



State of New Mexico
OFFICE OF THE STATE AUDITOR

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State Auditor Tim Keller Releases Special Audit of State Purchasing Practices
Comprehensive study includes nearly \$1 billion in procurement through loopholes in the competitive bidding process

SANTA FE, NM – Today, State Auditor Tim Keller released a multiagency audit of State Agency procurement practices from July 2013 through July 2016. The report reveals that in fiscal year 2016, over \$1 billion worth of state spending did not go through the competitive procurement process designed to safeguard public funds from patronage, fraud and corruption. In addition, over \$5 billion of healthcare dollars were spent through exemptions to the Procurement Code. The report highlights both the level of reliance on contracts procured with sole source, emergency and other exceptions and exemptions and violations of the Procurement Code.

“Our audit reveals billions of dollars of state purchasing passing through loopholes,” stated State Auditor Tim Keller. “We found examples of agencies using emergency exemptions when there is no real urgency, sole source exemptions that did not comply with state law, and a significant gap in campaign contributions disclosures. The spirit of procurement is to safeguard tax dollar funded contracting from fraud, waste and abuse. Strong directive executive leadership and a reworking of the law to make bidding more effective and efficient would have a game-changing impact on creating local jobs, cutting red tape, and providing essential services to New Mexicans at the best value.”

The State Auditor initiated the audit to address various concerns related to the competitive bidding process. The State Auditor selected multiple agencies for the special audit due to their roles in procurement oversight: the Department of Finance and Administration (DFA), the General Services Department (GSD) and the Department of Information Technology (DoIT).

Key findings from the audit include:

- *Sole source procurements:* The sole source exemption was used in over \$56 million worth of purchases in FY 2016. The top agencies by sole source expenditures in FY 2016 were: Corrections Department, Public Education Department, Department of Health, and Taxation and Revenue Department. The audit also found instances of agencies using the sole source exemption inappropriately and in some cases, a lack of adequate scrutiny of sole source justifications.
- *Emergency procurements:* The emergency exemption was used in \$105 million worth of purchases in FY 2016. The top agencies by emergency expenditures in FY 2016 were: Corrections Department, Energy Minerals and Natural Resources Department, Department of Transportation, and General Services Department. The audit reveals that

some state agencies are using the emergency exemption in circumstances that are not permitted, due to agencies' desire for convenience and misperceptions about the regular procurement process.

- *Widespread exemptions:* The Procurement Code contains exemptions for certain agencies and transactions. The largest share of exempt purchasing is between a state agency and another state agency or local public body. Other exemptions are used for private vendors, the top recipients of which in FY 2016 were United Behavioral Health, Talweg Creative Inc., Merck Sharpe & Dohme, Pfizer Inc., and Glaxosmithkline.
- *Length of time:* The average time for various agencies to approve a contract is over six months, including time for RFP publication, bidder responses, response evaluation, and required approvals. When laws and regulations are too complex and time-consuming, agencies are more likely to push the boundaries of available short-cuts.
- *Campaign Contribution Disclosure:* Procuring agencies are not complying with Procurement Code requirements to obtain Campaign Contribution Disclosure Forms to prevent the improper influence of procurement decisions through campaign contributions.

To address these findings, the OSA developed best practices including: moving towards a centralized oversight procurement office, as the Legislative Finance Committee has long recommended; enhanced training and a culture of support for state personnel involved in procurement; implementing a “when in doubt, bid it out” practice; and reducing opportunities for data entry errors.

The State Auditor also recommends that the Legislature consider a comprehensive review of the Procurement Code, including revisiting exceptions and exemptions, imposing dollar limitations on exceptions and exemptions, addressing loopholes and expanding campaign contribution disclosure laws.

The special audit is part of a series of work from the OSA to shine a light on procurement concerns in New Mexico. On Thursday, the OSA will release another comprehensive report on out-of-state contracting and conduct training sessions for procurement professionals and local businesses on ways to support in-state businesses: https://www.saonm.org/media/news_pdf/8-24-17_OSA_to_release_procurement_report.pdf

The Special Audit is available here: https://www.saonm.org/audit_reports/detail/11070

The Office of the State Auditor helps government work better by providing transparency and accountability for government spending; informing policy choices; and tackling fraud, waste and abuse. OSA is an independently elected executive agency responsible for examining the use of public dollars in New Mexico.

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