

# NEBRASKA

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DEPT. OF ADMINISTRATIVE SERVICES



November 15, 2022

Pete Ricketts, Governor

Governor Pete Ricketts  
Nebraska State Capitol  
P.O. Box 94848  
Lincoln, NE 68509

Members of the Nebraska Legislature  
Nebraska State Capitol  
P.O. Box 94604  
Lincoln, NE 68509

Dear Governor Ricketts and Members of the Nebraska Legislature:

I am pleased to inform you that the evaluation of the State of Nebraska's procurement processes is complete. Please accept this submission of the enclosed procurement report as the Department of Administrative Services' (DAS) fulfillment of LB1037, introduced by Senator Arch and passed during the second session of the 107<sup>th</sup> Legislature.

As specified by LB1037, DAS contracted with Ikaso Consulting (Ikaso), a firm with government procurement expertise, to conduct an evaluation and provide a report with recommendations to the State's procurement policies and practices. Consistent with the legislation's requirements, Ikaso conducted an analysis of procurement practices to include matters of due diligence, evaluation of cost, accountability for decision making, and protest procedures. DAS-Materiel Division supported the review by providing considerable staff time and unfettered access to all relevant documents, policies, practices, and contracts. Ikaso's comprehensive evaluation also incorporated input from key stakeholders, including members of the legislature, agency procurement professionals, vendors, and legal experts. Finally, Ikaso also benchmarked Nebraska procurement policies with four peer states.

If you'd like to discuss the evaluation and recommendations, please contact Sarah Skinner, DAS Policy Advisor, at (402) 419-4229.

Thank you for your support for LB1037 and our DAS-Materiel Division team.

Sincerely,

Jason Jackson  
Director, DAS

CC: Michelle Potts, Acting Materiel Administrator/Chief Procurement Officer

Jason Jackson, Director

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**Procurement Review Findings and**  
**Recommendations Report**



*Submitted To:*  
*Nebraska Department of Administrative Services*  
*Materiel Division*

*Ikaso Consulting, LLC*

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# **I. Executive Summary and Recommendation Roster**

## **Executive Summary**

Governor Pete Ricketts signed Legislative Bill 1037 (“LB 1037”) into law on April 18<sup>th</sup>, 2022. As signed, this bill instructed the State of Nebraska (“the State”) Department of Administrative Services (“DAS”) to hire a contractor to conduct a review of the State’s procurement process with a focus on four key areas: due diligence, evaluation of cost, accountability for decision-making, and protest procedures. As required by law, the Administrator (“the Administrator”) of the Materiel Division requested proposals for procurement consulting services from qualified vendors on May 13<sup>th</sup>, 2022. Ikaso Consulting (“Ikaso”) submitted a response to the Administrator on May 20<sup>th</sup>, 2022, that outlined Ikaso’s approach to meeting the State’s needs in accordance with LB 1037. On June 9<sup>th</sup>, 2022, the Administrator informed Ikaso that DAS had selected Ikaso as the successful contractor. Contract negotiations began immediately and a fully executed contract went into effect on June 17<sup>th</sup>, 2022. We officially began work on June 20<sup>th</sup>, 2022.

Through a thorough review of the State’s statutes, promulgated rules, legislative reports, administrative forms, manuals, and guidance, and the conduct of interviews with key procurement stakeholders across the State and the vendor community, and an analysis of available data, this report includes thirty-three recommendations across which we noted components of the State’s procurement process or practice that could be adjusted to better meet the needs of the State and its constituents. A complete table of the recommendations is included below. This table includes the estimated complexity to implement each recommendation, the estimated impact on the State’s operations, and the estimated impact on the State’s current and potential suppliers.

This Report and recommendations are listed in approximate alignment with the order of the State’s procurement process: Background and Context, State Purchasing Bureau (“SPB”) Operations, Procurement Staff Training, Procurement Drafting and Development, Procurement Evaluation and Management, Protest Procedures, and Contract and Vendor Management. Section II: Project Scope and Methodology outlines the process by which we reviewed the State’s procurement practices and procedures, including the resources we relied upon, and the methodological framework criteria used to evaluate the findings from these resources. Section III: Findings and Recommendations contains further details and explanations for each recommendation. Each subsection of Section III is organized by first summarizing the findings and recommendations of the specified step of the procurement process, followed by findings from written materials, the results of a targeted comparison of Nebraska’s peer states where applicable, the findings from interviews, and ends with an analysis of these findings and a discussion of our detailed recommendations. These detailed recommendations also designate which framework criteria are addressed by each recommendation. Following Section III, a complete list of written materials reviewed can be found in Appendix A, a complete roster of

interviews conducted in Appendix B, and a complete list of acronyms used throughout this report in Appendix C.

Overall, we found that the State’s procurement practices did not diverge significantly from nationwide standards. Furthermore, State staff did not describe any large inefficiencies within the processes outlined either in DAS rule or State statute. Thus, the majority of our recommendations do not address or recommend changes to rule or statute, but instead address internal policies and procedures.

We have specifically tailored these recommendations to the needs of the State of Nebraska and have designed them to bolster the current procurement practice into a process that balances the demands of a 21<sup>st</sup>-century economy with the responsibilities of stewarding public funds and trust. We appreciate the State’s commitment to good governance and public service, demonstrated by both the decision to engage in this review and evaluation and by the support provided during the development and delivery of this report.

## **Recommendation Roster**

A complete list of our thirty-three recommendations is provided below. Each recommendation is numbered, and the lettering of each number refers to the sub-section of Section III in which the recommendation appears. Each recommendation within a section is individually numbered. The end of each section in this report reiterates each recommendation with greater detail if applicable and notes relevant statute, rule, or policy changes to implement the recommendations.

No.	Overview	Complexity	Impact on State Ops	Impact on Suppliers
<b>A. Background and Context</b>				
A-1	SPB should ensure it owns and controls all matters relating to procurement policy and process, while allowing agencies and end users of contracts to own and control the resulting contracts.	High	High	Low
A-2	The legislature should consolidate and reconcile State procurement statute to ensure consistency, ease of access and reference, and to eliminate ambiguity.	High	High	Low
A-3		High	High	Medium

No.	Overview	Complexity	Impact on State Ops	Impact on Suppliers
	SPB should implement an electronic procurement system as contemplated in NRS Chapter 81-153 (10) with cross-agency input on system requirements.			
<b>B. State Purchasing Bureau Operations</b>				
B-1	SPB should identify internal workload-related metrics it wishes to track in line with its operational priorities and ultimately develop core Key Performance Indicator (KPI) targets to assess ongoing operations as an aid to meeting those priorities.	Medium	High	Low
<b>C. Procurement Staff Training</b>				
C-1	SPB should review and develop external agency procurement trainings.	High	High	High
C-2	SPB should expand and standardize their staff training program utilizing updated procurement materials.	High	High	High
<b>D. Procurement Drafting and Development</b>				
D-1	SPB should update all templates and boilerplates.	Medium	High	Low
D-2	SPB should create and maintain a repository of competitive grant models.	Medium	Medium	Low
D-3	SPB should update policy to allow buyers to issue RFIs that a potential vendor must	Low	Medium	Medium

No.	Overview	Complexity	Impact on State Ops	Impact on Suppliers
	respond to.			
D-4	SPB should review the State’s standard terms and conditions to determine which terms may be negotiated.	Medium	Medium	Medium
D-5	SPB should update policy to require all deviations from the competitive bidding process be submitted at the beginning of the procurement drafting process.	Low	Medium	Low
D-6	The legislature should modify statute, and SPB should modify supporting policy, to conduct the proof-of-need process before a procurement proceeds.	Low	Medium	Low
D-7	SPB should remove or modify the Alternate/Equivalent Proposals clause from the RFP boilerplate.	Low	Medium	Low
D-8	SPB should update policy and discontinue the practice of return-mail bids.	Low	Low	Low
<b>E. Procurement Evaluation and Management</b>				
E-1	SPB should develop policy guidance for developing solicitation-specific mandatory technical requirements.	Low	High	Low
E-2	SPB should develop guidance for evaluating and potentially clarifying exceptions to contractual terms within policy.	Medium	Medium	Medium



No.	Overview	Complexity	Impact on State Ops	Impact on Suppliers
E-3	SPB should establish a standard, total point allocation framework for all solicitations within policy.	Low	Low	Medium
E-4	SPB should update policy and share guidance on the allocation of cost, technical merit, and corporate merit points.	Low	Medium	Low
E-5	SPB should develop guidance and instruction in policy for cost reasonableness and cost realism. This should be paired with a statutory update to add price realism and price reasonable as grounds for finding a bidder not responsible.	High	Low	Medium
E-6	SPB should develop guidance in policy for “consensus” scoring.	Medium	Medium	Low
E-7	SPB should establish a scoring rubric for RFPs.	Medium	High	Low
E-8	The legislature should amend the NRS to remove the Nebraska in-state reciprocity preference in its current form.	Medium	Medium	Medium
<b>F. Protest Procedures</b>				
F-1	The State should maintain a single protest policy and process led by SPB.	Medium	Medium	Medium





No.	Overview	Complexity	Impact on State Ops	Impact on Suppliers
F-2	SPB should establish specific protest grounds in policy.	Low	Low	Medium
F-3	SPB should adjust policy to allow protests on specifications ( <i>i.e.</i> , before solicitations are due).	Low	Low	Medium
F-4	SPB should update protest policy to expressly allow contract negotiations to proceed but should also be modified to not allow contract execution prior to protest resolution without written approval from DAS.	Low	Medium	Medium
F-5	SPB should clarify policy to allow for debriefs for vendors not selected for award.	Low	Low	Medium
<b>G. Contract and Vendor Management</b>				
G-1	SPB should establish a policy allowing agencies to finalize, negotiate and manage their own contracts.	Low	High	Medium
G-2	SPB should establish a policy to allow for the potential of initial planning work that may commence in parallel to contract negotiations, by giving written notice that preparatory work done prior to a signed contract is “work at risk.”	Low	Medium	Medium
G-3		High	Medium	Medium

No.	Overview	Complexity	Impact on State Ops	Impact on Suppliers
	SPB should establish an organized and searchable Statewide contract listing.			
G-4	The legislature should amend statute related to mandatory usage of statewide contracts.	Medium	Medium	Medium
G-5	SPB should update policy around debarment and suspension	Medium	Low	Medium
G-6	SPB should establish a policy regarding a standard maximum initial contract term.	Low	Medium	Low

## II. Project Scope and Methodology

Utilizing guidance from the State and our experience with statewide procurement evaluation across the country, we proposed a focus on five key areas of the procurement process: Due Diligence, Evaluation and Scoring of Technical Merit, Evaluation of Cost, Accountability for Decision Making, and Protest Procedures. Each of these areas is addressed throughout the report. We set out to evaluate these categories through a process that involved interviews with stakeholders across the State, past legislative review, and a review of statutes, rules, and procedures. Prior to commencing this evaluation, we and DAS leadership agreed upon a common “framework” that distilled the goals of this effort. The agreed upon framework is below.

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Framework Criteria	Key Components of Framework Criteria
<b>Efficiency</b> 	<ul style="list-style-type: none"> <li>• The State’s procurement process appropriately balances cost with value.</li> <li>• The State’s procurement process minimizes complexity to the greatest extent possible.</li> </ul>
<b>Effectiveness</b> 	<ul style="list-style-type: none"> <li>• The State’s procurement process effectively results in acquiring the actual goods and services needed by the State.</li> <li>• The State’s procurement process effectively screens for responsible bidders that are able to deliver proposed outputs at proposed costs.</li> </ul>
<b>Customer Service</b> 	<ul style="list-style-type: none"> <li>• The procurement process and system are sufficiently easy for both State agencies and vendors to access.</li> <li>• State agencies are satisfied with the procurement services provided by the State Purchasing Bureau.</li> </ul>
<b>Transparency &amp; Accountability</b> 	<ul style="list-style-type: none"> <li>• The State’s procurement processes are transparent to members of the public.</li> <li>• The State’s procurement processes have adequate measures and checkpoints to ensure accountability.</li> <li>• The State’s procurement grievance appeal process and procedures are transparent to the public and adequate to ensure that the State conducted a fair procurement in accordance with applicable law.</li> </ul>

The above four criteria graphics appear above the recommendations at the end of each section. The grid of recommendations includes a mark in each graphic’s column indicating which framework goal(s) are furthered by the specific recommendation. Each recommendation’s estimated level of complexity and estimated impact on both the State’s operations and on the State’s current and potential suppliers were calculated based on our experience as well as our understanding of the State’s procurement process developed as a part of this undertaking. This report makes recommendations regarding several potential changes to State law but does not

include specific edits to State statute or State administrative rules.

In preparing this report, we reviewed all applicable Nebraska procurement statute, rules, policies, forms, and procedures. This report defines “statute” as a law passed by the legislature in a manner prescribed by the respective state constitution whereas a “rule” is an administrative law passed by a state agency through the relevant promulgation procedures. A “policy” as used in this report is an assembled body of agency guidance on detailed practices and procedures, which would include the Nebraska Procurement and Contract Management Manuals. A complete list of the materials reviewed can be found in Appendix A. Within this report, unless otherwise noted, all statutory citations are to the Nebraska Revised Statutes (“NRS”) and any rules cited are the Nebraska Administrative Code (“NAC”). This body of written material was both confirmed by the State and contributed to by the State.

Furthermore, we coordinated with the Materiel Division to identify four states in which to conduct a target comparison to specific aspects of the State’s procurement practice. These four states were identified based on a combination of factors including geographic proximity and similarity (*e.g.*, urban and rural distributions, population size), and other factors considered a priority to the State. Colorado, Iowa, Missouri, and South Dakota were identified as “benchmark” peer states. Our targeted comparison was focused on specific topics identified in collaboration with DAS leadership and our findings from these comparisons can be found throughout this report. For each of these states, we reviewed core procurement materials that were publicly available (*i.e.*, state statute, agency rules, and policy manuals) and comparable to the State’s written materials we reviewed.

We also interviewed 41 State and private sector stakeholders. These included State legislators, DAS staff, agency staff, commission staff, board members, and vendors. A roster of those interviewed can be found in Appendix B.

### **III. Findings and Recommendations**

The seven subsections of Section III are laid out in similar fashion. Each subsection begins with an overview of our findings and recommendations for that step in the procurement process, followed by a high-level description of our recommendations for that procurement step with an estimated level of complexity and impact on both State operations and on current and potential State vendors. The next content area is a detailed discussion of our findings from the review of written materials, stakeholder interviews, and a targeted review of peer States wherever applicable. Further topic categorization is provided within each subsection as applicable. Finally, each section concludes with an aggregated analysis of these findings and is followed by a table of the recommendations, with more detail and the framework criteria each recommendations affects.

All acronyms utilized in this report will be defined the first time they are used and then acronymized in subsequent mentions. A complete glossary of acronyms can be found in Appendix C.

## III. A. Background and Context

### Section Summary

Public procurement in the State of Nebraska proceeds in a way that is comparable to States across the country. While we recognize the attention that past procurement challenges have drawn, raising questions of accountability, we feel these can be addressed through a variety of recommendations in this report and did not find evidence of a systematic lack of accountability. In terms of the division of power and responsibility between agencies and the SPB, our first recommendation is to clearly distinguish between what constitutes procurement process expertise and what constitutes expertise in the subject matter or object of a procurement process. This general recommendation is supported by detailed recommendations throughout this report. The State relies heavily on procurement statutes and policy to guide the public procurement process, with minimal use of administrative rules, thus allowing the will of the legislature to stand at the fore and providing flexibility to adapt policy within those parameters. At the same time, these statutes are spread across different chapters of Nebraska law and contain inconsistencies and ambiguities that could be resolved as part of a consolidation and reconciliation effort. Agency interaction with the SPB – while certainly not completely free of bumps or opportunities for improvement (which will be discussed throughout this report) – is notably collegial and cooperative. Interactions (as well as vendor engagement) can be improved in many ways by implementing an electronic procurement system, as is contemplated by LB 1037.

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We make the following recommendations:

No.	Recommendation Description	Complexity	Impact on State Ops	Impact on Suppliers
A-1	SPB should ensure they own and control all matters relating to procurement policy and process, while allowing agencies and end users of contracts to own and control the resulting contracts.	High	High	Low
A-2	The legislature should consolidate and reconcile State procurement statute to ensure consistency, ease of access and reference, and to eliminate ambiguity.	High	High	Low
A-3	SPB should implement an electronic procurement system as contemplated in NRS Chapter 81-153 (10), including with cross-agency input on system requirements.	High	High	Medium

## **Findings and Analysis**

### **Written Material Findings**

#### *Division of Power and Responsibility*

NRS Chapter 73-504 and existing policy and practice make it very clear that the Director of DAS prescribes the manner in which services contracts are to be bid. Services contracts are typically the most complex and most costly, and therefore solicited via a Request for Proposals (“RFP”) process. The statute further makes clear that any State agency may request that SPB conduct a competitive bidding process on their behalf, or else run the solicitation process on their own according to SPB requirements. Agency directors are responsible for ensuring solicitations issued directly by the agency are pre-reviewed by SPB, and also for appropriate public notice (in cooperation with SPB) of an impending solicitation.

Beyond statute, our review uncovered agency-specific policy and procedure documents that guide how agency-led solicitations are conducted and managed.

In terms of direct purchase authority, NRS Chapter 73-504(2) establishes fifty thousand dollars as the threshold for services procurements that must be conducted under the review or auspices of the SPB. NRS Chapter 81-1118(5)(a) establishes fifty thousand dollars as the threshold for the use of the competitive formal sealed bidding process for procurements of materials, supplies, or equipment, and the lease of personal property, which must be conducted by SPB. NRS Chapter 81-1118(5)(b) allows procurements expected to be between twenty-five thousand and fifty thousand dollars be conducted via an informal competitive bidding process under the auspices of the SPB. NRS Chapter 81-1118(5)(c) allows unrestricted open market purchases when purchases are of an estimated value less than twenty-five thousand dollars. Delegation of direct purchase authority from the Materiel Division to agencies is allowed by express written order under NRS Chapter 81-161.03.

### *Accountability*

NRS Chapter 73-507 establishes limited exceptions to standard requirements for services procurements that may be approved by SPB, including sole source, emergency needs, and contracts established by external entities such as the federal government. It also includes a general-purpose exception where standard requirements are not appropriate or compatible with the circumstances or contract. Additional exceptions are established for specialty procurements such as construction-related arrangements including architecture, engineering, surveying, legal services, pass-through assistance (presumably, grants), intragovernmental agreements, and other less-common and unique arrangements.

NRS Chapter 73-508 creates a separate and special exception for sole source contracts in emergency situations, allowing agency directors to approve such contracts. We found policy guidance that seems to conflate sole source emergency procurements under this statute with emergency procurements more generally, though it is unlikely that an emergency procurement authorization from DAS would be needed but a sole source was not involved.

In parallel to NRS Chapter 73, NRS Chapter 81-1118(5) establishes the Materiel Division as the authority for procurement of materials, supplies, or equipment, and the lease of personal property. The only exception established to the statutory language is the declaration of an emergency by the Governor.

### *Procurement Statute Reconciliation*

As noted above, NRS Chapter 73 – which focuses on services, and NRS Chapter 81 – which is broadly considered to focus on the procurements of materials, supplies, or equipment, and the lease of personal property, are located in separate parts of Nebraska Statute. Moreover, the procurement-related elements of NRS Chapter 81 are widely distributed across a chapter of over 1,300 pages, with large, unrelated sections intermixed.

### *Past Procurement Challenges*

The report issued under Legislative Resolution 29 included a number of past procurement challenges and asserted a number of issues with past procurements. This report was presented as representative of historical issues with public procurement in the State. Beyond the LR29 report, this report considers court filings specific to the Eastern Service Area Child Welfare contract that was awarded to Saint Francis Ministries.

### **Interview Findings**

#### *Division of Power and Responsibility*

All parties in interviews were clear on their roles and responsibilities, and where interactions and handoffs take place throughout the procurement process from solicitation drafting to the execution of a contract. Delegation of direct purchase authority from SPB to agencies under NRS Chapter 81-161.03 appears to be a formal and tightly controlled process. There is the potential for agencies to bypass competitive bidding procedures under delegation, and there was a suggestion in our interviews that this could be happening, but there was no information to validate this. Any agency violating competitive bidding procedures would also run the risk of being discovered in audit.

A more interesting finding was how practices had the potential to diverge when a solicitation is led by an agency instead of led by SPB. One interviewee stated "We centralized [agency] procurement and began having more and more of our RFPs run in-house. We have a lot of our own forms and templates, and we are gradually trying to sync them up as much as possible with DAS."

It was also found that contract finalization is handled by the party that led the solicitation process, meaning that when SPB leads a solicitation on behalf of an agency, they also lead the engagement with the vendor after award. The same is true for ongoing maintenance of such contracts.

#### *Accountability*

We did not hear any issues related to abuse of the grant of exceptions to the standard procurement process.

As will be noted below, there was a sense from interviews that SPB sometimes lacked the resources to be as responsive as agency customers would like, and a sense that this has been a challenge especially since the pandemic. In particular, there were mentions of SPB declining to lead agency solicitations due to workload, subject matter expertise, or disagreement over a solicitation strategy.

### *Procurement Statute Reconciliation*

Aside from the generalized bifurcation of statutes related to goods vs. services, interviewees specifically mentioned variance between the two, and ambiguities that could be resolved. On the subject of variance, the treatment of emergency procurements under NRS Chapter 73 vs. NRS Chapter 81 was noted as a source of unnecessary confusion. On the subject of ambiguities, it was mentioned that statute does not provide clarity for the definition and treatment of grant agreements.

### *Agency Interaction*

The particular objections mentioned above notwithstanding, the relationship between SPB and agency customers is notably collegial. There are a number of former SPB staff now working across a variety of agencies, and they broadly expressed appreciation and respect for SPB's role and effort. As will be noted more below, interviewees did note a lapse in past practices such as centralized training and the maintenance of standard templates and models, notably over the pandemic years since 2020. The status of solicitation boilerplates, which currently date to 2019, was a very common refrain, with one interviewee noting "when I was at DAS, we went through the boilerplate multiple times to make it realistic to how we work on the process."

Agencies frequently rely on SPB to manage their most weighty (as measured in dollar value) procurement processes, though they tend to handle smaller value procurements on their own, at least in part to save time. One interviewee noted RFPs "will get out on the street and be done more efficiently with the [agency] team." Another agency noted that SPB requires a one-and-a-half month to two months longer review time when leading a solicitation vs. when the agency leads a solicitation.

### *Electronic Procurement*

There is a generalized frustration with the State's E1 system, which is viewed as out of pace with the functionality needed to manage procurement and contracts in a modern central procurement organization. In particular, SPB's historic inability to track detailed metrics and KPIs except via manual and potentially inaccurate methods has implications for how SPB operates and adapts to changing workloads and client agency needs. Interviewees noted that "the E1 system and SPB's functions for that system are unique and arcane processes that can primarily be understood by [procurement] veterans." Others noted that "the E1 System is 20+ years old and is still cumbersome to use," and that SPB dedicates a large amount of staff time to handling issues with E1.

Discussions with vendors revealed inconsistent experience with solicitation notice, which could be related to a lack of clarity in vendor registration. A modern electronic procurement system will include features to ensure registered vendors are consistently notified of relevant procurement opportunities, and – as part of implementation – an onboarding process to ensure a

seamless experience in the future.

## Comparison to Other States

### Direct Purchase Authority

Nebraska is firmly in the middle of the pack when it comes to direct purchase authority. Among the four States benchmarked as part of this report, Colorado is more lenient, South Dakota is more restrictive, and Iowa and Missouri are comparable. The following chart outlines each benchmarked states' approaches to Direct Purchase Authority across 4 general procurement methods: Unrestricted Open Market Purchase, Informal Competitive Quote, Formal Competitive Quote Required (Goods or Services).

Procurement Method		Nebraska	Colorado	Iowa	Missouri	South Dakota
Goods	<b>Unrestricted Open Market Purchase</b>	Up to twenty-five thousand dollars (informal quote process preferred)	Up to five thousand dollars (w/o special authority) Up to five thousand dollars (w/ special authority)	Up to fifteen thousand dollars	Up to ten thousand dollars	Up to four thousand dollars
	<b>Informal Competitive Quote</b>	Twenty-five thousand dollars – fifty thousand dollars (SPB review required)	Five thousand – two hundred fifty thousand dollars (w/o special authority) Fifty thousand – two hundred fifty thousand dollars (w/ special authority)	Fifteen thousand – fifty thousand dollars	Ten thousand – fifty thousand dollars	Four thousand – twenty-five thousand dollars
	<b>Formal Competitive Quote Required</b>	Over fifty thousand dollars (via SPB)	Over two hundred fifty thousand dollars (via central procurement or agency)	Over fifty thousand dollars (via central procurement)	Over fifty thousand dollars (w/o special authority) Over one hundred thousand dollars (w/ special authority) (via central procurement)	Over twenty-five thousand dollars (via central procurement)
Services	<b>Formal Competitive Quote Required</b>	Over fifty thousand dollars (via SPB or agency)	Same as above	Over fifty thousand dollars (via central procurement or agency)	Same as above	Over twenty-five thousand dollars (via agency)

## Analysis

A number of elements noted below as aspects of Background and Context will be addressed by recommendations elsewhere in this report.

### *Division of Power and Responsibility*

Despite clear statutory requirements for the role of SPB relative to agencies specific to the solicitation process, a widespread understanding and set of practices have evolved such that agencies are disconnected from SPB in important procurement-related matters and conjoined in areas where it might not make sense. Going forward we recommend that all matters relating to procurement policy and process are owned and controlled by SPB. Agencies and end users of contracts may then (and should be allowed to) own and control the subject matter specifics of solicitations, and the resulting contracts.

It is not untoward that agencies should establish procurement procedures and training related to the development of solicitations, particularly in areas that relate to the development of scopes of work, business requirements, and the like. However, we have found that agencies operate under their own guidance and develop their own forms and templates in areas that should be standardized under SPB. Areas that should be brought clearly under central control include but are not limited to:

- RFP point allocation guidance and approvals
- Scoring rubrics
- Confidentiality and conflict of interest agreements for RFP evaluation team members
- Evaluation procedures
- Award documentation
- Protest procedures

In the converse, it does not make sense for SPB to stand between agencies and contractors once a procurement process has concluded. There is no statutory requirement that a contract resulting from a solicitation that was managed by SPB be signed and owned by SPB, but that is the current understanding and practice. Agencies should sign and control their own contracts for goods and services specific to the agency.

Happily, recommendation A-1 can be implemented via a cooperative process between SPB and agencies that takes full advantage of the accumulated knowledge and experience that has resulted in varying models and practices across agencies. As the country emerges from the changes in focus that resulted from the pandemic, and to rekindle a collaborative level of engagement, we recommend starting with a working group formed among SPB and customer agencies, focused on establishing appropriate boundaries and parameters for centralized procurement's role and the role of agency experts. We will offer additional specific recommendations in subsequent

sections of this report on the parameters that should be controlled by SPB, including training, evaluation policy, protest policy, and contract management, but there are other recommendations here such as defining detailed training needs, updating and simplifying boilerplate and template files, and helping define electronic procurement system requirements that will benefit from detailed collaborative discussion among the procurement professionals across the State.

### *Accountability*

The exceptions to standard procurement requirements for services contracts under NRS Chapter 73 are broad, but we found no reason to question their careful and judicious application. With respect to procurement for materials, supplies, or equipment, and the lease of personal property, NRS Chapter 81 is much more restrictive. While NRS Chapter 81-161.03 allows DAS to authorize agency-direct procurement – essentially an exception to bid requirements – in any circumstance (which could include emergencies, sole source conditions, and related circumstances), much later, in NRS Chapter 81-1118(5), it is made clear that emergency circumstances require the declaration of an emergency by the Governor.

With respect to day-to-day operations, the recommendation to ensure all matters relating to procurement policy and process are owned and controlled by SPB will further ensure accountability for the procurement process.

Exceptions for specialty procurements such as those covered under the Nebraska Consultant’s Competitive Negotiation Act are common. Under this statute, as is typical in other states, the first step is to identify multiple firms (at least three) as potential vendors for a given project, rank them based on qualification, then negotiate for a fair and reasonable price, starting with the most qualified firm. Similarly, it is typical that for professional legal services, selection begins with identifying the most qualified firms for the work needed, then negotiating fees.

### *Procurement Statute Reconciliation*

As noted above, the procurement of services and the procurement of materials, supplies, or equipment, and the lease of personal property are governed under different chapters of State statute, and – particularly with NRS Chapter 81 – are widely distributed among unrelated matters. The net result is that there is no clear point of reference for the laws that govern procurement in Nebraska.

Despite being separated, the two statutes are sometimes conflated, such as under NRS Chapter 81-161. This chapter establishes detailed standards for defining a “responsible” bidder, when determining “lowest responsible bidder” – conceptually the bids to include or not include before determining which offers the lowest price in a price-only procurement process. Even with its location in the “goods” statute and the logic underpinning it (two binary determinations of a) responsible/not responsible, then b) lowest/not lowest), it has been cited in legal briefs as a



relevant factor in the determination of whether a proposer in a services RFP should be removed from consideration. The concept of a “responsible bidder” is important, and we recommend expanding the definition elsewhere in this report but addressing “responsibility” as a stand-alone factor is one of many benefits of creating a single procurement statute.

Beyond responsibility, we also note that clarification of emergency procurement (using the flexible controls under NRS Chapter 73-507) and clarity for the definition and treatment of grant agreements (*e.g.*, leveraging the simplicity of Federal sources such as 31 U.S.C. 6303 and 6304) should be targets for refinement. An SPB/agency working group as recommended above is likely to be another source of suggestions for where practice would benefit from statutory clarity.

### *Agency Interaction*

As noted above, agencies frequently rely on SPB to manage their most weighty (as measured in dollar value) procurement processes. With smaller value procurements agencies are more comfortable managing the process on their own – for procurements valued between fifty thousand and one million dollars, the agency-led figure has been consistently over 80% for a number of years. As the value goes up, so does the proportion of procurements led by SPB, currently averaging about 50% of the time for those in excess of twenty-five million dollars. This proportion is in line with longer term trends, but significantly improved in the course of the past 5 years.

### *Past Procurement Challenges*

Three past procurements feature prominently when discussing issues with public procurement in Nebraska. Chronologically they are the 2007 Medicaid Management Information System (MMIS) procurement that was awarded to FourThought Group, the 2013-14 Medicaid Eligibility and Enrollment System procurement that was awarded to Wipro, and the 2019 Eastern Services Area Child Welfare Case Management procurement that was awarded to Saint Francis Ministries.

This report makes a number of recommendations that will help avoid the issues encountered with these solicitations. The biggest factor, and one that concerns all three of these instances, is the process by which the conditions of vendor “responsiveness” are established and tested. This is related to the concept of due diligence, in which the subject matter experts creating a solicitation and evaluating proposal responses define what is necessary to comply with the scope of work and be considered for award. This extends into establishing consistent checklists for these factors to facilitate review and involves ensuring potential solicitation respondents know what is or is not acceptable in terms of experience and performance. This helps respondents to decide whether to bid at all, and how to prepare a proposal that clearly meets requirements. In each of these instances, proposals were accepted from respondents that either did not have relevant, demonstrable experience (which could have been established as a qualifying condition), or that







failed to comply with known statutory requirements. Had any of these requirements been established and made explicit in advance, the awarded vendors in question would have either not submitted proposals or would have submitted proposals that addressed the requirements clearly.

Beyond testing for responsiveness, the subject of cost evaluation was a common theme in these instances. From the standpoint of how cost points are balanced relative to technical merit points in RFP scoring, we recommend more clarity in policy, but note that in practice the proportion or “weighting” for cost (*e.g.*, 25% of the total available points in the Saint Francis case) is not atypical and is considered thoughtfully on a case-by-case basis. The scoring methodology for cost, in which the lowest cost proposal is granted the full point allocation, with others receiving proportionally fewer points, is a common and defensible standard used across the country.

Cost realism and cost reasonableness are related but distinct concepts that are sometimes conflated, as in the cases here. Realism specifically means prices that are “not so low as to suggest underbidding,” while reasonableness means prices that are “not so high as to suggest the State is at risk of overpaying.” While the State RFP boilerplate loosely speaks to the concept of “too high” *reasonableness* as part of Procurement Procedures, it is more notably cited in relation to standard terms for Contractor Duties in a way that is not clearly related to the evaluation of proposals. Regardless, the matter at hand for the past procurement challenges relates to “too low” cost *realism*. While we make a recommendation with respect to elaborating on cost realism (and reasonableness) in statute, we also note that making either a “too high” or “too low” determination is an inherently subjective exercise that is difficult to cleanly justify without significant push-back and challenge from the impacted bidder. Citing the court documents for the Saint Francis case, which provided relatively clear justification for a question of realism (had such opportunity existed under State procurement rules), a case was still made to justify objectively low-seeming costs as fairly resulting from different and newly enabled modalities for the provision of child welfare services.

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## Recommendations

No.	Details				
A-1	<p>SPB should ensure all matters relating to procurement policy and process are owned and controlled by SPB, while allowing agencies and end users of contracts to own and control the resulting contracts.</p> <p>SPB should form a working group among SPB and customer agencies to establish the appropriate boundaries beyond what is recommended specifically in this report, and also to provide feedback on elements of recommendations A-2 and A-3.</p>	✓	✓	✓	✓
A-2	<p>The legislature should consolidate and reconcile State procurement statute, specifically NRS Chapters 73 and 81, to ensure consistency, ease of access and reference, and to eliminate ambiguity.</p>	✓	✓	✓	✓
A-3	<p>SPB should implement an electronic procurement system per NRS Chapter 81-153 (10), including with cross-agency input on system requirements.</p>	✓	✓	✓	

## III. B. State Purchasing Bureau (SPB) Operations

### Section Summary

A crucial component of the State’s procurement process is not a step of the process *per se*, but rather the central procurement office’s operational processes. In our interviews with both procurement staff and agency staff, the internal operations of the State Purchasing Bureau yielded mixed feedback on components such as staffing and workload. Based on these conflicting interviews and our review of internal procedures, we are making one recommendation in this report. This recommendation is intended to assist SPB in identifying operational priorities and goals and develop a method by which to meet those priorities.

*We make the following recommendations:*

No.	Recommendation Description	Complexity	Impact on State Ops	Impact on Suppliers
B-1	SPB should identify internal workload-related metrics it wishes to track in line with its operational priorities and ultimately develop core Key Performance Indicator (KPI) targets to assess ongoing operations as an aid to meeting those priorities.	Medium	High	Low

### Findings and Analysis

#### **Written Material Findings**

To verify claims about staffing levels made in our stakeholder interviews, in July 2022 we requested to view SPB’s organizational chart. This confirmed that there were five vacancies at SPB, and in September 2022 we learned of an additional departure, bringing the total vacancies in SPB to six. Since then, we have learned that three vacancies have been filled, reducing the total vacancies to three. These vacancies include one administrative technician and two procurement supervisors. Consequently, interim supervisors lead both the Goods and the Services division.

To further understand internal operations at SPB, we requested and reviewed available KPI files. Among these files was a copy of the metrics and KPIs tracked up to 2018, which showed that SPB was once tracking things like political subdivision data, cost avoidance dollar amounts, and the length of time taken for each procurement run through SPB from requisition to award.

SPB's operations have turned recently to only track a single metric – the expiration dates of contracts, with the goal of anticipating renewals and upcoming projects.

We also requested and reviewed available Standard Operating Procedure (SOP) files. Beyond providing insight into the internal processes of SPB, these SOPs highlighted that the administrative technicians (also known as “staff assistants”) frequently handle major steps in the procurement process. The SOPs illuminated the key role of administrative technicians at SPB.

### **Interview Findings**

Our interview findings reveal mixed feedback from State staff. It became clear early in our process that staffing and workload was an important issue for State employees, both at SPB and among agency customers, with some staff expressing discontent with current staffing levels and the workload amount per staff member at SPB. One SPB employee described their staff as a “skeleton crew,” while another said the staff felt “stretched quite thin.” These comments weren't restricted to SPB, however, as an employee from a State agency who had once worked at SPB said: “It's sad coming from State Procurement and seeing the position they are in right now. They don't have the manpower to get things done in a timely manner.” Vendors commented on staffing as well, with one interviewee attributing delays to the belief that “there's so much turnover.” Another vendor that holds a goods contract with the State remarked that they had attended a bid opening where the primary buyer was out of the office and the substitute buyer running the process seemed “confused” as to the management of the bid opening. These quotes are only a sampling of what we heard in interviews about staffing levels at SPB, but nearly all our interviewees made some reference to staffing vacancies. Alternatively, some staff disagreed with what we heard in several interviews and suggested that these perceptions had built up over time but were not based in fact.

This issue relates to another common topic of discussion – procurement workflows and staff workload. Several interviewees from State agencies remarked that working with SPB on a procurement has led to missed deadlines and delays. One interviewee from an agency said: “The review of ITBs (Invitations to Bid) used to take 10 days, but now they take 5-6 weeks.” Another agency interviewee said: “It used to take 3-4 months to complete an RFP, but now it's almost double that.” Several interviewees from SPB agreed that delays were a common issue, with one saying that starting and finishing a procurement late “is the norm.” Other interviewees attributed these problems to staffing issues, ascribing the perceived rising workload as being caused by the aforementioned vacancies. One SPB interviewee spoke at length about their workload: “I've felt like I'm drowning since the first month and I have never caught up. I'm scared to take a week off, and there is no room for errors.” Another SPB interviewee noted the departures of long-time employees at SPB may contribute to a ‘brain drain’ as “they take knowledge with them”.

Workload is not currently a metric tracked by SPB and thus cannot be analyzed quantitatively.

One SPB interviewee noted the many metrics that were once tracked, and that the metric tracking ended because “it’s hard to track and get your job done at the same time.” Interviewees confirmed that the only metric currently tracked at SPB is contract expiration dates – upcoming work – and there was a prevalent feeling among agency staff that sourcing was behind schedule on existing work. Again, this feedback was not unanimous on procurement timing and planning, with some interviewees noting that external agency operations also affect the procurement workflow.





### **Analysis**

While the vacancies at SPB are clear, the implications of these vacancies on SPB’s operations are not. We recognize that hiring qualified individuals is a difficult undertaking and do not suggest that there are quick fixes to hiring or one-size-fits-all staffing patterns, and thus, do not make any recommendations pertaining to hiring practices or specific staffing levels. Rather, we intend for our only recommendation in this section to be used in the pursuit of identifying and meeting SPB’s operational priorities and resulting staff needs.

While our interview findings pertaining to workload and staffing were frequently emphatic, they were also conflicting. This also informs our recommendation that SPB identify internal operational priorities and develop KPIs to track performance against those priorities. We strongly encourage SPB to identify the key work input and output metrics that are relevant to each position and that they are capable of tracking and reporting in an accurate and unobtrusive way. Examples could include solicitation review or processing time as measured by dates of receipt and completion, work throughput volumes, and similar measures. These can form the starting point of new priorities and KPIs. Once data collection and KPI measurement is underway, we recommend the SPB utilize these KPIs (and expand upon them wherever possible as supported by data) to develop a plan by which to meet their identified operational priorities. Based on our findings, we recommend that SPB focus on measures of staff workload as, at present, it is difficult to quantitatively verify whether staff at SPB are being overworked or underworked, or whether the staffing levels at SPB are adequate to meet the needs of the State. By developing KPIs for workload, the SPB can inform operational priorities for itself and in support of agency customers.

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## Recommendations

No.	Details				
B-1	<p>SPB should identify internal workload-related metrics it wishes to track in line with its operational priorities and ultimately core Key Performance Indicator (KPI) targets to assess ongoing operations as an aid to meeting those priorities.</p> <p>A focus should be placed on metrics that have data inputs that can be readily tracked and validated. Once measurement is underway, SPB may use these to create KPI targets to determine any ways the current environment might deviate from the identified priorities and, if so, to develop a plan by which to adjust resources.</p>	✓	✓	✓	

### III. C. Procurement Staff Training

#### **Section Summary**

A great procurement organization depends upon well-trained and well-informed procurement staff. A well-trained and well-informed procurement staff requires a robust procurement training program. It became clear through interviews with State staff that training was an area that required further investigation. After further interviews and review of the available training materials from SPB and agencies, we are making two recommendations to SPB about training. This training section is two-fold. On one hand, there is the training of procurement staff outside of SPB by SPB. There have been practices that have lapsed in the past that we describe in this section, and we believe SPB should resurrect these practices. On the other hand, there is the training of SPB staff by SPB. A robust and continuing training program is vital to developing a professional and expert procurement organization that can serve as a procurement authority for all state agencies and as a desirable place to work and grow for procurement professionals.

*We make the following recommendations:*

No.	Recommendation Description	Complexity	Impact on State Ops	Impact on Suppliers
C-1	SPB should review, develop, and refine agency procurement trainings.	High	High	High
C-2	SPB should expand and standardize their staff training program utilizing updated procurement materials.	High	High	High

#### **Findings and Analysis**

##### **Written Material Findings**

The written procurement training materials we have been able to review are mostly internal documents and presentations. While the primary materials we discuss in this report come from SPB, several agencies provided us with examples of their own training materials used to supplement the training offerings from SPB. In some cases, agencies developed these materials using historical materials from SPB that are no longer available.

Additionally, SPB provided us with the ability to access the procurement training module. This module is comprised of 70 sections including several quizzes and an exam at the end. This

module roughly follows the procurement process cycle beginning with an introduction to statutory and regulatory authority and ending with contract close out. In sum, this module officially takes 105 minutes not including time to answer quiz and exam questions. We found this training to be accurate and comprehensive. Guided by a recorded voice that has a separate script from what is displayed on the screen, almost all concepts and items of the procurement process are addressed in this module. Those who take this training may not pause the training in the middle of a section, but may move through the module freely (*i.e.*, one does not need to complete prior sections in order to view a later section). Presently, this training is the extent of the procurement training. There is a training for the State's E1 system, but we did not participate in this training as it is related to navigating the existing system and not the public procurement process.

Despite the accuracy of this module, our primary finding after reviewing this training tool is that it is not enough. There is no thorough, in-person training and the separate script for the voiceover is not available. This voiceover expounds upon content the module displays on-screen and is valuable context and detail for all who take this training. Additionally, it has been at least two years since the module was updated and refreshed. While procurement modules do not need to be refreshed and updated on a set, recurring schedule, we believe that training modules should be reviewed on a regular basis and refreshed when necessary, such as for statute or policy shifts or procedural updates.

In addition to the primary procurement training module, the Procurement Manual is a kind of training resource in addition to being reference material. This Manual is also very thorough yet may not necessarily be helpful for newly hired employees who are unfamiliar with the process of procurement in the State. In other words, this written Manual lacks an in-person and hands-on element and cannot stand alone as training for employees new to the State procurement processes.

Additional resources that are both training and reference materials are SPB's internal Standard Operating Procedures (SOPs), which are a set of 51 documents provided to us that describe the step-by-step process by which SPB staff facilitates all type of procurement and contracting activities from file organization, procurement drafting, to contract close out. The materials expand upon the details provided in the Procurement Manual and Contract Management Handbook but have been noted as out of date in places and do not appear to be updated in conjunction with these other reference materials.

SPB staff was kind enough to furnish us also with a handful of other training materials, which are limited to contextual PowerPoint presentations that accompany the training modules and legends or keys for system status codes and system document types. These are important training materials that should remain as they are.



At the beginning of this subsection, we referenced agency-specific training materials including presentations and handouts created by the agencies themselves, not by SPB, that describe in detail each step of the procurement cycle and internal agency processes. We found these materials to be thorough and thoughtfully prepared.

### **Interview Findings**

When we began to interview State staff, an early topic of concern was the subject of procurement training for non-DAS procurement staff. We immediately recognized and categorized this as a source of stress for State staff both from SPB and other agencies alike. Upon further investigation, interviewees informed us that SPB previously held semi-regular trainings referred to as “Procurement User Groups” or “PUGs.” SPBs used PUGs not only as a training or retraining opportunity but also as a method of disseminating information regarding best procurement practices and procedural updates. Agency staff noted in their interviews that these PUGs were “useful” and “even enjoyable.” At the time of interviews and of the writing of this report, SPB has not conducted a PUG for agency staff in some time. In fact, some agency interviewees informed us that they have begun to hold their own PUG-style trainings primarily for that agency’s procurement team, but other agency procurement professionals are welcome.

Our findings regarding internal SPB staff training echo the findings in the preceding paragraph regarding PUG trainings. Current SPB staff describe staff training as “on the job” and “needing work.” One interviewee noted that official, in-person training used to take place over several days and included not only the standard online training modules but also examples of solicitation drafting (ITBs or RFPs), examples of contract writing and negotiations, and contract amendment writing. Another interviewee made their own training documents to onboard a newly hired employee; these documents did not already exist. Interviewees described the usefulness of SPB’s SOPs, but the use of this suite of materials is inconsistent from staff member to staff member and some interviewees noted that often these materials conflict with parts of other training and reference materials such as the Procurement Manual and Contract Management Handbook. Interviewees confirmed that these SOPs are not updated in conjunction with either the Manual or the Handbook and many have not been updated in some time.

Our interviews with SPB staff included a discussion of the same online training module we reviewed. The feedback we heard from SPB staff on this module is similar to our findings on the training module discussed above in the previous sub-section. Overall, while the training is accurate, it does not cover all elements of the procurement process in substantial detail and does not account for the additional, in-person elements that used to take place as a part of trainings such as example solicitation and contract writing sessions. Simply put, interviewees view this training as “not enough.” We confirmed in interviews that this training module is the extent of the procurement training officially offered by SPB.

## Analysis

As the central procurement authority for the State, SPB should serve as “go-to” subject matter experts on all matters pertaining the procurements of goods and services. This should extend to offering trainings and development opportunities for procurement staff that operate outside of the SPB. At present, the training offered by SPB externally does not substantively differ from the training internally. In some cases, agencies have developed their own training materials to augment what SPB offers. Additionally, SPB and agency staff hope for the return of PUG trainings.





We recommend that these PUG trainings (or similar) should be redeveloped and resumed as soon as is practicable for several reasons. First, this would rightfully refocus the central procurement expertise within the SPB. If procurement expertise and information at the State is represented by a wheel with spokes, SPB should stand at the center with information radiating out of SPB into the agencies. These PUG trainings can help SPB implement this model and serve as in-person trainings for newly hired procurement agency staff, reminder trainings for veteran staff, and as inter-agency meetings where procurement staff may discuss procurement procedures, practices, and issues affecting the State. Agencies may augment these trainings with their own supplemental materials, but these supplements ideally should only be necessary for agency-specific practices and structures that SPB has not already prescribed.

Our own review of the training materials took place after our interviews with State and agency staff, and we found ourselves surprised at the level of depth the module went into. Based on our interview findings we did not expect to find a quality training module, but also recognized that the procurement training module was not sufficient in and of itself to constitute adequate staff training. The training module is accurate and comprehensive, but it has not been refreshed recently and is not reviewed regularly for potential updates or modifications. We do not recommend any changes to this procurement module other than to ensure it is up to date, but we strongly recommend that SPB’s training include more than the online module.

Through interviews and material review, we discovered that not only was training historically longer in duration, but it was also more robust and included multiple, in-person elements. We recommend that SPB return to previous practices such as hands-on procurement drafting practice and hands-on contract writing and negotiation practice. In conjunction with the online module, these hands-on sessions should be supplemented with materials developed for trainees and veterans alike to use as a reference during onboarding and beyond. As noted above, agency procurement staff outside of SPB could be enlisted to collaborate in the process of creating these materials, as agency procurements staff we spoke to have quality content, in part based upon materials developed by SPB in the past. This process should also include the updating of SPB’s SOPs to bring them in alignment with all other training and reference materials. These SOPs

may also be used to inspire training content and can otherwise serve an invaluable aspect of training SPB staff in conjunction with hands-on training.

**Recommendations**

No.	Details				
C-1	SPB should review its current training offerings for customer agencies and develop an updated external training and professional education program to promote consistent procurement expertise across State agencies.		✓	✓	
C-2	As a starting point, SPB should update and expand its procurement training to include the update of SOPs and other reference materials, the sharing of example workplans that include timing and responsibilities, model procurement drafting and management, and model contract writing and negotiation. This would standardize internal SPB staff training and ensure that each staff member receives substantially similar training and support when they are hired by SPB.		✓	✓	

## III. D. Procurement Drafting and Development

### Section Summary

The typical drafting and development of competitive procurements in the State does not suffer from any significant procedural inefficiency, yet there are some areas where we believe SPB may use its procurement expertise to reduce the work done by SPB and agency buyers, such as updating boilerplates and maintaining a repository of grant materials. SPB may further support State procurement and contract staff by reviewing the State's standard terms and conditions and issuing guidance on what terms are negotiable, other than the terms required by State law.

Procedurally, we recommend the elimination of the return mail bid process and the addition of an option to require vendors to respond to a RFI in order to be considered for a subsequent RFP. A current clause in the RFP boilerplate model that allows proposals at variance from the RFP specifications should be removed or modified. We also recommend that SPB standardize the process of deviations from the competitive bidding process, specifically sole sourcing of goods and services, and require that all justifications be submitted prior the beginning of the procurement process. Similarly, the proof of need process for large services procurements should be reoriented via statute and policy to the beginning of the procurement process.

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We make the following recommendations:

No.	Recommendation Description	Complexity	Impact on State Ops	Impact on Suppliers
D-1	SPB should update all templates and boilerplates.	Medium	High	Low
D-2	SPB should create and maintain a repository of competitive grant models.	Medium	Medium	Low
D-3	SPB should update policy to allow buyers to issue RFIs that a potential vendor must respond to.	Low	Medium	Medium
D-4	SPB should review the State's standard terms and conditions to determine which terms may be negotiated.	Medium	Medium	Medium
D-5	SPB should update policy to require all deviations from the competitive bidding process be submitted at the beginning of the procurement drafting process.	Low	Medium	Low
D-6	The legislature should modify statute, and SPB should modify supporting policy, to conduct the proof-of-need process before a procurement proceeds.	Low	Medium	Low
D-7	SPB should remove or modify the Alternate/Equivalent Proposals clause from the RFP boilerplate.	Low	Medium	Low

No.	Recommendation Description	Complexity	Impact on State Ops	Impact on Suppliers
D-8	SPB should update policy and discontinue the practice of return-mail bids.	Low	Low	Low

## **Findings and Analysis**

### **Written Material Findings**

SPB currently maintains several templates and models for the following procurement methods: RFPs, ITBs, and RFIs. These templates are essentially sound, containing standard instructions and guidance to bidders on the specifications or scope of the procurement. However, we noticed that some instructions seemed to be out-of-line with current SPB procedures and several of the boilerplates contained errors such as incorrect statutory references and duplications of items.

Statutory provisions are in place for the justification and approval of procurements in certain unique conditions, such as emergencies, sole source, and large services contracts above fifteen million dollars.

Both ITB and RFP boilerplates include a clause addressing Alternate/Equivalent Proposals, with language that seems directly relevant to bids for goods, but less so for services RFPs.

There were no written materials for grants found to be issued by SPB, but we were able to review documentation that agencies have developed on their own to use when issuing grants.

### *Procurement of Services*

As discussed in the Procurement Manual, it is a matter of policy and practice that all services valued below fifty thousand dollars may be procured at the agency-level. While SPB encourages that the agencies obtain three bids for these services, it is not required. For services valued above fifty thousand dollars, agencies may procure these services on their own but must follow the processes prescribed both in NRS Chapter 73 and in SPB-directed policy found in the Procurement Manual or other guidance. Specifically, NRS Chapter 73-504 requires that agencies submit RFPs to SPB for review for services above the fifty thousand dollar threshold regardless of whether the agency is primarily responsible for the requirement or the agency has asked SPB, and SPB has agreed, to be responsible for the procurement of the services.

NRS Chapter 73-507 allows for deviations from the process for services procurement, including sole source and emergency procurements. As noted earlier as a subject of potential (but likely

non-material) ambiguity relative to emergencies and sole source procurement, NRS Chapter 73-508 requires agencies to receive SPB approval for sole source services procurements valued more than fifty thousand dollars except in the case of emergencies where statute requires agencies to take certain notification measures. SPB issues and requires a Deviation from Contractual Services Contract Process Form that requires agencies to provide justification behind the decision to deviate from the standard RFP process. This form must be signed by director of the agency that is requesting the deviations. A Deviation Requests and Emergency Contracts procedural PowerPoint is available for viewing, linked from the Procurement Manual, and clearly states that this Deviation form should be submitted with an agency requisition, but that SPB approval is only required prior to the commencement of the contract period.

### *Procurement of Goods*

NRS Chapter 81-1118 instructs agencies to procure goods valued above twenty-five thousand dollars through SPB, which may be done informally if those goods are also valued below fifty thousand dollars. If those goods are valued above fifty thousand dollars, then SPB must issue a formal bid process. Additionally, NRS Chapter 81-1118.05 instructs SPB to maintain a record and written justification for emergency purchases. NRS Chapter 81-154, meanwhile, allows for competitive bids for goods valued greater than fifty thousand dollars to receive fewer than three bids so long as the Materiel Division approves the specifications.

To that end, SPB maintains and requires the submission of a Sole Source Justification Form from agencies. This form requires agencies to determine whether the good desired is a sole source, meaning there is only one provider of a product, or a restricted purchase, where there is only one manufacturer of a product but more than one reseller of that product. In addition to written justification from the agency, the agency must provide SPB with verification from the provider or manufacturer of the product. It is not clear from the Procurement Manual or Justification form when approval is given or required by.

### **Interview Findings**

The most consistent source of frustration among interviewees were the procurement boilerplates maintained by SPB, specifically the RFP and ITB boilerplates. Several interviewees noted that the boilerplates had not been updated in several years (with one State employee saying that the last date was in 2019) and are potentially too complex for smaller solicitations that are issued and responded to by less-sophisticated bidders. One interviewee suggested that “each RFP requires 4-8 hours to just go through it and update out-of-date info.” Issues with boilerplates and templates extend to the topic of grants, where SPB does not currently create or issue any templates or guides to agencies. Grants are not commonly used across the State, and the one agency that uses them most frequently has created their own internal templates and processes.

For all procurements, we found inconsistent understanding of standard terms and conditions.

While many terms in the standard contract are required by statute, some buyers expressed uncertainty over which non-mandatory terms the State would be open to negotiating. This can cause time to be lost in negotiations, and one interviewee noted instances where negotiations with an awarded bidder have ultimately failed over the inability to agree to non-statutory contract terms.

For RFIs, we found their usage to be occasional, as is typical when specifications and requirements are standard or well-understood at the State. We recognize that RFIs are an additional step in the procurement process and buyers often do not have procurement timelines that could accommodate an RFI component. One interviewee who used to work at SPB remarked that RFIs are “underutilized” and “could be helpful.” However, it was observed that it is rare for RFIs to have a mandatory response requirement and thus bidders currently have no incentive to respond to these requests and provide the State with desirable and accurate information.

### *Procurement of Services*

The Justification Form submitted for sole source procurements by the buyer to SPB often “can only be included when you have a draft contract at the end of the procurement process” observed one buyer. Other interviewees suggested that this form is often submitted at different stages of the process, with work on an RFP being completed prior to sole source permission being granted in at least one instance.

An interview with one services vendor noted that a sole source award decision had been made to a vendor for a service the interviewed company could provide. This was noted as a source of frustration at the lost chance to compete for State business.

One individual noted the risk that is created in services procurements by the existence of the Alternate/Equivalent Proposals clause within the standard RFP boilerplate. This was noted specifically as a risk, but not a case where issues had occurred in the past.

### *Procurement of Goods*

The return mail bid process was pointed out early in our fact finding. It was highlighted as a unique practice, and we sought feedback on this subject in multiple interviewees. As a practice of sole sourcing for goods, very few buyers have experience in this area. The SPB SOPs assist SPB buyers in the conduct of a return mail bid, with one interviewee expressing that it is not a publicly posted bid.

### *Vendor Identification and Solicitation*

Our interviews with State staff confirmed that a thoughtful process is undertaken with services solicitations to identify in advance – and later notify – potential vendors, especially where dollar



values are high, there is a potential that qualified vendors may not be registered with the State, or where standard notification procedures may not reach the intended audience. At the same time, we heard mixed feedback from goods vendors about the solicitation notice procedure, which suggests improvements are possible. Implementing an electronic procurement system, per Recommendation A-3, will ensure (among other things) that solicitation notices are performed consistently and reach registered vendors in all cases.

### **Analysis**

The reoccurring issue mentioned by buyers across the State was the issue of boilerplate documents being out of date or incorrect. As this adds a consequential amount of time to the procurement development process later, we strongly recommend that SPB update all boilerplates, templates, and relevant document and continue to do so regularly. Per the initial recommendation in Section III.A., as part of working group discussions we encourage SPB to solicit feedback from agency buyers who have substantial experience with the boilerplates. This can include potential ways to simplify variations of models that are better suited to smaller procurements.

As it pertains to grants, we found that agencies create their own materials when necessary to facilitate procurements involving grants. While we understand that grants are not procurements *per se*, they do often constitute a competitive process involving the distribution of funds that is managed by State staff. SPB, as the central purchasing and procurement authority should facilitate competitive grant development by collecting and aggregating example files from past agency experience. While this is a specialized area of competitive solicitations that is distinctly resident within agencies, SPB can act as a resource to all agencies and facilitate cross-agency collaboration, information-sharing, and best practices.

RFIs are an occasional practice that was observed in a handful of instances. An agency not only requires ample time to complete an RFI, but also a need for input from the market on draft specifications or scopes of work. In these cases, however, there is not currently an incentive for potential vendors to provide this feedback when needed by the State. At times, an incentive exists for potential vendors to remain mute to protect a potential competitive advantage. As such, we recommend that SPB update its guidance and Procurement Manual to allow buyers to issue RFIs and – under specific conditions – allow a response to an RFI to be a minimum requirement for a potential vendor in a later procurement. This requirement should be determined at the outset and be subject to prior approval by SPB based on a narrow market of potential vendors, an assurance that all potential vendors will be notified of the RFI, and that a risk of non-response exists that would defeat the purpose of issuing an RFI.

Interviewees noted a lack of consistent guidance on contract terms, specifically which ones were negotiable beyond those required in statute. As will be noted in the next section, risks to cost

and even technical scoring have the potential to arise from this. This can also impede the contract negotiation process at the expense of buyers and can create a roadblock to efficiency. As such, we recommend that SPB review the State's contract terms and conditions to determine which terms may be negotiated and which are more inflexible. This should be accompanied by subsequent guidance issued to agencies for solicitations they draft and issue on their own.

While the NRS provides some flexibility to buyers who need to deviate from the prescribed competitive bidding process, specifically in sole source, restricted, and emergency procurements, the justification seemed to be practiced inconsistently. While we did not find evidence in either goods or services procurements of deviations not meeting statutorily required justification requirements, we found that these justifications can occur at different points of the procurement process including at the end. We recommend that a justification for deviation should be submitted and either approved or denied prior to the release of any bid. This justification and SPB's decision whether to grant the deviation should be very carefully considered as we heard of at least one instance where a vendor was unable to respond to a sole source procurement because the deviation request was granted. This decision should also be made as soon as possible, as one interviewee noted that they went through an entire procurement process despite confidence in a sole source scenario but was not granted the deviation request until significant time was invested and the procurement process was almost over.





NRS 73-510 addresses proof-of-need for large services procurements in excess of fifteen million dollars. It requires important information about these procurements be provided and reviewed but does so only at the end of a procurement process when both the State and potential vendors have expended substantial effort and cost. This should be modified to conduct the proof-of-need process before a solicitation is issued. Specifically, all requirements to provide a contract as part of the proof-of-need process should be removed, in favor of the provision of the statutorily required analysis. The requirement for certification to enter into the contract should be removed, in favor of certification to enter into a solicitation process. If a given contract turns out to be in excess of fifteen million dollars either on extension or as a result of miscalculation on the front end, it should be agreeable to require a proof-of-need after the fact. Statute should be modified to simply require savings and justification (if no savings) analysis, and only require certification if savings goals are not met. Including proof-of-need documentation as an exhibit to a solicitation can ensure potential respondents are aware of the risk to the contract should savings goals not be met. Such changes have the potential to save 30 days that would otherwise need to be added to the end of a procurement timeline, and also can avoid the risk of invalidating a solicitation at the end of a procurement.

The Alternate/Equivalent Proposals clause from the RFP boilerplate does not make a large amount of sense where it exists and seems to be carried over from the ITBs boilerplate where it can make sense. SPB should remove or modify the clause from the RFP boilerplate. If kept, it

should remove language related to manufacturers and literature (the third and fourth sentences) and add language making it clear that any proposed variances must be submitted by the Contractor and validated by the State as part of Q&A process.

Finally, we recommend the SPB to remove all guidance (external and internal) pertaining to the return mail bid and instead conduct sole source or restricted bids for goods in a manner like services. This procurement method appeared in both the written material review and in our interview findings to be an unnecessary extra method.

### **Recommendations**

<b>No.</b>	<b>Details</b>				
D-1	SPB should update all templates and model documents, including procurement document boilerplates.	✓	✓	✓	
D-2	SPB should create and maintain a repository of competitive grant models that all agencies may use.	✓	✓	✓	
D-3	SPB should update the Procurement Manual and SOPs to allow buyers, with approval by SPB, to issue RFIs that a bidder must respond to in order to be considered responsive to a subsequent RFP.	✓	✓		
D-4	SPB should regularly review the State’s standard terms and conditions to determine which terms are mandatory beyond those that are statutorily required and what contract terms may be negotiated, either generally or on a solicitation-specific basis. This should result in guidance that is updated and shared with all procurement and contract management staff at least as frequently as the terms and conditions are reviewed.	✓	✓	✓	✓

D-5	<p>Within the scope of NRS Chapter 73-507 and 81-154, SPB should update the Procurement Manual and SOPs to require all deviations from the competitive bidding process be submitted at the beginning of the procurement drafting process.</p>	✓	✓	✓	✓
D-6	<p>NRS 73-510 addressing proof-of-need for large procurements and supporting policy such as in the Procurement Manual and boilerplates, should be modified to conduct the process before a procurement proceeds. All requirements to provide a contract as part of the proof-of-need process should be removed, in favor of the provision of the statutorily required analysis. The requirement for certification to enter into the contract should be removed from statute, in favor of certification to enter into a solicitation process. The legislature should amend NRS 75-510 (3) and (4) to simply require the final results of 75-510 (2) (c) (savings) and 75-510 (2) (h) (i) (justification if no savings result) analysis, and only require certification if the savings goal is not met.</p> <p>As a matter of policy, the proof-of-need should also be included as an exhibit to any solicitation for which it is relevant.</p>	✓	✓		✓
D-7	<p>SPB should remove or modify the Alternate/Equivalent Proposals clause from the RFP boilerplate. If kept, it should remove language related to manufacturers and literature, and add language making it clear that any proposed variances must be submitted by the Contractor and validated by the State as part</p>	✓	✓		✓

	<p>of Q&amp;A process.</p> <p>The parallel clause may be kept unchanged within the ITB boilerplate.</p>				
D-8	<p>SPB should update policy to discontinue the practice of return-mail bids for the procurement of goods in favor of issuing guidance to buyers on the conduct of sole source and restricted bids.</p>	✓			✓

## III. E. Procurement Evaluation and Management

### **Section Summary**

The State's evaluation of bids for goods and proposals for services is broadly aligned with the evaluative practices of the State's peers. Overall, the process is logical and the variance in processes between solicitations of similar natures are typically small. However, we found several inconsistencies between agencies that we believe SPB can address through the development of specific guidance and instructions. Additionally, we believe that there are also concepts such as consensus scoring, price realism, and price reasonableness that may serve the State well in specific situations. Finally, we consider some additional evaluated elements of proposals and provide recommendations in furtherance of the goal to promote an efficient, effective, and transparent procurement process.

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We make the following recommendations:

No.	Recommendation Description	Complexity	Impact on State Ops	Impact on Suppliers
E-1	SPB should develop policy guidance for developing solicitation-specific mandatory technical requirements.	Low	High	Low
E-2	SPB should develop guidance for evaluating and potentially clarifying exceptions to contractual terms within policy.	Medium	Medium	Medium
E-3	SPB should establish a standard, total point allocation framework for all solicitations within policy.	Low	Low	Medium
E-4	SPB should update policy and share guidance on the allocation of cost, technical merit, and corporate merit points.	Low	Medium	Low
E-5	SPB should develop guidance and instruction in policy for cost reasonableness and cost realism. This should be paired with a statutory update to add price realism and price reasonable as grounds for finding a bidder not responsible.	High	Low	Medium
E-6	SPB should develop guidance in policy for “consensus” scoring.	Medium	Medium	Low

No.	Recommendation Description	Complexity	Impact on State Ops	Impact on Suppliers
E-7	SPB should establish a scoring rubric for RFPs.	Medium	High	Low
E-8	The legislature should amend the NRS to remove the Nebraska in-state reciprocity preference in its current form.	Medium	Medium	Medium

## **Findings and Analysis**

### **Written Material Findings**

Boilerplate templates for low-cost bids for goods and for RFP-based proposals for services both have detailed sections that include standard terms and conditions and contractor duties. The elements within these sections indicate clauses that are not able to be changed (flagged as “statutory”) and those for which it is possible for a respondent to accept, reject outright, or reject and provide an alternative.

### *Evaluation of Bids for Goods*

The Procurement Manual describes the process by which the State may issue informal bids for goods valued between twenty-five thousand and fifty thousand dollars. The Manual States that for goods under the fifty thousand dollar threshold, the Administrator may grant direct purchase authority to the agency to informally bid the goods in question competitively. Otherwise, these goods must be informally bid by SPB. This guidance conforms to the language in both the Open Market Purchase Authority Letter and in NRS Chapters 81-161.03 and 81-1118 that instruct informal bids for goods may take place when the goods are valued under fifty thousand dollars. In addition to the Procurement Manual, we reviewed examples of this direct purchase authority language found within the latest Open Market Purchase Authority Letter and found it to be aligned with the language found in NRS Chapters 181-61.03 and 81-1118.

When goods are valued above fifty thousand dollars, NRS Chapter 81 is quite clear that the goods must be formally bid through SPB as ITBs. Both the Procurement Manual and SPB SOP #13 describe the process for managing and evaluating these bids that are to be awarded to the “lowest responsive, responsible bidder/supplier.” To that end, additional material available is a Specification Comparison Tool spreadsheet that allows buyers to quickly compare the minimum specifications contained within a bid to determine whether a bidder is responsible. Per SOP 13, timely bids are then publicly opened, the tabulation sheet comparing bidder pricing is sent to the



agency (if an agency requested ITB), the procuring agency makes an award recommendation to the SPB buyer who then will post a Letter of Intent to Award (“LOIA”) based upon the tabulation and recommendation of the agency (if applicable).

NRS Chapter 73-101.01 provides that for any lowest bid procurement, a Nebraska vendor will receive a scoring preference over an out-of-State vendor commensurate to the preference the out-of-State vendor would receive if bidding on a lowest bid procurement in their home state. This preference is also mentioned in the ITB boilerplate and information pertaining to out-of-State preferences can be found in a Preference Survey Report worksheet.

### *Evaluation of Proposals for Services*

As noted above, NRS Chapter 73 outlines how the State is to procure services and is distinct from NRS Chapter 81, which described the procurement of goods. NRS Chapter 73-504 outlines the formal bidding requirements for services valued above fifty thousand dollars. Unlike goods, SPB does not need to issue or manage an RFP but may be requested to do so by an agency. If an agency issues and manages an RFP, the solicitation materials are to be reviewed by SPB in compliance with this section of NRS. NRS Chapter 73-507 outlines exceptions to the RFP process such as sole source procurements or cooperative purchasing agreements through a cooperative organization of public entities.

While the Procurement Manual outlines the policy for awarding services valued below fifty thousand dollars (which is at the discretion of the agency and does not require SPB review), it also lays out the steps for developing and evaluating an RFP with additional details found in the RFP Evaluation and Scoring Manual. The Procurement Manual provides clear guidance of reviewing proposals for compliance with basic mandatory requirements (*e.g.*, that they are signed), but also explicitly that proposal should be checked “for compliance with the mandatory requirements, including mandatory terms and specifications such as: 1) contract duration; 2) price; 3) quantity; 4) quality; 5) delivery; or 6) other contractual terms and specifications.” It also provides clear guidance on how to address failure to meet all mandatory terms and specifications and allows that if a bidder/supplier is determined to be not responsible the bid/proposal may be rejected.

Both the Procurement and RFP Evaluation and Scoring manuals prescribe individual and independent scoring of technical and corporate merit and the steps of evaluation including the holding of oral presentations or vendor demonstrations, issuing of Best-and-Final-Offers (BAFOs), and ultimately the recommendation of an award following the completion of the Final Evaluation Document. Neither mention the maximum available points for scoring (*e.g.*, one example solicitation had 3,526 total available points for scoring), how to allocate points, or how to award points within a given scoring allocation area.

The Procurement Manual encourages buyers to use cost analyses to determine fair and reasonable pricing. The level of effort for these analyses are to be commensurate with the size and complexity of the procurement being conducted.

No documents detail a process by which the procuring agency may determine whether proposed pricing is reasonable or realistic.

## **Interview Findings**

### *Evaluation of Bids for Goods*

Interviewees had few comments on the evaluation of low-cost ITBs. One SPB interviewee observed some disagreement between the SOPs for ITBs and what the Procurement Manual says on the same matter. As noted earlier, an interviewee noted that agencies may be able to misconstrue the wording of NRS Chapter 81-161.03 as allowing them to not competitively bid goods valued between twenty-five thousand and fifty thousand dollars. This language is carried through to the Open Market Purchase Authority letter issued by the Materiel Division Administrator.

When asked about the reciprocal in-State preference for Nebraska vendors, interviewees noted that this provided additional work for buyers and could at times be difficult to implement and calculate.

All vendors we spoke to who provide goods and commodities to the State offered an overall high level of satisfaction with their experience with public procurement in Nebraska. No vendors providing commodities noted any particular issue with the conduct of low-cost bids, except for a mention of delays receiving answers to specification questions during the process, and a mention of technical and procedural issues with bid openings. One vendor expressed frustration about the solicitation notice procedure, while another described it as seamless. This suggests, at a minimum, there may be a lack of clarity in vendor registration for bid notices. All vendors interviewed expressed comfort with the response time allowed for bids.

### *Evaluation of Proposals for Services*

All interviewees described a basic process of checking for adherence to mandatory requirements in RFPs, but few if any described any formal process of investigating these mandatory requirements beyond relying upon evaluators and scorers to highlight anything found within proposals that may call into questions adherence to a mandatory requirement. Despite clear guidance in the Procurement Manual, interviews with stakeholders did not demonstrate a consistent practice of creating solicitation-specific mandatory requirements specific to the services being offered.

Furthermore, no interviewees described any consistent practice of determining which standard

contractual terms are non-negotiable and which are flexible. Two interviewees noted that no such guidance exists beyond explicitly stated statutory terms. Multiple interviewees provided feedback on the evaluation of the technical and corporate merits of proposals to provide services in response to RFPs.

On the subject of scoring RFPs, interviewees described a thoughtful approach on how points were assigned to technical and corporate categories and subcategories for scoring despite a lack of consistent guidance. Some interviewees noted that with the open-ended guidance regarding technical and corporate scoring, some agencies end up assigning an overall high and odd number of points (upwards of several thousands), ostensibly to avoid close scores or ties. All interviewees familiar with the evaluation of RFPs described a separated scoring process in which evaluators assigned individual qualitative scores to technical and corporate sections at which point the buyer would average these scores to arrive at a technical and corporate score. All interviewees noted that the assignment of qualitative points in individual scoring subsections was done based on some proportion of the total available points, without further guidance. Some interviewees discussed a process by which individual evaluator scores were checked for variance, with an opportunity to revisit the scoring in cases where substantial inconsistency existed. Other interviewees described proposal evaluations where the buyer allowed evaluators to discuss the proposals and scores, while others described a more segregated process where evaluators may not know each other's identity. One interviewee noted an interest in a "consensus scoring" process in which "scorers can consult with each and get clarity on topics they aren't as knowledgeable about."

Feedback on the evaluation of cost was much more consistent across interviews, with all interviewees typically relying upon the guidance found in the RFP Evaluation and Scoring Manual and the Cost Proposal Evaluation Worksheet. In situations where cost is a factor in an RFP, agencies report regular variation from the recommended forty percent weighting assigned to cost, despite the existence of that guidance/recommendation. No interviewees reported pushback from SPB staff in cases where RFPs deviated from this forty percent weighting. All interviewees reported using the same relative scoring formula for cost proposals where the lowest cost submitted is divided by the cost submitted, then multiplied by the maximum possible cost points, to arrive at the total cost points to be awarded. No interviewee noted any formal or reoccurring practice of analyzing cost proposals for reasonable or realistic pricing

No vendor we spoke to who provides services to the State described issues or frustrations with the State's RFP process and all vendors interviews were comfortable with the time permitted to respond to RFPs. Vendors who participated in RFI processes noted that they appreciated the chance to provide expertise on complex RFPs, despite their RFI responses being incomplete so as to not infringe upon proprietary confidentiality or cede any competitive advantage.

## Comparison to Other States

### *Evaluation of Bids for Goods*

The Colorado Revised Statutes (“CRS”) provide for both an in-state preference to Colorado vendors in the case of a low-bid tie and an in-state reciprocity preference by which Colorado will inflate an out-of-state vendor’s bid commensurate with the deflation that same vendor would receive if bidding in their home state.

Iowa Code (“IC”) 73A.21 allows for in-state reciprocity preference similar to the State’s by which an Iowa vendor will receive a preference against a non-Iowa vendor if the out-of-state vendor would have received a preference in their home state. The preference Iowa would give the Iowa-vendor in this case would be commensurate with the preference the out-of-state vendor would have received.

The Revised Statutes of Missouri (“RSMo”) Section 34.070 and 34.073 allow for a preference in low bids where “when quality is equal or better and delivered price is the same or less, quality of performance promised is equal or better and the price quoted is the same or less, or when competing bids, in their entirety, are comparable.” RSMo Section 34.076 also provides for a reciprocity preference identical to the State’s, Colorado’s, Missouri’s, and Iowa’s.

The State of South Dakota Code of Laws (“SDCL”) 5-18A-24 allows the state to award a preference when, all bids being equal, a resident business bids against a non-resident business or when a resident business whose principal place of business is South Dakota bids against a resident business whose principal place of business is not in South Dakota. SDCL 5-18A-26 also allows for a reciprocity preference identical to Colorado, Iowa, Missouri, and the State.

### *Price Realism and Reasonableness*

The Colorado Procurement Manual encourages buyers to assess for price reasonableness, and the subject is also addressed in rule. This assessment or analysis may consider the following: established catalog and market prices, prices set by law or rule, historical prices, independent cost estimates, *etc.* This guidance is especially encouraged in procurements where there is no competition, such as sole source or single-response procurements.

The State of Iowa’s Procurement Rules define a reasonable price as:

*“A price commensurate with the extent and complexity of the services to be provided and is comparable to the price paid by the department or other entities for projects of similar scope and complexity”*

Given the relative lack of guidance on price realism and price reasonableness from peer state examples, we looked to Federal guidance, as known users of the concepts. The Federal Acquisition Regulations (“FAR”) Part 15-404.1 illustrates a specific process by which to

measure the realism and reasonableness of proposed pricing

*“Cost realism analyses shall be performed on cost-reimbursement contracts to determine the probable cost of performance for each offeror...Cost realism analyses may also be used on competitive fixed-price incentive contracts or, in exceptional cases, on other competitive fixed-price-type contracts when new requirements may not be fully understood by competing offerors, there are quality concerns, or past experience indicates that contractors’ proposed costs have resulted in quality or service shortfalls.”*

Both forms of guidance, for price realism and reasonableness, from the FAR include specific elements for Federal buyers to consider when performing either analysis.

## **Analysis**

### *Evaluation of Bids for Goods*

The written material review and the conduct of interviews showed the State’s low-cost bid process to be thorough and the targeted benchmarking of peer States demonstrates that the State’s practices do not diverge significantly from typical standards.

When discussing the reciprocity preference for bids, interviewees described the preference as additional work and difficult to calculate. In addition, our review of the State’s worksheet for assisting buyers in calculating this preference discovered apparent errors in what other states allow in terms of an in-state preference. This is central to the problem with this preference – it functionally requires a constantly-updated list of preferences across 50 states. We found this preference to be not uncommon among the State’s peers, but that does nothing to resolve the fundamental issues involved. Due to the increased work on buyers and the practical unworkability of implementing this, we recommended that NRS Chapter 73-101 be amended to remove this preference in its current state. We recognize, however, that the State may desire to award an alternative preference to Nebraska vendors. We make no recommendations in that regard.

### *Evaluation of Proposals for Services*

We found that there is not a standard practice of creating solicitation-specific mandatory requirements for unique RFPs and that the review of the mandatory requirements is typically a simple analysis of whether the bidder submitted the required materials. In cases where an RFP may have unique, “must meet” specifications, those interviewed as a part of this review did not describe a process for significant investigation of a bidder’s ability to meet these minimum specifications unless an evaluator calls into question a bidder’s ability based on information contained within the technical response. This is not a lapse in guidance, but in standard practice, which can be remedied as part of larger training program improvements. We believe that unique RFPs often require unique mandatory requirements and that the State has the authority to include such minimum specifications in RFPs. As particularly relates to past procurement challenges, it

is fair play to establish minimum qualifications such as a reasonable and provable level of experience or examples of successful past results to be considered a responsive bidder that meets mandatory requirements. Moreover, consistent checklists for these factors both facilitate initial proposal reviews for responsiveness and help ensure potential respondents know whether to even submit a proposal. To that end, we recommend that SPB expand upon guidance allowing (and in fact encouraging) the inclusion of minimum requirements and building this into training materials.

Additionally, there is not a standard practice of reviewing or clarifying bidder exceptions to contract terms during the evaluation process. This is a potential point of concern as many clauses may affect the pricing offered by a bidder. A partial list of clauses, for which full or partial exception may be taken includes:

- Breach
- Indemnification
- Performance Bond
- Assignment, Sale, or Merger
- Force Majeure
- Confidentiality
- Early Termination (including State termination for convenience)
- Contract Closeout
- Employee Work Eligibility Status
- Permits, Regulations, Laws (relates to costs for compliance)
- Ownership of Information and Data / Deliverables
- Insurance Requirements
- Antitrust
- Conflict of Interest

If a bidder takes exception to a price-relevant clause and can propose a lower price than a bidder that does not take exception to the same price-relevant clause, the integrity of an award decision may be called into question. Qualitative scoring could also be impacted by significant deviations from standard terms. Thus, we recommend that SPB provide guidance to all State buyers, evaluators, and related legal staff on how to evaluate and clarify exceptions to contractual terms during (especially at the outset of) the evaluation process. This applies equally to the evaluation of bids for goods.

Another area that we noticed that had little in the way of formal guidance is the division of available points between cost and technical/corporate merit. Typical guidance provides that cost should account for approximately forty percent of the available points while technical and corporate make up the additional sixty percent. Based on our review of written materials, we could not find any direction or guidance as to how far buyers may deviate from this typical division of points. During interviews, we found that agencies frequently diverge from this

allocation but often not to a significant degree. In cases where buyers did deviate significantly from the recommended 60/40 split, we did not note any feedback from buyers of pushback from SPB. While we understand SPB's deferential position to agencies on the assignment of points vis-à-vis technical and corporate merit, loose guidance may contribute to underweighting or overweighting of cost or technical/corporate merit, or some combination of the two. Thus, we recommend that SPB develop guidance on how far agencies may deviate from the recommended 60/40 division of points with and without permission.

On the subject of the evaluation of cost and calculating price scores, we noted that the State encourages buyers to ensure that all proposed prices are fair and reasonable but provides little in the way of guidance to buyers on how to do this. Interviews demonstrated that buyers do not have consistent practices or methodologies for determining if pricing is reasonable or realistic. While it is common among Nebraska's peer States to lack formal guidance on determining reasonable or realistic pricing, the Federal government's guidelines on these practices provide a useful framework for conducting this analysis. Thus, we recommend that SPB develop and issue guidance for determining when proposed pricing is reasonable and realistic. This should be complemented with an update to statute that expressly allows suspicion of lack of price reasonableness or realism to be grounds for finding a respondent not responsible and removed from consideration. The current statute for bidder responsibility is NRS Chapter 81-161, but as noted earlier it would benefit from being brought to bear specifically for services procurements, especially in the context of price reasonableness or realism. We would like to note that the guidance issued for applying both practices such as may be derived from FAR should be carefully considered, as both can be difficult to implement, conduct, and defend.

While we do not recommend any changes to the practice of having buyers allocate a variable number of points to scoreable sections, we do recommend that SPB develop and issue guidance on a standard or basic point-allocation framework. This framework would ideally recommend a consistent maximum number of points (*e.g.*, one thousand). We note that while it was noted by interviewees that a larger number of points can help create separation between respondents in the final scoring of an RFP, we observe that in the end these differences are measured equally well in percentages, and thirty points on a base-three thousand point RFP is the same proportion as ten points is on a base-one thousand point RFP. Establishing a standard base of points is a relatively minor recommendation, but the biggest impact would be to the vendor community, who could come to expect an element of clarity and consistency.

Relatedly, we found neither guidance nor a consistent practice of evaluating scoreable sections after those section have been allotted points. Rather, we found that in most cases evaluators and scorers were given minimal instruction on how to determine the number of points a bidder should receive for a particular section. A particular subsection might be worth dozens of points, and individual evaluators would be able assign anything between zero and the maximum to their







qualitative evaluation. For example, “System Architecture” was one scoring area from an RFP we reviewed, where evaluators had to allocate between zero and thirty points. We did find at least one instance of an agency buyer who does provide instruction to evaluators, but the general lack of guidance for evaluators has the potential to lead to highly variable scores between evaluators, inconsistent standards being applied from solicitation to solicitation, and openings for aggrieved bidders to challenge the details of scoring (especially in a scenario where protest procedures are opened up significantly). In a hypothetical “razor’s edge” situation, it is hard to imagine how to defend a 0.1% scoring differential when that difference depends on a widely distributed, seemingly random set of individual scores between zero and thirty on one or many detailed aspects of evaluation. We recommend that SPB develop and issue guidance to assist evaluators in the scoring process, in particular setting up a scoring “rubric” whereby the total available points in each scoring subsection are consistently allocated based on some defensible (albeit still inherently subjective) structure. Scoring rubrics are commonly used and typically assess a proposal’s clarity and likely success of addressing the need expressed in each scoring area. Scores allocated under a rubric help evaluators understand the implications of their scores, create more natural consistency, and allow more defensibility of subjective decisions in a protest. This is especially true when the point allocation is defined in fewer, more clear elements, such as on a zero to four or zero to five point scale with relevant definitions for each level. An additional benefit relevant to the recommendation to establish a standard base of points above is that scoring according to a rubric tends to result in clear scoring distinctions between average and better proposal responses.

Relatedly, the State currently encourages individual and separate scoring of technical and corporate merit from evaluators and does not have a process for “consensus” scoring, in which evaluators may discuss the merits of a proposal and may also arrive at a single, group score upon which all evaluators agree. This is a common optional practice in state procurement that provides the benefit of discussion, live access to subject matter expertise, and a range of perspectives when setting a score. This is true whether scores are agreed at the end, or merely discussed and then averaged. In practice in Nebraska, we found in interviews that some buyers do allow evaluators to discuss a proposal, but not allow discussion of scores, and other buyers do not allow evaluators to know the identity of other evaluators. In addition to this being potentially inconsistent from agency to agency or procurement to procurement, there is a strong possibility that evaluators may not be subject matter experts across all areas of an RFP they are responsible for scoring, especially for intricate RFPs such a complex system procurement or a large health and human services contract. Some buyers noted in their interviews that they may address this by preventing evaluators from scoring sections in which they lack the sufficient expertise or knowledge base. While this approach does address some shortcomings caused by a lack of comprehensive evaluator subject matter expertise, it adds complexity to the evaluation process and does not address the need for a holistic view of the full content of a proposal when scoring by an accountable evaluation team. We do not recommend that the State overhaul its preferred



evaluation methodology, as almost all interviewees prefer individual scoring in most cases. However, some interviewees noted that consensus scoring may be beneficial in certain cases such as those discussed above. As such, we recommend that SPB develop guidance for consensus scoring and provide agencies with this guidance to be used at the discretion of the buyer.

### **Recommendations**

No.	Details				
E-1	SPB should develop guidance within policy for developing solicitation-specific mandatory technical requirements and should encourage the development of such requirements in RFPs within the Procurement Manuals and SOPs.	✓	✓	✓	
E-2	SPB should develop guidance within policy for evaluating and potentially clarifying exceptions to contractual terms and conditions and encourage agencies to utilize this guidance earlier in the evaluation process. This guidance should be found in both SPB SOPs, the Procurement Manual, and the RFP Evaluation and Scoring Manual.	✓	✓	✓	
E-3	SPB should establish a standard, total point allocation framework within policy for clarity and consistency across State solicitations. This update can be made in both the Procurement Manual and the RFP Evaluation and Scoring Manual.	✓	✓	✓	
E-4	SPB should update and share guidance on the allocation of cost, technical merit, and corporate merit points in the Procurement Manual and RFP Evaluation and Scoring Manual. This guidance should establish	✓	✓	✓	

	boundaries within which approval need not be sought for deviations from this guidance and, if desired, a process to seek approval for different allocations based on the specific circumstances of a solicitation.				
E-5	SPB should develop guidance and instruction within policy for the implementation of cost reasonableness and cost realism across bid and solicitation evaluations in the Procurement Manual and RFP Evaluation and Scoring Manual. At the same time, the legislature should amend NRS Chapter 81-161(1) to include that unrealistic or unreasonable pricing may be grounds to find a bidder not responsible in the evaluation of bids for goods and proposals for services.	✓	✓	✓	
E-6	SPB should develop guidance in policy for the use and conduct of “consensus” scoring and provide agencies with this guidance in the Procurement Manual and the RFP Scoring and Evaluation Manual.	✓	✓	✓	
E-7	SPB should establish and encourage the use of a scoring rubric for RFPs to ensure a consistent basis for scoring across all solicitations in the RFP Evaluation and Scoring Manual.	✓	✓	✓	
E-8	The legislature should remove the Nebraska in-State reciprocity preference in its current form by amending NRS 73-101 and, if desired, replace it with a more workable preference for Nebraska bidders.	✓			

## III. F. Protest Procedures

### Section Summary

Protest procedures in Nebraska have received significant attention in the wake of high-profile contract problems as outlined in Section III.A. under past procurement challenges. Despite this attention and as noted in that section, the key issues in these protests (and the ultimate cause of the poor contract results) relate to procurement processes – in particular the mechanism by which vendor “responsiveness” is defined and tested – and not the protest procedures that resulted in the awards being ratified. As relates further to the recommendations in Section III.A., we do recommend changes to protest policy and procedure such as ensuring a single, consistent process centralized in DAS and not controlled by agencies in selective circumstances and under potentially variable procedures. As part of this we believe there is an opportunity to establish clarity on what constitutes valid grounds for protest, to create additional supplier protections by defining procedures to protest solicitation specifications, and to better serve the supplier community by creating an express avenue for post-solicitation debriefs. We acknowledge that there are a number of voices advocating for statutory changes to protest procedures, but our recommendation is that protests be handled through policy.

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We make the following recommendations:

No.	Recommendation Description	Complexity	Impact on State Ops	Impact on Suppliers
F-1	The State should maintain a single protest policy and process led by SPB.	Medium	Medium	Medium
F-2	SPB should establish specific protest grounds in policy.	Low	Low	Medium
F-3	SPB should adjust policy to allow protests on specifications ( <i>i.e.</i> , before solicitations are due).	Low	Low	Medium
F-4	SPB should update protest policy to expressly allow contract negotiations to proceed but should also be modified to not allow contract execution prior to protest resolution without written approval from DAS.	Low	Medium	Medium
F-5	SPB should clarify policy to allow for debriefs for vendors not selected for award.	Low	Low	Medium

## **Findings and Analysis**

### **Written Material Findings**

#### *Protest Policy and Procedure*

Nebraska manages its vendor protest procedures through policy and manuals. There is a primary version that is owned by SPB, but these can and do vary across agencies, applicable to agency-led procurements.

The Procurement Manual protest guidance includes a clause that allows the execution of contracts:

*“The receipt of a protest does not prohibit the execution of the contract, but the decision to execute the contract while a protest is pending should only be made after discussion with SPB, the agency, and legal counsel.”*

Our review did not uncover any guidance with respect to protests that might be filed before a solicitation is due in order to challenge the requirements or specifications of the solicitation before the proposal acceptance and evaluation.

### *Unsuccessful Bidder Debriefs*

No documents detail the availability of (or process for) unsuccessful bidder “debriefs,” in which unsuccessful vendors may seek non-protest-related feedback from the procuring agency on their unsuccessful proposals/bids.

## **Interview Findings**

### *Protest Policy and Procedure*

There was widespread support for the State’s existing protest procedures in our interviews with State procurement professionals. One interviewee noted that “If an incumbent loses a bid, they would gladly tie it up in court for a year.” Interestingly, while the Procurement Manual protest guidance includes the clause that allows the execution of contracts, all of the State staff interviewed believed that not only contract execution, but also negotiations were automatically stayed by the existence of a protest.

In contrast there was significant skepticism about these protest procedures in our interviews with legislators and lawyers familiar with the State’s protest procedures. We conducted an interview with attorneys from the Kutak Rock firm, who have in-depth experience with protests in the State (including the 2019 Eastern Services Area Child Welfare Case Management procurement), and across the country. The Kutak Rock attorneys cited the practices of other states that allow an express right to independent review of agency award decisions (with a particular focus on the State of Iowa as a good example) and put limits on a state’s discretion to act inconsistently with its procedures. They noted that Nebraska’s procedures are minimal and can vary from case to case, that published policy is not considered binding, and that there are limited legal remedies, in part due to challenges to find legal standing. A question was included in this interview on what defining characteristics might exist for valid and legitimate protests. The Kutak Rock attorneys included mathematical errors, clerical errors, demonstrable conflict of interest, illegality within a proposal, violation of procurement rules, vendor failure to disclose required information, and price realism. On the last point they acknowledged that firm grounds for pricing protests are a challenge to implement.

## Comparison to Other States

### *Protest Policy and Procedure*

Colorado’s protest structure is based primarily in statute. It is notable for not having a fixed date by which protests must be submitted, instead tying that deadline to the time that an aggrieved party knows or should have known the relevant facts. An initial protest response falls to lower-level procurement officials directly associated with a challenged solicitation. At the same time, it allows extensive cycles of review, including a distinct third round via a district court. The district court review is also explicitly available to be brought to bear in lieu of earlier state-only steps.

Iowa’s protest structure is based in rule, and proceeds immediately to a complex contested case hearing, with detailed steps that include procedures for discovery, witnesses, exhibits, pre-hearing evidentiary meetings, and the like. Iowa requires protest bonds in the case of requested stays of award.

Missouri’s protest structure is based in rule and – in contrast to Colorado and Iowa – allows a single round of protest. Details of the procedures are limited, both in rule and in policy.

In further contrast even to Missouri, South Dakota does not specify any protest procedures.

None of the four states included in the benchmarking exercise included express definition of the acceptable grounds for protests, though most did require that appeals be limited to the issues raised in the initial protest.

The chart below provides a side-by-side comparison of elements of the State’s protest procedure and their equivalents in benchmarked states.

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Protest Policy Area	Nebraska	Colorado	Iowa	Missouri	South Dakota
<b>Initial Protest Due</b>	10 Business Days (after award)	10 Business Days (after aggrieved party knows or should have known relevant facts)	5 Calendar Days (after award)	10 Business Days (after award)	Not Described
<b>Protest Ground Limits</b>	Not Specified	Not Specified	Not Specified	Not Specified	Not Described
<b>Initial Protest Heard By</b>	Materiel Division Administrator <sup>1</sup> (Division-led RFPs) Procurement Executive <sup>2</sup> (Agency-led RFPs)	Procurement Official	Contested Case Hearing Presiding Officer <sup>8</sup>	Director of the Division of Purchasing	Not Described
<b>State Response Timeline</b>	10 Business Days (goal / target)	10 Business Days	60 Calendar Days (hearing date)	Not Described	Not Described
<b>Protest Appeal Due</b>	10 Business Days (after receipt)	10 Business Days	15 Days <sup>9</sup> (after proposed decision)	N/A	Not Described
<b>Protest Appeal Heard By</b>	Director of DAS (Division-led RFPs) Agency Head (Agency-led RFPs)	Executive Director, Department of Administration <sup>3,5</sup> ; Denver district court <sup>4</sup>	Director, Department of Administrative Services <sup>10</sup>	N/A	Not Described
<b>State Response Timeline</b>	10 Business Days (goal / target)	30 Business Days	30 Days (after notice of appeal)	N/A	Not Described
<b>Protest Stays Award</b>	No	Yes <sup>6</sup>	Yes (if requested, with bond)	No	Not Described
<b>Protest Bonds</b>	No	No	Yes (if stay of award also requested; set at 120% of contract value)	No	Not Described
<b>Specification Protests?</b>	No	Yes	No	No	Not Described
<b>Contested Case / APA Applies</b>	No	Yes <sup>7</sup>	Yes	Not Described	Not Described

<sup>1</sup> Vendors may skip initial protest step and proceed to agency head / appeal process.

<sup>2</sup> May vary by agency.

<sup>3</sup> The Executive Director may refer cases to the office of administrative courts.

<sup>4</sup> Vendors may appeal directly to the Denver district court.

<sup>5</sup> A third round of appeal via judicial review to the Denver district court is available after the Executive Director review round and is to be initiated within 10 business days.

<sup>6</sup> Stay is made on appeal for contracts in excess of \$1.5M, except the Executive Director may override the stay

<sup>7</sup> After judicial review in district court, the Executive Director has final authority and decision on whether to proceed with original award, regardless of the court finding.

<sup>8</sup> Initial protest includes procedures for discovery, witnesses, exhibits, pre-hearing evidentiary meetings, recording,

and transcription.

<sup>9</sup> Items cited without “calendar” or “business” days are reflective of the source material. In context these are assumed to be calendar days.

<sup>10</sup> Secondary appeal includes provisions for submission of briefs, oral arguments, and transcriptions.

### *Unsuccessful Bidder Debriefs*

The State of Missouri makes a limited allowance for post-award debriefs, for Missouri-based companies that are unsuccessful bidders. Per Missouri Revised Statutes Chapter 34:

*“Upon request of the Missouri company who applied for but was not awarded a State contract, the [Division of Purchasing and Materials Management] shall prepare a written explanation within 20 days of the award explaining why the Missouri manufacturer or service provider did not receive the award.”*

## **Analysis**

### *Protest Policy and Procedure*

The key purpose of a state’s procurement protest procedures should be to ensure that clear, factual errors in a solicitation process may be raised and addressed, including causing a procurement award to be overturned in the (hopefully) unusual case where a distinct misstep has taken place. Procedures should be fair to all parties – both winning vendors and those who are disappointed by a result – and not create advantages for any particular groups. They should not be available as an avenue to needlessly delay the business of a state or otherwise inhibit the provision of goods or services to the benefit of its constituents.

We do not believe that substantially more strict protest requirements are likely to benefit the State or its many constituents. At the same time, we acknowledge that Nebraska’s policy-based protest procedures are fundamentally flexible (and variable), and thus make recommendations to address the most challenging elements of them. It is commendable that the State automatically grants a meeting with aggrieved bidders as part of the second round of the defined process – this both humanizes and contextualizes the issues at hand and helps to ensure protest matters are not easily dispensed with. We do not want to gainsay the integrity or motives of the individuals involved in the process, and do not believe that challenging the judgement of the initial decision makers in a protest is likely to result in a different decision. Noting the most prominent and recent case of the Eastern Services Area Child Welfare Case Management procurement, we observe that while the district court granted standing to the plaintiffs, it ultimately denied an injunction. Relevant to recommendations elsewhere in this report, this observation is not to say that the procurement process in question was purely optimal, but it was ultimately able to be upheld even when receiving a review in court.

Looking to the examples of the peer states reviewed here, the procedures found in Iowa and Colorado are complex and this has the potential to create incentives for protest, in particular by incumbent and/or well-resourced entities wishing to challenge a procurement decision. At the



same time, a complex process that is costly to navigate can create a barrier to filing protests, especially for smaller and less sophisticated or financially equipped vendors. Process complexity can also lead to significant delays in contract transition where the scheduling nexus for procurement planning and ongoing state business operations struggles to accommodate substantial swings resulting from a long and variable protest process.

In these two notable peer state examples, the Iowa protest process starts with a contested case where the resolution of fundamental errors such as mathematical calculations and similar matters may not need formal proceedings to address. The Iowa process includes allowance for nearly four months of procedural steps (110 calendar days), which does not include the time to complete a contested case hearing and render a result. The total timeframe could be expected to take up to six months. Similarly, Colorado's procedures include allowance for approximately three months of procedural steps (70 business days), which includes neither the time to either a) schedule or b) receive judicial review, nor the time for a final decision by the Executive Director of the state Department of Administration. In this case the total timeframe could also take upwards of six months, and still results in the final award decision residing with the Colorado state Department of Administration.

It is important to underscore that, unlike firms in the private sector, the State serves a broad range of constituents, including through third party contracts, and must consider their interests and needs in the design and execution of its processes. We have no reason to doubt the integrity of the individuals charged with hearing protests, so it is hard to justify adding complexity and uncertainty to the contract cycle that helps provide consistent service to Nebraskans.

To address the issues we found with Nebraska protest policy and procedures, we first recommend consolidating the control of protest policy under SPB, and having SPB handle all protest processes, regardless of whether an agency leads a solicitation. This will create predictability, consistency, and objectivity that can benefit all parties involved. The existing ten business day standard to file protests and appeals is reasonable and comparable to peer states.

Next, we recommend establishing specific grounds for protests in policy. Providing clear standards may prevent weak protests, while lending clear structure to ones with merit. This can also help guide the review and decision-making process. Standards should not create opportunities to unduly challenge the qualitative scoring of evaluators, given scoring of technical merit necessarily involves subjective judgement and the discretion to make decisions should be protected.

As a measure of protection for vendors, we recommend establishing a specification protest policy and process that can be triggered early on, prior to solicitation responses being due (*e.g.*, 5 business days before a due date). The purpose of a specification protest process is to allow

review of cases where requirements may be too restrictive, whether in specifications or other aspects that have the potential to inhibit competition.

As an additional measure of protection for vendors, we recommend not proceeding with the execution of contracts until a protest process is complete, except with written approval from the Director of DAS or their designee. The State's process is sufficiently streamlined that this should not create excessive timing unpredictability and will ensure that aggrieved vendors have their issues fully heard. At the same time, to create efficiencies, contract finalization should be allowed to proceed so that contract signatures can be made as quickly as possible after the protest period.

We recognize that there is the potential for legislation to shift away from historical State practice and implement fixed protest laws. We do not recommend this, for the reasons noted above, but should this course be taken we suggest the legislature consider and include certain provisions to provide protections to the various parties involved, including the State, successful bidders, and aggrieved vendors.





### *Unsuccessful Bidder Debriefs*

While not a commonly explicit element of procurement policy, it is broadly beneficial to allow disappointed vendors an avenue to ask questions, receive feedback, express dissatisfaction, or offer suggestions for improvements to the procurement process. Making express provision for this in policy also has the potential to avoid some protests by providing an alternative outlet for frustration.

A debrief policy should make clear that the process is distinct from the protest process, and not intended to support an unsuccessful bidder's pursuit of a protest. Debriefs should have a constructive focus and only take place after the protest period has concluded.

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## Recommendations

No.	Details				
F-1	The State should maintain a single protest policy and process led by SPB. Guidance in training and both the Procurement Manual and Vendor Manual should be updated accordingly.	✓		✓	✓
F-2	SPB should establish specific protest grounds in policy, such as mathematical or clerical errors, failure to meet explicit or implicit minimum requirements, material violation of stated procurement policy, violation of law, provable conflict of interest, provable vendor collusion, or provable vendor obfuscation of relevant information.	✓			✓
F-3	SPB should add to its protest policy an avenue for protests against specifications ( <i>i.e.</i> , before solicitations are due). Within this policy, the grounds for specification protests at a minimum should include requirements that are restrictive or otherwise inappropriately limit competition.		✓	✓	✓
F-4	SPB should update the protest policy in the Procurement Manual to expressly allow contract negotiations to proceed, but this policy should also be modified to not allow contract execution prior to protest resolution without written approval from the Director of DAS or their designee.	✓		✓	✓
F-5	SPB should update and clarify within policy to allow for debriefs for vendors not selected for award. This should be included in training and			✓	✓

	both the Procurement Manual and Vendor Manual and should only take place after the protest period has concluded.				
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## III. G. Contract and Vendor Management

### **Section Summary**

Nebraska’s policies, procedures, and practices for contract and vendor management differ from other states’ practices in several regards, which are discussed in this section. That being said, our findings did not include indications of any serious, systemic problems or issues that consistently yield contracts that are insufficient for the State. On the contrary, the majority of stakeholders interviewed for this report only offered critiques of specific elements in the contracting and vendor management process and even then, many issues only occurred in particular instances. Thus, our recommendations in this subsection seek to make contract management more efficient by providing agencies more control and flexibility, ensure the State’s buying power is leveraged effectively, and bring the State’s contracting closer in line with the practices of peer states.

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We make the following recommendations:

No.	Recommendation Description	Complexity	Impact on State Ops	Impact on Suppliers
G-1	SPB should establish a policy allowing agencies to finalize, negotiate and manage their own contracts.	Low	High	Medium
G-2	SPB should establish a policy to allow for the potential of initial planning work that may commence in parallel to contract negotiations, by giving written notice that preparatory work done prior to a signed contract is “work at risk.”	Low	Medium	Medium
G-3	SPB should establish an organized and searchable Statewide contract listing.	High	Medium	Medium
G-4	The legislature should amend statute related to mandatory usage of statewide contracts.	Medium	Medium	Medium
G-5	SPB should update policy around debarment and suspension	Medium	Low	Medium
G-6	SPB should establish a policy regarding a standard maximum initial contract term.	Low	Medium	Low

## **Findings and Analysis**

### **Written Material Findings**

In our review of Nebraska statutes, we found ambiguous language pertaining to the usage of Statewide contracts by agencies. Presently, language in statute requires standard specifications (NRS Chapter 81-154), but only requires the Materiel Division to “encourage and foster” their

use. Much later in NRS Chapter 81-1118.04 it states that the purpose of the Materiel Division is in part to maximize state purchasing power – nothing that fully requires agencies to make purchase orders off Statewide contracts procured by SPB. As a result, policy around Statewide contract usage is dictated by the policy of the current Materiel Administrator. Currently, the open market purchasing authority letter dictates that agencies must buy off Statewide contracts, but this policy could easily change with the issuance of a new letter or a new Materiel Administrator, and there is limited guidance on how to proceed with identifying and using existing contracts. The existing contract website is a blank search form that only yields information that is as good as a user’s input. If one knows to leave the fields blank and click a “view all contracts” box at the bottom, the website yields a simple list of (currently) over 600 contracts, sortable by limited fields. Clicking through any item simply produces a copy of the contract.

It was also found in statute that there is no maximum contract term length. Instead, it is mandated under NRS Chapters 81-1118(5)(f) and 73-506 that a contract may not be extended by more than 50% of the base term. The limit of that base term is not addressed and is conceptually unlimited. Our review of statutes also found no mention of debarment or suspension. However, guidance around debarment and suspension is defined in NAC Title 9 Chapter 1-001 and in Section 7.2.7 “Suspension or Removal from Bidder/Supplier List” within the State Procurement Manual.

Through reading the State Procurement Manual, guidelines around contract negotiations and contract management stood out. During contract negotiations and finalization of contracts procured under the auspices of SPB (which as noted earlier is a high proportion of the highest value contracts), agencies are not directly involved in talks with the awarded vendor, with the buyer and DAS General Counsel acting as the main direct representatives of the State’s interests. These provisions blocking State agencies from contact with the vendor, except when having led the procurement process, are not based in statute. In cases when SPB has acted as the solicitation lead, current practice can complicate contract finalization, and potentially delay the implementation of projects that are crucial to agencies. While the manual maintains that agencies handle the contract management process, DAS takes over during vendor performance disputes and discussions, and requires that agencies submit a report to begin these processes.

### **Interview Findings**

Many agency interviewees expressed frustration with the role of their agencies in contract management, from their role during contract finalization and negotiations to the submitting of contract renewals. Some interviewees focused on the structure of contract negotiations, which currently leaves agencies out of the talks. One subject brought up a procurement where a delay in signing led to a shorter contract period, stating: “We could’ve gotten 20% more product between the intent to award and the signature.” Another interviewee suggested that “DAS is not

staffed or trained for active contract management” yet “matters like renewals and vendor disputes have to go through DAS.” That same interviewee took issue with the structure of vendor performance discussions, noting that the structure creates “redundancy” and that “we have to re-explain things to DAS and have to hope that they will make our preferred choices” during these discussions.

One agency interviewee spoke at length about issues surrounding purchasing off Statewide contracts procured by SPB. That interviewee highlighted confusing rules surrounding purchasing and unavailability of clear information about existing contracts, saying that for some time “it was harder in some cases to purchase off of a Statewide contract” rather than to take the typically more arduous route of making a purchase order. An interviewee from SPB noted that “it’s hard for agencies to know what the current policy is” on purchasing off Statewide contracts, given it has changed in the past.

Our discussions with SPB employees also highlighted an aspect of contracting where the policy differed from what otherwise might be logically presumed, and from common practices in other States. An SPB interviewee confirmed for us that there is no maximum contract term in Nebraska and added that “base period and renewals can vary significantly from contract to contract.” This interview subject also addressed the minimal capabilities of the State contracts website, suggesting that a prior SPB lead had removed functionality from the contract listing site under the basis that “people didn’t use the website anyway.” We were not able to validate past website practices but did assess the current version.

Vendors interviewed as a part of this review expressed overall satisfaction with the State’s contract management process and practice. Occasional issues noted by vendors included staff turnover ramifications and some difficulties having price changes approved. Neither of these pieces of feedback correspond to errors or inefficiencies in the State’s procurement practice.

### **Comparison to Other States**

Through our benchmarking of the statutes, rules, and manuals of Colorado, Iowa, and South Dakota’s procurement offices, we found very different guidance around contract terms compared to Nebraska. Standard contract term length guidelines for Missouri were not available.

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The chart below compares the maximum contract term lengths of Colorado, Iowa, and South Dakota.

	Nebraska	Colorado	Iowa	South Dakota
<b>Maximum Contract Term</b>	None	<p>Maximum Total of Five (5) Years <i>(May be longer, with permission from State Purchasing Director)</i></p> <p>While Colorado Statute 24-106-105 does not set a maximum contract length, R-24-103-503 and Chapter IV, Section 12 (C) of the Colorado Procurement Manual establish that a contract cannot exceed 5 years without State Purchasing Director approval.</p>	<p>Maximum Total of Six (6) Years for non-IT contract</p> <p>Maximum Total of Ten (10) Years for IT Contracts</p> <p>No Base Term Greater than Three (3) Years</p> <p>No Renewal Greater than One (1) Year</p> <p>Established by Iowa Administrative Code 11.118.11(3) and Chapter H of the Iowa Procurement Manual</p>	<p>Maximum Total of Five (5) Years</p> <p>Established in the “Multiterm Contracts” section of the South Dakota Vendor Manual</p>

**Analysis**

State agencies expressed a desire for a greater level of involvement in the contract management process. Since they carry the subject matter expertise and better understand how a contract will be administered, agencies would be knowledgeable and invaluable stakeholders in these discussions and could better shape both contracts and vendor relationships in a way that will

provide them with better results. With this in mind, we recommend that State agencies in Nebraska be allowed to negotiate, finalize, sign, and manage their own contracts regardless of who conducted the procurement process, giving more control closer to the relevant subject matter expertise, and allowing agencies to dictate these processes in a manner most beneficial to their missions. We believe that this authority should cover contract negotiations and finalization after a vendor has been awarded, through day-to-day management, the Corrective Action Process, contract amendments, and contract renewals. This is not to say that SPB should not have a required line of information on terms, renewals, modification, vendor performance issues, and input into how contract management procedures are designed more generally. That said, placing the front-line responsibility at the agency level this way will not only make work more efficient for State agencies, but it will also allow SPB to direct vital resources away from contract management and towards other procurement duties.

Along with this recommendation on contract negotiations and management, we recommend expressly acknowledging that agencies and vendors may from time to time engage in initial planning work – particularly for complex projects with long horizons – while contract finalization is underway. That said, most interviewees indicated that all discussions were halted until contract signature. An unsigned contract does not create rights for a vendor, but we recommend addressing these circumstances by giving written notice (together with award) that any work done prior to a signed contract is “work at risk.” This is a simple measure to address reality, and simultaneously avoid any misunderstandings between the State and a vendor. This can mitigate the potential detrimental effects of any procurement delays and allow for a more efficient process for both vendors and agencies if the earlier implementation stages of a contract can be completed as soon as is mutually agreeable.

On the topic of Statewide contracts, we first recommend that DAS establish an organized and searchable Statewide contract listing on their website that is accessible to the public. As it is currently structured, the contract search site has minimal capability and is difficult to navigate without knowledge and experience. It includes nearly 600 contracts, many of which are agency-specific and not true Statewide contracts. The contracts listed are not searchable by description – only by category – though there appear to be in excess of 250 categories, along with over 100 classifications. All of this is too broad to allow efficient and effective searching to understand what is available to purchase off of an established contract. In contrast, Missouri maintains a much more manageable list of approximately 150 contracts, which can be searched by keyword, and includes simplified filters for contract type – 12 goods categories, 12 services categories, and 9 IT categories. South Dakota does not provide a search function, but has a refined list of approximately 140 contracts, with readily understandable descriptions. Colorado refines further, to a list of under 50 contracts, and also includes specific guidance on mandatory-use and permissive-use policies. Colorado also offers annual informational sessions on available statewide price agreements.

Once upgraded, this website would provide agencies with clear, available information on Statewide contracts they can utilize and the public with information on public contracts. Along with this, SPB should also write and provide clear contract usage instructions for each Statewide contract, starting with those of greatest use and applicability across the State. This should include how to place orders and how to complete any necessary forms such as exception requests. Ideally, these will minimize confusion among agency buyers and decrease the inquiries from agency procurement staff to SPB.





If such a site is established, it will aid our next recommendation, that the legislature should amend NRS Chapter 81-154 defining the authority of SPB to require usage of Statewide contracts and requiring exception requests from agencies that wish to purchase goods or services from another entity. Mandated usage of Statewide contracts should be dictated by a consistent policy that is more difficult to alter and agencies should be restricted from trying to seek alternative pricing on goods and services when SPB already has negotiated a contract for the benefit of all State agencies.

In regard to debarment and suspension, we recommend two actions. First, we recommend that SPB should create a space where a list of debarred and suspended vendors could be accessed by the public on their website. Second, we recommend that SPB establish in policy, a process for debarred and suspended vendors to appeal their punishments. Together these changes will bring more clarity to debarment and suspension in Nebraska, as well as bring policy and standards in line with other states.

Our final recommendation in this subsection is that DAS should establish a standard maximum initial contract term in policy and allow for extensions with approval. We found that State contract terms ranged significantly in their length, and there were a substantial number of contracts that covered more than a decade in their term. To ensure that contracts can stay relevant to the needs of agencies and the ebbs and flows of the market, contracts need a standard maximum term that is only able to be modified with SPB approval. This is not to say that decade-long contracts are not sensible in certain cases – only to say that the term should be scrutinized at the central procurement level at the outset, to ensure market competition is tested on an appropriate cycle. As shown in comparison table above, this recommendation would bring this aspect of the State’s contract management practice in line with the State’s peers.

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## Recommendations

No.	Details				
G-1	SPB should establish in policy that agencies should be allowed to finalize, negotiate, and manage their own contracts. This includes owning the Vendor Improvement Request / Corrective Action process.	✓	✓	✓	
G-2	SPB should establish a statewide policy whereby SPB or other agencies may acknowledge the potential for initial planning work that may commence in parallel to contract negotiations, by giving written notice that preparatory work done prior to a signed contract is “work at risk.” This should be done by modifying the “Beginning of Work” clause (presently Section II. Terms and Conditions, Clause E.) in the ITB and RFP boilerplate documents to delete and replace the sentence “The Contractor will be notified in writing when work may begin.” The initial sentence in the clause regarding billable work remains valid.	✓	✓	✓	
G-3	SPB should establish an organized and searchable Statewide contract listing on their website accessible to the public. SPB should also establish a policy of writing and providing clear contract usage instructions for Statewide contracts, including how to place orders and how to complete any necessary forms.	✓	✓	✓	✓
G-4	The legislature should alter NRS Chapter 81-154 to outline the mandated usage of Statewide	✓	✓	✓	

	contracts and require exception requests from agencies who wish to order from entities not on the established statewide agreement.				
G-5	SPB should create a space where a list of debarred and suspended vendors can be publicly available. SPB should formulate a process in policy for vendors to challenge debarment and suspension.		✓		✓
G-6	DAS should establish a standard maximum initial contract term and allow for extension with approval within policy.	✓	✓		

## Appendix A – List of Reviewed Written Materials

Below is a list of all reviewed written materials as a part of this report’s preparation.

Written Material Code or File Name	Written Material Code or File Name
Protest-Grievance Log 032813 R1.xlsx	2020 LB371 Report - Modified with PCard Info
1-204	2022 MA Terms and Conditions Letter-FINAL-DOCUSIGNED
1-205	2022 MA Terms and Conditions-FINAL
1.12.22 DHHS Procurement Report - For CEO	2022 MASTER AGREEMENT-ANDERSON FORD
11.117.20	2022 MASTER AGREEMENT-BAXTER AUTO
13-106-3-Award and documentation	2022 MASTER AGREEMENT-GENE STEFFY
14252_Dell	2022 MASTER AGREEMENT-HUSKER AUTO
14816 Carolina Textiles	6684 OF Revised Return Mail Bid
15-404-1-Proposal analysis techniques	71163 United Health MCO
2015 LB371 Contract Report Govt Procurement Act	ADDENDUM A - DHHS General Terms - Services Contracts
2017 RFP Evaluation and Scoring Manual	ADDENDUM A - DHHS General Terms - State Funds Grants
2018 Procurement Manual - Updated 09132018	ADDENDUM A - DHHS General Terms - University of Nebraska Contracts
2018 Report Trans Gov Procure	ADDENDUM A - DHHS General Terms - University of Nebraska State Funds Grants
2019 ITB Boilerplate - 07012019 - CHANGES	Addendum A - General Terms - Subawards
2019 ITB Boilerplate - REV07012019	Addendum A - General Terms - University of Nebraska Subawards
2019 Report Trans Gov Procure	ADDENDUM B - Insurance Requirements - Services Contracts
2019 RFP Boilerplate - 07012019 - CHANGES	ADDENDUM B - Insurance Requirements - State Funds Grants
2019 RFP Boilerplate - REV07012019	Addendum B - Insurance Requirements - Subawards
2019.08.14 Promiseship Amended Complaint	ADDENDUM B - University of Nebraska Statement of Self-Insurance - University of Nebraska Contracts
2019.09.06 PromiseShip Brief in Support of Motion for Temporary Injunction (1)	ADDENDUM B - University of Nebraska Statement of Self-Insurance - University of Nebraska Grants
2019.09.06 State of Nebraska's Brief in Support of Motion to Dismiss and in Opposition to Motion for Temporary Injunction	2019.10.10 Order on Defendants' Motion to Dismiss and Plaintiff's Motion for Temporary Injunction

Written Material Code or File Name	Written Material Code or File Name
Addendum B - University of Nebraska Statement of Self-Insurance - University of Nebraska Subawards	BAFO letter
ADDENDUM C - HIPAA Business Associate Agreement Provisions - Services Contracts	Basics Contract Writing
ADDENDUM C - HIPAA Business Associate Agreement Provisions - State Funds Grants	BP Certification Training
ADDENDUM C - HIPAA Business Associate Agreement Provisions – Subawards	Buyer's Instructions (Pink Sheet)
ADDENDUM D - Add'l Terms_HUD - Subawards	Cancellation Letter
Addendum for Change of Scope	Certificate of Insurance Checklist
Addendum for Questions and Answers RFP	Change_Of_Address_Form_PDF
Addendum for Revised Schedule of Events	Chapter 73
Addendum Form, Contract	Chapter 81
AddendumToRFP	Chapter 83
Agency Instructions for Office Relocation	Clarification
Agency Instructions for Surplus Property	Commodities 101 Q4 21
Amendment – NEW	Commodity Tutorial & ITB Boilerplate
Amendment Form, Contract 1	Competitive Procurement 101
AOB - Contract 05.27.22	Conflict of Interest Declaration 2014 Commodities
AOB - Contract PRIMARY AND-OR SECONDARY AWARD 05.27.22	Conflict of Interest Declaration 2014 Services
AOB - Contract RESTRICTIVE 05.27.22	Contract Cancellation Justification Form
AOB - Contract SOLE SOURCE 05.27.22	Contract Instructions (for Cooperative Contracts)
AOB - Purchase Order 05.27.22	ContractAdministrationPlan(CAP)
AOB - Purchase Order RESTRICTIVE 05.27.22	ContractLocationReport07-02-2018
AOB - Purchase Order SOLE SOURCE 05.27.22	Contractor Price Adjustment Request
Approvalroutes	Contracts Access Database Buyer Report Query
ASSET MANAGEMENT MANUAL 2020	Copy Req
Award Instructions	Cost Proposal Evaluation Worksheet
Cutoff Dates as of 05.31.22	DAS Materiel - SPB Org Chart
DAS_BR_Handbook (-) Posted 28MAY20	DCS DPA Auth Ltr 8.9.22 - FINAL Signed
DCS PURCHASING ORG DEC 2021	ITB Timeline 01152014

Written Material Code or File Name	Written Material Code or File Name
Deviation Requests and Emergency Contracts Guide	ITBsolicitationAnnouncementLetter
DeviationForm	KPIs - 09-2018
DHHS Procurement Report 2020 - For CEO	LB 1037 Committee Note [2021-2022 Session]
DHHS.SOP.3047 Agency Processed RFP Process	LB 1037 Statement of Intent [2021-2022 Session]
Direct Services Standards - NEW	LB 1037 [2021-2022 Session]
Director-Title10AdministrationRulesRegs	LB 1037 Fiscal Note [2021-2022 Session]
Director-Title12PersonalServicesRulesRegs	LB 371 2016 Report [2013-2014 Session]
E1 Financial Status	LB61 - 2021-03-04 Hearing Extract [2021-2022 Session]
ESA Chronology	LB 790 [2019-2020 Session]
EvaluationCriteria	List of Respondents
Evaluator Orientation - Basic Template (Revised 2022)	LR 29 PROCUREMENT OBSERVATIONS – “We followed the process
EvaluatorScoringWorksheet	LR 29 [2021-2022 Session]
Event Speaker Contract	Mail_Manual_2021
Example Installation Services Quote Form	MANDATORY REQUIREMENTS CHECKLIST
Example Moving Services Quote Form	Market Research
Final Evaluation Document	Materiel-PurchasingVendorManual12-14-2017
Final Evaluation Document with BAFO	Materiel-RulesAndRegs1982
Final Evaluation Document with Oral Interviews	MMCAP News - April 2017
FinalEvaluationDocumentVending Services	Moving and Installation Services Guide
FinalEvaluationDocumentWithOralInterviewsVending Services	Moving Services Quote Form
Fixed Asset Memo FY20-21	NASPO ValuePoint-Buyer's Instructional Pink Sheet
Flash Memo Template - New NASPO Vendor Contact	NDCS DPA Request FY23
Intent To Award Letter	NDERFP2111 ECIDS
Introduction to DocuSign 2020.01	NIGPpreferenceSurveyReport
Introduction to OnBase 2020.01	Non-CSI Purchase Guide
ITB OF Military Rock	NonCSIJustificationForm
Nigpcodes	OfficeDepotAccountApplication



Written Material Code or File Name	Written Material Code or File Name
on-line-return-instructions	2015 Purchase Orders
Open_Market_Purchase_Authority_Ltr_10-5-21	April through June 2016
Optional Renewal Language	April through June 2017
Optional Renewal Pricing Language	April through June 2018
OralInterviewLetterVersionOne	January through April 2016
OralInterviewLetterVersionTwo	January through March 2018
OralInterviewLetterVersionThree	JanuarythroughMarch2017
OralInterviewScoringWorksheet	July through September 2017
Payment Processing 101	JulythroughSeptember2016
pc_manual	October through December 2017
Personal Services Guide Template	October through December 2018
PO_Standard_T-Cs_10-1-2020	OctoberthroughDecember2016
PON Analysis Agency Checklist 02242020	Q1 January 2021 - March 2021
Pre-Bid_Proposal Attendance Sheet	Q1 January 2022 - March 2022
Pre-BidAttendanceSheet	Q2 Apr 2021 - June 2021
Pre-BidConferenceQ&A	Q2 April 2020 - June 2020
Pre-ProposalConferenceQ&A2014	Q3 July 2020 - September 2020
Printing 101	Q3 July 2021 - September 2021
Procurement and Grant KPIs	Q4 October 2020 - December 2020
Procurement Training Guide Generating PO Moving and Installation Services	Q4 October 2021 - December 2021
ProcurementSeries	Q12019
Proof of Need Analysis Guide 02242020	Q12020
Proof of Need Analysis Template 02242929	Q22019
ProtestGrievanceProcedureForVendors_08042021	Q32019
PRR Form	Q42019
PT Roles11_NIS_Role_Descriptions_PT	R5743452_NIS001_Year 2011
PT30 Powerpoint	R5743452_NIS001_Year 2012
PublicNoticeCoverAnnoucementREVISED11-2018	R5743452_NIS001_Year 2013

Written Material Code or File Name	Written Material Code or File Name
PUP-CAT 12.9.20 Final	R5743452_NIS001_Year 2014
PURPLE SHEET (Buyer's Solicitation Form)	Services Contract - Short Form
Quantity Increase Request Form	Services Contracts - General Terms - NEW
R5743540_NIS0001_Contracts in Dollar Range 07112022	Sole Source Justification Commodity
R590371A_NIS0001_AS Contract Reporting 07012016 06302017	Solicitation Announcement Letter
ReferenceCheckWorksheet	SPB KPI- Due to Expire - January 2021
Reject Letter_Agency	SPB KPI - JAN 2021
RejectLetter	SPB RFI
Request for Fax or Electronic Quote	spb_2way_match
returnauth	Spec Comparison Tool
RFP 112209 MCO	SPN Form for Non-Fixed Asset
RFP Bid Review Agreement	SPN Form Instructions
RFP Checklist	SOP 1, FILE CONFIG & MAINTENANCE, 2014
RFP Proposal Evaluation Team Guide NGPC 07.0221	SOP 1, FILE CONFIG & MAINTENANCE
RFP Timeline 01152014	SOP 2, TIMELINE FORM, 2014
SA100-06012022- July_1_2020_through_June_30_2021_DAS_ACFR_Management_Letter	SOP 3, CONTRACT SUMMARY FORM (obsolete)
SA65-06012022- July_1_2020_through_June_30_2021_ACFR_Management_Letter	SOP 4 COMMODITY QUANTITY INCREASES
Scanner Manual CT40 - FINAL	SOP 5, BUYERS SOLICITATION FORM (PURPLE SHEET)
Scope of Work	SOP 6, BUYERS INSTRUCTIONAL FORM (PINK SHEET)
Scope of Work and Deliverables - NEW	SOP 7, RFP PROCESS
Scoring for Use Case	SOP 8, BID OPENING
Service Contract Award - NEW	SOP 9, BONDS
Services 101 2022	SOP 10, CERTIFICATE OF INSURANCE 3-25-20
Services Contract	SOP 11, DEVIATION PROCESS
Services Contract - First Amendment	SOP 12, EMERGENCY SERVICES

Written Material Code or File Name	Written Material Code or File Name
Services Contract - Renewal	SOP 13, ITB PROCESS
Services Contract - Second and Subsequent Amendment	SOP 14, AWARD OF BID PROCESS
SOP 15, ITB PROCESS, RESTRICTIVE	SOP 47, COPYRIGHT AND PROPRIETARY INFORMATION
SOP 16, ITB PROCESS, SOLE SOURCE	SOP 52, QUALITY ASSURANCE
SOP 17, ITB PROCESS, RETURN MAIL	SOP 53, CONTRACT MANAGEMENT, Including Reporting and Rebates Admin Fees
SOP 18, BID TABULATION	SOP 54, RECORDS MANAGEMENT
SOP 19, DIRECT PURCHASE AUTHORITY	SOP 60, RETURNED MAIL
SOP 20, EMERGENCY GOODS	SOP 61, MONTHLY E1 REPORTS
SOP 21, FUEL REQUISITIONS-REVISED & CORRECTED - ACCEPTEDCHANGES	SOP ABBREVIATIONS AND DEFINITIONS
SOP 22, FURNITURE REQUISITIONS	SOP APPENDIX
SOP 23, GSA-LIKE PRICING	SOP PURPOSE & SCOPE
SOP 25, TRADE IN - Formal Bid Process	St. Francis Whistleblower Memo
SOP 26, TRADE IN - Informal Bid Process	State Funds Grant
SOP 27, USED EQUIPMENT	State Funds Grant - Renewal
SOP 28, VEHICLE REQUISITIONS & PURCHASE ORDERS	Status Codes
SOP 29, SPB PRINT REQUISITIONS	Subaward
SOP 30, LIFE CYCLE COST ITB PROCESS	Subaward - Amendment
SOP 31, CONTRACT AWARD, INITIAL PERIOD	Subaward Attachment 1 - Consolidated 7.2022
SOP 32, CONTRACTS,RENEWAL OR EXTENSION	Subaward Attachment 2 - Officer Compensation
SOP 33, CONTRACTS,AMENDMENTS	System Document Types
SOP 34, CONTRACTS, PRICE CHANGES	Title-009_Material_Division
SOP 35, CONTRACTS,CANCELLED OR EXPIRED	Use Case Combined 07-30-2021
SOP 36, CONTRACT, COOPERATIVE AWARD and RENEWAL	VendorApplication_12_14_20
SOP 37, PUBLIC RECORDS REQUESTS	VIR - Form
SOP 38, PROTESTS	VPN - Template
SOP 40, LICENSING AGREEMENTS	VPP-Guide-1-1
SOP 41, PURCHASE ORDERS AND CHANGE	Withdrawal of Bid Form

Written Material Code or File Name	Written Material Code or File Name
ORDERS	
SOP 42, RFP AGENCY PROCESSED	Withdrawal of Intent to Award - FORM
SOP 43, WITHDRAWAL OF INTENT TO AWARD	XXXXXX O3 RFP Pre-Review Checklist Review SPB

## Appendix B – List of Interviews Conducted

At the time of our submittal of this report, we interviewed twenty-seven individuals across ten State agencies. We also interviewed an additional fourteen individuals working outside of state agencies. A complete roster of all individuals whom we interviewed, including when they were interviewed, is below.

Name	Entity	Interview Date(s)
Amara Block	DAS	June 24 <sup>th</sup> , August 11 <sup>th</sup> , August 15 <sup>th</sup> , August 26 <sup>th</sup> , September 9 <sup>th</sup>
Senator John Arch	Legislature	June 27 <sup>th</sup> , July 6 <sup>th</sup>
Pete Kroll	DAS	July 1 <sup>st</sup> , August 23 <sup>rd</sup> , August 29 <sup>th</sup>
Sonya Caldwell	DAS	July 1 <sup>st</sup>
Michael Hendrickson	DAS	July 1 <sup>st</sup>
Christina Kelly	DAS	July 1 <sup>st</sup> , September 1 <sup>st</sup>
Connie Heinrichs	DAS	July 1 <sup>st</sup> , July 11 <sup>th</sup> , August 9 <sup>th</sup>
Dianna Gilliland	DAS	July 5 <sup>th</sup>
Joy Fischer	DAS	July 5 <sup>th</sup>
Brenda Sensibaugh	DAS	July 5 <sup>th</sup>
Vicki Collins	DAS	July 6 <sup>th</sup> , September 13 <sup>th</sup>
Whitney Titov	DAS	July 6 <sup>th</sup> , August 29 <sup>th</sup>
Rob Taylor	DAS	July 6 <sup>th</sup>
Noah Finlan	OCIO	July 6 <sup>th</sup>
David Hattan	OCIO	July 6 <sup>th</sup>
Chuck Hagan	NDOT	July 7 <sup>th</sup>
Dale Piening	NDOT	July 7 <sup>th</sup>
Rita Kucera	NDOT	July 7 <sup>th</sup> , August 30 <sup>th</sup>
Bo Botelho	DHHS	July 7 <sup>th</sup> , August 31 <sup>st</sup> , September 8 <sup>th</sup>
Kelly Lammers	NDBF	July 8 <sup>th</sup>
Senator Mark Kolterman	Legislature	July 8 <sup>th</sup>
Brent Davis	NDOA	July 8 <sup>th</sup>

Name	Entity	Interview Date(s)
Julie Schiltz	NDCS	July 8 <sup>th</sup> , August 26 <sup>th</sup>
Kate Severin	NDCS	July 8 <sup>th</sup> , August 26 <sup>th</sup>
Robin Spindler	NDCS	July 8 <sup>th</sup>
Greg Walklin	DHHS	July 12 <sup>th</sup> , August 31 <sup>st</sup> , September 8 <sup>th</sup>
Senator Justin Wayne	Legislature	July 12 <sup>th</sup> , July 26 <sup>th</sup>
Kay Mencl	Game and Parks Commission	July 21 <sup>st</sup> , August 30 <sup>th</sup>
Dave Sankey	Public Service Commission	July 25 <sup>th</sup>
Don Arp	Nebraska Crime Commission	July 26 <sup>th</sup>
Ed Fox	Kutak Rock	August 19 <sup>th</sup>
Tom Kenny	Kutak Rock	August 19 <sup>th</sup>
Wade Geiken	NE Salt and Grain	September 22 <sup>nd</sup>
Chad Curtis	Fast Enterprises, LLC	September 22 <sup>nd</sup>
Jeff Viano	Fast Enterprises, LLC	September 22 <sup>nd</sup>
Daniel Robinson	Omaha Paper	October 3 <sup>rd</sup>
Jim Howell	Omaha Paper	October 3 <sup>rd</sup>
Robert Powell	Omaha Paper	October 3 <sup>rd</sup>
Kevin Hall	Seiler Instruments	October 4 <sup>th</sup>
Jeff Case	Therap Services	October 6 <sup>th</sup>
Jeff Roberts	Terra Technology	October 18 <sup>th</sup>

## Appendix C – List of Acronyms

Below is a table of the acronyms contained within this report and its appendices.

Acronym	Full Name
BAFO	Best and Final Offer
CAP	Contract Administration Plan
CSI	Cornhusker State Industries
DAS	Nebraska Department of Administrative Services
DHHS	Nebraska Department of Health and Human Services
DNR	Nebraska Department of Natural Resources
GSA	US General Services Administration
ITB	Invitation to Bid
LB	Legislative Bill
LOIA	Letter of Intent to Award
MMCAP	Minnesota MultiState Contracting Alliance for Pharmacy
NASPO	National Association of State Procurement Officials
NDBF	Nebraska Department of Banking and Finance
NDCS	Nebraska Department of Correctional Services
NDOA	Nebraska Department of Agriculture
NDOT	Nebraska Department of Transportation
NDR	Nebraska Department of Revenue
NRS	Nebraska Revised Statutes
OCIO	Office of the Chief Information Officer
RFI	Request for Information
RFP	Request for Proposals
SPB	State Purchasing Bureau