

Office of
LEGISLATIVE AUDITOR GENERAL
State of Utah

REPORT NUMBER ILR 2002-C

SEPTEMBER 2002



Hiring Practices of the CIO and ITS

Our office has conducted a limited review of hiring practices surrounding former [Excite@home](#) employees. On June 1, 2002 an anonymous letter was circulated which contained allegations concerning the hiring practices of the state's Chief Information Officer (CIO) and the current Director of Information Technology Services (ITS), both former employees of [Excite@home](#). Specifically, the letter alleges that the CIO and the ITS director have caused the manipulation of state hiring and procurement systems in order to hire former employees of the now bankrupt [Excite@home](#) organization.

We believe favoritism towards former [Excite@home](#) employees has occurred. While individual cases may not raise strong concerns, taken together we believe these cases display a pattern which does yield strong concerns of favoritism. First, in two cases, competitive processes appear manipulated to hire specific individuals formerly employed by [Excite@home](#). Second, processes used to hire two other former [Excite@home](#) employees have significant concerns associated with them. Third, new hires who are former employees of [Excite@home](#) have higher starting salaries than those new hires who do not have such a connection. Taken together, we believe this data supports the allegation of favoritism.

The CIO is a politically appointed staff member who reports directly to the Governor. The CIO was the former senior corporate officer of [Excite@home](#) and was responsible for all Utah employees within that organization. The current Director of ITS was also a past employee of

[Excite@home](#) and was recommended for the ITS director position by the CIO.

Since the CIO was hired in March 2001, nine other former [Excite@home](#) employees have also been hired. Figure 1 identifies these employees by position title, employment status and hire date.

Figure 1. Former [Excite@home](#) Employees, Their State Employment Status and Their State Hire Dates. As of July 2002, ten former [Excite@home](#) employees were working for the state.

	Position Title	Employment Status	Hire Date
A	Chief Information Officer	Exempt State Employee	March 3, 2001
B	Administrative Assistant	Exempt State Employee	March 3, 2001
C	Product Management Consultant	Contractual Employee	April 17, 2001
D	ITS Section Manager/Deputy CIO	Exempt State Employee	July 9, 2001
E	Director, ITS	Exempt State Employee	March 12, 2002
F	Senior Systems Administrator Consultant	Contractual Employee	March 25, 2002
G	Electronic Product Manager I	Merit State Employee	May 15, 2002
H	Research Consultant II	Exempt State Employee	May 28, 2002
I	eREP General Manager Consultant	Contractual Employee	June 1, 2002
J	Data Processing Security Specialist II	Merit State Employee	June 17, 2002

Two Competitive Procedures Appear Manipulated

In our opinion, the state’s competitive bidding and hiring procedures, which are in place to help insure the state obtains the best service for the least cost, plus insure fair treatment among applicants, appear manipulated in order to hire two former employees of [Excite@home](#). In the first case, a legitimate information technology consulting services’ contract was used in an improper way to mask the direct hiring of one desired individual (individual F). In the second case, a competitive hire for a merit position abruptly changed into a non-competitive hire for a newly created exempt

position in order to provide an acceptable starting salary for the other desired individual (individual D).

Legitimate Contract Misused to Hire Pre-selected Individual

The Senior Systems Administrator contractual position was not hired competitively as it should have been. Instead, a legitimate MC1014 contract was used in an improper way to directly hire individual F. It is possible that the MC1014 contract was used to give the appearance of competition when, in fact, no competition occurred.

The Assistant Director of ITS, who was responsible for this hiring process, stated that individual F was referred to him by the current ITS Director (a former [Excite@home](#) employee). The assistant director stated that a sole-source contract could not be justified with individual F because other individuals and companies offered these same services. Thus, a competitive bidding process (i.e., a Request for Proposals (RFP) or a properly used MC1014 contract) was, in actuality, necessary. The assistant director chose to use an MC1014 contract rather than an RFP. However the MC1014 contract was improperly used and no actual competition occurred.

An MC1014 contract is a master price agreement with an in-state contractor who has expertise in providing specific information technology (IT) programming and consulting services. Basically, an MC1014 contractor offers skilled, temporary IT help in the same way as a company, such as SOS Temporary Services, offers skilled, temporary office help.

The state has a number of MC1014 contracts which were obtained through a competitive RFP process. In order to properly use an MC1014 contract, the Division of Purchasing requires that users review at least three contractor sources from the pool of MC1014 contracts for optimal pricing and expertise. The decision should then be based on the lowest qualified price unless other relevant factors are deemed essential by the user entity.

The assistant director did not follow these procedures. Instead of obtaining three contractor sources for optimal pricing and expertise as required, the assistant director approached one particular MC1014

contractor because he liked doing business with them. At the time of this approach, individual F was not an employee of the MC1014 contractor.

According to a partner of this MC1014 contractor, the assistant director called him and told him that he wanted to hire individual F. As a result of this conversation, individual F was hired as an employee of the MC1014 contractor. In fact, the MC1014 contractor hired individual F so quickly that not even a copy of his resume was obtained. Thus, in essence, individual F was directly hired by ITS without competition through an MC1014 intermediary.

ITS pays the MC1014 contractor \$75/hour for individual F's services as a Senior Systems Administrator. In the time available, we were unable to determine what portion of this hourly amount goes to the MC1014 contractor for providing the services of individual F and what portion of this amount goes to individual F for actually providing the services. We are also unsure how this rate was determined since the MC1014 contractor did not have a copy of individual F's resume and did not go through its normal interview procedure through which a rate would be established. Regardless, from March 25, 2002 through July 31, 2002, individual F has submitted time sheets documenting 747 hours at a cost to the state of \$56,025. Certainly, using the MC1014 contractor is more expensive since it requires the state to pay both the contractor and individual F, when only individual F was needed.

The assistant director reported that individual F was hired as a contract employee because the position was seen as time-limited. However, in an ITS reorganization plan, individual F was listed as the acting Tier Four manager within ITS. The Tier Four manager position is not time-limited. It appears, then, that ITS is considering permanent employment for individual F.

According to the Letter of Authorization between ITS and the MC1014 contractor, ITS has the option to offer employment to individual F after June 28, 2002. Since individual F has been identified as the acting Tier Four manager, we believe it very likely ITS will exercise its option regarding individual F. If this occurs, then not only will the state's competitive bidding procedure have been apparently manipulated but the state's competitive hiring procedure will have been circumvented as well. In our opinion, this action shows a clear intent to avoid the competitive process intended for all state contracts.

Competitive Hiring Procedure Altered to Hire Pre-selected Individual

In order to hire individual D at his requested salary, ITS stopped the competitive recruitment of a lower salaried, merit position, eliminated the merit position, and created a new, higher salaried, exempt position called ITS Section Manager over accounting. While the four other existing ITS Section Managers were all merit positions, this new ITS Section Manager position was created as an exempt position. With no competition required to fill an exempt position, Individual D was simply placed into the newly created position.

On June 11, 2001, the DAS opened recruitment for the recently vacated merit position of Manager of Administrative Services. Fourteen resumes were received by the recruitment's closing date of June 22, 2001. In our judgement, some of the fourteen applicants, including individual D, appeared to meet, at least on paper, the basic requirements of the merit position.

According to the former director of ITS, considerable pressure was placed on him to hire individual D. However, after the recruiting process had begun, it became known that individual D required a starting salary of at least \$80,000 which was higher than the top salary offered by the Manager of Administrative Services position. This position had only a salary range between \$39,728 and \$59,675 a year (step 53 to 68). In fact, there are only three positions within ITS which can offer a yearly salary of \$80,000 (i.e., step 79): the ITS Division Director position (step 71 to 89), the ITS Assistant Director position (step 66 to 80) and the ITS Section Manager position (step 66 to 81).

On Monday, July 2, 2001, the former Executive Director of DAS, the Executive Director of the Department of Human Resources (DHRM), and the CIO had a lunch meeting. In a memo referring to this meeting, the former Executive Director of DAS told the Executive Director of DHRM—

I ... appreciated your recommendation on the job that I need to create.

Although the Executive Director of DHRM does not remember her specific advice, she stated it would have focused on the necessity of providing significant additional duties to justify the salary range.

On the same day as the July 2nd lunch meeting, the Manager of Administrative Services position was eliminated and a new ITS Section Manager position over accounting was created. Of particular importance is the fact that this new ITS Section Manager position was created as an exempt position. An exempt position does not require a competitive hiring process. By comparison, the other four existing ITS Section Managers are merit positions. A merit position does require a competitive hiring process.

The justification for the exempt status was that this new position will establish statewide policy. At the time of creation, this ITS section manager position was given all the duties of the former manager position plus some additional auditing duties (e.g., performs in the role of inspector general for all state IT projects; enforces the use of approved architecture, standards and IT policies). It is not clear to us that the additional duties added by the former director of ITS involve setting statewide policy and the absorbed duties of the former Manager of Administrative Services do not, as they were performed by a merit status employee. Further, human resource staff within the DAS could supply no written justification or evidence that this new ITS Section Manager position would establish statewide policy.

On Tuesday, July 3, 2001, all those who applied for the Manager of Administrative Services position (with the exception of individual D) were mailed a letter stating that the recruitment for the manager position had been canceled. The former Executive Director of DAS requested DHRM's approval of a new ITS Section Manager position on Thursday, July 5, 2001 and this request was approved by DHRM on that same day. The DHRM analyst noted that this new job was transitional and would evolve as the CIO identified needs. On Monday, July 9, 2001, individual D was employed as an ITS Section Manager at a step 79 - two steps below the end of the ITS Section Manager position's salary range. Since this new position is exempt, there was no competition.

The CIO expressed surprise upon learning that the former director of ITS had felt pressured to hire individual D. It was the CIO's belief that the former director had wanted to hire individual D as an ITS accounting manager. It had been the CIO's intention to hire individual D himself and use him in an IT auditing capacity for a period of time. However, according to the CIO, the former director had wanted individual D so

badly that the CIO let individual D go with the understanding that he would be available to help the CIO from time to time.

In our opinion, this case gives the appearance of process manipulation and candidate pre-selection. Specifically, ITS stopped the competitive recruitment of a lower salaried, merit position and created a higher salaried, exempt position to enable the non-competitive hiring of individual D at his requested salary.

Questions Surround Employment of Other Individuals

The state employment of two contractual employees with an [Excite@home](#) link have raised questions. First, the procurement process selecting individual I for the eREP General Manager position, a contractual position, was very unusual and involved two concerning selection processes. Second, the product management consultant (individual C) inappropriately worked for at least a month prior to any approved contractual arrangement between herself and the state. In our opinion, this contributed to her non-competitive hiring on a sole source contract.

Two Selection Processes Used for eREP General Manager

Although the eREP General Manager position was identified as a contractual position from the beginning, the proper procurement procedures were not followed. The candidate (individual I) was chosen by the first selection process without an RFP process. As a result, when individual I was presented to the Director of the Division of Purchasing for a sole-source contract, the purchasing director denied the request stating that a sole-source contract was not justifiable. Another selection process, using an RFP, was quickly performed resulting again in individual I's selection. In our opinion, this process may have been biased because members of the second selection committee had a prior association with individual I. Also, there is no evidence that any candidate other than individual I was ever interviewed in the second selection process.

The position of eREP General Manager is responsible for assuring that the PACMIS rewrite project is finished on time and, hopefully, under

budget. The PACMIS system impacts three large state agencies: the Department of Workforce Services (DWS); the Department of Human Services (DHS); and, the Department of Health. This is the largest project of its type that the state has ever done. Phase 1 of the project must be completed by October 1, 2003 and is funded by a \$29 million Temporary Aid to Needy Families (TANF) grant.

Before any specific selection process started, the first selection committee, consisting of the Executive Director of DHS, the Executive Director of Health, the Deputy Director of DWS, the PACMIS project manager, the Chairman of the eREP Governing Board, and the CIO, discussed whether the eREP General Manager could be hired as an employee. At that time, it was identified that none of the three impacted agencies had a spare FTE which could be devoted to the eREP General Manager position. In addition, all three agencies had already taken some of their existing FTEs and reassigned them to the PACMIS project. As a result, it was decided the eREP General Manager would have to be a contractual position.

Thus, from the beginning of the selection process, the eREP General Manager position was identified as a contractual position. This point is verified by one of the initial candidates for this position. He stated that prior to his April 2002 interview, he understood that the position was contractual. Since the contractual nature of the position was apparently known from the beginning, a competitive RFP procedure was the proper procurement procedure to follow. However, no RFP was generated at the beginning of the selection process.

Instead, the CIO and each of the three agencies submitted one candidate for a total of four candidates to be considered. The candidate submitted by Health did not make it to the interview process but the other three did. After the April 15th interviews, the candidate submitted by DWS was eliminated. On April 22, 2002, the CIO sent the following message to DWS:

Could one of your HR people do a few reference calls on [individual I and the other candidate]? I have references from both of them, but I don't want to be the one doing the calls and summarizing the data since I don't want to inject my biases. If this isn't possible now, let me know and I'll find another path.

The human resources manager for DWS performed the reference checks and the data was summarized by April 25, 2002. The human resources manager indicated that the CIO's candidate, individual I, clearly had the best references and, as a result, came out of this first selection process as the chosen candidate.

Sometime after April 25th, the CIO approached the Director of Purchasing in the DAS and requested a sole-source contract with individual I. The purchasing director indicated that a sole-source contract could not be justified for this position but that a rapid RFP might be possible. A rapid RFP remains open to bidders for seven days while a normal RFP remains open to bidders for ten days. A rapid RFP can be justified in one of two ways: the request is urgent or the request is an emergency. On May 13, 2002, the CIO made the following representation to purchasing:

The purchase is urgent because of the timing on the eREP project itself. This purchase is for a general manager for the overall project who will be needed to help with the RFP evaluation process on the eREP project and the subsequent bid award and bid management. Having this management effort start as early as possible in this process will increase the chances of overall project success.

So, because proper procurement procedures were not followed initially when adequate time was available, the selection process time frame has now become urgent and hurried.

The rapid RFP opened on May 13, 2002 and closed on May 20, 2002. Seven responses were received and two were disqualified. One was disqualified because the company was also bidding on the PACMIS rewrite project and the other was disqualified because the company submitted two candidates when only one candidate per company was allowed in the RFP.

This time, a second selection committee of only three members was created. Two of the members, the CIO and the PACMIS project manager, were on the original selection committee. The third member, the Assistant Director of ITS, was not on the original selection committee.

The makeup of this second selection committee concerns us because it had the potential to be biased. First, two of the committee members had already made a selection in the first process and had chosen individual I. In fact, they recommended the state hire individual I under a sole-source contract. Second, the CIO had a prior association with individual I through their employment at [Excite@home](#). Also, in the first process, the CIO was so concerned about injecting his bias that he excluded himself from gathering and summarizing reference data. However, in the second selection process, he sat on the selection committee as one of three voting members. In our opinion, a bias that precludes you from gathering and summarizing reference data should also preclude you from being on the selection committee. Certainly, whether true or not, the makeup of this second selection committee allows a perception of bias.

The selection committee made its choice in less than five days—which appears quick for a professional service contract. As a general rule, the Division of Purchasing informs bid competitors to allow an agency at least 10 days to review the bids and make an award determination. The only candidate interviewed in this second process was individual I. This interview was conducted by the ITS assistant director who stated he felt an obligation to conduct an interview because he was the only one who had not interviewed individual I previously (i.e., in the first selection process).

On May 23, 2002, the CIO sent a letter to the assistant director stating the following:

Having reviewed the submissions on the eREP General Manager RFP... and participated in the interview of [Individual I], I recommend that we accept the bid from [Individual I].

Individual I was formally offered employment on May 24, 2002. The contractual period began June 1, 2002 and ends September 30, 2003. The hourly cost to be billed is \$57.50 with total costs not to exceed \$120,000 a year nor \$150,000 for the total contractual time period.

It should be noted that individual I will not necessarily remain a contractual employee. The RFP states that the state has reserved the right to hire the eREP General Manager at any time as a full time state employee and individual I has agreed to that possibility.

The CIO regrets his methodology in setting up this selection process. At the time, he believed he was following an appropriate selection process and was surprised when the process was rejected by the Director of Purchasing. Having only been a state employee for one year, he maintains the mistake was one of an inexperienced employer. The CIO indicated that he will not make this mistake again.

In our opinion, this process was flawed from the beginning when an RFP was not used in the first selection process. In addition, certain individuals on the second selection committee appear to have had a bias and should not have been involved in the selection process. Finally, no candidate in the second selection process other than individual I was interviewed for the position.

Product Management Consultant Worked Prior to Contract Approval

The CIO recommended individual C as a product management consultant to both the former director of ITS and the assistant director of ITS. Individual C worked at least one month before a contract was approved and in place. Further, the contract was awarded as a sole-source contract even though the sole-source justification did not appear strong.

Individual C was charging time to the state one month prior to the approval of her contract. Specifically, the Director of Purchasing in the DAS did not approve this contract until May 16, 2001. However, individual C was billing the state for her services as early as April 17, 2001. In fact, on May 14, 2001, two days before the contract was approved, individual C was paid \$3,570 for 68 hours worked between April 17th and April 28th. For the state to pay for contractual services with no approved contract in place is inappropriate.

Individual C's contract covered one year beginning April 17, 2001 and ending April 16, 2002. The contract stated that she would be reimbursed \$52.50/hour and that the total billed amount would not exceed \$99,750 for the contract period. Individual C's invoices to the state indicate charges of \$84,000 for 1600 hours of work during the year-long contract period. In addition, she has charged \$5,184 for 98.75 hours of work since her contract period ended.

We are somewhat uncertain that all payments to individual C were identified. Our uncertainty comes from a \$1,200 September 2001 ITS payment to an MC1014 company for IT services provided by an individual with the same name as individual C. While individual C stated that she has never worked for this MC1014 company, we were unable to contact the owner of the MC1014 company to gather clarifying information.

Individual C's product management contract was not competitively bid. Instead, the contract was awarded on a sole-source basis. The assistant director of ITS provided the sole-source justification which is as follows:

[C] has been selected for this project based upon 9 years of successful experience working in product management, business process analysis, and user interface arena. Her skills and talents for the eUtah project are known and verifiable.

No other vendor available under contract with the State has similar experience and qualifications that are as well suited to this project. [C] already has a working relationship and record of accomplishment with the CIO on these types of projects.

No other contract vendor available to the State has similar credentials and personnel available that specialize in electronic brand development, business process analysis, and solutions design implementation, including user interface experience design and electronic feature-set strategy.

A sole-source procurement is an option only if a purchase requirement is reasonably available from a single supplier. This justification appears weak to us because the assistant director only references vendors currently under state contract. This leaves open the possibility that there are vendors, not currently under state contract, who could have provided this service. The Director of Purchasing agrees that the sole-source justification for individual C is relatively weak; however, he did approve the sole-source request.

In our opinion, the fact that individual C was employed prior to contract approval is inappropriate and created pressure upon purchasing to approve a questionable sole-source contract. Further we can not understand how individual C could receive a payment for services without having an approved contract in place. This would appear to violate financial controls.

Former Excite Employees Have Higher Starting Salaries

The starting salaries of the five former [Excite@home](#) employees, who are now state employees, appear high. Specifically, IT new hires with an [Excite@home](#) background were hired a greater distance above the salary midpoint than were IT new hires without such a background.

The starting salaries of new ITS hires, both with and without past [Excite@home](#) experience, were assessed relative to the salary midpoint of the position for which they were hired. To accomplish this, we selected all former [Excite@home](#) employees who were hired as a state employee (as opposed to a contractual employee) and who were placed within positions having a defined step range. Under these two criteria, the starting salaries of five former [Excite@home](#) employees were reviewed.

The new IT hires, without [Excite@home](#) experience, who began employment with ITS since March 2001, were identified for us by the Department of Human Resource Management. We chose March 2001 as a starting point since this is the month the CIO began working for the state. In addition, only IT positions with a starting salary of step 48 or higher were reviewed since this is the beginning step range of new hires with [Excite@home](#) past experience. Using this methodology, ten new IT hires without [Excite@Home](#) experience were identified.

The new hires with [Excite@Home](#) experience were hired an average of 6.4 steps above the salary midpoint while the new hires without [Excite@Home](#) experience were hired an average of 2.2 steps above the salary midpoint. Figure 2 shows the steps above the midpoint for each of the five employees with [Excite@Home](#) experience.

Figure 2. Salaries for New IT Hires with [Excite@Home Experience](#). On average, these new IT employees were hired 6.4 steps above their positions' midpoint.

New Hire	Step Range	Midpoint	Step Hired	Step to Midpoint
D	66-81	73.5	79	5.5
E	71-89	80.0	89	9.0
G	48-68	58.0	68	10.0
H	53-68	60.5	65	4.5
J	58-72	65.0	68	3.0
Average Steps above Midpoint				6.4

In dollar terms, these five employees were hired an average of \$11,835 more per year than their respective position midpoint's annual salary.

Figure 3 shows the steps above the midpoint for each of the ten IT new hires without [Excite@Home](#) experience.

Figure 3. Salaries for New IT Hires without [Excite@Home Experience](#). On average, these new IT employees were hired 2.2 steps above their positions' midpoint.

New Hire	Step Range	Midpoint	Step Hired	Step to Midpoint
1	48-68	58.0	68	10.0
2	55-71	63.0	60	-3.0
3	55-72	63.5	66	2.5
4	55-72	63.5	66	2.5
5	55-72	63.5	66	2.5
6	55-72	63.5	64	.5
7	55-72	63.5	69	5.5
8	55-72	63.5	65	1.5
9	58-74	66.0	68	2.0
10	58-72	65.0	63	-2.0
Average Steps above Midpoint				2.2

In dollar terms, these employees were hired an average \$3,286 more per year than their respective position midpoint's annual salary.

While hiring above the midpoint for most state positions was unusual in the past, it appears to be less unusual with IT positions today. Even so, based on this data, it would also appear that past experience with [Excite@Home](#) leads to a higher starting salary.

Given the time available, we were unable to perform an in-depth analysis of all the factors which may contribute to observed pay differences. It is possible that the new employees with [Excite@Home](#) experience simply had other qualities that the new employees without [Excite@Home](#) experience lacked and, thus, should be compensated at a higher rate. This could also be the case in the instances where former [Excite@home](#) new hires are compensated at a relatively high level given the compensation of existing employees within the same position. We simply do not know. Nonetheless, we are struck by the fact that new

hires with [Excite@home](#) experience receive higher starting salaries, on average, than new hires without such experience.

In our opinion the information in this report, taken as a whole, shows a pattern or practice which yield strong concerns about favoritism toward former [Excite@home](#) employees. First, two competitive selection procedures appear manipulated to hire pre-selected individuals. Second, significant concerns surround other former [Excite@Home](#) employees who were hired contractually. Finally, new hires who are former [Excite@Home](#) employees appear to receive higher starting salaries than other new hires. We do note that the qualifications and competency of the [Excite@home](#) employees were not raised as an issue by other ITS employees.

The anonymous letter also referred to the January 2002 termination of the State Information Technology Consultant and the February 2002 early retirement of the ITS Division Director. Both these positions were exempt positions which means the employee holding the position can be hired and fired at will. Upon termination, the former technology consultant received \$9,180 of severance pay. For the former division director, 1.6 years of future retirement service was purchased for him by the DAS at a state cost of \$39,528. This enabled the former director to retire with 30 years of state service.

In closing, the IT environment is rapidly changing under the new CIO and change can often cause employee stress. Perhaps as a result of this stress, we had contact with a number of individuals from the IT sector who had issues they wanted to discuss. From these discussions, we were given two issues which we could not address in this letter. First, we were told about a possible conflict of interest issue within ITS and second, we were told about allegedly unnecessary and expensive software purchases within ITS. We would be happy to address these issues upon request.

Recommendations:

1. We recommend that the CIO and ITS follow proper state bidding policies and procedures when hiring contract employees.
2. We recommend that the CIO and ITS follow proper state hiring policies and procedures when hiring state employees.

Agency Response

September 12, 2002

Mr. Wayne Welsh, Auditor General
Office of the Legislative Auditor General
130 State Capitol
Salt Lake City, Utah 84114

Dear Mr. Welsh,

Thank you for the opportunity to respond to your review of Hiring Practices of the State CIO and ITS (ILR2002C). We appreciate your noting, and we want to emphasize, that the qualifications and competency of the employees discussed in the report were not raised as an issue. While there are areas of interpretation with which we differ, your review has pointed out areas of recruitment, hiring and procurement where the CIO and ITS can improve. We are committed to providing a fair process for all recruitment, hiring and procurement. We want to attract the most competent people and firms for state employment and contracts and pledge that we will do so in full compliance with state hiring and procurement procedures.

Phillip J. Windley

Stephen W. Fulling

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Chief Information Officer

Director
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Executive Director
Department of Administrative Services