REPORT TO THE

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A Review of the Division of Information Technology Services

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A Review of the Division of Information Technology Services

At the request of the Executive Appropriations Committee, we reviewed three allegations concerning management operations within the Division of Information Technology Services (ITS). These allegations were bought forth by ITS employees who were concerned about the appropriateness of some management activities. The Department of Administrative Services (DAS) also looked into these allegations and initiated procedural changes as a result of their findings. Based on our review, we found the following:

Unjustified ITS Software Purchases Resulted in $1.7 Million Misspent. The implementation of three products purchased in fiscal year 2002 is very doubtful. In all three cases, the purchases were made with little analysis done to insure the appropriateness of each purchase. An inadequate pre-purchase analysis increases the risk of making a purchase that is imprudent in some regard (e.g., departmental needs not met, costs unrecoverable). Further, all three purchases were procured in a non-competitive manner even though competition existed. When purchases are made in a non-competitive fashion, the state has a greater risk of not getting the best product for the best price.

Chief Technical Architect May Have Benefitted His Son with State Business. First, total ITS payments to Vendor D (the son's employer) rose from a yearly average of $415,000 in fiscal years 1999 and 2000 to $1.4 million in fiscal year 2001—the first year the chief technical architect's son was employed by this vendor. Second, the two questioned purchases, which totaled approximately $1.1 million, were done quickly with an inadequate supporting analysis. Third, these purchases were procured through sole-source contracts which raise questions. The chief technical architect (who is also an ITS deputy director) stated that the two purchases in question were coincidental with his son becoming Vendor D's state sales representative.

Issuance of Gag Order Unlikely. First, while two instances were identified at which a possible gag order was issued, different employees interpreted the messages conveyed differently. Second, of the thirteen ITS employees interviewed, only two (15 percent) believed that a gag order had been placed on ITS employees. Consequently, this issue was not pursued further.

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Chapter I
Introduction

At the request of the Executive Appropriations Committee, we reviewed three allegations concerning management operations within the Division of Information Technology Services (ITS). The allegations were that:

- ITS wasted over $1.7 million by purchasing unnecessary software.

- The state's chief technical architect benefitted his son, who had become a state sales representative, by directing increased business to his son's employer.

- ITS management issued a gag order barring all ITS employees from talking to legislators and/or the press about their concerns regarding ITS management.

These allegations were bought forth by ITS employees who were concerned about the appropriateness of some management activities. When these allegations were publicized, the Department of Administrative Services (DAS) management also conducted a review and initiated procedural changes as a result of the findings.

We found the following:

- The first allegation has merit. ITS spent $1.7 million on three software purchases in fiscal year 2002. These products are currently not in use and their ultimate implementation is doubtful.

- The second allegation may have merit. In fiscal year 2001, ITS spent $1.1 million on two purchases of tape storage equipment from the chief technical architect son's company. This was surprising since ITS had been moving away from tape storage and more towards disk storage. Also, there was a less expensive alternative offered by another vendor for one of the two equipment purchases.

- The third allegation does not appear to have merit. Most employees interviewed believed no gag order was issued.

One common concern existing in the first and second allegations is the limited analysis made prior to the purchase of the five products reviewed.

Conducting a strong pre-purchase analysis, perhaps in the form of a business case analysis, minimizes the risk of making an imprudent purchase. Because an adequate analysis was not done for any of these products, three of the five purchases did not meet customer needs while two have conflict of interest questions surrounding them.

A second common concern is the non-competitive procurement of all five products reviewed. Competition helps insure that vendor selection is not based on favoritism and that the state received the best product for the best price. This absence of competition for all five products helped fuel employee suspicion over the appropriateness of management's activities.

Chapter II
Unjustified ITS Software Purchases Resulted in $1.7 Million Misspent

In all likelihood, ITS misspent over $1.7 million on three fiscal year 2002 software purchases. Currently, the implementation of the products purchased is very doubtful. In all three cases, the purchases were made with little analysis done to insure the appropriateness of each purchase. An inadequate pre-purchase analysis increases the risk of making a purchase that is imprudent in some regard (e.g., departmental needs not met, costs unrecoverable). Further, all three purchases were procured in a non-competitive manner even though competition existed. When purchases are made in a non-competitive fashion, the state has a greater risk of not getting the best product for the best price.

It should be noted that all three purchases discussed in this chapter were made prior to the appointments of the current DAS executive director and current ITS director. The current DAS executive director was appointed in April 2002 while the current ITS director was appointed in March 2002.

We also want to note here a convention adopted in this report to distinguish between two individuals who have the same title. Specifically, ITS employs two deputy directors. One of these deputy directors also functions as the state's chief technical architect, a position that reports to the state's Chief Information Officer (CIO). Thus, when referring to this deputy director, the title of chief technical architect will be used. When referring to the other deputy director, the title of deputy director will be used.

In December 2001, ITS purchased three software products:

- An electronic forms package intended to provide standardized electronic forms throughout state government.

- A content management package intended to help state agencies manage the content of their web sites. With this, ITS received a portal services software package that provided state employees with access to the most current state web information.

- A Customer Relationship Manager (CRM)/Help Desk package which was to improve the performance of the ITS Help Desk and replace the existing help desk software.

We have no concern with the quality of these products. In fact, two are rated as "best of breed" by industry consulting services.

The absence of a business case analysis for each purchase stands in stark contrast to reported standard business practices.

Instead, our first concern rests with the limited analysis made prior to product purchase. All three purchases were made without a thorough pre-purchase (i.e., business case) analysis. A business case analysis would consider the level of product demand and agency product requirements as well as other factors such as overall development and implementation costs. Without this business case analysis, ITS did not have sufficient knowledge to make a sound decision regarding each purchase. ITS indicated that a business case analysis was not part of ITS's process when these purchases were made. This is very surprising, and as a DAS auditor stated this lack of analysis "stands in stark contrast to what has been reported to be a standard business practice."

A second concern is with the non-competitive purchasing practices used for all three products. Two were procured by expanding a vendor's existing master license agreement while one was procured by a sole-source contract. These procurement procedures were non-competitive in spite of the fact that competition existed for all three products. While non-competitive purchase methods are sometimes legitimate, these non-competitive methods do not appear to be properly applied here. One of the basic tenets of state procurement is that it will be competitive whenever possible. It is believed that competition guarantees the state and the tax payers the best product for the best price. Also, competition helps minimize the possibility and/or perception of favoritism towards a particular vendor. The purchasing director approved all three purchases primarily on the basis of recommendations made by the state's chief technical architect—a computer technology expert.

In spite of existing competition, each procurement procedure was non-competitive.

A third concern is with the fact that none of the three products purchased are currently in use. Since the products purchased by ITS were imprudent in some regard (e.g., departmental needs not met, implementation costs too high), it appears they have a very limited chance of being successfully implemented statewide. Additionally, while the former CIO wanted statewide (enterprise) implementation of software products, departments only wanted work-group (department specific) implementation of products. Thus, $1.7 million in taxpayer money was, in all likelihood, misspent by ITS.

None of the Products Had an Adequate Pre-purchase Analysis

None of the three software purchases which were made had an adequate pre-purchase analysis.

- No business case analysis was performed prior to the purchase of Vendor A's electronic forms software. While an electronic forms Request for Proposals (RFP) was developed, this was inadequate as a pre-purchase analysis.

- The analysis supporting the content management software purchase was inadequate. In fact, ITS employees were in the process of analyzing various content management solutions when the purchase decision was made.

- The CRM/Help Desk software was purchased despite the fact that an adequate pre-purchase analysis had not been done. In fact, this lack of analysis was identified prior to purchase by the chief technical architect. The former CIO's explanation for purchasing Vendor C's software was one of business development rather than state need.

Electronic Forms Software

According to a DAS audit, no business case analysis was performed prior to procuring Vendor A's electronic forms software. A business case analysis considers not only statewide needs issues but product implementation issues as well. The absence of a business case study suggested that purchasing decisions could be made without basic supporting information such as:

- demand for product among client agencies,
- agency needs and requirements being met by software,
- anticipated development/implementation costs in terms of capital and manpower hours, and
- advantages/disadvantages of the product procured vis a vis competing products.

The likelihood of successful implementation was not analyzed.

ITS had collected some information through an electronic forms Request for Proposals (RFP) which was issued in November 2000. However, the DAS audit concluded that this information was inadequate as a business case analysis. Specifically, the likelihood of successful product implementation was not analyzed. The DAS audit further maintained that without due diligence and the information it provides, ITS could not be assured that purchases made represented the products best suited to the state's needs at the best prices.

Content Management/Portal Services Software

As before, no business case study was conducted prior to procurement of the content management/portal services software. Again, this absence of a business case study suggested that purchasing decisions could be made without basic supporting information such as agency demand, agency needs, and implementation costs. As mentioned earlier, both content management and portal services software pertain to the management of agency web sites.

An in-state user of Vendor B's content management product stated it was too difficult and costly to maintain.

The DAS audit did note that, prior to purchase, ITS personnel and CIO staff had conducted research on major enterprise content management offerings and consulted with an in-state user of Vendor B's content management product. However, when we spoke with this in-state user, we were told that the use of Vendor B's product had been discontinued. The in-state user reported that the product did not perform as advertised. Further, this in-state user found that Vendor B's content management product was simply too difficult and too costly to maintain.

While acknowledging ITS had conducted research on a content management solution, the DAS audit still concluded that this information was inadequate as a business case analysis. This concern also applies to the portal services solution. Again, without due diligence and the information it provides, ITS could not be assured that purchases made represented the products best suited to the state's needs at the best prices.

Even though no business case analysis was done, the general concept of content management was identified as a state need by the former CIO. Further, Vendor B's product was specifically targeted as the content management solution of choice by the chief technical architect in April 2001. This targeting is surprising given the apparent lack of analysis at this point.

ITS employees were surprised to learn that Vendor B's content management product had been purchased.

In fact, around December 2001, ITS employees were in the process of investigating possible content management vendors with the goal of issuing a content management RFP. Consequently, ITS employees were surprised when told by ITS management in early January 2002 that Vendor B's content management product had been selected and was to be installed immediately.

Customer Relationship Manager/Help Desk Software

As with the two preceding products, no business case analysis was performed on Vendor C's CRM/Help Desk software prior to purchase. In fact, the chief technical architect alerted upper management that an adequate needs analysis had not been performed on this product. He further warned that implementing the product could be very costly. These warnings were apparently ignored by the former CIO and others in upper management.

The chief technical architect warned of high costs prior to purchasing Vendor C's CRM/Help Desk software.

On December 17, 2001, the chief technical architect, while acknowledging that Vendor C's CRM/Help Desk software was considered "best in class" by all major IT consulting organizations, listed the following concerns in an executive briefing:

> *Initial application costs and ongoing maintenance costs are high...*
>
> *Implementation of [Vendor C's software] on a statewide basis would be time consuming and require conversions of data and substantial process re-engineering from existing systems... There does not appear to be sufficient employee time available to both perform with existing applications and transform to the [Vendor C] environment.*
>
> *The impact of [Vendor C] applications on existing state infrastructure has not been assessed adequately. There will likely be hidden costs of implementation that have not been identified.*

The former CIO implied the purchase was for business development reasons rather than state need.

This is not the first time the chief technical architect had raised concerns about the purchase of this product. Previously, on December 13, 2001, the chief technical architect had stated the following to the former CIO in an e-mail:

> *Off the record, we have no money to go after any of [Vendor C's]$1.8 million in solutions no matter how good they or we think they are. ...Right now these guys are a solution looking for any kind of problem, and even though I view some of their applications as world class...the price is equally large. In a budget deficit environment it is hard for me to understand why we are spending so much time with them. Their current target is Homeland Security.*

The former CIO responded:

> *Well, right now they're looking at moving some operations to Utah, so look at it as business development.*

Like the chief technical architect, IT employees also felt that in a tight budget year there was no reason to replace the existing help desk software. IT employees indicated that, while the existing software was "clunky" and would need replacement once the help desk became more web based, it functioned adequately. Consequently, we are left with the former CIO's explanation—that this purchase was made to encourage Vendor C to locate some operations in Utah.

Not only was an inadequate pre-purchase analysis developed for all three purchases, but each product was also procured in a non-competitive fashion.

None of the Products Were Procured Competitively

Even though competition existed for each of these products, none were procured in a competitive fashion. Two products were procured by amending one vendor's Master License Agreement (MLA) while the remaining product was procured through a sole-source contract. In our opinion, the lack of competition in each case is questionable. While non-competitive procurement methods can be valid, the methods used were not the best in these cases.

Electronic Forms Software

Vendor A responded to the electronic forms software RFP two months after it closed but while other vendor responses were still being analyzed.

The $1.2 million electronic forms contract with Vendor A was procured in a dubious manner. First, Vendor A responded to the RFP two months after it closed but while other vendor responses were still being analyzed by the RFP committee. Second, the RFP was canceled and no contract was awarded because the vendor bids were alleged to be too high. While the request for a "Best and Final Offer" from the respondents was considered and, in our opinion, would have helped clarify each vendors ultimate price, this option was not taken. Third, no further electronic forms competition was sought once the RFP was canceled. Instead, two months later, Vendor A was awarded a $1.2 million electronic forms contract through an amendment to their master license agreement (MLA). An MLA is a vendor agreement which identifies specific products and price discounts offered to the state.

On February 12th, consideration was being given for a "Best and Final Offer" request to the six responding vendors. This request was never made.

Vendor A was not one of the six vendors who responded to the electronic forms RFP by the December 19, 2000, closing date. According to Vendor A's state sales representative, upon learning about the RFP, he approached the chief technical architect, who was also ITS's RFP committee representative, with information about Vendor A's product. (As a point of clarification, this electronic forms product is not Vendor A's product. The product is owned and produced by another company. Instead, Vendor A appears to have a resellers agreement with this second company.) Upon learning that Vendor A had recently acquired technology which could meet the RFP requirements, the chief technical architect encouraged Vendor A to provide ITS with information about the product.

To determine what each vendor's final price was, a request for a "Best and Final Offer" was being considered on February 12th, as noted in the following communication between a vendor and the purchasing agent representing ITS:

> *... The review committee has taken longer on their evaluations than anticipated. It is my understanding that further communication will be prepared for the vendors this week, possibly in the form of a Best and Final Offer.*

On February 14th, Vendor A submitted its response to ITS's request for information.

A request for a Best and Final offer requires each vendor to commit to a final lump-sum price. In spite of this apparent intention, responding vendors were never asked for a Best and Final Offer. While one RFP committee member reported difficulty in determining what price vendors were actually bidding, ITS, who was paying for the product, apparently had no such difficulty.

On February 14, 2001, Vendor A submitted its response to ITS's request for information. This document responded to each point raised in the electronic forms RFP and also provided a cost proposal. Vendor A's state sales representative noted that the cost proposal was very aggressive and offered discounts significantly greater than those offered in Vendor A's state master license agreement.

On April 5th, the chief technical architect canceled the electronic forms RFP through the following message to the other RFP committee members:

> *Based on financial presentations from the vendors the eForms RFP is being canceled. We have alternative approaches identified that I will discuss with you in the near future. Please return all RFP responses ...*

The RFP was canceled and Vendor A awarded the contract without further competition.

With no further competition, the chief technical architect signed an amendment on June 29th to Vendor A's MLA committing the state to the $1.2 million purchase proposed by Vendor A on February 14th. This amendment to the MLA was approved by purchasing.

Guarantee of Level, Competitive Playing Field Cannot Be Made. One of our concerns with this procurement surrounds the sequence of events and the resulting assurance that all vendors were playing under the same rules. As regards the six vendors who responded to the RFP, it can be reasonably guaranteed that each vendor was unaware of the other vendors' product solutions and cost proposals. In other words, these vendors are assumed to be on a level, competitive playing field.

No guarantee can be made that Vendor A was unaware of other vendors' product solutions and cost proposals.

However, this same assumption cannot be applied to Vendor A. Vendor A's product solution and cost proposal were finalized two months after the other six vendor proposals were opened and known by all members of the electronic forms RFP committee. Thus, it cannot be guaranteed that Vendor A was unaware of the other vendors' product solutions and cost proposals. As a result, the state cannot be assured that Vendor A was on the same level, competitive playing field as the other six vendors. In our opinion, this fact alone necessitated a second RFP process.

Purchasing's Approval Lacking Oversight Guarantee. Another concern is over the appropriateness of a non-competitive procurement (i.e., an amendment to an MLA) when competition existed. When discussing the appropriateness of this MLA amendment with the purchasing director, he indicated that purchasing relies heavily on the representations and recommendations of the chief technical architect, a computer technology expert, when amendments to a MLA are proposed. The director further indicated that purchasing simply does not have the time or expertise to enable them to judge when an amendment to a MLA is appropriate. Because of the involvement of the chief technical architect, purchasing did not provide the oversight that it would have under other circumstances.

Purchasing's approval of the non-competitive procurement was based on the recommendation of the chief technical architect rather then their independent analysis.

We are concerned that purchasing's approval was not based on their independent analysis or expertise concerning the competitive environment. Instead, purchasing relied on the recommendation of the chief technical architect. In our opinion, purchasing's approval should involve more oversight than this.

We believe the elimination of competition in this case was questionable. In our opinion, a second RFP was the appropriate action to take. First, competition existed as evidenced by the response to the first RFP. Second, a new RFP would help insure that all vendors were competing on a level playing field. The DAS audit also expressed concern that factors surrounding this purchase would lead some to believe that using an addendum was simply an expedient means of avoiding the RFP process and we agree.

Content Management/Portal Services Software

Vendor B's content management software was acquired non-competitively by amending Vendor A's Master License Agreement.

The $1.1 million purchase of content management and portal services software and consulting services were procured in a non-competitive fashion despite the existence of competition in both cases. In fact, ITS employees were reviewing other content management products when Vendor B's product was selected by upper management. Instead of using a competitive selection process, Vendor B's content management software was acquired by amending Vendor A's master license agreement to include Vendor B's product. At the same time, Vendor A provided its portal services software free to the state.

ITS did not contract with Vendor B for their product but, instead, with Vendor A. Somehow, Vendor A knew of the state's interest in Vendor B's content management software. Vendor A approached the state and proposed that the state work through them to get Vendor B's product.

Vendor A had acquired a new subsidiary in July 2001 who happened to be a reseller of Vendor B's product. By moving through Vendor A's master license agreement with the state, which offered the state a 50 percent product discount, the state could conceivably get that same discount from Vendor B.

Vendor A's master license agreement was amended to include Vendor B's content management product in December 2001. The amendment gave the state a 40 percent discount on Vendor B's products. As before, this amendment was approved by purchasing based on recommendations by the chief technical architect. Because the chief technical architect was involved, purchasing provided little oversight.

While Vendor A's portal services software was provided at no charge, the necessary consulting services were not.

At the same time, Vendor A also provided, at no charge, its portal services software to be used in conjunction with the content management software. Many companies offered portal services software. Further, free, open-source portal services software was also available on the internet. So, by bundling this product with the content management product, competition was avoided for this product as well. While the portal services software was provided at no charge by Vendor A, the necessary consulting services were not. These consulting services have cost the state about $404,000 to date.

The DAS auditor indicated that factors surrounding this purchase may lead some to believe that using an addendum was an expedient means of skirting the RFP process. Because a non-competitive process was used, the state cannot be guaranteed of having obtained the best product for the best price. Given the information available, we also are uncomfortable with the elimination of competition in this case. Other companies offered content management and portal services software.

Customer Relationship Manager/Help Desk Software

The primary sole-source justification for Vendor C's product was questioned by the DAS auditor.

This sole-source request was not pre-approved by purchasing as required.

With other companies offering CRM/Help Desk software, the sole-source contract with Vendor C raises concerns. First, the primary justification for the sole-source is questionable. Second, the sole-source request was not pre-approved by the purchasing director as it should have been.

The primary justification for this sole-source appears to be one of product testing and evaluation. The Division of Purchasing allows the possibility of a sole-source justification when a sole supplier's item is needed for trial use or testing. ITS stated the following in its sole-source justification:

> *This software for CRM/Help Desk will be procured for testing and evaluation purposes to validate a possible statewide CRM/Help Desk implementation. An RFP may be required for actual statewide implementation to ensure best pricing to the state.*

This testing and evaluation representation was questioned by the DAS auditor for the following reasons:

1. The scope of the purchase appears larger than necessary for testing and evaluation. The purchase contains 80 help desk agents, 10 call center packages, and 5 sales bases.

2. ITS employees operated under the belief that Vendor C's CRM/Help Desk software was to be fully implemented.

We noted, in addition to these reasons, that the contract appears longer than necessary for testing and evaluation. Specifically, the contract is in effect for 5 years with renewal options for annual maintenance.

In addition to the testing and evaluation justification, ITS also listed other possible justifications for the sole-source. These other justifications may, in fact, eliminate competition and so justify the sole-source. However, there is no needs analysis against which to assess the strength of these other sole-source justifications. Ultimately, we agree with the DAS auditor who concluded that the circumstances surrounding the purchase of Vendor C's product raise concerns that this sole-source justification was simply an expedient means of bypassing the RFP process.

In addition to questionable sole-source justification, the sole-source request was not pre-approved by purchasing as required by purchasing's policies. While the contract was signed on December 31, 2001, the sole-source request was not approved in writing until January 2, 2002. The purchasing director believes he gave verbal approval for this sole-source contract. However, he also indicated that procedural lapses (i.e., failing to provide purchasing with the sole-source request before contract negotiations begin) are not infrequent.

Nonetheless, this approval-after-the-fact is troubling because there were other competitors who offer CRM/Help Desk products. When reasonable doubt exists as to whether a sole-source is justified, competition is required by purchasing. Yet, purchasing was given no time to make any analysis of the competitive environment.

Added to the facts of inadequate pre-purchase analysis and questionable procurement practices is the fact that none of the software are currently in use.

None of the Software Are Currently Used

None of the software purchased are currently in use. As a result, it appears likely that ITS misspent over $1.7 million.

- First, ITS has spent approximately $134,000 on the electronic forms software although that amount could have been far higher. The state originally contracted with Vendor A for $1.2 million. A business case analysis has been completed with the recommendation the product be dropped for lack of demand and cost-recovery issues.

- Second, when the content management product was shown to key departments after the purchase, they responded very negatively. As a result, this $1.1 million content management/portal services purchase is on hold awaiting completion of a business case analysis.

- Third, the $410,000 CRM/Help Desk software is on hold awaiting the completion of a business case analysis. It is unlikely to be brought into production soon because it is currently cost prohibitive to do so.

Electronic Forms Software

After Vendor A's product was purchased, it was discovered the product did not meet agency needs. Specifically, a representative of the CIO's office was unable to get any agency to commit to a project using Vendor A's product. In addition, the former ITS director also believed that Vendor A's product did not meet state needs. Because of his belief, Vendor A's contract was renegotiated from $1.2 million to approximately $110,000. A recent ITS business case analysis has recommended that this product be dropped.

The electronic commerce coordinator ultimately identified very few projects which could use the newly procured electronic forms package.

After purchase, the electronic commerce coordinator within the CIO's office had the job of identifying specific agency projects for which Vendor A's electronic forms could be used. During this process, the commerce coordinator began to see problems between what the product actually did and what agencies thought it could do. For example, if a heavy interaction with a database was required, then Vendor A's product performed poorly and was viewed as a poor solution. It should be noted that Vendor A does not agree with this assessment. Regardless, the electronic commerce coordinator ultimately identified very few projects that could use the newly procured electronic forms package.

The former ITS director also firmly believed that Vendor A's product did not work and would not meet state needs. In fact, Vendor A's product was characterized by some as a test product rather than a developed product. The former ITS director stated that he was concerned about Vendor A's product prior to purchase and became more concerned as tests were run in the month after purchase. The former ITS director maintained that, because of his concerns, he had only wanted a small initial contract with Vendor A, not a $1.2 million contract.

Nonetheless, a $1.2 million contract was signed by the chief technical architect. Although it was not specified in the contract, a gentleman's agreement existed between Vendor A and the state. Specifically, if Vendor A's product failed to meet state needs then all money would be returned to the state. The former ITS director used this agreement in his refusal to pay the $1.2 million to Vendor A. The former ITS director maintained his refusal in spite of pressure by the former CIO to pay.

In late October 2001, Vendor A offered the state a release from the contract if the state purchased 1,000 initial client licenses and necessary supporting server components by November 30, 2001. On November 27th, ITS made the required $110,000 purchase. To date, however, approximately $134,000 has been paid to Vendor A. This amount covers the 1,000 client licenses, the supporting server components and some training.

The 1,000 electronic forms licenses now held by ITS are not in use by any state agency.

ITS conducted a business case study on Vendor A's product beginning in June 2002—one year after the purchase—and identified the following risks:

- the project has a high break-even point,
- cost recovery is problematic and,
- implementation resources are currently inadequate.

This study has been completed with the recommendation that ITS discontinue the pursuit of an enterprise licensing structure and let agencies develop processes using the 1,000 licenses already purchased. So far, none of the 1,000 licenses have been requested by other state agencies.

Content Management/Portal Services Software

The $1.1 million in content management and portal services purchases are not in use by any state agency. After the content management product was purchased, key departments were given a product demonstration. These departments rejected Vendor B's product. The departments believed the product was hard to use and very expensive to implement and maintain. Interestingly, these are the very points made by the in-state former user of Vendor B's product.

No agencies have truly expressed an interest in Vendor B's content management product.

Because of departmental rejection, product implementation was put on hold by ITS while a business case analysis was performed. The product manager in charge of conducting this business case analysis indicated that no customers have truly expressed an interest in Vendor B's content management product. In fact, the replacement of Vendor B's product with another would not disappoint some departments.

The preliminary result of the business case analysis was that there is no demand for this particular product. However, ITS does plan to present an upgraded version of Vendor B's product to departments in the near future. If departments like this new version, then ITS will attempt to implement Vendor B's content management product statewide.

Customer Relationship Manager/Help Desk Software

Vendor C's $410,000 CRM/Help Desk product is not being used by ITS to support the help desk. When the implementation process was started, ITS encountered a problem. Specifically, the existing software which was supporting the help desk was also supporting other functions as well, such as time sheets and radio applications. If the existing software was to be replaced by Vendor C's product then these functions would have to be re-written using Vendor C's software. The estimate of these conversion costs got very expensive, very quickly and the implementation of Vendor C's CRM/Help Desk product was put on hold. We noted that this problem was identified by the chief technical architect in his Dec 17th executive briefing made prior to product purchase.

Currently, the implementation of Vendor C's CRM product is considered cost prohibitive.

ITS is currently conducting a business case analysis for Vendor C's product. There are no current plans to bring Vendor C's CRM/Help Desk software into production because the implementation is cost prohibitive—another issue brought up by the chief technical architect. As of March 2003, a prototype using Vendor C's CRM/Help Desk software had been constructed making it possible to compare the existing help desk software with Vendor C's. Once the role and function of the help desk is clearly defined, ITS may consider other help desk software products, including a new version of the existing software.

Overall, our review of these three ITS purchases revealed inadequate pre-purchase analyses supporting $1.7 million in product purchases. When an inadequate analysis is performed, the risk that a product purchased will not adequately address existing needs is increased. This risk materialized in these three purchases and, as a result, ITS may have misspent $1.7 million.

In addition, this review revealed concerns with the use of non-competitive bid procedures. When purchases are made in a non-competitive fashion, a risk is run of not getting the best product for the best price. Further, non-competitive purchases are more open to the suspicion of favoritism. This absence of competition helped fuel employee suspicion over the appropriateness of management's activities which spawned this allegation. The circumstances surrounding these purchases could lead some to believe that the methods used (i.e., MLA addendums and sole-source contracts) were simply an expedient means of circumventing the RFP process and the DAS auditor concurs with this conclusion.

Recommendations

1. We recommend that ITS develop and follow a process which allows ITS to assess the prudence of a purchase prior to the purchase.

2. We recommend that DAS administration and the Division of Purchasing's director develop and follow controls which increase the oversight of the Division of Purchasing.

3. We recommend that the Division of Purchasing develop and follow specific guidelines as to the circumstances under which a vendor's master license agreement may be extended to include other products.

4. We recommend that the DAS administration and the Division of Purchasing review and develop more stringent controls concerning the circumstances under which a sole-source contract will be awarded.

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Chapter III
Chief Technical Architect May Have Benefitted His Son with State Business

The allegation that the chief technical architect benefitted his son, a state sales representative, by directing business towards him may have merit based on information we collected. First, total payments to Vendor D rose from a yearly average of $415,000 in fiscal years 1999 and 2000 to $1.4 million in fiscal year 2001, the first year the chief technical architect's son was employed by Vendor D. Second, the two questioned purchases, which totaled approximately $1.1 million, were done quickly with an inadequate supporting analysis. Third, these purchases were procured through sole-source contracts which raise questions. The chief technical architect stated that the two purchases in question were coincidental with his son becoming Vendor D's state sales representative. The chief technical architect further denied having any involvement in either purchase decision.

Vendor D Purchases Rose Sharply in Fiscal Year 2001

ITS purchases from Vendor D rose sharply in fiscal year 2001. It was in fiscal year 2001(specifically in October 2000) that the chief technical architect's son became Vendor D's state sales representative. Figure 1 shows the total payments made to Vendor D in fiscal years 1999 through 2002 as well as the portion of the total amount which was for capital and current expenditures.

Figure 1. Historical Payments to Vendor D. Total expenditures and, in particular, capital expenditures rose significantly in fiscal year 2001.

Fiscal Year	Total Expenditures	Capital Expenditures	Current Expenditures
1999	$ 330,234	$ 0	$ 330,234
2000	499,650	123,230	376,420
2001	1,441,673	1,124,038	317,635
2002	577,451	156,046	421,406

The employment of the chief technical architect's son coincided with a steep rise in ITS's capital purchases from Vendor D.

It is clear from Figure 1, that payments to Vendor D increased significantly in fiscal year 2001. However, this high expenditure level was not maintained in fiscal year 2002 when expenditures dropped closer to fiscal years 1999 and 2000 levels.

The $1.1 million in capital expenditures for fiscal year 2001 was primarily made up of two purchases.

- A December purchase of twenty 9840 tape drives costing $383,000.
- A June purchase of two Virtual Storage Managers (VSMs) costing $686,000.

These two pieces of equipment had been first proposed in July 1999 as an ITS virtual tape project. At this time, ITS was committed to tape storage. The 9840 tape drives were high-density drives which allowed more data to be stored per tape. The Virtual Storage Manager performed two functions.

- The primary function was to provide virtual tape drives. In this way, ITS could appear to have more tape drives than it physically had.

- The secondary function was to perform data-set stacking. Data-set stacking maximized the efficient use of an individual tape. Without this or a similar procedure, only one file record could be stored on a tape.

The ITS storage management team, who had proposed the project, actually issued a virtual tape subsystem RFP in October 1999. Vendor D submitted the Virtual Storage Manager (VSM) as their solution and were chosen by the storage management team to win the contract.

The storage management team presented their recommendation to the former ITS director. This recommendation was rejected by the former ITS director around January 2000 for the following reasons:

1. Vendor D's financial position was too risky,
2. Virtual tape was too expensive for the benefits obtained,
3. Movement towards a disk storage environment should be pursued since the price of tapes and disks were starting to converge.

In December 2000, ITS's storage direction abruptly changed back to tape with the offer of two years free maintenance on all new 9840 tape drives purchased.

With the rejection of virtual tape as a storage component, the ITS storage manager understood that ITS's storage direction had changed from tape to disk. So, for the remainder of calendar year 2000, the storage manager studied the possibility of moving more files to disk storage. He also began to reduce equipment inventory associated with tape storage. However, in December 2000, ITS's storage direction abruptly changed back to tape when Vendor D's state sales representative (the chief technical architect's son) made a time-limited proposal to ITS offering two years of free maintenance on the purchase of new 9840 tape drives.

Analysis on Tape Drives and VSM Purchases Inadequate

Analysis supporting the $383,000 purchase of twenty 9840 high-density tape drives was inadequate. First, ITS had not been looking for new tape drives and did not initiate this purchase. Rather, the tape drive purchase was initiated by Vendor D's state sales representative. Second, though ITS's justification for the quick purchase included large cost savings, no thorough cost analysis was performed prior to the purchase.

Similarly, the analysis supporting the $686,000 purchase of two VSMs was inadequate. In fact, documentation of the VSM selection process was very poor. The only cost analysis found supported the purchase of a solution other then the VSM (i.e., a software solution). It was this software solution that the former ITS director supported, yet somehow the VSM was purchased.

Tape Drive Analysis Inadequate

ITS did not initiate the tape drive purchase, Vendor D's state sale representative did. While the justification for the purchase included a cost savings, the cost analysis done was not thorough, in our opinion.

ITS had one month to take advantage of Vendor D's free maintenance offer.

Purchase of Tape Drives Initiated by Vendor D. The purchase which reversed ITS's storage direction from disk to tape was initiated by Vendor D's state sales representative rather than anyone in ITS. On November 27, 2000, approximately six weeks after his employment began with Vendor D, the chief technical architect's son sent a 9840 tape drive refresh proposal to three ITS employees: the director, the chief technical architect and the storage manager. This refresh proposal began as follows:

> *I wanted to take this opportunity to make you aware of some great new opportunities to take advantage of new tape technology. I realize that you did not request this proposal, but I felt it important to let you know of the time, money and resources that will be saved by upgrading to the 9840 drives.*

Contained in this refresh proposal was the offer of two years free maintenance which Vendor D's sales representative estimated as a two-year savings of $237,000. However, the 9840 tape drives must be purchased by December 31st if ITS was to take advantage of the free maintenance offer. Thus, ITS has one month to make this decision and complete any purchase.

Two ITS managers over storage were very surprised at the decision to purchase the 9840 tape drives.

The decision to purchase the 9840 tape drives was made on December 15th by the former ITS director. This decision was made without input from either the ITS storage manager or the ITS section manager over storage who were attending an out-of-state conference. Both managers were very surprised at this decision since it represented a second storage direction reversal in less then a year.

No Thorough Cost Analysis Was Done. The former ITS director made this decision because he believed that the two years of free maintenance fully paid for the 20 new tape drives in about 18 months. However, we found no thorough cost analysis done prior to the purchase which would support this belief.

The most thorough cost analysis found was from Vendor D's state sales representative. He estimated that $237,000 of maintenance savings would be realized by the state over the two-year free maintenance period. However, there was a mistake in the analysis.

Vendor D's sales representative over-estimated the maintenance savings.

In computing the savings, Vendor D's sales representative added together the current maintenance costs of the existing tape drives ($84,000 per year) with the maintenance costs avoided on the new 9840 drives ($35,000 per year). We think the savings to the state is simply the $84,000 in current maintenance costs per year or $168,000 for the two years. These savings do not cover the total cost of the 9840 tape drives ($383,000).

The chief technical architect estimated approximately $400,000 in savings which would result from the purchase of the 9840s. It is possible that this is the savings estimate the former ITS director was using since it is the only estimate which exceeds the purchase price of the 9840s. The chief technical architect's estimate is made of two components:

- tape maintenance savings of approximately $225,000, and
- maintenance savings of approximately $175,000 from an assumed reduction of tape silos (housing units for tapes).

The chief technical architect's estimate of tape maintenance savings seems high to us given Vendor D's corrected estimate. In addition, no tape silos were reduced because of the 9840 purchase according to the ITS storage manager's calculations. Instead, the reduction in tape silos would come later as a result of the VSM purchase. It is true, however, that ITS reduced its tape requirements by about 19,000 tapes as a result of purchasing the high-density 9840 tape drives. This reduction would result in future tape replacement cost savings.

These two cost analyses (the ones from Vendor D's state sales representative and the chief technical architect) are the only ones we could find which occurred prior to the sale. In our opinion, both analyses are inadequate.

- The capital and start-up costs of bringing on the 9840s were not considered.
- A total cost comparison of purchasing the 9840s versus not purchasing the 9840s was not performed.
- The effect the 9840 tape drive purchase would have on ITS's movement towards disk storage was not analyzed.

While ITS management now believes disk storage is prohibitively expensive, this conclusion had not been reached in December 2000. In our opinion, ITS did not do an adequate analysis to justify this purchase.

VSM Analysis Inadequate

Little documentation of the process which selected the VSM was found. However, the one analysis which was found supported the selection of a software solution over the VSM. Further, the former ITS director, the ITS storage manager, and the ITS section manager over storage all supported the software solution. In spite of this support, the VSM was purchased. The individual responsible for the actual selection of the VSM over other solutions was never identified.

Unless a tape backup problem was solved, only one file record could be stored on each new 9840 high-density tape.

The purchase of the 9840 tape drives and the shift back to tape storage caused a tape storage problem to resurface. This problem concerned the efficient use of backup tapes. Specifically, when departmental data was backed up onto tape, only one file record could be stored on each tape. This record could take the whole tape or use only a very small portion of the tape. If the latter possibility occurred, then the remainder of that tape was unused and, thus, wasted. Although the new 9840s were high-density tape drives, the fact still remained that only one file record could be stored on each new high-density tape unless this backup problem was solved. ITS's preferred solution was a procedure called data-set stacking.

VSM Selection Process Poorly Documented. The process by which the VSM was chosen as the data-set stacking solution is poorly documented. Nonetheless, at least three vendors submitted data-set stacking proposals to ITS. Two vendors submitted a hardware solution for data-set stacking. One of these was Vendor D who again submitted their VSM solution. A third vendor submitted a software solution for data-set stacking. Exactly when these vendors submitted their solutions or when the selection process began is unknown.

An April 26, 2001 cost evaluation supported a software solution over the VSM solution.

The only analysis found was a 36-month cost evaluation dated April 26, 2001. This evaluation compared two data-set stacking solutions—the software solution and Vendor D's VSM solution. This evaluation estimated the three-year capital and operating expense of the software solution to be approximately $444,000 while the same expense for Vendor D's VSM solution was estimated to be $865,500. This evaluation stated that either solution would solve the problem.

In spite of the former ITS director's support for the software solution, the VSM was chosen.

The former ITS director remembered supporting the software solution because it was less expensive and it focused strictly on data-set stacking (i.e., it did not have a virtual tape component like the VSM did). The ITS section manager over storage as well as the ITS storage manager also remember supporting the software solution. Nonetheless, in spite of this support and the cost differential between the two solutions, the VSM was somehow chosen.

Individual Who Chose VSM Not Known. The individual who actually made the VSM choice was never identified to us. The ITS deputy director, who signed the VSM purchase documents, could not remember who instructed him to make the purchase. This ITS deputy director began to sign all purchase documents involving Vendor D after the son of the chief technical architect was hired by Vendor D. However, this deputy director had little expertise in either storage management or contractual matters. Rather, his expertise was in customer relationships. As a result, the deputy director's signature gives no oversight assurance that the VSM decision was financially or technically competent.

The ITS deputy director who signed the VSM contract cannot remember who instructed him to do so.

Based on the information available, we are very uncomfortable with this purchase. For reasons unknown, the less expensive data-set stacking solution was not chosen, in spite of being favored by the former ITS director, the ITS section manager over storage, and the ITS storage manager. Further, the individual who actually chose the VSM was never identified.

Non-competitive Procurement for Tape Drives and VSM Questionable

Both the 9840 tape drives and the VSM were procured in a non-competitive way which opens up some questions. When Vendor D's expired statewide contract could not be used to make the tape drive purchase before December 31st, the tape drives were instead justified as a sole-source and purchased as such. This gives the impression that a sole-source was simply used as a vehicle to make a quick purchase. The VSM was also purchased as a sole-source contract in spite of the fact that competition existed in the provision of data-set stacking solutions.

Tape Drive Procurement Questionable

ITS had to purchase the 9840 tape drives by December 31st or the two-year free maintenance offer would not be available. With the purchase decision made on December 15th, ITS had only 16 days to secure the purchase. ITS wanted to purchase the tape drives using Vendor D's expired statewide contract but this plan failed. So, a sole-source justification was developed in under four hours and the tape drives were purchased using a sole-source contract.

ITS wanted to purchase the 9840 tape drives off Vendor D's state contract but it had expired.

ITS wanted to purchase the 9840 tape drives using Vendor D's statewide automated tape library contract. However, there were two problems:

- Vendor D's automated tape library statewide contract had expired on November 30th, and
- The 9840 tape drives were not part of that statewide contract.

On December 19th, it became apparent that ITS had requested an extension of the statewide contract and the addition of the 9840 tape drives to that contract. While purchasing agreed to extend the statewide contract until February 28th to allow time for rebidding, they refused to add the 9840 tape drives stating:

> *[The Director of Purchasing] has concerns that our ability to rebid a future contract may be impaired if the current purchase needs are fulfilled prior to a rebid process.*

The chief technical architect replied as follows:

This decision will cost the state $400K in unnecessary maintenance fees and I think it should be revisited immediately. We commonly allow contract vendors to update products and prices.

In spite of this appeal, purchasing still refused to add the 9840 tape drives to Vendor D's contract.

A sole-source justification which should have been prepared by ITS personnel was not found.

Since Vendor D's expired statewide contract could not be used to purchase the 9840 tape drives, ITS used a sole-source contract instead. The written sole-source justification which should have been prepared by ITS personnel was never found. The only documentation found was a December 22nd analysis of ITS's sole-source request done by the deputy director of the Department of Administrative Services (DAS).

The DAS deputy director was involved because of a December 21st request by the former ITS director to the former DAS executive director which stated:

After evaluating the bid, ITS feels that there is a very good technical and business case for the purchase of these drives. I discussed the issue with [the purchasing director] and I believe the Division of Purchasing will support a recommendation for purchase. However [we] both feel apprehensive in making this decision because [Vendor D's state sales representative] is my [chief technical architect's] son. I would like to state here that I can attest to the fact that [the chief technical architect] had no direct involvement in this process. Never the less, to avoid any appearance of impropriety, I would like to declare a conflict of interest. Further, I am requesting that the Department make the decision and not ITS.

An admittedly limited sole-source analysis performed by the DAS deputy director justified this $383,000 purchase.

The next morning, the deputy director completed an admittedly limited analysis which concluded the sole-source request was justified. The deputy director indicated that while his four-hour analysis was limited, it was his belief that ITS had already done an in-depth analysis since that was their job. We found no such in-depth analysis and are uncomfortable that a limited review was used to justify a $383,000 sole-source purchase.

VSM Procurement Questionable

Given the competition available for data-set stacking solutions, a sole-source justification for a $686,000 purchase seems questionable. Nonetheless, a sole-source purchase request for Vendor D's VSM was submitted to purchasing on April 20th. This request was denied by the purchasing director because the approximate cost of the purchase was not reported. Another sole-source request, including the approximate cost, was submitted to and approved by purchasing on June 1st.

The sole-source request written by the ITS deputy director was very general and made no actual reference to the VSM. The justification was as follows:

1. Products acquired will consist of upgrades or enhancements to existing [Vendor D] products not available from any other source with equivalent specifications, trade-in values or reductions of ongoing maintenance costs.

2. No competing vendor offers products with equivalent technical specifications in terms of guaranteed compatibility with the State's existing tape environment.

3. The State of Utah has had an ongoing business relationship with [Vendor D] for many years and we currently own millions of dollars worth of [Vendor D's] products. These prices are consistent with previous discounts offered to the State by [Vendor D]. [Vendor D] is the sole source for this equipment based upon previous sole-source justifications for the tape drives and our current installed base of [Vendor D] products.

The VSM sole-source purchase request pre-dates the April 26th cost evaluation.

Our initial concern with this April 20th sole-source justification is that it pre-dates the April 26th cost evaluation. In other words, it appears that the VSM purchase decision was made prior to the side-by-side cost comparison of the two competing solutions.

Another concern is with ITS's apparent argument that only one solution (i.e., Vendor D's VSM) could possibly function in the state's existing tape environment. This argument is contradicted by the fact that the cost-evaluation considered a solution other than Vendor D's VSM and by the fact that the solution of choice for the former ITS director , the ITS section manager over storage and the ITS storage manager was one other than the VSM. Based on this, we do not find the sole-source justification compelling.

The purchasing director approved this sole-source justification primarily because ITS listed equipment compatibility as a requirement (see justification 2). Generally, when ITS lists compatibility as a requirement, the purchasing director approves the sole-source justification. Again, the purchasing division does not have the expertise or time to make this type of analysis.

We are concerned that no formal, competitive selection process was followed when selecting the data-set stacking solution. Instead, the purchase was justified as a sole-source even though other data-set stacking solutions were obviously available. Also concerning is the fact that the actual selection of the VSM appeared to precede a cost comparison between the two competing systems. Of further concern is the fact that the individual who actually selected the VSM was never identified to us.

The VSM was justified as a sole-source even though other data-set stacking solutions were available.

The chief technical architect maintains that purchases from Vendor D are coincidental to his son's employment with Vendor D. The chief technical architect maintains that both purchases (the 9840 tape drives and the VSM) were caused by the implementation of the virtual tape plan. This plan had been approved by a former CIO in fiscal year 2000 but was purposefully deferred until fiscal year 2001 when the remaining storage area network (SAN) projects were approved.

This explanation concerns us for two reasons: First, this explanation is contrary to what the former ITS director has stated. He reported that the virtual tape plan was not deferred by him but, instead, rejected. Second, we believe a purposeful deferral implies some sort of plan. From our perspective, very little about these two Vendor D purchases appears planned.

Based on the information collected, the possibility of a conflict of interest remains. Given the familial relationship between the chief technical architect and Vendor D's state sales representative, we believe ITS had a duty to maintain detailed records and analyses concerning Vendor D purchase decisions. Instead, documentation was sketchy and actions taken (i.e., sole-source justifications) appeared questionable.

Recommendations

1. We recommend that ITS perform a thorough cost-benefit analysis on all relevant options prior to purchase.

2. We recommend that ITS maintain supportive documentation for all purchases equaling or exceeding $100,000 for a period of time set forth by the ITS director.

3. We recommend that all purchases equaling or exceeding $100,000 require the written approval of the ITS director.

Chapter IV
Issuance of Gag Order Unlikely

The allegation that ITS employees were issued a gag order forbidding communication with legislators and the press does not appear to have merit. First, while two instances were identified at which a possible gag order was issued, different employees interpreted the messages conveyed differently. Second, of the thirteen ITS employees interviewed, only two (15 percent) believed that a gag order had been placed on ITS employees. Consequently, this issue was not pursued further.

In making this assessment, the judicial example of a gag order was used. In this case, a judge would make clear, unambiguous statements barring trial participants from revealing all or certain aspects of the court proceeding outside of the courtroom. In addition, a penalty would be attached for any participant who violated the judge's order. So, in applying this model, we first sought clear, unambiguous statements which barred ITS employees from speaking to legislators or the press. We found no such statements.

We identified no statements which barred ITS employees from speaking to legislators or the press.

The first meeting at which a gag order might have been issued was a combined managers meeting which occurred on September 17, 2002. At this meeting, the ITS director was characterized as attempting to curb the growing staff animosity over allegations concerning the hiring of former Excite@home employees. Employees attending this meeting agreed that the ITS director admonished the staff for wasting time discussing the audit report and the related newspaper articles and gave instructions for the staff to get back to work.

During this meeting, two statements were attributed to the ITS director which caused one employee to believe a gag order was issued. The first statement was "Keep your mouths shut." and the second was "The talk we've had does not leave this room." The ITS director stated to us that while he probably made the latter statement he did not make the former statement. Regardless of whether he made one or both statements, other employees attending this meeting did not interpret any statements made as a gag order. Instead, they believed the overall message was simply to stop wasting time talking about the audit report and get back to work.

The second meeting at which a gag order was alleged was held by a section manager on October 24, 2002. At this meeting, employees were instructed that their managerial concerns should go through proper management channels before either the Ombudsman or legislators were approached. The section manager also allowed the circumvention of the proper chain of command if the employee's direct manager was not trusted.

One employee believed this denial of access to the Ombudsman or legislators until certain internal procedures were followed was a gag order. Two other employees attending this meeting did not have the same interpretation. In fact, one employee believed that the trust issue effectively eliminated all management, rendering employees free to pursue outside intervention.

77 percent of the ITS employees interviewed believed no gag order was issued.

In addition, thirteen ITS employees were interviewed concerning their perceptions of any gag order issuance. Of the thirteen ITS employees interviewed, only two (15 percent) believed a gag order had been issued while one (8 percent) was unsure. The remaining ten (77 percent) believed no gag order was ever issued.

In our opinion, there is little support for the allegation that gag orders were issued by ITS management. From our viewpoint, a gag order is an unambiguous directive barring communication outside certain confines. As such, a gag order should not result in different interpretations by the intended recipients. The information gathered from ITS employees does not fit this expectation. Instead, interpretations varied among ITS employees attending either meeting as to whether a gag order had been issued. Based on these results, we did not pursue the allegation further.

Agency Response

June 17, 2003

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 read and respond to your audit entitled A Review of the Division of Information Technology Services. An internal audit conducted last November by the Department of Administrative Services yielded similar findings and recommendations to those of your auditors.

I agree with all the recommendations set forth in the audit. Of the recommendations in Chapter II, numbers 1 and 4 have been implemented, numbers 2 and 3 are in process. All of the recommendations in Chapter III have been implemented.

I appreciate the professional and courteous manner in which your staff conducted this audit.

Sincerely,

S. Camille Anthony
Executive Director
Department of Administrative Services

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