# Department of Administrative Services: Analysis of State Agency Emergency Contracting

Legislative Oversight Committee
Nebraska Legislature

**September 2025**


NEBRASKA
LEGISLATIVE
AUDIT OFFICE

Audit reports are available on the Legislature's website (www.nebraskalegislature.gov) or can be obtained from the Legislative Audit Office at 402.471.1282

Cover photo by Tom Fisk via Pexels website.


**LEGISLATIVE AUDIT OFFICE**
**Nebraska Legislature**
**1225 L Street, Suite 502 ● Box 94604 ● Lincoln**

# Table of Contents

# I. Audit Summary & Committee Recommendations

# Audit Summary and Committee Recommendations

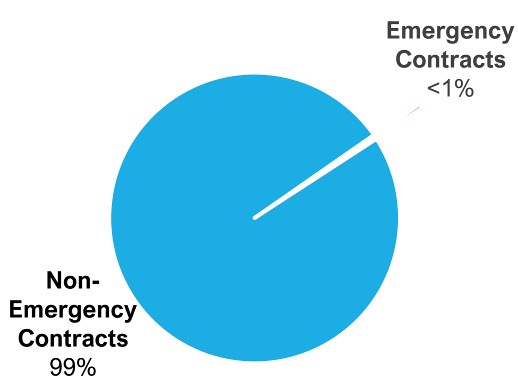
This section contains a brief summary of the emergency contracting process and how emergency contracts were used from 2014 to 2024, the audit findings and results, and the Legislative Oversight Committee's recommendations.

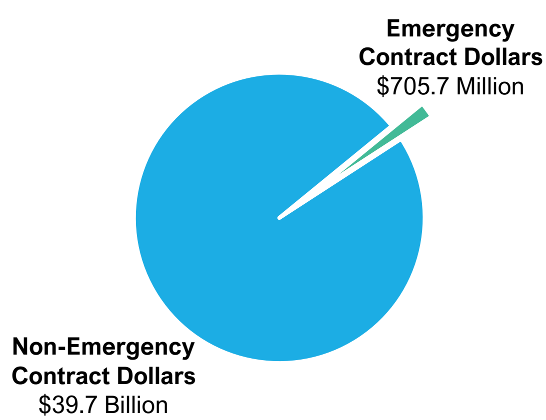
In Nebraska, all agency contracts with a value of $50,000 or more are required to go through a formal bidding process unless falling under an exception. One such exception is an emergency contract. Nebraska law defines an emergency as a situation where a contract is "necessary to meet an urgent or unexpected requirement or when health and public safety or the conservation of public resources is at risk."

If the agency's need meets this definition, the agency's director can designate the execution of an emergency contract by completing a contract deviation form. In addition to basic information about the contract, the form requires the agency to provide a detailed justification for the use of an emergency contract. Once completed, the agency director is required to sign the deviation form and the form, any supporting materials, and the executed contract must be uploaded into the EnterpriseOne Accounting System (E1). In addition, emergency contracts, like all contracts, must be uploaded to the publicly available State Contract Database.

Unlike other competitive bidding exceptions, the Department of Administrative Services (DAS) does not have to give prior authorization for the contract. Once the information is entered into E1, DAS must accept the contract if the form is complete. Statute also tasks DAS with maintaining a list of emergency contracts.

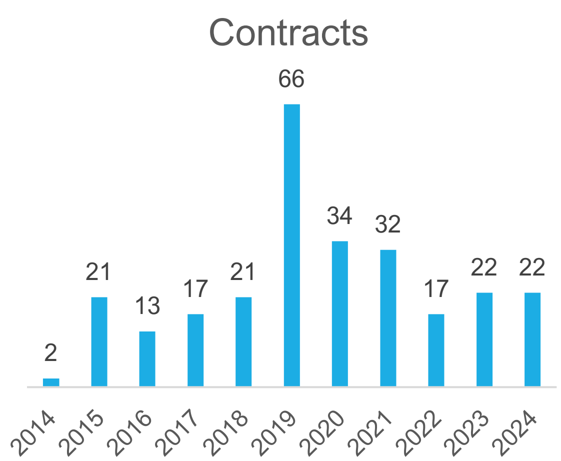
Between January 2014 and December 2024, the State of Nebraska entered into 266 emergency contracts totaling $705.7 million in state and federal funds. Emergency contracts were 0.5% of all agency contracts during that period and 1.7% of total contract dollars.

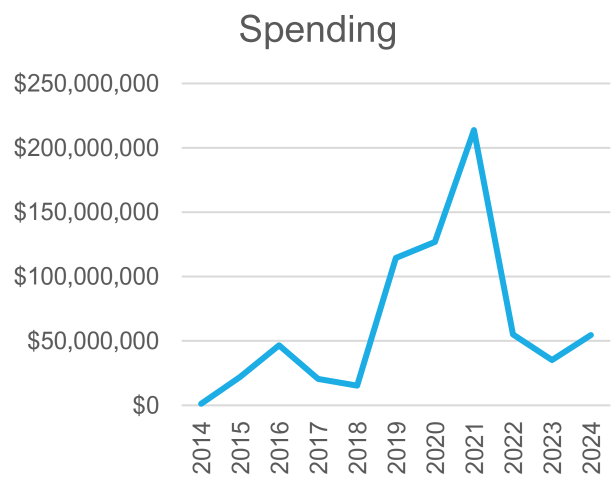



All emergency contracts between 2014 and 2024 were services contracts; there were no goods contracts entered into under the emergency contracting rules during that period.

The total number of emergency contracts in any given year varied, from as few as 2 in 2014 to as many as 66 in 2019. The amount spent on emergency contracts grew from $1.2 million in 2014 to a 2021 peak of $213.8 million. Major increases in the total number of contracts and total spending occurred during the 2019 flooding event and the COVID-19 pandemic.




Twelve agencies entered into emergency contracts from 2014 to 2024. Most of those agencies had fewer than 20 emergency contracts each during that time. Only the Department of Health and Human Services (DHHS) and Department of Transportation (NDOT) had more than 20 contracts, with 162 at DHHS and 45 at NDOT. In addition to having the most emergency contracts, DHHS also spent the most on emergency contracts, followed by the Departments of Transportation, Administrative Services, Labor, and Military.

| Agency | Total |
|---|---|
| Department of Health & Human Services | $520,222,435 |
| Department of Transportation | $109,899,822 |
| Department of Administrative Services | $40,173,004 |
| Department of Labor | $13,888,065 |
| Department of Military | $9,920,066 |
| Tourism Commission | $3,830,552 |
| Department of Economic Development | $3,323,808 |
| Department of Motor Vehicles | $2,650,000 |
| Game and Parks Commission | $749,688 |
| Department of Correctional Services | $567,518 |
| Commission for the Blind and Visually Impaired | $350,000 |
| Commission on Law Enforcement (Crime Commission) | $134,000 |
| **Total** | **$705,708,958** |

# AUDIT FINDINGS AND RESULTS

The report contains two types of outcomes from our analyses: findings and results. When there is a standard to compare the product of an analysis against, we present a finding. Typically, when there is no standard, we present results. For this audit report, results are observations about patterns auditors saw while reviewing emergency contract justification documents.

## SECTION I

**Finding (p. 5):** The Department of Administrative Services could not provide a stand-alone list of emergency contracts for the period between 2014 to 2024.

**Discussion:** DAS was able to provide a list of emergency contracts entered into E1 after the 2024 statutory changes went into effect.

> **Recommendation:** If the Legislature wishes to have more information about emergency contracts, they could consider requiring agencies to report emergency contracts to DAS annually and for DAS to provide that report to the Legislature. By requiring a report of this type, this would also give DAS the ability to check that emergency contracts are being entered into the EnterpriseOne as required by statute.

## SECTION II

**Finding (p. 12):** Auditors found no evidence of excessive statewide use of the emergency contract exception. During the period reviewed, emergency contracts were fewer than 1% of the total number of state agency contracts and less than 2% of total contract spending.

> **Recommendation:** None.

**Finding (p. 19):** Crime Commission contract #90242 was extended via multiple amendments, which is not allowed by law.

**Finding (p. 20):** One emergency contract was written in a way that violated the prohibition on contracts of unlimited duration. Military Department contract #68283 contained terms that would have renewed it each year indefinitely, but the contract was cancelled after the initial three-year term.

> **Recommendation:** DAS should ensure that regular agency training includes a review of contract extension rules. All agencies should review their contracting procedures to make certain that contracts are extended in a manner compliant with Neb. Rev. Stat. § 73-812.

**Finding (p. 20)**: Twenty-seven emergency contracts from eight agencies were not uploaded to the State Contract Database as required by law.

> **Recommendation:** State law is very clear that contracts must be entered into the State Contract Database. Agency executives should ensure that all contracts, including emergency contracts, are uploaded to the State Contract Database as required by Neb. Rev. Stat. § 84-602.04.

**Finding (p. 20):** Three Department of Economic Development and 45 Department of Transportation emergency contracts were not uploaded into the EnterpriseOne platform as required by DAS policy.

**Discussion:** Neb. Rev. Stat. § 73-806 requires that all state agencies process and document all contracts through the state accounting system (EnterpriseOne or E1) and empowers DAS to determine the type and form of information to be entered. DAS policy requires agencies to upload the actual contract into E1.

> **Recommendations:** DED and NDOT should ensure, and seek assistance from DAS to confirm, that their contract documentation procedures are in compliance with the Procurement Act.
>
> If the Legislature believes that the statute should be more explicit in requiring contracts be entered into E1, they could consider modifying the statute to explicitly state that contracts must be entered into E1.

**Finding (p. 21)**: The Department of Administrative Services entered into emergency contract #108957 without the completion of a justification form as required by law.

**Discussion:** This finding relates to a DAS contract that was mandated by legislation. It previously contained an additional contract but language in the enacting legislation exempted the contract from competitive bidding procedures. DAS interpreted this to mean that this language exempted the contract from emergency contract process requirements as well. While the Audit Office does not necessarily agree, it is unclear what the Legislature intended.

> **Recommendation:** DAS should review its policies and procedures for DAS emergency contracting and ensure that contract deviation form is properly completed and approved by the DAS Director even when the emergency is caused by legislation with a deadline incompatible with competitive bidding procedures.
>
> For legislation that requires agencies to enter into time-dependent contracts, the Legislature could consider including language that provides more specificity about what contract process the agency should follow rather than a complete exemption from competitive bidding.

**Finding (p. 22)**: From December 2013 to December 2024, the Department of Economic Development did not enter any information into EnterpriseOne for more than 80 contracts (including emergency contracts) as required by law. The contracts were also not entered into the State Contract Database as required by law.

> **Recommendation:** DED should review their internal policies and procedures to ensure that they are in compliance with the law. DAS should provide assistance to DED to ensure that their policies are up-to-date and staff is properly trained in procurement procedures.

**Finding (p. 22)**: The Department of Economic Development submitted, and the Department of Administrative Services accepted, documentation for emergency contracts #24-01-495, #23-01-155, and #23-01-225 where no information justifying the emergency was provided in the justification form.

> **Recommendation:** DED should submit fully completed justification forms and DAS should only accept them if they contain the required justification.

**Finding (p. 24)**: From 2014 to 2024, 81% of emergency contracts were sufficiently justified as emergencies; 1% did not have documentation of the emergency. Auditors questioned whether 18% of the contracts met the definition of emergency.

> **Recommendation:** If the Legislature is concerned about agency emergency contracting, they could consider a number of changes to the statute, including but not limited to: modifying the definition of emergency to be less vague by focusing on why competitive bidding is not possible rather than the nature of the emergency or limiting the duration of the emergency contract or the scope of what can be contracted for. They could also consider more robust reporting to the Legislature.

**Results (p. 25):** Auditors made a number of observations during the review of emergency contract justifications:

1. It appears that between 2014 and 2024, DHHS periodically used emergency contracts as a way to bridge the gap between an expiring contract and a potential or future RFP. Often potential loss of services and/or need to RFP was the only justifying event for the emergency. DHHS told auditors they are currently working to strengthen their overall contracting process, including efforts to reduce the agency's use of emergency contracts.
2. Auditors found a number of emergency contracts that could have been more appropriately designated as sole source contracts. There is some indication that at least one agency had difficulty in securing approval for any sole source contracts for a number of years, which may explain why emergency contracts were used.
3. Emergency exceptions were used to continue contracts with current vendors to maintain, stabilize, or enhance technology systems because bidding out contracts and changing systems would have been difficult or an unnecessary expense. Though auditors found the decision to continue with current vendors of proprietary technology a reasonable one, it is likely an inappropriate use of an emergency contract in cases where an agency simply wishes to keep their current vendor.

**Recommendations:** DHHS should create procurement procedures that emphasize planning and ensures that the RFP process starts before the expiration of current contracts.

DAS should ensure that agencies are able to use the sole source exemption in situations where a sole source contract is appropriate.

DAS should create criteria for use of the exception in Neb. Rev. Stat. § 73-813(b) for contracts where competitive bidding is otherwise not appropriate or compatible.

# II. Legislative Audit Office Report

Legislative Audit Office Report

# Department of Administrative Services: Analysis of State Agency Emergency Contracting

## September 2025

**Prepared by**

**Franceska Cassell**

**Adam Hohensee**

NEBRASKA LEGISLATIVE AUDIT OFFICE

## REPORT TABLE OF CONTENTS

# INTRODUCTION

On April 2, 2024, the Legislative Performance Audit Committee (Committee) directed the Legislative Audit Office (Office) to conduct an audit of the emergency contracting process at state agencies and the role of the Department of Administrative Services (DAS) in that process.[1]

The Committee was interested in understanding more about the process, directing the Office to address the following in the audit:

1. Explain the emergency contracting process and how emergency contracting processes are different from regular contracting processes.
2. Determine if emergency contracts are being used appropriately.
    a. Provide overall data on the state's use of emergency contracts by determining how many emergency contracts were entered into and how much was spent as a percentage of total contracts, by agency for the last ten years.
    b. Analyze available data to determine what kinds of goods or services were procured through emergency contracts and whether there were more emergency contracts for goods or services.
    c. Examine rationales agencies provided for using emergency contracts and determine whether the contracts are meeting the statutory definition of an emergency.
    d. Report on the length of emergency contracts and determine how often emergency contracts were extended, amended, or renewed.
3. Make a determination about whether there is sufficient oversight for contracts designated as an emergency.
    a. Determine the role that DAS plays in oversight and monitoring of contracts.
    b. Research how other states manage emergency contracting and determine if other states have strategies that might make Nebraska's process more robust or efficient.

The Committee also asked auditors to report on the difference between the dollars contracted for and actually spent on emergency contracts. We were not able to answer this question because contract amounts and costs are tracked dynamically rather than in a static way that would allow a comparison to be made.

Section I briefly describes the contracting process both under normal circumstances and using the emergency contracting exception, as well as DAS' roles in those processes and oversight. It also includes information on other states' emergency contracting practices. Section II provides data analyses of all contracts versus emergency contracts by comparing the total number of contracts as well as dollars spent. It contains an examination of the duration of emergency contracts and a review of the agency justifications for emergency contract use.

---

[1] Under LB 298 (2025), the committee's name was changed to the Legislative Oversight Committee. LB 298 also added two additional members to the Committee.

We appreciate the cooperation of the Department of Administrative Services and all other state agencies who provided information during the course of the audit.

## AUDITING STANDARDS COMPLIANCE STATEMENT

We conducted this performance audit in accordance with generally accepted government auditing standards, with two statutory exceptions regarding continuing education hours and peer review frequency.[2] As required by auditing standards, we assessed the significance of noncompliance on the objectives for this audit and determined there was no impact. The exceptions do not change the standards requiring that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on the audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on the audit objectives. The methodologies used are described briefly in each section.

[2] Neb. Rev. Stat. § 50-1205.01.

## SECTION I: The Contract Process in Nebraska and Other States

In this section, we provide an overview of Nebraska's current contracting process, how the emergency contracting process for services contracts differs from that process, the role of the Department of Administrative Services (DAS), and how other states handle emergency contracts.[3]

### STATE PROCUREMENT ACT

While Nebraska has had procurement rules and procedures in statute since 1943, the Procurement Act was first enacted in 2003 with the passage of LB 626. The Legislature's purpose for the Procurement Act was to establish a standardized, open, and fair selection process for contracts and create accurate reporting of expended contract funds. During debate on LB 626, there was very little discussion about the emergency contract provisions. However, during the Committee hearing, the bill's introducer, Senator Don Preister, was asked if there was anything keeping agency heads from circumventing the procurement process by calling everything an emergency. Senator Preister explained that the emergency process was essentially an honor system with some oversight from DAS.[4]

In 2012, the Legislature passed LB 858, which added language requiring any contract over $15 million to include a proof-of-need analysis before completing the procurement process. LB 461, 2024, updated language and consolidated procurement statutes into one section. It also changed the way contract bids were assessed by moving focus away from solely relying on the lowest bidder and including a review for the capacity of the vendor to fulfill the contract at the bid price.

### CONTRACT PROCESS

A contract is entered into when a state agency needs to purchase a large amount of goods or fulfill a service for the residents of Nebraska that cannot be satisfied using the agency's current personnel or resources. Contracts with a value of $50,000 or more are required to go through a formal bidding process unless falling under an exception.

#### CURRENT REGULAR CONTRACT PROCEDURES

When an agency determines there is a procurement need, the agency creates a Request for Proposal (RFP) for services or an Invitation to Bid (ITB) for personal property. Once the RFP or ITB is created, vendors submit proposal bids to the managing agency. Bids are not reviewed until the bidding period has ended, a minimum of 15 calendar days. The managing agency is required to designate an individual or group of individuals to evaluate

---

[3] As will be discussed in Section II of the report, there were no emergency goods contracts for the period reviewed (January 2014 to December 2024). While the process for emergency *goods* contracts was changed significantly with the passage of LB 461 in 2024, statutory provisions governing the procedure for emergency *services* contracts have remained largely unchanged since before 2014.

[4] Nebraska Legislature, Government, Military, and Veterans Affairs Committee, *LB 626 (2003) Transcript,* testimony of Senator Preister, February 13, 2003, p. 15.

the bids received. After bids have been received, the managing agency must have a fair and impartial evaluation process that considers cost realism, cost reasonableness, and the responsibility of each bidder, applying points to specified criteria out of a possible 100 points when added together.

The bid with the highest point total is awarded the contract and an Intent to Award naming the vendor is published on the DAS website. After the Intent to Award is published, the protest period begins, allowing any vendor to protest the bidding process. Execution of the final contract with the winning vendor cannot occur until after the protest period has ended, unless approval is received from the Director of Administrative Services.

## Emergency Contracting Procedures

In the emergency contract process, an agency must determine that the property or services they are looking to acquire is "necessary to meet an urgent or unexpected requirement or when health and public safety or the conservation of public resources is at risk."[5] If the agency's need meets this definition, the agency's director can designate the execution of an emergency contract by completing a form. The form requires the agency to provide information including the procuring agency, where the funding of the program is coming from (state/federal), total estimated cost, the goods or services being acquired, and the justification for the emergency. Once completed, the agency director (or designee) is required to sign the deviation form and upload the form, any supporting materials, and the executed contract into EnterpriseOne (E1), the state's accounting system, within three business days of executing the contract.

For the majority of the review period, the Contract Deviation Form was used for all deviations from competitive bidding including emergencies. The form required the agency to select from six types of deviation requests and "clearly and fully indicate why the service cannot be competitively bid."[6] For emergency contracts, the form also instructed the agency to submit a signed copy of the final contract with the form.

In 2023, a new Procurement Exception/Deviation Form required agencies to answer a number of questions about the procurement, the first of which was the why the procurement could not be competitively bid. Agencies were also required to attach a completed justification and a copy of the current contract.[7] In July of 2024, a new form was created solely for emergency procurements, called the Emergency Procurement

[5] Neb. Rev. Stat. § 73-803(6).

[6] *Deviation from Contractual Services Contract Process Form*, June 25, 2014 Revision; *Deviation from Contractual Services Contract Process Form*, February 18, 2015 Revision.

[7] 2023 was also the first year that DAS had a stand-alone policy that governed deviations. SPB Policy 23-06 instructed agencies to enter an O8 Requisition in E1 and attach the completed SPB Form GS-1, supporting materials, and the executed contract. Prior to this policy, the Procurement Manual, or a presentation referenced in it, directed agencies to submit the O8 requisition, the signed Deviation from Contractual Services Form, and the executed contract within three days of signing the contract. Department of Administrative Services, *SPB Form GS-1*, November 2, 2023 Revision. Department of Administrative Services, *State of Nebraska Procurement Manual*, September 14, 2018. Department of Administrative Services, *State of Nebraska Procurement Manual*, January 2017.

Notice. This simplified form requires the executed contract be attached and asks the agency to explain why an emergency contract was needed for the procurement.[8]

### Sole Source and Other Contract Exemptions

Other types of contracts that are exempt from the formal bidding process are sole source contracts, contracts where prices are set by the federal General Services Administration (GSA), contracts that have already been competitively bid, as well as several very specific circumstances listed in statute.[9] Sole source contracts are entered into when the goods or services being provided are of such a unique nature that the contractor selected is clearly and justifiably the only practicable source to provide the service or personal property. Sole source contracts must be approved by DAS before a contract can be finalized. This differs from an emergency contract because in an emergency, an agency can select any vendor they choose and DAS must accept the contract as long as the paperwork is filled out properly.

## DEPARTMENT OF ADMINISTRATIVE SERVICES

The Department of Administrative Services is tasked in statute with creating the procedures for contract entry into the E1 system, including specifying the type and form of information entered. They are also allowed to manage or co-manage the contracting process with other state agencies if the contracting agency requests DAS' involvement or if required by statute. If the contract is a statewide contract, DAS is responsible for the entire contracting process.

As previously described, if the contracting agency is requesting the use of an exception to the bidding process through the use of the contract deviation form, DAS is responsible for ensuring the form is completed, signed, and filed. While these exceptions require approval by DAS before continuation of the contracting process, for emergency contracts, DAS' only role is to ensure the deviation form is completed and filed into E1 as they have no approval authority in these contracts.

DAS is also responsible for maintaining a record of, and explanations for, emergency contracts. When auditors asked DAS for a list of emergency contracts entered into between 2014 to 2024, however, the agency could not provide one. Instead, DAS requested agencies provide a list of emergency contracts to them, which was then provided to auditors. According to DAS, updates to the law and E1 now allow them to collect that information directly from E1. When asked, DAS was able to provide a list of emergency contracts entered into E1 after the 2024 statutory changes went into effect.

> **Finding:** The Department of Administrative Services could not provide a stand-alone list of emergency contracts for the period between 2014 to 2024.

---

[8] Department of Administrative Services, *SPB Form 10*, July 19, 2024.

[9] Neb. Rev. Stat. § 73-813(2).

## EMERGENCY CONTRACTING IN OTHER STATES

The Audit Office researched contract processes throughout the country in order to provide an overview of how emergency contracts work in other states.

### AUTHORITY TO CONTRACT

In several states, including Nebraska, procurement law directly empowers state agency heads to authorize emergency contracts. Some of the laws in these states suggest that contracting agencies consult with the procurement.

Two states, Maine and New Hampshire, have the most stringent requirements for authorization: their procurement agencies can only engage in emergency contracting if authorized by the Governor or in response to a Governor's emergency declaration.

In several other states, only a centralized procurement agency has the authority to enter into emergency contracts. In some of these states, rules allow for delegation to some or all administrative agencies either for all emergency contracts or those under a certain dollar threshold.[10]

In states that do not allow delegation of contracting authority, there are typically two ways that statute authorizes emergency procurements: either only the procurement agency can enter into emergency contracts or individual agencies can initiate emergency contracts with central procurement authorization. This is typically done through a form submitted to the procurement agency which provides detailed information on the justification for the emergency and details about the vendor, though some states allow verbal confirmation before submission of the form when time is of the essence. Some of these states do allow emergency procurements without prior approval if there is not sufficient time to get approval before the contract is needed, but immediate post-award approval is typically required.

*State Highlight*

In Wisconsin, emergency contracts without prior approval from the State Purchasing Bureau are documented as if they were unauthorized contracts. In addition to contract details and justifications, agency directors must provide information about how the agency will prevent the situation from reoccurring.

Wisconsin has a unique method for dealing with post-contract approvals. If an agency enters into an emergency contract without prior approval, it must fill out paperwork as if the agency entered into an unauthorized contract. The unauthorized contract requires more documentation of what happened and why it is needed, along with a statement from the agency director which details how the agency will prevent the situation from happening again.

[10] Delegation limits vary widely among states, between $1,500 to $100,000.

## Limitations on Emergencies

Some states use specific terms and phrases to further define or limit the definition of emergency, such as restricting emergency contracts to sudden or unforeseen circumstances or circumstances outside of an agency's control. A 2021 emergency procurement audit from the Maryland Office of Program Evaluation and Government Accountability examined states' use of certain words (sudden, unexpected, and unforeseen) to qualify emergencies. The audit ultimately determined foreseeability in particular was too vague to be an effective standard because even if an agency could anticipate that a need (for example, repair on old equipment like a boiler) would be necessary, it is no less an emergency when the need occurs at a critical time (like if the boiler broke down during a winter storm). Instead, the audit recommended using language emphasizing the urgency of the procurement rather than the nature of the event.

A number of states do this by limiting emergencies to situations where normal procurement is not possible or desirable. For example, Indiana defines an emergency condition as one where the condition causes an immediate and serious need for goods/services that cannot be met through normal procurement methods and the lack of which would seriously threaten functioning government, preservation/protection of property, or the health or safety of any person.

Some states are also very specific about the kinds of things that do not rise to the level of emergency. For example, in South Dakota, a failure to follow regular procurement rules in a timely way does not justify an emergency. Montana is similar in that they do not allow emergency procurements when agency inaction is responsible for the emergency or when the agency failed to timely renew a contract.

*State Highlight*

In South Dakota, failure to follow regular procurement rules in a timely way does not justify an emergency contract.

States are split on whether or not funding issues justify an emergency. Some states say that expiration of funds or potential loss of funds is an emergency while other states specifically prohibit such a justification. For example, in Illinois, a quick purchase is allowed if "immediate action is needed to avoid loss of federal or donated funds," while in Georgia, poor planning and pending expiration of funds are not sufficient to justify an emergency.[11]

[11] Ill. Admin. Code tit. 44 § 1.2030 (2022). Georgia Department of Administrative Services, *Georgia Procurement Manual*, July 2022, § 1.3.5

## Types of Emergencies

> **State Highlight**
>
> Arkansas has two types of emergency contracts: critical emergencies and imminent danger emergencies. Critical emergencies require at least three bids and prior authorization. Imminent danger emergency contracts, where human life or health is imminently endangered, may be signed without any competitive process.

A unique way that a handful of states use definitions is to create categories of emergencies where different processes apply. In Mississippi, "health and safety emergencies" and "public interest emergencies" have different procedural requirements; public interest emergency contracts require the approval of the central procurement agency prior to procurement whereas health and safety emergencies do not. Georgia separates emergency purchases into two different types: Immediate Action Emergency Purchases and Prompt Action Emergency Purchases. Immediate Action Emergency Purchases are those where action without delay is necessary (examples include failed prison locks or water pipe breaks in a state building). Prompt Action Emergency Purchases are situations that are serious or urgent situations requiring prompt action but not immediate action (such as sand bags needed to protect against flooding from impending weather). The designation of emergency type appears to largely make a difference in what kind of competition is preferred. Arkansas is similar, in "critical" emergencies, at least three bids and prior authorization from the central procurement agency are required, but in "imminent danger" emergencies, contracts may be signed without any process because "human life or health is imminently endangered."[12]

## Competition

More than 30 states require some kind of competitive process even for emergency contracts. Most of those states require such competition as is practicable under the circumstances of the emergency. Some, though, require a certain number or type of competition. For example, Texas requires three informal bids and Florida requires at least two quotes unless the time it takes to get the quotes would increase the danger of the emergency situation. Pennsylvania requires at least two bids made by telephone. Generally speaking, the states that require some kind of competition also require documentation of the vendor choice, whether that's specific documentation of the vendor's information or documentation of why the choice of the vendor was justified.

> **State Highlight**
>
> In Virginia, agencies maintain lists for local sources of goods and services that might be needed in an emergency with prices agreed upon in advance. Agencies are also encouraged to engage in annual competitively bid "as needed" contracts to alleviate emergency needs.

[12] Ark. Code Ann. § 19-11-233.

A small number of states require some use of pre-bid contracts in emergency situations. For example, in Georgia, agencies are required to establish competitively procured contracts for routinely occurring emergencies. Virginia's procurement manual directs that public bodies should maintain a list of local sources for goods and services that might be needed in an emergency with information on rates and charges agreed upon in advance, as well as procuring annual "as needed" contracts to alleviate emergency needs and reduce costs. In Rhode Island, the creation of a list of pre-approved vendors is the responsibility of the Division of Purchases within the Department of Administrative Services.

## Contract Scope

> *State Highlights*
>
> In Iowa, emergency contracts are limited to the duration necessary to meet the emergency.
>
> In Rhode Island, agencies cannot enter into emergency contracts that extend beyond the immediate emergency response.

Other states commonly limit the scope of emergency contracts. More than half of all states limit emergency contracts to only those goods or services necessary to meet the emergency. Some states have statutory or regulatory timelines for emergency contracts. They can be in general terms or for a set time period. For example, Iowa limits emergency contracts to the duration necessary to meet the emergency and Rhode Island prohibits commitments that extend beyond the immediate response to the emergency.

Time-specific limits vary between states. For example, Utah only allows 30 days for most emergency contracts and 60-day contracts for natural disasters. In Mississippi, emergency contracts are limited to one year. Illinois is unique among states in that emergency contracts are limited to the amount of time it takes to complete a regular procurement for the goods or services needed to meet the emergency (with a maximum of 90 days plus a 90-day renewal if approved by the chief procurement officer).

## Documentation and Notice

Most states have some kind of requirement for documentation of emergency contracts and their justifications, though not all specify whether and by whom the documentation must be kept. Twenty-four states (including Nebraska) and D.C. require that either the contracting agency or the centralized procurement agency maintain a copy of the emergency justification in the contract file.

A handful of states specify in their emergency contracting statutes or regulations that information must be published on state websites or in newspapers after the contract is awarded. Timelines can be specific, as in D.C. where notice is required within seven days of award and is limited to only contracts over a certain amount, or are more general, like New Mexico where publication is required "promptly" after the justification for the emergency and contractor select is documented.

A few states require legislative notification when emergency procurements are made. Some require reporting of individual contracts, like Arkansas where emergency contracts, except those for critical emergencies, must be sent to the Legislature for review. This is also true in Ohio, where a joint body of legislators and executive officials called the Controlling Board receives contemporaneous notice of the contract and then a full report on the details within 90 days of award.

Other states require periodic reports. New Mexico requires a report to their Legislative Finance Committee within 60 days of the end of the fiscal year. In Kansas, the Director of Purchases must file a quarterly report of all non-competitive contracts over $5,000 with the Legislative Coordinating Council, the Chairperson of the Kansas Senate Ways and Means Committee, and the Chair of the Appropriations Committee in the Kansas House of Representatives. In Louisiana, the Office of State Procurement must provide an annual emergency contract report to the Legislature providing detailed information on the contract and the vendor.

*State Highlights*

In Ohio, a joint body of legislators and executive officials must receive both contemporaneous notice of emergency contracts and a full report on the contract within 90 days of award.

New Mexico requires a report of emergency contracts be made to the Legislative Finance Committee within 60 days of the end of the fiscal year.

# SECTION II: Review of Agency Emergency Contracts

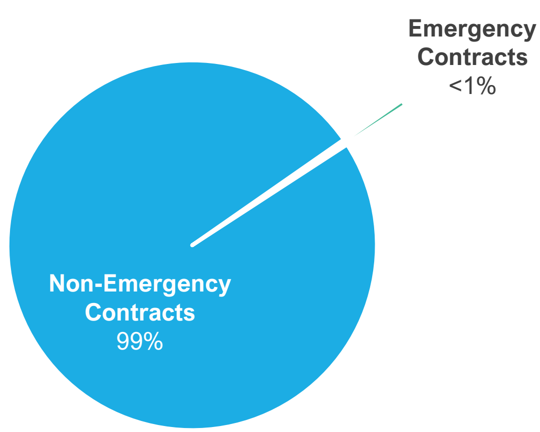
This section contains a breakdown of emergency contracts compared to all other contracts. It provides analysis of emergency contract documentation and contains a discussion of issues discovered during review of agencies' justifications for emergency contracts.

It is important to note that this section relies on self-reported information. As discussed in Section I, the original list of emergency contracts was created by the Department of Administrative Services (DAS) after they requested a list of emergency contracts from each agency. All other data comes from the state's EnterpriseOne (E1) system and the State Contract Database. Because the audit is reliant upon this information, any contract not reported to DAS or entered into E1 would not appear in the audit data.

## EMERGENCY CONTRACT USE: ALL AGENCIES

Between January 2014 and December 2024, the state of Nebraska entered into 52,228 contracts totaling $40.4 billion in state and federal dollars.[13] Of those 52,228 contracts, 266 were emergency contracts totaling $705.7 million. Emergency contracts were 0.5% of the total number of contracts (Figure 2.1) and 1.7% of total contract dollars (Figure 2.2). All emergency contracts between 2014 and 2024 were services contracts; there were no goods contracts entered into under the emergency contracting process during that time period.

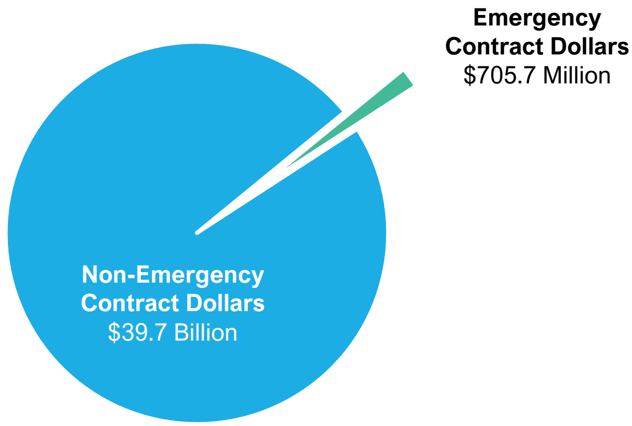
**Figure 2.1. Less than 1% of all reported contracts were emergency contracts.**




Source: Audit Office analysis of E1 and DAS-collected data.

[13] All amounts in the audit report are what was recorded in E1 as of October 2024.

**Figure 2.2. Emergency contracts were a small portion of the total dollars spent on contracts over the last 10 years.**

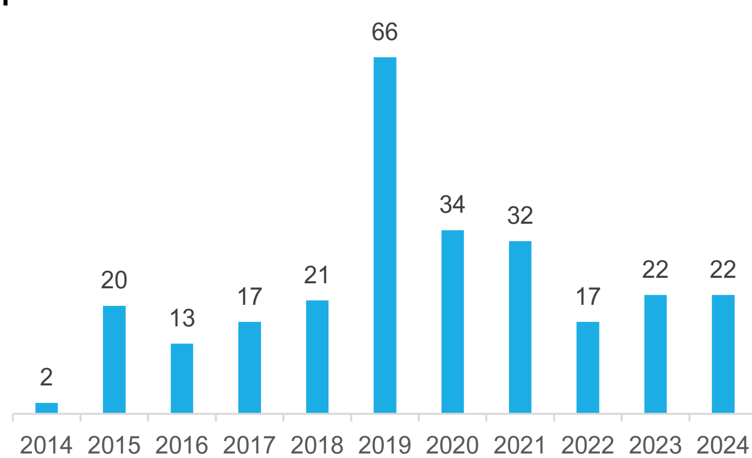



Source: Audit Office analysis of E1 and DAS-collected data.

> **Finding:** Auditors found no evidence of excessive statewide use of the emergency contract exception. During the period reviewed, emergency contracts were fewer than 1% of the total number of state agency contracts and less than 2% of total contract spending.

The total number of emergency contracts in any given year varied, from as few as 2 in 2014 to a high of 66 in 2019. There was a clear spike in emergency contracting during the years where Nebraska experienced a significant emergency: almost 40% of all emergency contracts were related to either the 2019 flood or COVID-19 pandemic (Figure 2.3).

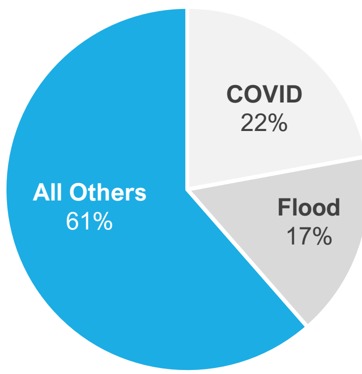
**Figure 2.3. The number of emergency contracts spiked during the 2019 flood and the COVID-19 pandemic.**




Source: Audit Office analysis of E1 and DAS-collected data.

However, despite the 2019 spike, almost two-thirds of emergency contracts entered into during the review period were not related to the 2019 flood or COVID (Figure 2.4).

**Figure 2.4. The majority of all emergency contracts were not related to the 2019 flood or COVID.**

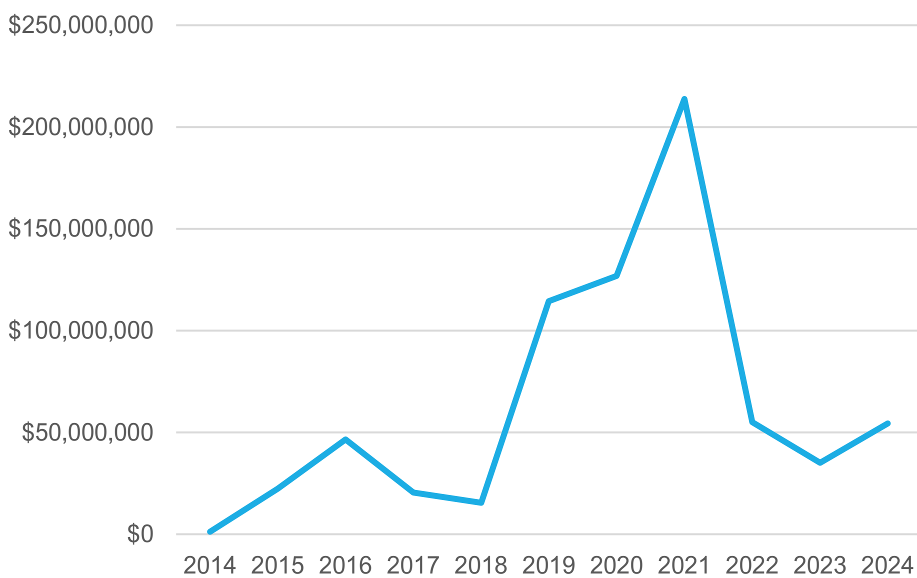



Source: Audit Office analysis of E1 and DAS-collected data.

As stated previously, $705.7 million was spent on emergency contracts over the review period. For the 266 emergency contracts, the average contract amount was about $2.6 million. Actual contracted amounts ranged between $400 and $157.8 million per contract, making the median contracted amount about $350,000.

The amount spent on emergency contracts grew from $1.2 million in 2014 to $213.8 million in 2021, before dropping to less than $60 million in each of the following years. (Figure 2.5). Total emergency contract spending notably increased following the 2019 flood and during the pandemic.

**Figure 2.5. The 2019 flood and the COVID pandemic were strong drivers of the increase in dollars spent on emergency contracts.**

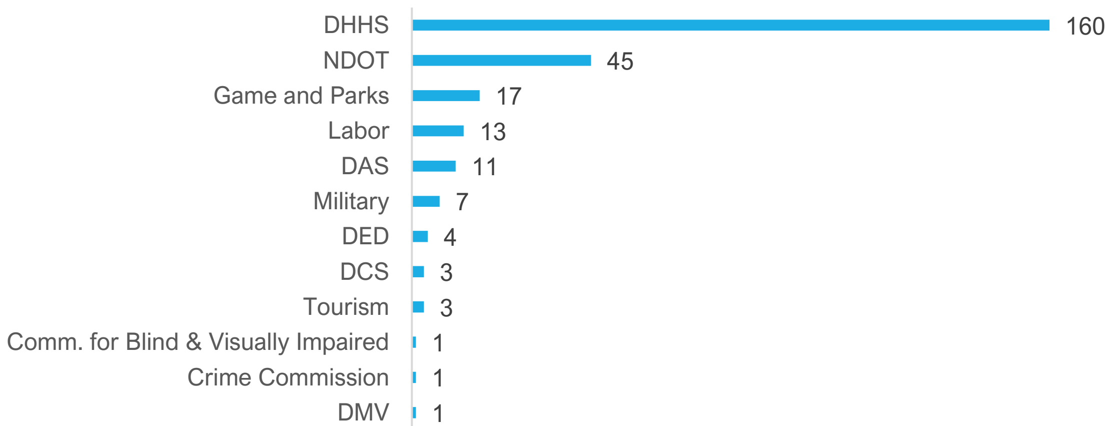



Source: Audit Office analysis of E1 and DAS-collected data.

## EMERGENCY CONTRACTING BY AGENCY

Twelve state agencies entered into emergency contracts between 2014 and 2024. The Department of Health and Human Services (DHHS) entered into the most emergency contracts during the review period, with 160 contracts, or 60% of all emergency contracts (Figure 2.6). The Nebraska Department of Transportation (NDOT) entered into 45 emergency contracts during the same period. The remaining 10 agencies entered into fewer than 20 emergency contracts each.

**Figure 2.6. From 2014 to 2024, DHHS entered into more emergency contracts than all other agencies combined.**




Source: Audit Office analysis of DAS-collected data.

In addition to having the most emergency contracts, DHHS also spent the most on emergency contracts, followed by the Departments of Transportation, Administrative Services, Labor, and Military (Figure 2.7).

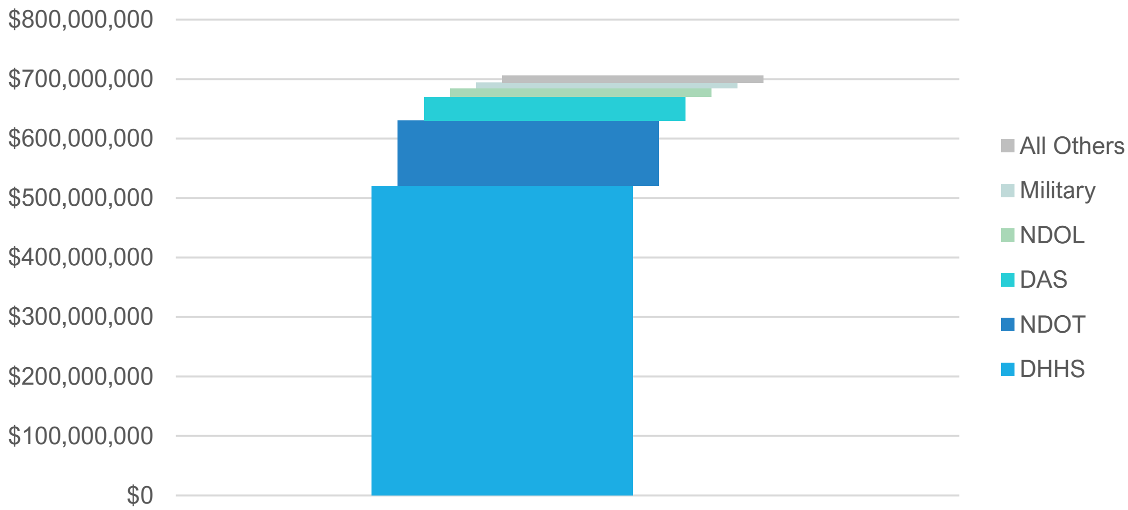
**Figure 2.7. DHHS spent more than $400 million more on emergency contracts than any other agency.**

| Agency | Total |
|---|---|
| Department of Health & Human Services | $520,222,435 |
| Department of Transportation | $109,899,822 |
| Department of Administrative Services | $40,173,004 |
| Department of Labor | $13,888,065 |
| Department of Military | $9,920,066 |
| Tourism Commission | $3,830,552 |
| Department of Economic Development | $3,323,808 |
| Department of Motor Vehicles | $2,650,000 |
| Game and Parks Commission | $749,688 |
| Department of Correctional Services | $567,518 |
| Commission for the Blind and Visually Impaired | $350,000 |
| Commission on Law Enforcement (Crime Commission) | $134,000 |
| **Total** | **$705,708,958** |

Source: Audit Office analysis of E1 and DAS-collected data.

Three state agencies—DHHS, NDOT, and DAS—accounted for 95% of all emergency contract dollars. DHHS contracts were nearly 75% of all emergency contracted dollars period between 2014 and 2024 (Figure 2.8).

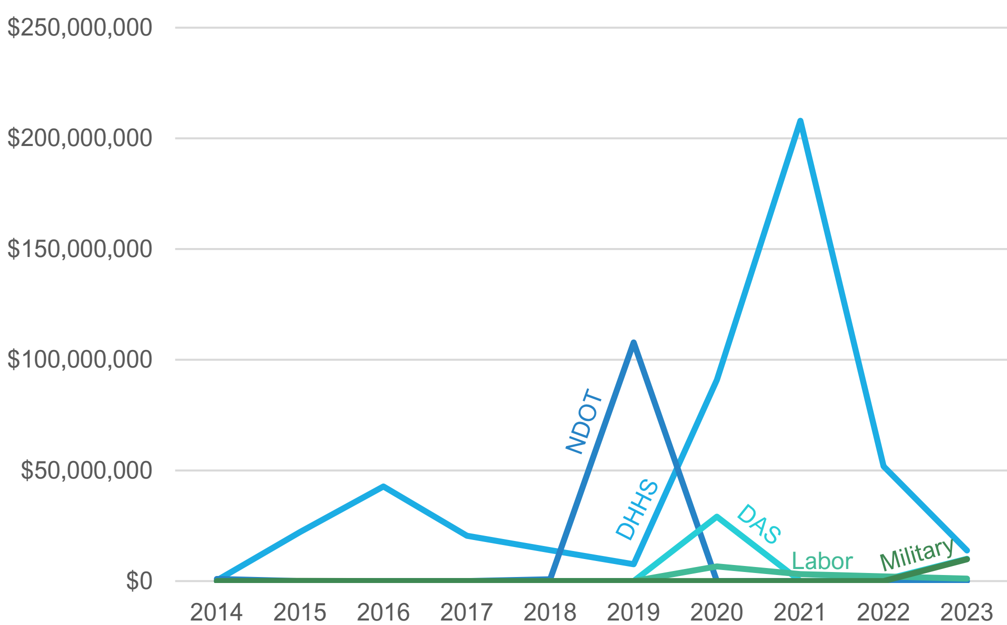
**Figure 2.8. DHHS, NDOT, and DAS spent 95% of emergency contract dollars during the review period.**




Source: Audit Office analysis of E1 and DAS-collected data.

An examination of the top five agencies for emergency contracts also shows a spending increase driven by state-wide emergencies (Figure 2.9). NDOT had a spike in emergency contract spending during the 2019 flood and DHHS emergency contract spending spiked in the midst of the COVID pandemic.

**Figure 2.9. Agency spending on emergency contracts spiked during the 2019 flood and the COVID pandemic.**

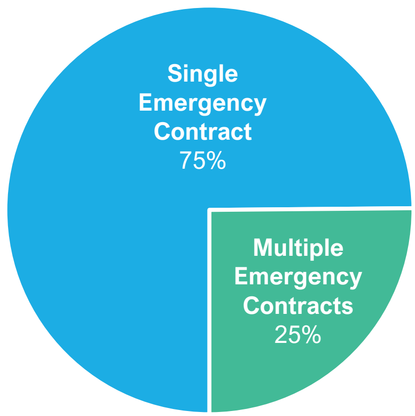



Source: Audit Office analysis of E1 and DAS-collected data.

## EMERGENCY CONTRACT VENDORS

A total of 186 vendors entered into 266 emergency contracts between 2014 and 2024. Of those vendors, 139 (75%) entered into only one emergency agreement during that time period (Figure 2.10). The remaining 47 vendors (25%) entered into multiple emergency contracts.

**Figure 2.10. Three-quarters of all emergency contract vendors entered into only one emergency contract.**




Source: Audit Office analysis of DAS-collected data.

Of the 47 multi-contract vendors, about two-thirds (29 vendors or 62%) entered into two emergency contracts (Figure 2.11). Another 18 vendors entered into more than 2 emergency contracts, ranging from 3 total contracts to 9.

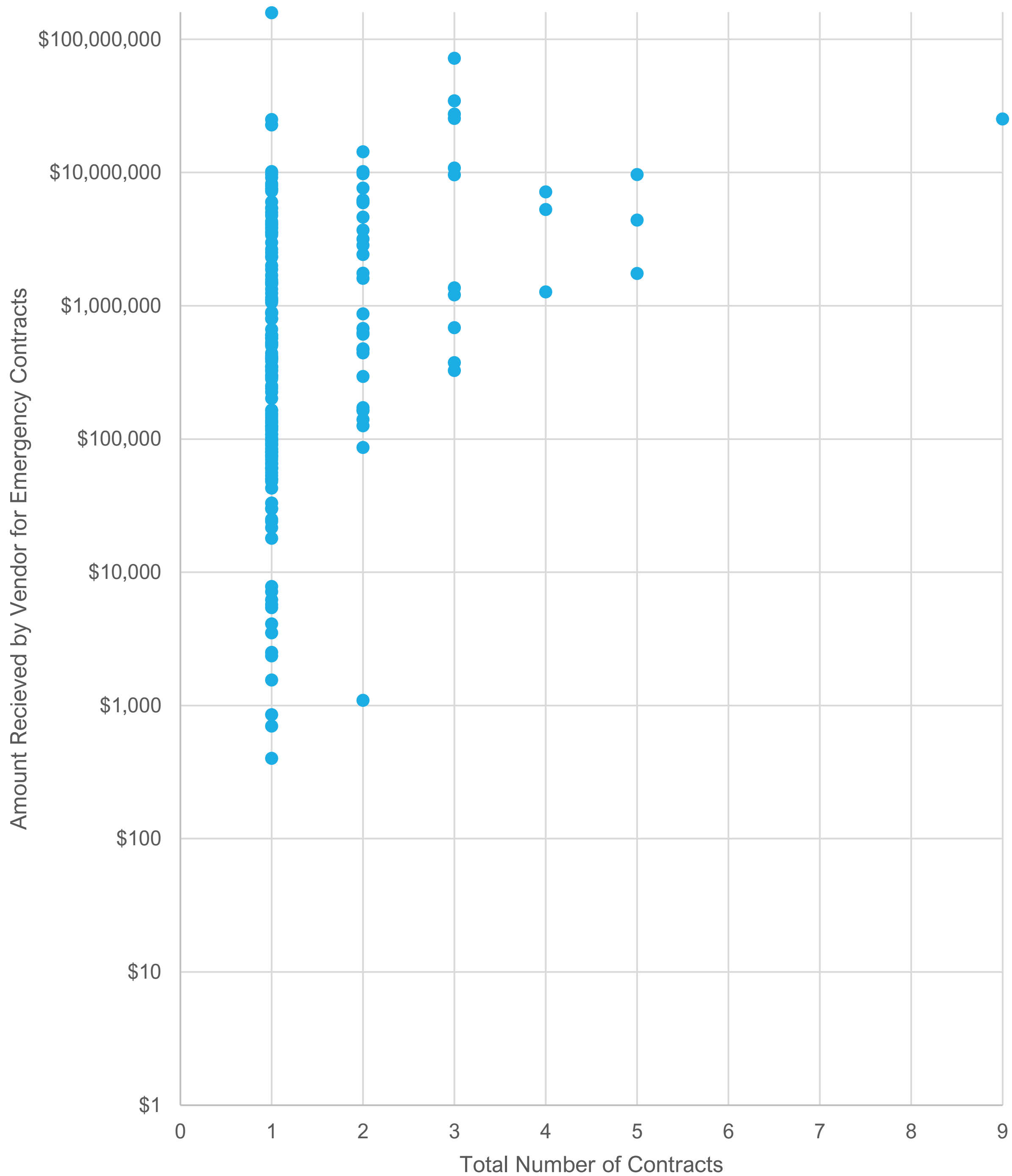
**Figure 2.11. Fewer than 20 vendors entered into more than 2 emergency contracts.**

| Emergency Contracts per Vendor | Total Vendors |
|---|---|
| **1 Contract** | 139 |
| **2 Contracts** | 29 |
| **3 Contracts** | 11 |
| **4 Contracts** | 3 |
| **5 Contracts** | 3 |
| **9 Contracts** | 1 |

Source: Audit Office analysis of DAS-collected data.

Because the contract amount varied so much from one contract to another (between $400 and $158 million), the total number of contracts was not necessarily an indication that a vendor received a larger portion of total spending. The vendor who entered into a single $158 million emergency contract received more than any other vendor, including the vendor who entered into nine emergency contracts (Figure 2.12).

**Figure 2.12. Individual vendors received between $400 and $158 million in emergency contracts.**




Source: Audit Office analysis of DAS-collected data.

Eight vendors received more than $15 million each in emergency contracts over the course of the examination period (Figure 2.13). Those eight vendors received a total of more than $390 million. The vendor with the largest single contract was St. Francis Community Services at almost $158 million.

**Figure 2.13. Eight vendors received more than $15 million in emergency contracts.**

| Vendor | Number of Contracts | Total Amount | Year | Contract Amount |
|---|---|---|---|---|
| St. Francis Community Services in NE, Inc. | 1 | $157,826,058 | 2021 | $157,826,058 |
| Hawkins Construction Company | 3 | $72,009,147 | 2019 | $44,170,911 |
| | | | 2019 | $25,470,888 |
| | | | 2019 | $2,367,348 |
| Nomi Health, Inc. | 3 | $34,515,592 | 2020 | $26,875,000 |
| | | | 2021 | $4,640,592 |
| | | | 2021 | $3,000,000 |
| Arbor E&T, LLC dba Rescare Workforce Services | 3 | $27,417,240 | 2015 | $11,423,850 |
| | | | 2016 | $6,854,310 |
| | | | 2017 | $9,139,080 |
| Maximus US Services, Inc. | 3 | $25,463,888 | 2022 | $3,139,618 |
| | | | 2023 | $3,139,618 |
| | | | 2024 | $19,184,652 |
| North End Teleservices | 9 | $25,247,715 | 2020 | $2,651,035 |
| | | | 2020 | $10,796,720 |
| | | | 2020 | $3,000,000 |
| | | | 2020 | $242,112 |
| | | | 2021 | $3,081,363 |
| | | | 2021 | $1,250,000 |
| | | | 2022 | $3,201,520 |
| | | | 2023 | $73,838 |
| | | | 2024 | $951,127 |
| Covendis Technologies | 1 | $25,000,000 | 2016 | $25,000,000 |
| Public Knowledge LLC | 1 | $22,722,996 | 2022 | $22,722,996 |

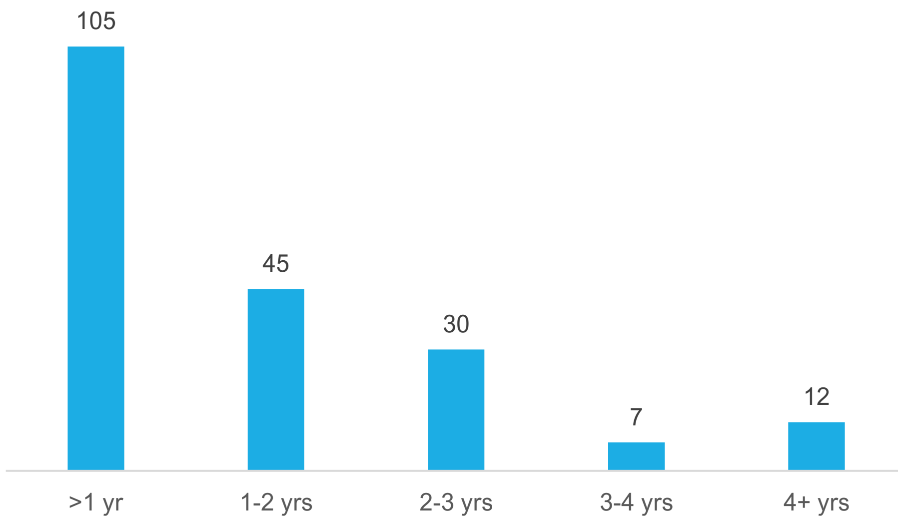
Source: Audit Office analysis of DAS-collected data.

## CONTRACT LENGTH

Auditors reviewed 199 emergency contracts to determine the duration of the agreement.[14] Of the emergency contracts reviewed for length, 105 (slightly more than half) were one year or less in length including extensions (Figure 2.14). Twelve contracts were longer than 4 years in duration.

[14] There were 199 emergency contracts that were required to follow emergency documentation procedures, which will be discussed more below.

**Figure 2.14. Half of the emergency contracts reviewed were for one year or less.**




Source: Audit Office analysis of E1 and DAS-collected data.

Nebraska law specifically prohibits state agency contracts of unlimited or unspecified duration, but does allow contracts to be extended by renewal or amendment. For renewals, agencies can execute a renewal clause written into the original contract. The law does not set a limit on the length of such renewal clauses. For amendments, agencies are allowed a single amendment extending the contract for a period of time no longer than half of the length of the original contract.

Of the contracts reviewed, 104 of the 199 emergency contracts had a renewal clause written into the contract, but only 57 renewal clauses were executed. Twenty contracts were extended by amendment only. Another 12 contracts had executed renewals and were also extended beyond the renewal period by amendment, but were not extended beyond half of the original contract term as allowable by law.

The Audit Office's review found two contracts with extension related statutory violations. The first contract, Crime Commission contract #90242, was extended via three separate amendments.

**Finding:** Crime Commission contract #90242 was extended via multiple amendments, which is not allowed by law.

The second contract, Military Department contract #68283, was for an initial term of three years but contained a clause that automatically renewed each year until the contract was cancelled. While this appears to violate the statutory prohibition on contracts of unlimited duration, the contract was terminated after the initial term and was not renewed.

> **Finding:** One emergency contract was written in a way that violated the statutory prohibition on contracts of unlimited duration. Military Department contract #68283 contained terms that would have renewed it each year indefinitely, but the contract was cancelled after the initial three-year term.

## CONTRACT DOCUMENTATION AND EMERGENCY JUSTIFICATION

As discussed in Section I, when an agency enters into an emergency contract, they are required to provide DAS with justification within three business days after the contract is approved by the agency head. Functionally, the agencies notify DAS by filling out a form which is uploaded into EnterpriseOne (E1), the state's accounting platform. The form must contain an explanation of why emergency procurement is needed. If that form is appropriately filled out, DAS accepts the contract documentation.

Additionally, emergency contracts must be uploaded into State Contract Database and E1, as required for all contracts.

### MISSING DOCUMENTATION: CONTRACTS

We examined contract information in the State Contract Database and E1 to determine whether each emergency contract had been properly documented. Of the 266 emergency contracts, 27 total contracts from eight agencies were not uploaded to the State Contract Database.[15]

> **Finding**: Twenty-seven emergency contracts from eight agencies were not uploaded to the State Contract Database as required by law.

Forty-eight emergency contracts were not uploaded into the E1 system. Three of these contracts were DED contracts and the other 45 were NDOT contracts. NDOT contracts are exempt from competitive bidding requirements under Neb. Rev. Stat. § 73-813(2)(i) and § 39-1343, but not from the requirement to enter contract information and documentation into E1 under Neb. Rev. Stat. § 73-806. While NDOT did enter information about the contracts into E1, actual copies of the contracts and other documentation were not uploaded as required by DAS policy.

> **Finding**: Three Department of Economic Development and 45 Department of Transportation emergency contracts were not uploaded into the EnterpriseOne platform as required by DAS policy.

[15] Agencies with contracts not uploaded to the State Contract Database include: DAS, DCS, DED, DHHS, Military, DMV, NDOT, and Game & Parks.

When auditors followed up with NDOT about not entering contracts into E1, they explained that they have a procedure “largely independent of DAS” due to their statutory exemption from competitive bidding but did acknowledge that there was some uncertainty at the agency about how the co-existence of E1 and the State Contract Database affects processes. The agency believes that having both systems may be duplicative and DAS guidance provided to all agencies in 2013 when the contract database was created suggested to NDOT that they needed to enter contract information into E1, but the contract itself only needed to be uploaded to the State Contract Database.

Auditors are not aware of any law or policy that allows NDOT to upload contract documents only to the publicly available State Contract Database and not the state’s accounting system. It is our understanding that, with limited exception for specific types of contracts and documentation, all agencies are required to enter contracts and contract information into E1 for accounting and budgeting purposes and into the State Contract Database for public transparency purposes.

## Missing Documentation: Emergency Justifications

We also looked at emergency justification forms for each of the emergency contracts to determine whether the circumstances of the contract met the statutory definition of the emergency. Here too, auditors found evidence of missing documentation. Of the 266 emergency contracts reviewed, 67 contracts were not required to have an emergency justification because they were either exempt bridges and roads projects or they were for less than $50,000 so competitive bidding requirements were not triggered.

Five emergency contracts did not have a justification form entered in E1. Because the justification documentation is at the center of the audit’s scope, the following is a discussion of each agency’s missing documentation in detail.

### Department of Administrative Services

One of the contracts without a justification form was a DAS contract for a research study required by legislation with a short statutorily mandated turnaround time. Current DAS staff did not have any actual knowledge of or documentation about why the forms were not filled out at the time, but suggested that it may have been because the Legislature had, by legislation, authorized entry into the contracts and so prior staff may have felt that DAS wasn’t entering into a contractual decision that was necessary to document.

> **Finding**: The Department of Administrative Services entered into emergency contract #108957 without the completion of a justification form as required by law.

### Department of Economic Development

The four remaining contracts without documentation were Department of Economic Development (DED) contracts. When auditors initially pulled contract documentation from E1 in 2024, only one of the DED contracts was listed in E1 and no justification documentation had been entered. Auditors first followed up with DAS about DED's lack of documentation. DAS told auditors that "DED explained that they went back and realized that during the emergencies, they failed to get their contracts uploaded into E1, therefore payment would have been made directly and the contract wasn't housed in E1 or LB 429."[16] This meant that documentation was lacking for the emergency contracts because DED had not entered the contracts into E1 at all, but had instead entered purchase orders when the contract vendors needed to be paid.[17]

> **Finding**: From December 2013 to December 2024, the Department of Economic Development did not enter any information into EnterpriseOne for more than 80 contracts (including emergency contracts) as required by law. The contracts were also not entered into the State Contract Database as required by law.

When auditors followed up with DED, the agency explained that they were in the process of getting their contracts entered into E1 and prepared for upload to the contract database but that they couldn't estimate how many contracts had not been entered (emergency or otherwise) or the total dollar amount of the unentered contracts. A list subsequently provided by DED showed that the agency had not just failed to enter emergency contracts, but also had failed to enter more than 80 contracts into E1 and the State Contract Database between December 2013 and October 2024.

DED was able to provide to auditors signed justification forms for the four emergency contracts, but three of the forms did not contain an explanation of the emergency. Despite not being entered into E1 and not containing any information justifying the emergency, the justification forms were accepted by DAS via email. Documentation provided by DED showed that purchase orders for the contracts had been entered into E1.

> **Finding**: The Department of Economic Development submitted, and the Department of Administrative Services accepted, documentation for emergency contracts #24-01-495, #23-01-155, and #23-01-225 where no information justifying the emergency was provided in the justification form.

[16] DAS refers to the State Contract Database as LB 429.
[17] A subsequent examination of the E1 database by auditors showed that DED did enter the contracts into E1 after DAS reached out, but that no justification forms were entered at that time.

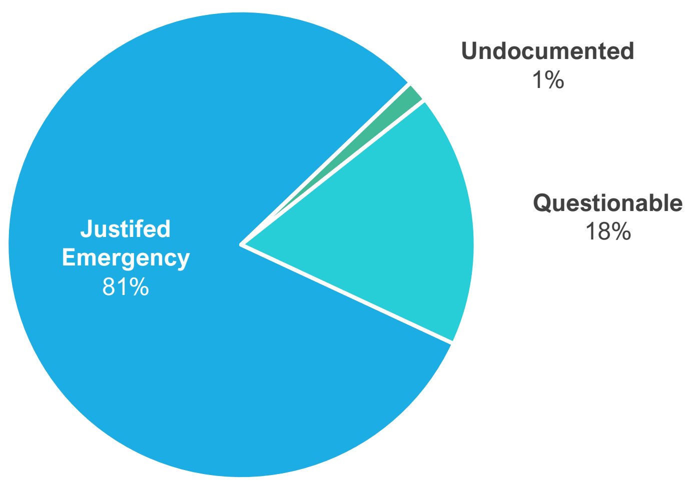
## Justification of Emergencies

As described in Section I, Nebraska law defines an emergency as a situation where a contract is "necessary to meet an urgent or unexpected requirement or when health and public safety or the conservation of public resources is at risk."[18] Nothing in the legislative history provides any constraints or direction about what the elements of the emergency definition would mean outside of their normal use.

Auditors reviewed justification documentation for the 199 emergency contracts where a form was required to determine whether the definition of an emergency was met. Because the definition is so broad, determining whether or not something is an emergency is likely a question of judgment. Additionally, because the determinations are based on the written text of the justification, an insufficiently detailed justification may have caused auditors to question whether an emergency existed even if there was such an emergency.[19]

Of the 199 justification forms reviewed, 161 contracts (81%) met the definition of emergency (Figure 2.15). Three contracts (1%) did not have any information documenting the circumstances of the emergency.[20] Auditors questioned whether the remaining 35 contracts (18%) met the definition of an emergency.[21]

**Figure 2.15. The majority of contracts reviewed provided sufficient documentation to justify their emergency status.**




Source: Audit Office analysis of DAS-collected data.

---

[18] Neb. Rev. Stat. § 73-803 (prior section was Neb. Rev. Stat. § 73-502).
[19] Methodology note: Auditors assumed all COVID-related contracts to automatically be emergencies, although we did review each COVID-related justification individually.
[20] These were the previously discussed DED contracts, see page 22 for more information.
[21] The 36 emergency contract justifications questioned by auditors were from the following agencies: DHHS – 31, Tourism – 3, Labor - 1, and DMV – 1.

**Finding**: From 2014 to 2024, 81% of emergency contracts were sufficiently justified as emergencies; 1% did not have documentation of the emergency. Auditors questioned whether 18% of the contracts met the definition of emergency.

The remainder of this section uses examples from the justification review to illustrate the issues auditors noticed with 35 questionable emergency contracts. As explained above, it is hard to say with 100% certainty that any particular contract was absolutely not an emergency. Some contracts were easier to describe as non-emergent than others. For example, in 2023, the Department of Labor contracted for an efficiency review of the unemployment insurance team. The contract was for one year and $150,000. The justification for an emergency contract was that the team had reached a critical stage in poor performance, mostly due to inability to fill vacancies. The study was needed, according to the justification document, because of fears that a future recession would lead to an even higher workload and cause more delays in processing of unemployment claims.

To be an emergency, the issue needs to be urgent or unexpected. The plain meaning of urgent is immediate.[22] The plain meaning of unexpected is something unforeseen.[23] While contracting for assistance makes general sense in this situation, the problem was impending but not immediate. And by pursuing the contract, the Department of Labor was foreseeing a future threat and seeking a solution *before* it became an emergency rather than *because* it was emergency.

On the other side of the spectrum is a contract that auditors determined was just short of the line of emergency. In 2017, the Department of Motor Vehicles (DMV) entered into a contract for short-term state ID delivery services. The contract was initially for three years and $8.8 million but ended up being extended for an additional three years and cost just over $21 million.

In the emergency justification, the DMV explained that they were in the process of moving to an entirely new business model for ID services due to legislation but that the model wouldn't go into effect immediately. The agency said that they could not bid out for the services under the current model because they would end up buying equipment that would immediately become obsolete when the business model changed. The agency felt it was more financially prudent to continue with the current vendor until the business model changed. This contract likely falls short of a "public resources" emergency because it is a judgment call made by the agency that this contract was more financially sensible than a Request for Proposal (RFP) would have been and not a concern that public resources were at imminent risk.

[22] Merriam-Webster, "Urgent," https://www.merriam-webster.com/dictionary/urgent, accessed May 28, 2025.
[23] Merriam-Webster, "Unexpected," https://www.merriam-webster.com/dictionary/unexpected, accessed May 28, 2025.

Some of the justifications simply lacked enough information for auditors to understand whether there was an emergency or not. For example, in 2017, DHHS entered into a $75,000 one-year contract for pre-employment background checks. The justification for an emergency contract was that while the agency was pursuing both centralized pre-employment background checks and planning on pursuing an RFP, "it was discovered there is a need for a contract due to volume but one is currently not in place."[24] The agency explanation stated that not having the contract would put public safety at risk.

Other contract justifications reviewed, examples of which will be discussed below, reported an urgent need for continuation of services; some of which seemed to be very unlikely to impact health, safety, or to be a threat to public resources. Other patterns were also noticeable among the questionably justified contracts, including purportedly insufficient time to RFP, using emergency contracts in lieu of sole source contracts, and issues with proprietary or essential technology (many fit into more than one of these categories).

**Results:** Auditors made a number of observations during the review of emergency contract justifications:

1. It appears that between 2014 and 2024, DHHS periodically used emergency contracts as a way to bridge the gap between an expiring contract and a potential or future request for proposal (RFP). Often potential loss of services and/or need to RFP was the only justifying event for the emergency. DHHS told auditors they are currently working to strengthen their overall contracting process, including efforts to reduce the agency's use of emergency contracts.
2. Auditors found a number of emergency contracts that could have been more appropriately designated as sole source contracts. There is some indication that at least one agency had difficulty in securing approval for any sole source contracts for a number of years, which may explain why emergency contracts were used.
3. Emergency exceptions were used to continue contracts with current vendors to maintain, stabilize, or enhance technology systems because bidding out contracts and changing systems would have been difficult or an unnecessary expense. Though auditors found the decision to continue with current vendors of proprietary technology a reasonable one, it is likely an inappropriate use of an emergency contract in cases where an agency simply wishes to keep their current vendor.

---

[24] Department of Health and Human Services, *Deviation from Contractual Services Contracts Process Form for Contract #75656*, November 7, 2016.

### Continuation of Current Services

A number of the emergency contracts reviewed justified the emergency because the contract was necessary to prevent disruption of services provided under a current but soon-to-expire contract. While it is likely that disruption in some services could be a threat to public health or safety, it is also possible that agencies might wish to keep the vendor they currently have and not go through an RFP process for other reasons.

DHHS used this as a justification in a number of cases. In 2024, DHHS signed a $6.5 million three-year emergency contract with Equifax Workforce Solutions for SNAP income verification. This contract was the third emergency contract DHHS signed with Equifax, though the first two contracts were when an RFP and contract negotiations had failed. The justification for this contract, however, was that Equifax, the current vendor, is a leading provider of employment verification data and not having access to the Equifax system would prevent or delay access to benefits.

Similarly, in 2016, the Tourism Commission entered into two one-year contracts with Bailey Lauerman & Associates for web services and marketing services. The web services contract was for $200,000 and the marketing services contract was for $3.5 million. The agency justified the contracts as a need for continuation of these services and to finalize prior commitments while the agency prepared for a "future" RFP. Using the emergency contract mechanism to forgo competitive bidding for services that don't impact public health or safety is particularly concerning here; in the same year these contracts were signed, the Auditor of Public Accounts found serious issues with agency behavior on the previous non-emergency contract with this same vendor.

### Insufficient Time to RFP

Some of the emergency justifications reviewed appeared to rely almost entirely on the fact that the agency had no time to competitively bid the contract as a justification for the emergency. According to these justifications, because there was not sufficient time to RFP, the service provided by the current vendor would be disrupted unless an emergency contract was signed.

For example, DHHS engaged in a series of emergency contracts with Policy Studies Inc. (PSI) to provide economic assistance case management services after the initial contract expired. DHHS originally engaged PSI to manage cases in 2006. That initial $33 million dollar contract ran from July 2006 to June 2015. In 2015, DHHS signed a subsequent one-year emergency contract with PSI for $4.5 million, which was extended by 90 days and $900,000. The justification for this contract was that the current contract was about to expire, potentially threatening federal funds because loss of the vendor's services would put DHHS out of compliance with federal requirements. DHHS needed time to release an RFP. However, DHHS had years to begin the RFP process: the initial contract was for five years, with four optional one-year renewals, which DHHS executed. And yet, in 2016 the agency signed an additional 272-day contract with the vendor for $2.7 million, stating that it did not have time to review a completed RFP before the current contract expired. By 2017, DHHS had received the complete request for proposal/award, but it signed yet another one-year contract with PSI for $3.6 million with the justification that it had insufficient time to complete the review before the 2016 contract expired. That contract was extended for an additional 31 days after the contract expiration date.

A series of DHHS contracts with a different vendor provides another illustration about whether the need to develop an RFP is sufficient justification for an emergency contract. In 2019, DHHS entered into an emergency contract with Oxford House for the monitoring of recovery homes. The contract was for $120,000 for one year with two one-year options to renew. Oxford House had been DHHS' vendor for these services for years. Each year since 2011, DHHS and Oxford House had entered into a $40,000 one-year contract (the only exception was a sole source contract for $140,000 in 2016). DHHS had not previously bid the Oxford House contract because it was always under the $50,000 threshold or it was a sole source contract. But in 2019, they justified the need for an emergency contract because they were going to issue an RFP for the services but did not have enough time to complete the process prior to the expiration of Oxford House's current contract. DHHS wrote that if the contract with Oxford House was not continued, the network for community-based housing was at risk—without the technical support and treatment coordination offered by Oxford, the homes would be more like boarding houses with no recovery support, increasing the chance of relapse and homelessness.

The issue in this situation is the possible emergency was of DHHS' own making. If the agency had started the RFP process under the previous contracts, there would have been little risk to the population served by the recovery homes. Likewise, if DHHS had started the RFP process on the same timeline but engaged in three more one-year contracts with Oxford House, there would have been little risk. It's unknown whether Oxford House would have continued with the arrangement under such circumstances. But the sequence of events caused auditors to question whether there really was a justifiable risk to public health or safety at all.

In a meeting with auditors, DHHS officials allowed that their use of emergency contracts was less than judicious in the past. According to DHHS, in the last year, the agency has created a more robust contract approval system, created new policies for documentation with IT projects, and made sure that emergency contract requests must articulate an actual harm that would occur should an emergency contract not be approved. In the last six months, DHHS said that their Office of Procurement and Grants has worked to create a more organized and intentional way of managing their services contract portfolio. The agency's goal is to speed up contract process times and align the need to rebid existing contracts, transition away from deviation contracts (like emergencies), and work on RFPs for new initiatives.

### Emergency in Lieu of Sole Source

At least 20 emergency contracts reviewed appeared to more appropriately be sole source contracts. Some seem to have been intended to be written as sole source contracts but were ultimately designated as emergencies by the agency. In other contracts' emergency justification documents, the agency justified the emergency because the proposed contractor was the only vendor that could provide the needed services, rationale typically used to justify sole source contracts.

Two DHHS contracts are illustrative of an original sole source designation contract. In 2024, DHHS contracted with Action for Child Protection Inc. for a universal child welfare assessment tool. The justification was that a single-evidence based tool would provide better service provision, reduce involvement time-frames, and decrease cost to taxpayers. Included in the justification documentation was a letter from the potential vendor titled "Sole Source for the SAFE Practice Model." The letter was about why a sole source contract with the vendor was needed. Likewise, in 2015, DHHS entered into two emergency contracts with the Nebraska Federation of Families for Children's Mental Health for peer support services. The justification was that Neb. Rev. Stat. § 71-823 required a family navigator program and the vendor was the only entity that could provide the services. The justification went so far as to say that the Division of Children and Family Services wasn't able to complete the sole source process in time to avoid service lapse.

DHHS also used unique vendor justifications for emergency contracts rather than sole source. In 2018, DHHS entered into a two-year $420,000 contract with National Medical Services Labs for post-mortem toxicology testing and training. The justification for the contract was that the vendor is the only nationally accredited lab for all the lab services DHHS needed and that they provide training for county attorneys and coroners. Contracting with any other lab would require multiple contracts with labs all over the country.

Our review found that these contracts likely should have been sole source but when asked, DHHS provided some context why the emergency process was used. According to DHHS, there was a period of time under previous DAS leadership where DHHS could not get sole source contracts approved. DHHS told auditors that during that time, they were requesting sole source deviations and then waiting a period of weeks—sometimes as many as five weeks—just to be denied. DHHS said that have had no such problems with the current DAS leadership.

### Essential or Proprietary Technology

For a few contracts, the agency justified an emergency because the agency needed to continue with a current technology vendor. In a series of contracts with System Automation Corporation, DHHS justified an emergency exception because the system the agency used for licensing occupations was proprietary technology created by System Automation and no other entity could provide maintenance or add-ons for the system. DHHS entered into three emergency maintenance contracts with the vendor in 2015, 2016, and 2017 and one contract for functionality development in 2016. In all four of the justification documents the agency wrote that not having system maintenance would jeopardize the timely licensure of practitioners. In 2023, DHHS entered into another emergency contract with System Automation Corporation to upgrade and stabilize the system because it was failing and needed immediate work to function. The justification documentation also notes that DHHS tried to RFP in 2020 for another system and that

RFP failed. For this contract, DHHS sought a "uniqueness of service" deviation from DAS and was denied.

In another emergency technology contract entered into in July 2024, DHHS contracted with Rushmore Group for updates and maintenance to the Nebraska Economic Assistance Review System (NEARS), which is used by the Division of Medicaid and Long Term Care (MLTC) to monitor service providers, cases, and federally required performance measures. As justification for using an emergency contract, the agency wrote: "The system works and provides all functionality needed by DHHS. Changing the system would incur additional and unnecessary development and implementation costs. This service must continue as it is to conserve public resources." Additionally, in response to a question on the form about the agency's plans for future procurement DHHS wrote, "This system will only be released as a competitive bid when the current system no longer meets the need of the agency or no longer serves to conserve public resources."[25]

The need to continue with a vendor for maintenance of proprietary technology may be a real necessity. However, it seems an inappropriate use of the emergency exception to competitive bidding unless one reads the public resources emergency extremely broadly. The Procurement Act actually contains a provision that might be a better fit for some of these necessary but not really emergency contracts. Neb. Rev. Stat. § 73-813(b) allows for an exemption from competitive bidding requirements for other circumstances where competitive bidding is not appropriate or compatible. According to DAS, this section of statute is not being used and there are currently no criteria for its use.

[25] Department of Health and Human Services, *Deviation from Contractual Services Contracts Process Form for Contract #109019*, May 31, 2024.

# III. Agency Response & Fiscal Analyst's Opinion

## Legislative Auditor's Summary of Agency Response

The Legislative Performance Audit Act requires the Legislative Auditor to briefly summarize the agency's response to the draft performance audit report and describe any significant disagreements the agency has with the report or recommendations.

### DEPARTMENT OF ADMINISTRATIVE SERVICES

The response from the Department of Administrative Services (DAS) raised concerns regarding several of the draft report's findings as well as some of the language and terminology used by the Legislative Audit Office (Office) in the report. In several instances, DAS seemed to argue against the Office's interpretation of contract law and processes without disagreeing with our conclusions (for example, "Although the process was out of the ordinary, the Crime Commission did not extend the contract beyond the maximum extension period. Rather, they just entered three shorter extensions, which **does not follow the one-time extension** allowed by Neb. Rev. Stat § 73-506(2) at the time." (DAS Response, p. 3, emphasis added).

DAS's response to Finding 12 suggests that it was inappropriate for the audit team to review the justifications provided for past emergencies contracts (as directed by the Legislative Performance Audit Committee; see p. 1 of the report for the Committee's approved scope statement which included "examine rationales agencies provided for using emergency contracts and determine whether the contracts are meeting the statutory definition of an emergency"), as "Agencies and agency Directors know their everyday business best" and any such review would be "subjective and could possibly be misleading" (DAS Response, p. 9). The Office agrees that the statutory definition of an emergency is somewhat ambiguous, which is why the report states multiple times that the results of our review are not definitive: "determining whether or not something is an emergency is likely a question of judgment" (Audit Report, p. 25) and "it is hard to say with 100% certainty that any particular contract was absolutely not an emergency" (Audit Report, p. 26). The language of the finding itself is that auditors "questioned" whether 18% of the emergency contracts met the definition of an emergency, not that they were *not* emergencies (Audit Report, p. 26).

Auditors disagree, however, with DAS regarding their response to the draft recommendation ("If the Legislature is concerned about agency emergency contracting, they could consider a number of changes to the statute, including but not limited to: modifying the definition of emergency to be less vague by focusing on why competitive bidding is not possible rather than the nature of the emergency or limiting the duration of the emergency contract or the scope of what can be contracted for. They could also consider more robust reporting to the Legislature") for Finding 12: "DAS believes that this recommendation has been resolved due to the many updates and changes regarding accountability in procurement that occurred in July 2024 with LB 461" (DAS Response, p. 9). The question of whether the changes made by DAS—the majority of which had little to do with emergency service contract processes—are sufficient to address concerns raised in the audit report is ultimately a policy decision for Legislators and not agency staff.

After DAS staff provided additional information that had not been shared with the audit team during the course of the audit, the following changes were made to the findings in the draft report:

- Removed two findings:
  - Finding 7: DAS provided additional information showing that a signed form had been uploaded.
  - Finding 8: DAS provided additional information showing the form was listed under a different contract number.
- Changed the language of an additional five findings:
  - Finding 1: DAS's response stated that they could have given auditors a list of all contracts that were exempted from competitive bidding requirements (which would include emergency contracts), however, such a list was not provided.
  - Finding 3: Removed the Department of Motor Vehicle's contract from the finding, DAS provided information that the agency had re-used the contract number for a new contract rather than extending the contract improperly.
  - Finding 9: Removed one of the contracts from the finding.
  - Finding 10: Removed a sentence from the finding (did not impact the overall finding, also removed language from the report regarding purchase orders as DAS provided a different description in their response than what had been provided during the audit).
  - Finding 11: Added language to clarify that the need for the emergency contract was not included in the justification form.

The Office also added language to the report regarding how the contract deviation form had changed over time, which was raised by DAS in their response. While these changes to the form did not impact any of the report's findings, the Office agreed that it was relevant information to include in the report. The Office changed the word "approves" to "accepts" in the discussion of how the emergency contract process works based on DAS's response to Finding 4 as it is a more accurate word choice.

## OTHER STATE AGENCIES

The Office also sent relevant portions of the draft report to each state agency that was included in the report's findings: Crime Commission, Department of Motor Vehicles, Military Department, Department of Correctional Services, Department of Economic Development, Department of Health and Human Services (DHHS), Department of Transportation (NDOT), and Game and Parks Commission.

The Office received responses from four agencies: DHHS emailed and said they had no response, the Military Department stated that they had coordinated with DAS and concurred with DAS's response to both findings regarding their agency, and Game and Parks agreed with the finding regarding their agency and stated they would upload emergency contracts as required going forward. NDOT reiterated their position that their agency is only required to upload contracts to the State Contract Database and not to the EnterpriseOne system. As stated in the report, the Office is not aware of any law or policy that allows NDOT to upload contract documents only to the publicly available State Contract Database and not the state's accounting system.

**To**: Legislative Performance Audit Committee
**From**: Michelle Potts, Chief Procurement Officer & DAS - Materiel Administrator
**Date**: August 25, 2025
**Re**: Department of Administrative Services: Analysis of State Agency Emergency Contracting

**Section: Audit Summary and Draft Recommendations**

**Department of Administrative Services – State Procurement Bureau (DAS-SPB) Overall Response:**

The audit report considers data on emergency specific procurements from January 2014 to December of 2024. The State Procurement Act and Emergency Procurement Process were updated in July of 2024, due to passage of LB 461 in the 108th Legislature, 2nd Session. Many times throughout the report there are comments on past data (prior to July 2024), yet conclusions are drawn under the current procurement process, which DAS-SPB believes can be misleading. At times, the audit report makes recommendations for changes to current practice based on evidence from 2014-2024, when the current processes were not in place. DAS-SPB considers many of the issues identified from emergency contracts entered into between 2014-2024 to be resolved, as the changes enacted by LB 461 and effective in July of 2024 were put in place to update procedures and fix past errors.

**Terminology**

Throughout the audit report, contract terms have been at times misplaced, therefore, resulting in misinterpretations of Nebraska Law and proper processes for agencies to follow. The audit report conflates and misrepresents terms, such as contract amendment, contract extension, and contract renewal. DAS believes this misuse confuses Nebraska Law and current procurement contract standards.

Contract Amendment/Addendums

A contract amendment is a formal document that changes, clarifies, or deletes specific terms within an existing, signed and executed contract. A contract amendment can be as simple as updating the contract point of contact within an agency, and there is no statute that limits the number of amendments a contract can have.

Contract Renewal

A contract renewal is the process of adding a set period time to a contract that is beyond the contract's original expiration date, likely through an amendment and optional to the State. By SPB policy, all potential renewals need to be listed in the original contract. Per

SPB Policy, there are limits on contract renewals based on what the contract is for. If any agency would like an exception to this policy they must request it from DAS.

Contract Extension

A contract extension for Nebraska procurement contract purposes as defined in statute Neb. Rev. Stat. § 73-812(2): *State agencies shall not enter into contracts with an unspecified or unlimited duration, and no contract shall be amended to extend the duration of the contract for a period of more than fifty percent of the initial contract term. Following the adoption of any amendment to extend the contract for a period of fifty percent or less of the initial contract term, no further extensions of the original contract shall be permitted. This subdivision does not prohibit the exercise of any renewal option expressly provided in the original contract*. This specifically relates to extensions that are not listed in the original contract documents; therefore it is based off the original contract term, but does not prohibit contract renewals listed in the original contract.

**Pages i-ii:**

Pages i-ii DAS Response: The section gives statistics and data relating to Emergency contracts executed between 2014 and 2024. The emergency contract process and narrative provides information based on current practices that were updated with the State Procurement Act in July 2024 and does not reference the past process, which would have directly applied to contacts from 2014-June 2024.

**Finding 1**:

**Finding 1 (p. 5):** The Department of Administrative Services did not have a list of emergency contracts for the period between 2014 to 2024 as required by law.

**Finding 1 DAS Response**: The Department of Administrative Services did have a tracking report in EnterpriseOne for deviations from competitive bidding from 2014-2024, which includes emergency contracts. Since this report will include contracts other than just emergencies, DAS believed it was best to work directly with State Agencies to generate a list specific to emergency contracts and the data that the Audit was requesting.

**Draft Recommendation:** If the Legislature wishes to have more information about emergency contracts, they could consider requiring agencies to report emergency contracts to DAS annually and for DAS to provide that report to the Legislature. By requiring a report of this type, this would also give DAS the ability to check that emergency contracts are being entered into the EnterpriseOne as required by statute.

**DAS Recommendation Response**: Since July of 2024 DAS-SPB specifically tracks all emergency contracts that it receives from agencies; thus, moving forward, DAS-SPB will be able to produce an accurate list of all emergency contracts, which makes this finding/recommendation resolved through the updates to the State Procurement Act with LB 461 in July of 2024.

**Finding 2**:

No DAS Response

**Finding 3**:

**Finding 3 (p. 21):** Two emergency contracts were extended in a manner inconsistent with the law. Crime Commission contract #90242 was extended via multiple amendments. DMV Contract #74300 had two extension amendments and was extended for more than half of the original term.

**Finding 3 DAS Response:**

*Crime Commission Contract 90242 O4*

The Crime Commission entered an emergency contract for a three-year term for contract 90242 O4. That three-year term was from April 16, 2020, to April 15, 2023. According to Neb. Rev. Stat. § 73-506(2) (updated in July 2024 to § 73-812(2)), the Crime Commission could have entered into a one-time exception for a period from April 16, 2023, to October 15, 2024. The Crime Commission did enter three small extension periods that ultimately ended May 17, 2024. Although the process was out of the ordinary, the Crime Commission did not extend the contract beyond the maximum extension period. Rather, they just entered three shorter extensions, which does not follow the one-time extension allowed by Neb. Rev. Stat §73-506(2) at the time. (Neb. Rev. Stat §73-506(2) is now §73-812(2))

*Department of Motor Vehicles Contract 74300 O4*

The DMV submitted an emergency justification dated October 7, 2016, and signed a two-year contract from January 1, 2017, to December 31, 2019. The DMV then used their one-time extension allowed by Neb. Rev. Stat §73-506(2) (now 73-812(2)) for a period of January 1, 2020, to December 31, 2020; none of this violated standard process or procedures.

The DMV then filled out a new emergency justification and signed a new emergency contract with the same vendor from January 1, 2021, to December 31, 2021, with two, one year renewal options. The DMV recycled the prior (2017) emergency contracts number and failed to submit the emergency justification into EnterpriseOne (E1), therefore making it appear that the original emergency from 2017 violated Nebraska Law. Best practice would have been to submit the emergency request into E1 and generate a new E1 contract number.

**Finding 4**:

> **Finding 4 (p. 21):** One emergency contract was written in a way that violated the prohibition on contracts of unlimited duration. Military Department contract #68283 contained terms that would have renewed it each year indefinitely, but the contract was cancelled after the initial three-year term.

**Finding 4 DAS Response:** The Military Department did enter into contract 68283 O4 that allowed for automatic renewal, which does violate Nebraska law. DAS will make sure to remind and work with agencies to prevent any contract from not having a defined end date as required by statute. Further, on page 21, in the discussion of "Contract Documentation and Emergency Justification", the audit report states, *"If that form is appropriately filled out, DAS approved the contract."* This is a misrepresentation. DAS does not approve the emergency contract as the contract is already executed by the agency director, DAS-SPB simply reviews and accepts the information into EnterpriseOne (E1) for tracking and payment purposes. With the updates to the State Procurement Act in July of 2024, DAS-SPB has simplified the emergency exception form and requires all agencies to provide a fully completed form before the exception can be accepted into E1 for proper documentation purposes.

> **Draft Recommendation:** DAS should ensure that regular agency training includes a review of contract extension rules. All agencies should review their contracting procedures to make certain that contracts are extended in a manner compliant with Neb. Rev. Stat. § 73-812.

**DAS Recommendation Response:** Since LB 461 went into effect, DAS-SPB has made great efforts to provide training for agencies, not only regarding updates to the State Procurement Act, but in regard to the procurement manual, EnterpriseOne, Policies & Procedures, as well as many other procurement topics, including contract duration, renewals and extension. Over the last year DAS-SPB has held the following nineteen procurement training courses:

Procurement User Group Trainings: 9/18/24; 1/29/25; 2/26/25; 4/17/25; 5/28/25.

Lunch & Learns Open to Any Agency: 11/25/24; 11/27/24; 12/3/24; 12/5/24; 12/10/24; 6/5/25; 6/10/25; 6/12/25; 6/24/25; 6/26/25.

Agency-Specific Lunch & Learns: NDCS 11/26/24; NDOT 12/11/24; NGPC 12/13/24; NSHS 3/13/25

**Finding 5**:

**Finding 5 (p. 22):** Twenty-seven emergency contracts from eight agencies were not uploaded to the State Contract Database as required by law.

**Finding 5 DAS Response:**

DAS reviewed the list of 27 contracts from eight different agencies and found the following: (1) Two contracts, DAS 90920 O4 and NDCS 105976 O4, were cancelled, therefore nothing will be found in the State Contracts Database; (2) Five contracts had some documentation uploaded but were incomplete; (3) Twenty Contracts from five agencies were not uploaded in to the State Contracts Database from 2014-2024.

**Draft Recommendation:** State law is very clear that contracts must be entered into the state contract database. Agency executives should ensure that all contracts, including emergency contracts, are uploaded to the State Contract Database as required by Neb. Rev. Stat. § 84-602.04.

**DAS Recommendation Response:** DAS offers training and support for the State Contracts Database to agencies whenever they need help. ECM/OnBase produces weekly validity reports that are emailed to individual agency contacts that flag some issues for contract uploads to the State Contracts Database. DAS will continue to work with agencies to make sure staff understand what is required regarding EnterpriseOne and the State Contracts Database.

**Finding 6 & Recommendation:**

**Finding 6 (p. 22):** Three Department of Economic Development emergency contracts and 45 Department of Transportation emergency contracts were not uploaded into the EnterpriseOne platform as required by DAS policy.

**Draft Recommendations:** The Department of Transportation should ensure, and seek assistance from DAS to confirm, that their contract documentation procedures are in compliance with the Procurement Act.

**DAS Recommendation Response:** DAS will meet with NDOT and DED to ensure that both agencies understand the statutory requirements and will make sure staff have the training needed to follow such requirements for EnterpriseOne and the State Contract Database.

**Finding 7**:

**Finding 7 (p. 23):** The emergency justification form for the Department of Health and Human Services' contract #75656 was not signed by the CEO or a designee as required by law.

**Finding 7 DAS Response:** The emergency contract justification form was submitted into E1 for the Department of Health and Human Services Contract 75656 O4 and **was** signed by the agency director; the form was dated 11/7/2016. There was an unsigned form also uploaded and listed first in the document order, which could have caused confusion if the Auditors did not look through the entire portfolio of documents attached to 75656 O4.

**Draft Recommendation:** DHHS should ensure that all deviation forms are signed as required by law.

**Recommendation Response:** No response as this recommendation has been resolved.

**Finding 8**:

**Finding 8 (p. 23):** The Department of Correctional Services did not upload the justification form for contract #98417 into the EnterpriseOne platform. The agency provided the justification document to auditors when it was requested.

**Finding 8 DAS Response:** The emergency justification form **was found** for Department of Correctional Services Contract 98147 O4 in EnterpriseOne platform and was signed by the Director. Please note the report listed the wrong contract number and the corresponding O8 deviation number is 111108 O8, which housed the fully filled out form.

**Draft Recommendation:** DCS should upload the justification form for contract #98417 into E1 and ensure that all future emergency contract justifications are entered into E1.

**Recommendation Response:** No response as this recommendation has been resolved.

**Finding 9**:

**Finding 9 (p. 24):** The Department of Administrative Services entered into emergency contracts #100568 and #108957 without the completion of a justification form as required by law.

**Finding 9 DAS Response:** A statutory exception supersedes the requirements for the justification form. For contract #100568, LB1037 stated:

*The department shall contract with an outside consultant with expertise in government procurement within sixty days after the operative date of this section for the purpose of conducting such evaluation. Such contract shall not be subject to any competitive bidding requirement.*

Contract #108957 was mandated by the Legislature without the exception, but with competitive bidding time constraints, so the justification form is warranted.

**Finding 10:**

**Finding 10 (p. 25):** From December 2013 to December 2024, the Department of Economic Development did not enter any information into EnterpriseOne for more than 80 contracts (including emergency contracts) as is required by law. Instead, the agency used purchase orders to pay out on the contracts. The contracts were also not entered into the State Contract Database as is required by law.

**Draft Recommendation:** DED should submit fully completed justification forms and DAS should only accept them if they contain the required justification.

**Recommendation Response:** On page 24 there is a misrepresentation of how EnterpriseOne works. When contracts are entered into E1, the system **does not** flag the contract as an encumbrance on the agency's budget. Purchase orders **do** flag as encumbrances. Therefore, the following is incorrectly stated: "*According to DAS, when contracts are entered into E1, the system flags them as encumbrances on the agency budget reports. Purchase orders do not flag as encumbrances. This means that if the agency only uses purchase orders on a contract, budget reports will show that the agency has more cash than is actually available.*" Further, DAS was not certain of how DED made their payments to vendors if the contracts were not in E1. DED could have used purchase orders that did not pull from a contract or issued direct payments. DAS will meet with DED to ensure that all statutory requirements are met regarding the State Contracts Database and EnterpriseOne.

**Finding 11:**

**Finding 11 (p. 25):** The Department of Economic Development submitted, and the Department of Administrative Services accepted, documentation for emergency contracts #24-01-495, #23-01-155, and #23-01-225 where no information justifying the emergency was provided.

**Finding 11 DAS Response:**

*Contract #23-01-255*

DED's contract #23-01-255 correlates to 115182 O8 in the EnterpriseOne system. The Deviation from Contractual Services Form was filled out and the reason was marked as Emergency, the justification was just marked "emergency", and Director Anthony Goins signed the form. Further, the emergency contract provided some justification for the need of the contractor in the recitals section.

*Contract #23-01-155*

DED's contract #23-01-155 correlates to 114297 O8 in the EnterpriseOne system. The Deviation from Contractual Services Form was filled out and the reason was marked as Emergency; the justification was just marked "emergency" and Director Anthony Goins signed the form. Further, the emergency contract provided some justification for the need of the contractor in the recitals section.

*Contract #24-01-495*

DED's contract #24-01-495 correlates to 119016 O8 in the EnterpriseOne system. The Procurement Exception/Deviation Form was partially filled out and the reason was marked as Emergency; Deputy Director Joseph Lauber signed the form. Further, the emergency contract provided some justification for the need of the contractor in the recitals section and was authorized per LB1412 in 2024.

**Draft Recommendation:** DED should review their internal policies and procedures to ensure that they are in compliance with the law. DAS should provide assistance to DED to ensure that their policies are up-to-date and staff is properly trained in procurement procedures.

**Recommendation Response:** DAS-SPB has updated the Emergency Exception Form since July of 2024 and requires agencies to *explain why an emergency procurement was needed.* DAS-SPB will not accept the form without an explanation and signature by the Agency Director. DAS-SPB has trained the Emergency Procurement process and form at many of the trainings listed above. Therefore, DAS-SPB believes this recommendation has been resolved with the updates to the State Procurement Act from LB 461 in July 2024.

**Finding 12:**

**Finding 12 (p. 26)**: From 2014 to 2024, 80% of emergency contracts were sufficiently justified as emergencies; 2% did not have documentation of the emergency. Auditors questioned whether 18% of the contracts met the definition of emergency.

**Finding 12 DAS Response:** Agencies and agency Directors know their everyday business best; therefore, the discretion for services emergency during this time was in the eyes of the agency/agency directors. For the Auditors to review/critique these contracts well after many of the emergencies have been resolved and without sufficient circumstantial context is subjective and could possibly be misleading. Regarding the Sole Source comments, DAS has taken a strong approach since July 2024 and the updates to the State Procurement Act, to make sure Sole Sources are utilized when necessary.

**Draft Recommendation:** If the Legislature is concerned about agency emergency contracting, they could consider a number of changes to the statute, including but not limited to: modifying the definition of emergency to be less vague by focusing on why competitive bidding is not possible rather than the nature of the emergency or limiting the duration of the emergency contract or the scope of what can be contracted for. They could also consider more robust reporting to the Legislature.

**Recommendation Response:** DAS believes that this recommendation has been resolved due to the many updates and changes regarding accountability in procurement that occurred in July 2024 with LB 461.

# State of Nebraska

## LEGISLATIVE COUNCIL




*www.nebraskalegislature.gov*

**Legislative Fiscal Office**
**PO Box 94604, State Capitol**
**Lincoln, NE 68509-4604**


August 11, 2025

Stephanie Meese, Legislative Auditor and Interim Director of Legislative Oversight
Division of Legislative Oversight
1225 L St. Ste 502
P.O. Box 94604
Lincoln, NE 68509

Stephanie,

You have asked the Legislative Fiscal Office to review the draft report, "Department of Administrative Services: Analysis of State Agency Emergency Contracting" as to whether the recommendations can be implemented by the various agencies within their current appropriations.

The draft report contains ten recommendations. The following list is a review of each recommendation and analysis of fiscal impact.

1) Recommendation: Require agencies to report emergency contracts to DAS annually and for DAS to provide that report to the legislature. No fiscal impact is anticipated from this. It is baseline policy for emergency contracts to be uploaded into E1, forwarding the emergency contracts to DAS and DAS compiling these into a report for the Legislature would carry minimal administrative burden and can likely be accommodated within current appropriations;
2) Recommendation: Require DAS to ensure that regular agency training includes a review of contract extension rules. This would add to current contract training, no fiscal impact is anticipated from this.
3) Recommendation: Agency executives should ensure that all contracts, including emergency contracts, are uploaded into the State Contract Database as required by 84-602.04. No fiscal impact is anticipated as this would be a conformity to baseline policy.
4) Recommendation: The Department of Transportation should ensure, and seek assistance from DAS to confirm, that their contract documentation procedures are in compliance with

the Procurement Act. No fiscal impact is anticipated as this would be a conformity to baseline policy.

5) Recommendation: DHHS should ensure that all deviation forms are signed as required by law. No fiscal impact is anticipated as this would be a conformity to baseline policy.
6) Recommendation: DCS should upload the justification form for contract #98417 into E1 and ensure that all future emergency contract justifications are entered into E1. No fiscal impact is anticipated as this would be a conformity to baseline policy.
7) Recommendation: DAS should review its policies and procedures for emergency contracting and ensure that contract deviation form is properly completed and approved by the DAS Director even when the emergency is caused by legislation with a deadline incompatible with competitive bidding procedures. No fiscal impact is anticipated as this would be a conformity to baseline policy.
8) Recommendation: DED should submit fully completed justification forms and DAS should only accept them if they contain the required justification. No fiscal impact is anticipated as this would be a conformity to baseline policy.
9) Recommendation: DED should review their internal policies and procedures to ensure that they are in compliance with the law. DAS should provide assistance to DED to ensure that their policies are up-to-date and staff is properly trained in procurement procedures. No fiscal impact is anticipated as this would be a conformity to baseline policy.
10) Recommendation: The Legislature, if concerned about agency emergency contracting, could consider a number of changes to statute, including but not limited to:
    a. Modifying the definition of emergency to be less vague by focusing on why competitive bidding is not possible rather than the nature of the emergency or limiting the duration of the emergency contract or the scope of what can be contracted for. They could also consider more robust reporting to the Legislature.

    The fiscal impact of this recommendation is indeterminate as the specifics of such legislation are unknown and would be analyzed based on any legislation introduced. However, legislation which involves amending contracting procedures have typically carried minimal to no administrative burden and associated fiscal impact.

If you have any questions, please do not hesitate to call me.

Sincerely,

Keisha Patent

Legislative Fiscal Analyst

# Other Agency Responses

Because the emergency contract audit concerned contracts from all state agencies with emergency contracts, the Audit Office gave any agency subject to a finding or result the opportunity to respond to findings and results regarding their agency. The Department of Health and Human Services emailed to say that they had reviewed the sections provided and had no written response (that email is not included). The other agencies responded via email, the below text is copied from those emails, edited only for spacing and format.

## MILITARY DEPARTMENT

Regarding the two findings for the Military Department, we coordinated with Ms. Michelle Potts at DAS and concur with the DAS responses on both findings.

## DEPARTMENT OF TRANSPORTATION

Finding 5 NDOT Response: NDOT will continue to use validity reports and ensure staff members understand requirements.

Finding 6 NDOT Response: NDOT has been operating under the Nov 5, 2013, DAS guidance and recognize that NDOT highway emergency contracts are exempt from DAS policy 24-05. Neither of those documents specify that copies of all contracts should be uploaded in both the ECM and E1. NDOT's contract document procedure is to record contracts in E1 and copies of those contracts are uploaded in ECM which we interpret to be consistent with NRS 73-806 and 2013 DAS Guidance. NDOT will continue to coordinate with DAS and ensure staff is trained in compliant contract documentation procedures.

## GAME AND PARKS

Below you will find the Commission Response to the comment and recommendation issued to the Nebraska Game and Parks Commission on July 28, 2025.

Finding: Twenty-seven emergency contracts from eight agencies were not uploaded to the State Contract Database as required by law.

Draft Recommendation: State law is very clear that contracts must be entered into the state contract database. Agency executives should ensure that all contracts, including emergency contracts, are uploaded to the State Contract Database as required by Neb. Rev. Stat. § 84-602.04.

Commission Response: NGPC staff have spoken with State Purchasing Bureau and agree with the finding. Signed agreements will now be included along with the E1 purchase orders.

Corrective Action: Signed contracts will be uploaded in OnBase.
Anticipated Completion Date: August 31, 2025