions. However, the dollar amount on the prior authorization form SRS submitted was only for one year. As a result, in July 2008

the Division required SRS to submit an amended form that detailed the costs for all five years of the contract. It was this amended purchase that received the challenge. In August 2008, Cenpatico filed a challenge with the Division stating it could also administer the mental health program (Cenpatico is a managed healthcare organization that runs the behavioral health services for HealthWave).

When Cenpatico filed the challenge they submitted promotional materials to the Division as proof they could administer the program. Division officials, in collaboration with SRS officials, requested additional information because the promotional materials did not provide sufficient evidence that Cenpatico could administer the program. When Cenpatico officials submitted this additional material Division officials then forwarded that information on to SRS for their input. Although, Cenpatico did respond to the request for additional information they did not adequately address all the issues. For example, Cenpatico was asked to submit a detailed work plan describing how they would implement the mental health program in Kansas, but instead they sent information on a program they administer in Arizona. As a result, in October 2008 the Division denied the challenge because Cenpatico didn't provide adequate documentation demonstrating it was capable of administering the program within the required framework.

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 that framework. SRS officials told us they have identified two vendors that, given enough preparation time, might be able to provide this mental health service through a network of providers with ties to the State's community mental health centers. In addition, officials told us they anticipate this contract will be competitively bid when the contract with Kansas Health Solutions expires in 2012. The Division of Purchases' Director also told us he expects this contract to be competitively bid when the current contract expires.

Additional concerns were raised when this audit was considered about the relationship an SRS official had with the Association of Community Mental Health Providers, and whether that official was involved in the decision to award the mental health contract to the Association. We reviewed documents related to SRS awarding of this contract to the Association and spoke to SRS officials who also were involved in the process. We found no evidence of any inappropriate relationships or actions on the part of this individual or SRS. Although this individual was involved in one of the internal work groups he did not appear to be involved in any of the negotiations. Additionally, the individual left the agency approximately nine months before the contract with Kansas Health Solutions was signed.

**Conclusion:**

In general, State law requires agencies to seek competitive bids when buying goods and services. The premise behind seeking competitive bids is to allow the State to get the best price from potential vendors and to promote fair and open competition. However, sometimes it's in the best interest of the State not to seek competitive bids, such as when there is an emergency situation or compatibility with existing services or supplies is a concern.

Based on the purchases we reviewed, the Division of Purchases generally appeared to be approving sole-source purchases appropriately and in accordance with the law. However, the Division needs to do a much better job of documenting the actions it takes and the sole-source rationale it approves for purchases agencies submit. Doing so will provide both internal and external assurance that it is taking appropriate actions and requiring agencies to comply with the law and best practices. The absence of written policies and procedures puts the Division at greater risk of making errors or inconsistent decisions.

**Recommendations:**

1. To help ensure that purchasing requirements set forth in State law are followed, the Director of Purchases should do the following:
  - a. Review the transactions listed in this report as questionable and take action to ensure that these types of transactions are either not approved in the future, or are better documented to clearly demonstrate that they do comply with the State's purchasing requirements.
  - b. Develop a written policies and procedures manual after the State's new accounting system goes on-line in July 2010. At a minimum, that document should contain guidance for sole-source and emergency transactions, as well as other types of transactions overseen by the Division. When completed, the manual should be made available to each member of the Division's staff and to all State agencies. This will minimize the risk that steps in the purchasing process will be skipped or overlooked, and that procedures won't be consistently carried out.
2. To help ensure that the summary reports the Division of Purchases submits to the Legislative Coordinating Council

and other legislative committees are accurate and complete, Division of Purchases staff should do the following:

- a. Include a unique identifier for each transaction, such as the purchase order number, so it's easier to track these purchases through the State accounting system.
- b. Include the month and year of the approval date for the original sole-source transaction that is being amended to make it easier to track the entire transaction from beginning to end.
- c. Make sure that the new accounting system has appropriate edits and checks to ensure that all transactions listed on approved prior authorization forms are included and entered correctly into the quarterly reports.

## APPENDIX A Scope Statement

This appendix contains the scope statement approved by the Legislative Post Audit Committee for this audit on January 20, 2010. This audit was requested by the Legislative Post Audit Committee.

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

The Division of Purchases provides a centralized procurement service for all State agencies. State law provides that all contracts for construction and repairs, and all purchases of and contracts for supplies, materials, equipment and contractual services acquired for State agencies be based on competitive bids. The law goes on to specify seven instances in which competitive bids aren't required—such as when an emergency requires immediate delivery of services or supplies. State law also requires that the Director of Purchases prepare a detailed report at least once each calendar quarter of all contracts over \$5,000 entered into without competitive bids. That report is to be submitted to the Legislative Coordinating Council, Senate Ways and Means Committee, and House Appropriations Committee.

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

A performance audit of this topic would answer the following question.

1. **Has the Division of Purchases authorized sole-source contracts in instances where competitive bids should have been sought?** To answer this question, we would determine the number and dollar value of sole-source contracts the Division of Purchases has awarded in the past few years. We would review the Division's criteria and processes for allowing State agencies to use sole-source contracts and we would identify any weaknesses in those areas. We would review a sample of sole-source contracts awarded by the State in the past few years and determine whether it appears that the use of a sole source contract was justified in each instance. We would conduct other testwork as necessary.

**Estimated time to complete: 4-6 weeks**

## **APPENDIX B**

### **Emergency and Non-Emergency Sole-Source Purchases by Agency in Calendar Year 2009**

This appendix contains a table showing all non-emergency and emergency sole-source purchases made by each agency in calendar year 2009.

**Appendix B**  
**Amount and Number of Emergency and Non-Emergency Sole-Source Purchases**  
**by Agency for Calendar Year 2009**

Agency	Non-Emergency Sole-Source Purchases		Emergency Sole-Source Purchases		Total	
	Amount of Purchases	Number of Purchases	Amount of Purchases	Number of Purchases	Amount of Purchases	Number of Purchases
Adjutant General	\$801,395	25	\$209,189	11	\$1,010,584	36
Administration	\$29,733	2	\$0	0	\$29,733	2
Administration, Budget	\$50,628	5	\$0	0	\$50,628	5
Administration, DISC	\$4,466,150	25	\$0	0	\$4,466,150	25
Administration, Facilities	\$43,294	3	\$88,646	4	\$131,940	7
Administration, Printing	\$72,950	2	\$57,861	2	\$130,811	4
Aging	\$1,582,499	5	\$0	0	\$1,582,499	5
Agriculture	\$773,543	23	\$0	0	\$773,543	23
Attorney General	\$706,000	6	\$0	0	\$706,000	6
Banking Commission	\$150,000	1	\$0	0	\$150,000	1
Behavioral Science	\$20,000	2	\$0	0	\$20,000	2
Beloit Juvenile Correctional Facility	\$45,950	3	\$0	0	\$45,950	3
Board of Healing Arts	\$748,786	29	\$0	0	\$748,786	29
Board of Nursing	\$220,000	1	\$0	0	\$220,000	1
Board of Pharmacy	\$140,000	2	\$0	0	\$140,000	2
Board of Regents	\$444,062	7	\$0	0	\$444,062	7
Bureau of Investigation	\$1,531,773	31	\$24,071	3	\$1,555,844	34
Commerce	\$1,466,569	17	\$0	0	\$1,466,569	17
Conservation Commission	\$288,880	3	\$0	0	\$288,880	3
Corporation Commission	\$134,792	4	\$5,000	1	\$139,792	5
Correctional Industries	\$1,650,818	7	\$0	0	\$1,650,818	7
Corrections	\$578,760	14	\$78	1	\$578,837	15
Dental Board	\$78,040	1	\$0	0	\$78,040	1
Education	\$6,733,827	36	\$0	0	\$6,733,827	36
El Dorado Correctional Facility	\$87,994	3	\$13,304	2	\$101,298	5
Ellsworth Correctional Facility	\$74,491	4	\$30,531	2	\$105,022	6
Emporia State University	\$1,229,506	34	\$24,359	4	\$1,253,865	38
Fire Marshal	\$9,350	1	\$0	0	\$9,350	1
Governors Task Force	\$23,964	1	\$0	0	\$23,964	1
Health & Environment	\$12,096,694	173	\$105,767	6	\$12,202,461	179
Health Care Stabilization	\$30,000	1	\$0	0	\$30,000	1
Health Policy Authority	\$7,948,504	22	\$0	0	\$7,948,504	22
Highway Patrol	\$396,412	16	\$5,936	1	\$402,348	17
Historical Society	\$26,761	1	\$10,000	1	\$36,761	2
Housing Resources	\$16,484	1	\$0	0	\$16,484	1
Human Rights Commission	\$81,096	3	\$0	0	\$81,096	3
Hutchinson Correctional Facility	\$151,958	4	\$128,942	6	\$280,900	10
Insurance	\$9,700	1	\$65,338	3	\$75,038	4
Judicial Council	\$93,900	3	\$0	0	\$93,900	3
Juvenile Justice Authority	\$421,142	5	\$0	0	\$421,142	5
Kansas Juvenile Correctional Complex	\$87,444	7	\$117,834	9	\$205,279	16
Kansas State University	\$4,936,718	142	\$110,854	5	\$5,047,572	147

Agency	Non-Emergency Sole-Source Purchases		Emergency Sole-Source Purchases		Total	
	Amount of Purchases	Number of Purchases	Amount of Purchases	Number of Purchases	Amount of Purchases	Number of Purchases
Kansas Water Office	\$913,056	9	\$0	0	\$913,056	9
KPERS	\$15,000	1	\$0	0	\$15,000	1
Labor	\$3,151,377	10	\$43,904	2	\$3,195,281	12
Lansing Correctional Facility	\$72,279	3	\$0	0	\$72,279	3
Larned Correctional Facility	\$36,640	2	\$0	0	\$36,640	2
Larned State Hospital	\$1,142,605	25	\$46,696	3	\$1,189,301	28
Lottery	\$120,587	4	\$15,471	2	\$136,057	6
Neurological Institute	\$89,300	4	\$0	0	\$89,300	4
Norton Correctional Facility	\$0	0	\$6,201	1	\$6,201	1
Osawatomie State Hospital	\$325,281	13	\$18,464	2	\$343,744	15
Parsons State Hospital	\$346,923	2	\$0	0	\$346,923	2
Pittsburg State University	\$716,910	15	\$0	0	\$716,910	15
Pooled Money Investment Board	\$45,900	1	\$0	0	\$45,900	1
Racing & Gaming Commission	\$177,900	6	\$0	0	\$177,900	6
Rainbow Mental Health	\$401,850	8	\$0	0	\$401,850	8
Real Estate Commission	\$5,618	1	\$0	0	\$5,618	1
Revenue	\$34,775,042	13	\$0	0	\$34,775,042	13
School for the Blind	\$6,240	1	\$0	0	\$6,240	1
School for the Deaf	\$41,719	3	\$0	0	\$41,719	3
Sentencing Commission	\$16,650	1	\$0	0	\$16,650	1
Soldiers' Home	\$66,405	3	\$48,748	2	\$115,153	5
SRS	\$12,176,630	109	\$86,663	5	\$12,263,293	114
State Fair	\$0	0	\$75,805	1	\$75,805	1
State Library	\$1,438,322	5	\$0	0	\$1,438,322	5
State Treasurer	\$25,000	1	\$0	0	\$25,000	1
Topeka Correctional Facility	\$0	0	\$8,555	2	\$8,555	2
Transportation	\$2,877,107	86	\$5,391,581	22	\$8,268,688	108
University of Kansas - Medical Center	\$3,461,333	30	\$448,829	2	\$3,910,162	32
University of Kansas	\$0	0	\$87,000	1	\$87,000	1
Veterans' Affairs	\$7,000	1	\$0	0	\$7,000	1
Veterans' Home	\$136,600	2	\$86,483	1	\$223,083	3
Water Office	\$21,250	2	\$0	0	\$21,250	2
Wichita State University	\$2,822,911	94	\$0	0	\$2,822,911	94
Wildlife & Parks	\$796,145	49	\$21,083	11	\$817,228	60
Winfield Correctional Facility	\$12,563	2	\$34,799	3	\$47,363	5
<b>Grand Total</b>	<b>\$116,722,708</b>	<b>1,182</b>	<b>\$7,417,989</b>	<b>121</b>	<b>\$124,140,697</b>	<b>1,303</b>

Source: LPA analysis of Division of Purchases' records.

## **APPENDIX C**

### **Agency Response**

On April 13, 2010 we provided copies of the draft audit report to the Department of Administration. Its response is included as this Appendix.

April 20, 2010

Ms. Barbara J. Hinton  
Legislative Post Auditor  
800 SW Jackson St, Suite 1200  
Topeka KS 66612

Dear Ms. Hinton

Thank you for the opportunity to review the Legislative Post Audit's report entitled "*Sole-Source Contracts: Determining Whether Sole Sourcing Is Being Used When Other Vendors Could Supply the Goods and Services*".

From the first day each new member of the Division of Purchases staff begins employment, we emphasize that public procurement is about seeking competition to get the best quality and price for agencies. Additionally, we regularly engage our agency counterparts in significant discussions about the use of the Prior Authorization (PA) process, and on individual PAs as they are submitted for approval.

I appreciate the recommendations of the auditors and expect that the recommendations will result in appropriate changes that bring more formality to the review of Prior Authorizations for non-competitive purchases. Certainly the implementation of the SMART Financial Management System will improve our management tools and eliminate duplicative data entry as well. Our goal ever remains to improve our operations and to provide quality services for our state agency customers.

Sincerely,



Chris Howe, CPPB, CPPO  
Director of Purchases

cc. Duane Goossen, Secretary of Administration