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Justin Johnson, Secretary

MEMORANDUM

TO: House and Senate Committees on Government Operations and on Appropriations, House Committee on Corrections and Institutions, and Senate Committee on Institutions.

FROM: Justin Johnson, Secretary, Agency of Administration
Michael Obuchowski, Commissioner, Dept of Buildings and General Services *MJO*

DATE: September 30, 2016

RE: Purchasing and Contracting Report

In accordance with Acts of 2016, No. 172 Section E.100.4 (the "Act"), the Secretary of Administration and the Commissioner of the Department of Buildings and General Services hereby submit this plan for the State's purchasing and contracting services that will result in improved State services and increased financial savings.



PURCHASING AND CONTRACTING REPORT
Agency of Administration

Submitted by: Justin Johnson, Secretary of Administration, and

Michael Obuchowski, Commissioner of BGS

Date: September 30, 2016

TABLE OF CONTENT

- 1. EXECUTIVE SUMMARY: 3
- 2. PROBLEM STATEMENT: 5
- 3. SOLUTION: 5
- 4. BENEFITS ANALYSIS: 6
- 5. ASSUMPTIONS AND CONSTRAINTS:11
- 6. STAKEHOLDER RECOMMENDATIONS.....12
- 7. CONCLUSION.....13

1. EXECUTIVE SUMMARY:

In accordance with Acts of 2016, No. 172 Section E.100.4 (the “Act”), the Secretary of Administration and the Commissioner of the Department of Buildings and General Services hereby submit this plan for the State’s purchasing and contracting services that will result in improved State services and increased financial savings. We recommend moving forward with consolidation of more of the State’s procurement responsibilities within the Office of Purchasing & Contracting (OPC) and elevating the OPC to be a direct report to the Secretary of Administration. It is achievable and serves the following purposes:

- Provides an enterprise approach to acquisition of services as well as commodities
- General potential cost savings through eliminating redundancies
- Leverages statewide spending on services as well as commodities
- Increases transparency and accountability in State procurement and contracting
- Decreases risks associated with failed contracts, protests and legal action
- Creates efficiencies through streamlined operations and processes
- Effectively leverages existing procurement and contracting expertise
- Positions the State for next generation integrated e-procurement systems

Procurement Reform or Reengineering is not a new concept. In the past few years, an increasing number of states have reformed or reengineered their procurement systems to improve efficiencies, increase transparency, ensure an open and fair procurement process, maximize the buying power of the state and generate savings.

Vermont law currently only authorizes the OPC, residing within BGS, to centrally manage COMMODITY purchases (fuel, supplies, materials, equipment). Vermont has a decentralized approach to procuring and contracting for services. Each department or agency (referred to together herein as “agency”) is in charge of the process of procuring and contracting for services from “cradle-to-grave”. This allows, to a great extent, each agency to apply its own individual interpretation of Bulletin 3.5 and style of contracting which may fall short of the “best practices” intended by Bulletin 3.5 to protect the best interests of the State and the taxpayers. Since 2004 the Office of the Auditor of Accounts has produced no fewer than five audit reports, non-audit reports and memoranda addressing agency procurement and contracting practices. Inconsistent State procurement and contracting practices may also make it more difficult for the vendor community to participate in the procurement process. The consolidation of procurement processes at the executive level with clear authority from the Legislature and the Secretary of Administration to set governance, issue policy and actually direct certain agency procurements will facilitate procurements that are more uniform, transparent and efficient; reduce the risk contracts will have inappropriate terms and conditions and payment provisions; and enable the State to take full advantage of its collective purchasing power.

As stated in subsection (b) of the Act, the evaluation shall include recommendations from the Chief Performance Officer, the Director of the Office of Purchasing and Contracting, the Commissioner of Finance and Management and the Attorney General. This Plan was done in consultation with the Chief Performance Officer (Susan Zeller), the Director of the Office of Purchasing and Contracting (Deborah Damore), and the Office of the Attorney General (AAG Jaye Pershing-Johnson), all of whom support this Plan and the recommendations herein.

Additional Comments are provided by the Commissioners of Finance & Management and BGS:

Andy Pallito: *"This move will allow for a more seamless review of contracts, by the Purchasing Division, prior to signature by the Secretary of Administration. Currently the Department of F&M does these reviews, however, they are more appropriately placed within the Purchasing Division";*

Michael Obuchowski: *"I am supportive of the initiative and it should have happened several years ago".*

2. PROBLEM STATEMENT:

The Legislature has given the Commissioner of BGS centralized authority to purchase fuel, supplies, materials and equipment (“goods”) as well as certain construction-related services and building custodial services. The Legislature recognized that this central purchasing authority would reduce redundancies, facilitate statewide purchasing and reduce costs. We recommend expanding the role of the OPC to facilitate the procurement of services for all of the same reasons. Further, given the complex nature of procurement and contracting for services, we recommend consolidating all purchasing authority directly within the Office of the Secretary of Administration which issues the State’s contracting Bulletin 3.5.

Between 2001 and 2014, executive branch contracts for services increased 180%, from 719 to 2,011. The overall value of contracts for services over this period grew 300%, from \$130.4 million to \$519.7 million.¹ In most cases, services contracts can represent higher risk and/or involve greater dollar spend due to the nature of the service. As an example, the State has made and continues to make considerable investment to replace outdated legacy IT systems with modern technology for health and human services, human resources, public safety, transportation, tax and finance and administration. These contracts are generally for periods greater than one year and present the State with an enormous degree of cost and risk.

Centralized service procurement at the executive level will play a greater role to increase the success rate of these associated contracts and programs. Through common best practice solicitation and award processes, OPC will work with agencies to design and implement procurements and contracts that enable better controls and management over the contract life. The OPC can offer training for best practices in service contract management for the contract and project managers. Increased service contract success equates to a lower cost of government, and increased delivery of intended services to our taxpayers, at economies of scale which often escape us at present.

Currently, in many instances agency program managers are also handling the procurement function. This results in an inefficient allocation of scarce State resources and is problematic for the State from a risk perspective. Centralization permits agency program managers to focus their expertise as subject matter experts on defining the contract requirements for purposes of the procurement and contracting and utilizes the expertise of the OPC to conduct the procurement and ensure that those particular projects or purchases that are high dollar and / or high risk are getting the attention, resources, and expertise needed for the procurement.

3. SOLUTION:

We propose creating a centralized Division of Purchasing & Contracting within the Office of the Secretary of Administration and structured as follows:

- Centralized procurement authority, one voice one mission
- Maintain a Director who is a procurement professional and a classified employee.

¹ From the Auditor of Accounts, report to the Agency of Administration; Sole Source Contracts: Extraordinary Use in Ordinary Times, December 14, 2015; Non-Audit report 15-08, p. 5, citing Workforce Reports by the Department of Human Resources which do not reflect peaks and troughs during this period.

- Central governance (control) over all processes, policies and procedures, models and templates (i.e. model RFP forms and pre-approved contract forms to be used by agencies)
- Standardized forms/templates, process, centralized training, record keeping, centralized review and posting process, standardized bid opening, bid review, contract award and vendor notification processes.
- State agencies are mandated to use statewide contracts for all commodities and for services whenever available.
- Services shall be bid by the OPC; OPC assists with the production of the RFP, reviews the RFP prior to posting and posts the RFP
 - OPC manages RFP public opening with representatives of the agency to ensure proper handling of bids
- OPC reviews all contracts for services; OPC experts will replace Finance & Management Budget Analysts in reviewing contracts prior to Secretary of Administration signature.
 - Elimination of separate database maintained by F&M.
- Adequate staffing within the AGO and OPC to provide the necessary expertise required to handle procurement and contracting issues on an enterprise basis and support the OPC contracting agencies
 -
- Statutory revisions:
 - Commodities: BGS Commissioner currently has authority for commodities in Title 29. We recommend those provisions would be moved from Title 29 into Title 3 into a new section which clarifies the role of the Division of Purchasing and Contracting under the authority of the Secretary of Administration. At the very least, those statutes that reference the Commissioner in Title 29 would need to be changed to the Secretary.
 - Contracts for service: Currently state statutes prescribe very little authority for governance and oversight over procurement processes and contracts for services. That said, the Secretary, under its general authority to oversee the business of the Executive Branch, issues Bulletin 3.5. (In addition, the AGO reviews all contracts for service over \$25,000 to certify the engagement is not contrary to the spirit and intent of the classification plan and merit system principles set out in V.S.A. Title 3, Chapter 14.) We recommend consolidating all procurement authority in Title 3 under the powers and duties of the Secretary with authority to delegate this responsibility to the Director of OPC.

4. BENEFITS ANALYSIS:

Centralization of OPC maximizes opportunities to:

- Achieve cost savings through eliminating redundancies at agency level and improved spend management
- Leverage statewide spending on services as well as commodities
- Consolidating limited resources
- Increase transparency and accountability in State procurement and contracting
- Create efficiencies through streamlined operations and processes
- Position the State for next generation integrated e-procurement systems

- Legislature- or Governor-driven ethics reform and accountability

A. Generates Potential Cost Savings Through Eliminating Redundancies And Improved Spend Management

Centralization will serve to offset procurement infrastructure costs using best practices and forward thinking strategies. OPC will be able to strategically source both goods and services requirements rather than having every agency contract for these requirements independently.

B. Leverages Statewide Spending On Services As Well As Commodities

A centralized OPC permits the State to take advantage of a greater aggregation of volume which leads to more aggressive pricing. This has proven to be the case with commodities and the intent with centralization is to maximize the State's global purchasing power across all goods and services suppliers. This not only results in lower per item costs for goods, but also incentivizes service providers to offer discounts and increase soft benefits (favorable terms and conditions).

Another tool which could be expanded through centralization is cooperative multi-state purchasing of services. Although Vermont is a small state it has the same needs and requirements as larger states. As such, we continually look for opportunities to leverage our spending with cooperative purchasing as one of those options. BGS currently has specific statutory authority to allow cooperative purchasing arrangements for goods. This could be expanded to include services and could maximize options on the national level, northeast, and/or with just one other state, political subdivision and/or school. Other cooperative opportunities include GSA, "piggybacking" on another state's procurement effort, or a pure cooperative whether with one other state or on the national level.

C. Increases Transparency And Accountability In State Procurement And Contracting

Centralization will serve to standardize procurement practices and provide for consistency in messaging, predictability of operations and consistent interpretation and implementation of purchasing and contracting policies and procedures (Bulletin 3.5) which prescribes the manner in which all goods and services are to be procured by State agencies. A central OPC at the executive level will facilitate implementation and administration of the State's priorities and goals, including effective utilization of performance measures, econometric modeling, proper classification of contract employees versus independent contractors and proper coding for tracking and reporting on procurements and contracting.

Standardization will also facilitate relations with the contracting and vendor community. There should be few, if any, deviations in process which are currently found from one agency to the next. Further, there will be consistency in negotiated pricing and terms and conditions among contracts with the same vendor. Vendors can rely on one process and a consistent contracting approach. Examples include RFPs which will all look the same and be issued in a consistent manner; bidders' conferences will be run with a consistent agenda and terms and conditions with a single vendor will not vary by agency.

A central OPC will allow for centralized tracking and reporting on procurements and contracts. BGS is routinely asked by the Legislature about procurement and contracting rules, and statewide

contracts. Currently, BGS can only tell that part of the story relating to the procurement of commodities and BGS contracting for services. A central OPC could report about the number, types, selection processes, size and management of all contracts for services as well as commodities.

Since 2004 the Office of the Auditor of Accounts has issued no fewer than five (5) audit reports, non-audit reports and memoranda addressing agency purchasing and contracting practices, with the most recent two in 2015, Use of Non-Competitive and Non-Standard Contracts Contrary to State and Agency Requirements and Sole Source Contracts: Extraordinary Use in Ordinary Times.² In this report the Auditor noted the high frequency of sole source contracts across the five departments and agencies in the analysis and raised questions about the effectiveness of the State's contract management. The report noted:

In that "the State prescribes to a free and open bidding process that affords all businesses equal access and opportunity to compete for state contracts for goods and services," state officials have a responsibility to the public and to Vermont businesses to make every effort to competitively bid contracts.

The report also noted with approval the Secretary of Administration's determination to centralize reporting on manner of selection to simplify the collection of this information and facilitate monitoring and evaluation of the State's contracting practices. Further the Auditor noted the future implementation of a centralized procurement system (discussed below).

Finally, the intent around relocation of the OPC as a Division of the Office of the Secretary of Administration is to invest OPC guidance with the full force and authority of the SOA, making agency compliance with OPC procurement practices mandatory and measurable as opposed to voluntary and advisory in nature. While each agency will remain responsible for contract compliance, implementation and enforcement, centralization of the OPC will create a single source accountable for procurement practices across State agencies.

D. Decreases Risks Associated With Failed Contracts, Bid Protests And Legal Action

State agency use of non-standard procurement processes and non-standard contracts increases the risk of failed contracts stemming from both the failure to adequately prepare for a procurement and the failure to include appropriate performance requirements, performance-based payment provisions and terms and conditions which adequately address State risks. Further, State agency use of non-standard procurement processes and non-standard contracts increases the risk that bidders protest or threaten to protest vendor selection and potentially challenge a selection through court action. The intent of a central OPC is to reduce these risks, particularly with respect to high risk, high dollar procurements through the use of standardized processes, a single point of contact and expert contract negotiation.

² Keys to Success - Improving Accountability, Contract Management & Fiscal Oversight at the Department of Corrections 2004, Special Review, Vermont State Auditor, May 26, 2004; The Basics of Contract Management in Vermont State Government: Reducing the Risks and Increasing the Benefits of Service Contracts Through Stronger Contract Management and Monitoring, Special Report, Vermont State Auditor, September 8, 2004; Vermont Health Connect: Status of Planned Enhancements, Vermont State Auditor Rpt. No 15-09, November 18, 2015; Sole Source Contracts: Extraordinary Use in Ordinary Times, December 14, 2015, Non-Audit Report 15-08; Agency of Education: Use of Non-Competitive and Non-Standard Contracts Contrary to State and Agency Requirements, Vermont State Auditor, Rpt. No. 15-10, December 17, 2015.

It is often the case that an individual in an agency that has program or project management accountability is tasked with the procurement activity for a specific project. These individuals have the technical acumen for the project (subject matter expertise), but not the procurement and contracting expertise (process / administration expertise). Centralization brings greater expertise on compliance with the process and brings a more focused and consistent application of risk mitigation.

The use of dedicated expert legal counsel will also decrease these risks. The Office of the Attorney General currently has two attorneys focused primarily on the needs and requirements of State procurements and contracts. In addition, there are embedded Assistant Attorneys General at AOT and AHS who have developed expertise in this area. The AGO is responsible for reviewing all contracts over \$25,000 for consistency with applicable law and “as to form” pursuant to Bulletin 3.5. The AGO currently negotiates and reviews complex contracts, including IT contracts, for most Executive Branch agencies, the Office of the Treasurer, the Secretary of State and the E 911 Board. The AGO has also worked in consultation with the Judiciary on procurement and contracting issues. Examples include contracts for the BGS Montpelier Heat Plant, the HR timekeeping system, the Finance and Management budget management system, the Tax Department electronic integrated tax system, and electronic elections and corporations’ administration systems for the Secretary of State. Additional services include advice on procurement policy (including Bulletin 3.5), legal and policy interpretation, contract enforcement, advice on the creation and updating of all contract forms and templates, contract disputes, training, and any other legal requirements of the OPC.

In some cases, agencies rely on in-house counsel to assist with procurement and contract issues. Like program staff most in-house counsel are typically hired for their subject matter expertise related to the particular agency mission and not for their expertise in State procurement policies and processes or contract law. In-house counsel called upon to negotiate a contract may agree to terms which the AGO may not approve in accordance with applicable law or Administrative Bulletin. Further, it is the role of the AGO to defend or represent the State in contract disputes resulting in litigation or mediation. Most states that have “centralized” procurement responsibilities have at least one dedicated attorney, and more often than not, a dedicated legal team, who focus solely on the needs and requirements of the procurement / contracting process. In Vermont, the AGO provides the necessary expertise required to handle procurement and contracting issues on an enterprise basis and supports the OPC and contracting agencies. A centralized OPC would facilitate the allocation and prioritization of AGO resources dedicated to this purpose. Because of the importance of the goals of decreased risk of failed contract as well increased efficiencies and improved services. It is important to ensure appropriate AGO resources are available for this purpose.

E. Create Efficiencies Through Streamlined Operations And Processes

The sole purpose of the OPC has historically been statewide procurement of commodities. OPC also routinely provides interpretation and guidance to agencies on procurement activities, and provides outreach and training to agencies on the subject matter of procurement as requested. In many instances, the guidance requested is for procurement for services and the guidance and recommendations for a path forward are around understanding of process, procedures and appropriate documentation.

As discussed above, in many instances the program and technical managers are tasked with the procurement function for a particular project and these program and technical managers have no procurement or contracting knowledge or expertise. Very often these individuals are completely unaware of the existence of Bulletin 3.5, or of OPC and Risk Management as support resources. Centralization would allow the program and technical staff to focus on their subject matter expertise,

manage their program goals, identify program and technical requirements, and partner with OPC as a resource to conduct the procurement utilizing the best means possible. Appropriate allocation of staffing resources should result in better services and better contracting outcomes.

A centralized OPC would become a central repository of procurement and contracting data. Today there are a handful of systems being used across the State for managing agency contracts and purchases. These are stand-alone systems which do not interact with each other. Consequently, any need to compile statewide requirements results in a very protracted and time consuming effort, not to mention an inordinate margin of error inherent to pulling data streams together from disparate systems.

F. Positions The State For Next Generation Integrated E-Procurement Systems

The State is committed to the implementation of a centralized eProcurement system. Electronic processes for procurement are the norm across the country. Centralizing OPC should be thought of as a vital and pivotal “First Step” toward the “Next Step” of eProcurement. The VISION upgrade to 9.2 (the State’s financial management system) and the implementation of eProcurement will be made easier and more manageable with the advent of a centralized procurement model today. eProcurement is the natural extension of the centralization process and the transition to eProcurement will only be better and easier with centralization.

- VISION Statewide Financial System upgrade: the RFP (“Request for Proposal”) for the VISION Financial System upgrade is under final review. The RFP’s expected release date will be October 15, 2016. This RFP focuses on upgrading the current system functionality to a supported version.
- An RFI (“Request for Information”) is under development to gather information to explore options and costs for a new system vs. upgrade. The RFI release and response periods will be timed to receive the responses in the same time frame as the upgrade RFP;
- A second RFP for the e-Procurement front end is in development with a projected release date of mid-November 2016;
- Finally, an RFP for additional Project Costing and Project Management module(s) will be developed after the determination of vendor for the primary system is made. Project Costing and Project Management is focused on replacing VTrans’ STARS project system and will be primarily utilized by AOT, BGS, ANR, AOA and AHS for construction and IT Projects.

Centralized state purchasing organizations are playing a greater role to increase the success rate of contracts and programs. Through common best practice solicitation and award processes, central purchasing organizations are able to work with agencies to design and implement contracts that enable better controls over the contract life. Increased service contract success equates to a lower cost of government and increased delivery of intended services to our taxpayers.

BGS actively holds 875 contracts of which just over 500 are commodity contracts with the remaining balance being service contracts. The FY 2016 Contracts for Service Stats are identified below:

FY 2016 Contracts for Service Stats, by Range				
% Number Contracts	# Contracts	Contract Value Range	Total Dollars	% Dollars by Range
0.30%	5	\$10 M & Over	\$ 82,600,000.00	24.9%
0.30%	6	\$5 M - <\$10 M	\$ 42,468,878.75	12.8%
1.90%	34	\$1 M - <\$5 M	\$ 64,229,443.55	19.4%
3.30%	60	\$500 K - <\$1 M	\$ 41,765,146.44	12.6%
5.50%	99	\$250 K - <\$500 K	\$ 33,016,540.11	10.0%
13.60%	246	\$100 K - <\$250 K	\$ 37,907,570.72	11.4%
10.10%	182	\$50 K - <\$100 K	\$ 12,401,601.34	3.7%
10.50%	190	\$25 K - <\$50 K	\$ 6,544,841.25	2.0%
54.50%	983	Under \$25 K	\$ 10,387,753.50	3.1%
100.00%	1805	GRAND TOTAL	\$ 331,321,775.66	100.00%

5. ASSUMPTIONS AND CONSTRAINTS:

Even with the new organizational structure, collaboration and communication between OPC and each agency will be key. There will always be a need for the OPC to work directly and continuously with the agencies to timely and effectively source agency needs in the best possible manner at the best possible price.

We are in the process of reinstating the Purchasing Advisory Council (PAC) which is to be composed of agency and OPC personnel. The PAC will provide a forum for discussion of policies and procedures, and make recommendations for the promotion and improved effectiveness of the statewide purchasing function.

This centralization effort will leave the decision to purchase services with each agency, however the purchasing process for all contracts will be conducted through OPC. Further, contract management, compliance and enforcement will remain the responsibility of each agency, but OPC will be available for training with respect to best practices. Agencies may also buy services from contracts Statewide enterprise contracts administered by OPC.

It is foreseeable that certain agencies will resist the structural changes required by this action.

Centralization may also be perceived by some as simply creating hurdles to the way business is currently conducted rather than improving processes and practices. It is with this in mind that the OPC anticipates developing delegation levels, dollar and risk thresholds. Initially, all agencies will have the authority to conduct procurements and enter into contracts for services without the involvement of OPC. Threshold-based delegation(s) will be established to provide progressive increase authority to be achieved through best practices training and certifications.

6. STAKEHOLDER RECOMMENDATIONS

In accordance with subsection (b) of the Act, consideration was given to “interested stakeholders” which includes at least three vendors that regularly contract with the State. Six vendors were contacted and asked a series of questions.

The questions posed included:

- As part of the State’s continuing effort to operate in a fair and transparent fashion, we are evaluating electronic procurement systems (web-based) which will not only centralize purchasing across the State, but will provide easy access for vendors and service providers alike.
- Before we embark on such a far reaching endeavor, we thought it prudent to reach out to you for feedback...on how you feel the State conducts itself now in this important area but also how you foresee doing business with us in a more open and accessible web environment.
- How would you characterize your company’s ability to conduct business with the State of Vermont under existing practices?
- What hurdles, if any, are you confronted with when trying to acquire state business? Are processes clear? Do you find ambiguity in the system? How seamless of a routine would you say the State currently offers your company in any given bidding process?
- Do you believe you have equal footing (fair and impartial treatment) with other vendors? Would a more open procurement environment, one in which you as a bidder, would have access to general procurement activity, at the touch of a few keystrokes, be of significant value to you?

Overall input received:

- Procurement is perceived as fair and open.
- Standardization across the state is not consistent.
- Concern expressed over their being a consistent “chain of command” to elevate issues to.
- Concern expressed over payment schedules not clearly defined in the contracts. Although the state indicates payment in 30 days; it is more like 60-90 days and in some cases 120 days which causes additional issues.
- One vendor indicated the State would benefit the “perspective of the contractor” on some construction projects when the design and plans were being developed by the state and their designers. If you had a contractor not involved in the project, and wasn’t a bidder for the work, they could provide a “contractor perspective”; could save the state time and money. The contractor could point out a couple tweaks that could make it easier for a contractor to bid, which ultimately saves time and money. Otherwise, they are bidding per the “plan”, etc.

7. CONCLUSION

A single procurement office at the executive level increases strategic value through leveraged state spend, competition, negotiations, eProcurement solutions, increasing service contract success and creating and sustaining private sector jobs. In accordance with the subsection (c) of the Act, we believe the recommendations for a centralized OPC with elevated stature and improved visibility under the Secretary of Administration:

- (1) Create a mechanism to enforce uniform compliance with State contracting law and procedures;
- (2) Achieve cost efficiencies and service improvement; and
- (3) Facilitate the implementation of e-procurement and contract managements systems.

For these and other reasons presented in this Plan, we recommend moving forward with the consolidation of more of the State's procurement responsibilities within the Office of Purchasing & Contracting (OPC) and elevating the OPC to be a direct report to the Secretary of Administration.