

STATE OF NORTH CAROLINA

OFFICE OF THE STATE AUDITOR

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

WAIVER OF COMPETITION CONTRACTS

PERFORMANCE AUDIT
AUGUST 2016



NC  **OSA**
The Taxpayers' Watchdog

EXECUTIVE SUMMARY

PURPOSE

As directed by the Joint Legislative Program Evaluation Oversight Committee, the purpose of this audit was to determine whether the Department of Health and Human Services (DHHS) complies with applicable laws, regulations, and policies when executing contracts without competitive bids.

BACKGROUND

The North Carolina Administrative Code states “North Carolina’s purchasing program shall be built on the principle of competition.” The competitive bidding process is designed to prevent collusion and favoritism in the award of contracts, and to generate better pricing, quality or value to conserve public funds. However, the Administrative Code allows competition to be waived when contracting under certain circumstances.

When a contract is awarded without competition, NC regulations, and contracting best practices require it to be sufficiently justified, negotiated when feasible, and supported by documentation. The contract is also subject to review and approval within DHHS, and on a state level depending on the amount and type of contract. The Attorney General’s Office, the Division of Purchase and Contract, and the Statewide IT Strategic Sourcing Office provide oversight for State contracts. In addition, DHHS’ no-bid contract for the Medicaid program is subject to federal oversight.

Data in DHHS’ contract database, Open Window, had approximately 2,500 non-competitively bid contracts with a value of approximately \$2.4 billion between state fiscal year 2012 through 2014. The value of the no-bid contracts accounts for more than 32% of all contracts during the same period.

KEY FINDINGS

- Many no-bid contracts lacked required review and approval to protect state interests
- Many no-bid contracts lacked documentation of negotiations to improve pricing or terms
- Many no-bid contracts lacked adequate written justification to waive competition, which increases the risk of favoritism, unfavorable terms, and poor performance

KEY RECOMMENDATIONS

- DHHS should evaluate and monitor contracting processes to ensure that personnel are applying state and department laws, code, policies and procedures effectively and efficiently
- DHHS should incorporate best practices of negotiating no-bid contracts and retaining related documentation into its internal policies and procedures
- DHHS should ensure contract personnel document specific facts or circumstances when competition is waived

MATTER FOR FURTHER CONSIDERATION

- DHHS should consider evaluating and monitoring processes to contract with Local Management Entities
- Effective safeguards are needed to ensure required contract reviews and approvals

The key findings and recommendations in this summary may not be inclusive of all the findings and recommendations in this report.

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Office of the State Auditor



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AUDITOR'S TRANSMITTAL

The Honorable Pat McCrory, Governor
Members of the North Carolina General Assembly
Mr. Rick Brajer, Secretary, Department of Health and Human Services

Ladies and Gentlemen:

We are pleased to submit this performance report titled Waiver of Competition Contracts. The audit objective was to determine whether the Department of Health and Human Services complies with applicable laws, regulations, and policies when executing contracts without competitive bids.

The Department of Health and Human Services' Secretary Brajer reviewed a draft copy of this report. His written comments are included starting on page 24.

The Office of the State Auditor initiated this audit in response to a legislative request. This audit was conducted in accordance with Article 5A of Chapter 147 of the North Carolina General Statute.

We appreciate the courtesy and cooperation received from management and the employees of the Department of Health and Human Services during our audit.

Respectfully submitted,

A handwritten signature in cursive script that reads "Beth A. Wood".

Beth A. Wood, CPA
State Auditor



Beth A. Wood, CPA
State Auditor

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BACKGROUND

The North Carolina Administrative Code states “North Carolina’s purchasing program shall be built on the principle of competition.” The competitive bidding process is designed to prevent collusion and favoritism in the award of contracts, and to generate better pricing, quality or value to conserve public funds. However, NC laws and regulations also allow competition to be waived when state agencies contract under certain conditions (i.e., waiver of competition or no-bid contracts).

These no-bid contracts are subject to requirements outlined in the North Carolina General Statutes, Administrative Code, Procurement Manual, and each state agency’s procurement policies. If the contract is funded with federal dollars, it will also need to comply with applicable federal requirements.

Prior to the Department of Health and Human Services (DHHS) entering into a no-bid contract, NC regulations, and contracting best practices, require DHHS to sufficiently justify the decision to waive competition, negotiate the contract when feasible, and document the negotiation efforts. NC regulations and DHHS policies require the contract and request for waiving competition be reviewed and approved within DHHS and by the appropriate state oversight body depending on the amount and type of contract.

DHHS maintains many contracts and supporting documents in Open Window, a contract database implemented in 2011. Data in Open Window shows DHHS has approximately 2,500 non-competitively bid contracts with a value of approximately \$2.4 billion¹ between state fiscal year 2012 through 2014. These contracts’ value accounts for more than 32%² of all contracts during the same period.

The General Assembly’s Program Evaluation Division (PED) did a preliminary review in April 2014 and found evidence indicating routine non-compliance by DHHS with procurement rules for contracts requiring a waiver of competition. Specifically, out of 143 no-bid contracts selected for the review, DHHS submitted only 10 contracts (7%) for review by the Department of Administration’s Division of Purchase and Contract (P&C),³ and the Statewide IT Strategic Sourcing Office within the Department of Information Technology (DIT).⁴ On the surface, it appeared that the remaining 133 no-bid contracts were not approved by oversight agencies.

In June 2014, PED requested on behalf of the Joint Legislative Program Evaluation Oversight Committee for the Office of the State Auditor to perform a compliance audit of DHHS’ use of no-bid contracts.

¹ Excludes no-bid personal services contracts. No-bid personal service contracts were excluded because the General Assembly’s Program Evaluation Division was evaluating those contracts at DHHS and other state agencies.

² \$2.4 billion / \$7.4 billion = 32%

³ P&C oversees procurement of non-IT related goods and services.

⁴ DIT oversees procurement of IT related goods and services. Formerly the Office of Information Technology Services (ITS) the agency was re-established by Session Law 2015-241 as the Department of Information Technology. ITS is used throughout the report to be consistent with references to state laws, regulations, and DHHS policies that have not been updated.



OBJECTIVE, SCOPE, AND METHODOLOGY

The audit objective was to determine whether the Department of Health and Human Services (DHHS) complies with applicable laws, regulations, and policies when executing contracts without competitive bids.

The Office of the State Auditor initiated this audit in response to a legislative request from the Joint Legislative Program Evaluation Oversight Committee.

The audit scope included DHHS' no-bid contracts and amendments executed between state fiscal year 2012 through October 31, 2014. The audit scope does not include no-bid personal services contracts. Auditors conducted the fieldwork from May 2015 to April 2016.

To accomplish the audit objective, auditors interviewed personnel, observed operations, reviewed policies, analyzed contract records, and examined documentation supporting transactions as considered necessary. When samples were used, they were non-statistical and cannot be projected to the population.

Because of the test nature and other inherent limitations of an audit, together with limitations of any system of internal and management controls, this audit would not necessarily disclose all performance weaknesses or lack of compliance.

As a basis for evaluating internal control, auditors applied the internal control guidance contained in professional auditing standards. As discussed in the standards, internal control consists of five interrelated components, which are (1) control environment, (2) risk assessment, (3) control activities, (4) information and communication, and (5) monitoring.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.



FINDINGS, RECOMMENDATIONS, AND RESPONSES

1. MANY NO-BID CONTRACTS LACKED REQUIRED REVIEW AND APPROVAL TO PROTECT STATE INTERESTS

Lack of Required Review and Approval

Many of the no-bid contracts made by the Department of Health and Human Services (DHHS) lacked required review or approval by either the Attorney General’s Office (AG), the Division of Purchase and Contract (P&C), the Office of Information Technology Services (ITS)⁵ or DHHS administration.

Oversight Body	No. of Contracts Requiring Review or Approval	Contract Amount Requiring Review or Approval	No. of Contracts Lacking Required Review or Approval	Contract Amount Lacking Required Review or Approval
AG	12	\$414.3 million	3	\$6.1 million
P&C or ITS	19	\$41.5 million	9	\$9.5 million
DHHS – Office of Procurement and Contract Services	54	\$452.4 million	7	\$2.5 million
DHHS – Division of Budget and Analysis	22	\$418.2 million	13	\$11.8 million
DHHS – Division of Information Resource Management	8	\$15.9 million	5	\$4.2 million

Note: One contract may require review or approval by multiple oversight bodies. Consequently, the number of contracts subject to review or approval overlaps between oversight bodies. The total number of contracts reviewed was 59.

Lack of Required Attorney General Review

Three contracts with a value of \$6.1 million lacked the required AG **review** (Appendix A). Neither DHHS nor the AG provided records of review when requested. Of the 59 no-bid contracts audited, 12 contracts (\$414.3 million) required review by the AG. For contracts reviewed by the AG, an email from an AG representative or a checklist signed by an AG representative is sent to DHHS as evidence that the required review is completed.

Lack of Required P&C or ITS Approval

Nine contracts with a value of \$9.5 million lacked the required P&C or ITS **approval** (Appendix B). Neither DHHS, P&C, nor ITS provided records of approval when requested. Of the 59 no-bid contracts audited, 19 contracts (\$41.5 million) required approval from either P&C or ITS. For contracts approved by either P&C or ITS, a memorandum is issued to DHHS as approval for waiver of competition.

Lack of Required DHHS Administration Approval

Seven contracts with a value of \$2.5 million lacked the required **approval** by the DHHS Office of Procurement and Contract Services (OPCS) (Appendix C). Neither the contracting DHHS division nor OPCS provided records of approval when requested. Of the 59 no-bid contracts audited, 54 contracts (\$452.4 million) required approval from OPCS.

⁵ Reestablished by Session Law 2015-241 as the Department of Information Technology

Thirteen contracts with a value of \$11.8 million lacked the required **approval** by the DHHS Division of Budget and Analysis (B&A) (Appendix C). Neither the contracting DHHS division nor B&A provided records of approval when requested. Of the 59 no-bid contracts audited, 22 contracts (\$418.2 million) required approval from B&A.

Five contracts with a value of \$4.2 million lacked the required **approval** by the DHHS Division of Information Resource Management (DIRM) (Appendix C). Neither the contracting DHHS division nor DIRM provided records of approval when requested. Eight information technology (IT) related no-bid contracts (\$15.9 million) required approval from DIRM.

Contract review and approval across all DHHS divisions is facilitated and recorded on the Contract Approval Form (CAF). Approval from OPCS, B&A, and DIRM are documented on the CAF for each contract. The CAF for contracts audited were requested from DHHS divisions and offices that approve contracts through the coordination of the DHHS audit liaison.

State Interests Jeopardized

Without Required AG Review

When the AG does not review no-bid contracts, a greater risk exists that these contracts are not in proper legal form, do not contain all clauses required by law, are not legally enforceable, and do not accomplish the intended purposes of the proposed contract.

In fact, the AG's review of other DHHS no-bid contracts identified terms and conditions that should be better defined.

- An AG review of a \$375,000 staffing contract amendment pointed out 10 changes to better define contractor responsibilities, identify payment terms that would have created the potential for litigation if not changed, and check the contractor against the State's debarment list.
- An AG review of a \$3.57 million service contract amendment suggested "the base contract nor the amendment contain a description of the payment terms of the contract." Specifically, there was no description on what happens if the hours actually spent on a task exceeded the number of hours projected in the contractor's proposal.
- An AG's designated reviewer initially disapproved an \$886,117 IT contract amendment due to several reasons including missing contractor performance review and accountability provision as required by the State laws.

Without Required P&C or ITS Approval

When P&C or ITS does not approve no-bid contracts, there is an increased risk of inappropriately waiving competition and overspending public funds. Approvals by procurement oversight agencies ensure that no-bid contracts meet the no-bid classification requirements and have the appropriate level of pricing and quality before spending public funds.

Without Required DHHS Approval

When DHHS offices do not approve no-bid contracts, there is an increased risk of non-compliance and overspending.⁶

- OPCS ensures “the contract justification memorandum...supports sole source...contracts are in compliance with the general contracting requirements...proper approvals have been secured from NC State Purchase and Contract, State ITS...”
- B&A ensures “contracting division/office/facility/school has verified that funds are budgeted appropriately...contract is consistent with budget bill...”
- DIRM ensures IT contracts meet applicable IT procurement standards including security and project management requirements.

DHHS Process Failures Lead to Lack of Reviews and Approvals*By Attorney General*

DHHS could not fully explain why the AG did not review the no-bid contracts identified in this audit.

For one contract lacking the required AG review, OPCS claimed that the rules for obtaining AG review were not issued until August 2012. However, in a response to a survey conducted as part of another OSA audit in December 2011, OPCS recognized its responsibility for submitting DHHS contracts over \$1 million to the AG and was aware of the legal requirement that became effective in June 27, 2011.

For two other contracts lacking the required AG review, OPCS indicated the guidance that the AG’s Office issued in August 2012 allows DHHS General Counsel to review contracts between \$1 million and \$5 million. However, DHHS provided no records of review by its General Counsel or AG.

By P&C or ITS

DHHS contracting policies and procedures are inconsistent with laws and regulations in several ways.

- The DHHS Approval Flowchart and General Contract Manual do not include a requirement for P&C approval of no-bid contracts over \$10,000.⁷
- The DHHS Approval Flowchart does not include a requirement for ITS approval of IT contracts over \$25,000.⁸

According to DHHS Compliance Division and OPCS management, state contract laws and regulations do not contain criteria to allow consistent interpretation and application.

⁶ DHHS General Contracting Manual Chapter 2; Contract Administration, *effective 10/28/15*

⁷ As required by NC General Statute 143-53(a)(5)

⁸ As required by 09 NCAC 06B .1304(a)

- Two contracts to provide guardianship services worth \$1.36 million were not submitted for P&C's approval because they were considered grant contracts.⁹ However, the contracts were classified as purchase of services contracts that require P&C approval. Per DHHS, determination of grant contracts is highly subjective, even with the assistance of an internally developed questionnaire.
- One contract with a quasi-government organization worth \$3.9 million was not submitted for P&C's approval because DHHS had interpreted the contract as "services provided by an agency of the State, federal, or local government," and was exempt from P&C's review. However, they later recognized the organization is not a government entity.

By DHHS Administration

Several contracts lacked OPCS and/or B&A approvals because DHHS divisions misapplied the DHHS Contract Approval Flowchart (flowchart). Particularly, the wrong approval flow was used for the type of contract.

- One purchase-of-service contract for \$150,844 was missing OPCS and B&A approval because the flow for a program-related contract was used rather than the flow for an operations contract.
- One purchase-of-service contract for \$3.9 million was missing B&A approval because the flow for a program-related contract was used rather than the flow for an operations contract.
- One purchase-of-service contract for \$751,947 was missing B&A approval because the flow for a program-related contract was used rather than the flow for an operations contract.

According to the flowchart, OPCS approves program-related services contracts over \$200,000 and operations contracts over \$10,000. B&A approves operations contracts over \$10,000. According to OPCS, purchase-of-service contracts follow the approval flow for operations contracts.

Review and Approval Required

By Law

NC General Statute¹⁰ states the AG or the AG's attorney shall review "all proposed contracts for supplies, materials, printing, equipment, and contractual services that exceed one million dollars..." starting June 27, 2011. The AG's Office issued guidance in August 2012 and authorized agency's in-house attorneys to review contracts between \$1 million and \$5 million.

Per NC General Statute 143-53(a)(5), "...any waiver of competition for the purchase, rental, or lease of goods and services is subject to prior review by the Secretary, if the expenditure exceeds ten thousand dollars (\$10,000)." The Secretary refers to Secretary of Administration, who delegates the power and authority under Chapter 143 Article 3 to the State Purchasing Officer (SPO), Division of Purchase and Contract (P&C).

⁹ P&C issued a memo "Grant in Contract Form" on July 17, 1989, that stated contracts that are determined as grant contracts do not require approvals from P&C.

¹⁰ NCGS 114-8.3 as amended by Session Law 2011-326 and Session Law 2013-234

By Administrative Code

Per 09 NCAC 06B .0901, "...competition may be limited or waived where a factual basis demonstrates support of one or more of the conditions set forth in Paragraph (b) of this Rule. If the procurement is within a purchasing agency's general delegation, then the purchasing agency may waive competition in conformance with this Rule. If the procurement is greater than the agency's delegation, requests for limited or waived competition shall be submitted to the State CIO for approval." The State CIO delegates the power and authority of review of waiver request to the Director of Statewide IT Strategic Sourcing Office.

Per 09 NCAC 06B .1304(a),¹¹ "The general purchasing delegation for a purchasing agency shall be twenty-five thousand dollars (\$25,000) unless specific authorization is given by the State CIO."

By DHHS Practice Tools

The DHHS Contract Approval Flowchart requires:

- OPCS to approve sole source Operations contracts regardless of amount
- B&A to approve sole source Operations contracts above \$10,000
- DIRM to approve sole source Operations IT contracts regardless of amount
- OPCS to approve sole source Program Related Services contract above \$200,000

RECOMMENDATIONS

DHHS should evaluate and monitor contracting processes to ensure that personnel are applying state and department laws, code, policies and procedures effectively and efficiently.

DHHS should update its policies and procedures to align with applicable state laws, code, policy and procedures in a manner that personnel can apply effectively and efficiently.

DHHS should implement formal and cyclical training to ensure all contract personnel can consistently apply state laws, regulations, and DHHS policies.

DHHS should seek clarification from state purchasing authorities and develop guidance to facilitate consistent interpretation and application of state contract laws, code, policies and procedures.

AGENCY RESPONSE

The Department agreed with the finding and recommendations. The Department's full response to this finding begins on page 24.

¹¹ Language removed through amendment effective March 1, 2016

2. MANY NO-BID CONTRACTS LACKED DOCUMENTATION OF NEGOTIATIONS TO IMPROVE PRICING OR TERMS

No Documentation of Negotiation

Many no-bid contracts did not have documentation of negotiation. The Department of Health and Human Services (DHHS) provided no documentation for 33 of 45 contracts (73%) totaling approximately \$43.6 million (Appendix D). Of the 59 no-bid contracts audited, 45 (76%) should have documentation to demonstrate negotiation.¹²

For example, the following contracts lacked documentation of negotiation:

- A \$6.8 million contract for technical assistance in training, program operation, and human resource functions
- A \$1.1 million contract for occupational therapy services
- A \$2 million contract for temporary nursing services
- A \$6.9 million contract for services to administer a housing assistance program
- Two consecutive contracts totaling \$66,000 to provide training

Documentation of negotiation can consist of:

- A negotiation plan that details negotiation team roles and responsibilities, negotiation schedule, objective(s) of negotiation, and any other information that help achieve desired outcome through negotiations
- A written summary of offer and any counter-offer negotiations
- Correspondence with vendor of substantive negotiation
- Record of the date and general subject-matter of any substantive discussions
- Iterations of solicitation documents, proposals and counteroffers

Cannot Be Certain of Pricing or Terms

Without documentation of no-bid contract negotiations, DHHS cannot be certain of how contract terms and pricing were determined and whether the goods or services were acquired at the best possible price, delivery, terms and conditions.

DHHS' documentation showed that when contracts are negotiated, significant savings can be realized. For example, documentation demonstrates that DHHS negotiated a contract with an annual cost of \$840,000 and saved the State approximately \$900,000 over a five-year period. In this case, DHHS presented vendor proposals and correspondence as documentation to support their efforts to:

- Determine what other states were paying for the same service they were seeking
- Counter the vendor's original proposal
- Negotiate a lower contract cost

¹² Fourteen contracts were funded by a directive from the state legislature or for financial assistance programs and would not typically be subject to negotiation (59 - 14 = 45 contracts tested).

DHHS Procedures Deficient

The DHHS General Contracting Manual does not require documentation of negotiation efforts be maintained as part of the contract file.

Consequently, DHHS personnel do not consistently apply best practices to document negotiation efforts when executing no-bid contracts.

Best Practices Require Documentation

In “Contracting for Services in State and Local Government Agencies”,¹³ author William Sims Curry¹⁴ writes:

“For complex negotiations, the negotiation plan should be committed to writing.”

“When the contract itself, or negotiation thereof, is extensive and complex, documentation of the negotiation process provides useful background for future contractual actions. Written policies and procedures for the contracting function should specify negotiation that requires documentation to provide the background that should be useful for future contractual actions.”

RECOMMENDATIONS

DHHS should incorporate best practices of negotiating no-bid contracts and retaining related documentation into its internal policies and procedures.

DHHS should implement formal and cyclical training to ensure employees know the need to negotiate no-bid contracts, and document efforts of negotiation.

AGENCY RESPONSE

The Department agreed with the finding and recommendations. The Department’s full response to this finding begins on page 25.

¹³ Published by CRC Press Taylor & Francis Group as part of the Public Administration and Public Policy series. The book includes best practices from surveying various state and local government agencies including the State of North Carolina.

¹⁴ The Author has been a member of the National Contract Management Association (NCMA) for more than 30 years. He has held procurement or contract positions in federal, state and local government as well as the private sector. He was designated by the NCMA as a Certified Professional Contract Manager (CPCM) and received the award of NCMA Fellow.

3. MANY NO-BID CONTRACTS LACKED ADEQUATE WRITTEN JUSTIFICATION TO WAIVE COMPETITION, WHICH INCREASES THE RISK OF FAVORITISM, UNFAVORABLE TERMS, AND POOR PERFORMANCE

Justification Lacking

Many no-bid contracts lacked adequate written justification to waive competition. Of the 59 no-bid contracts selected for review, 27 (46%) with a value of about \$25.5 million, lacked justification (Appendix E). Twenty-five of the 27 contracts were staffing contracts for physicians, nurses, and interpretation services initiated by DHHS facilities.¹⁵

- Twenty-one contracts used the “particular product or service is needed” category to waive competition. However, there was either no other explanation or the explanation was deficient and did not support the selected waiver category. In one particular instance, the supporting explanation stated “there are multiple contracts in place.”
- Thirteen contracts used the “emergency or pressing need” waiver category even though DHHS contracted with the same provider(s) for several years. For example, a DHHS facility contracted with a temporary physician staffing agency and twice renewed for a total cost of \$1.3 million.

Favoritism, Unfavorable Terms, and Poor Performance

Favoritism

No-bid contracts can create the appearance of favoritism when they are not justified. The competitive bidding process is designed to prevent collusion and favoritism in the award of contracts and to generate better pricing, quality, or value when spending public funds.

As an example of contracts that can give the appearance of favoritism, two of the 27 no-bid contracts lacking justification were staffing contracts with former DHHS employees.

- A contract of approximately \$1 million was waived competition because there was “an emergency” need and “a particular” service was needed. DHHS had contracted with the same person since 2004 (11 years). There was no evidence of other providers being considered.
- A contract of \$672,000 was waived competition because the services were available from “one source of supply” and “particular professional services” were required. However, per DHHS management, no other providers were considered when awarding this contract.

¹⁵ Treatment centers, development centers, and psychiatric hospitals

Unfavorable Terms

No-bid contracts can also result in unfavorable terms. In “Contracting for Services in State and Local Government Agencies”,¹⁶ author William Sims Curry¹⁷ writes:

“Contractors that are well aware of their status as the sole source provider for a particular service have a tendency to propose higher pricing than they would in a competitive environment. Sole source contractors involved in service delivery over the long term also tend to increase their pricing at a rate higher than increases to their costs or the applicable rate of inflation. This tendency for higher initial pricing and excessive price escalation from sole source contractors is intuitive and well understood.”

Poor Performance

No-bid contracts can also result in poor performance. Author William Sims Curry warns:

“Not so intuitive or well understood, however, are additional disadvantages stemming from noncompetitive contracting such as the tendency for some long-term sole source contractors to relax their propensity to complete tasks or deliverables within the expected timeframe and to relax their propensity for meeting expected quality standards.”

No Time to Competitively Bid

According to the DHHS Division of State Operated Health Facilities contract office, facilities have a hard time filling medical staff vacancies. Facility contract personnel, who report directly to the facility director, fill the vacancies as instructed by the facility director and often don’t have the time to competitively bid staffing contracts.

However, lack of time may not be an acceptable reason to avoid the competitive bidding process. In “Contracting for Services in in State and Local Government Agencies”, author William Sims Curry writes:

“Insufficient time to conduct a competitive procurement also should not constitute justification to contract on a sole source basis... If there is sufficient time to obtain pricing and a proposal from one company, then there is normally time to obtain pricing and a proposal from numerous contractors on a concurrent basis.”

¹⁶ Published by CRC Press Taylor & Francis Group as part of the Public Administration and Public Policy series. The book includes best practices from surveying various state and local government agencies including the State of North Carolina.

¹⁷ The Author has been a member of the National Contract Management Association (NCMA) for more than 30 years. He has held procurement or contract positions in federal, state and local government as well as the private sector. He was designated by the NCMA as a Certified Professional Contract Manager (CPCM) and received the award of NCMA Fellow.

State Code and Policy Require Written Justification

State administrative code¹⁸ provides:

“All purchasing transactions shall be documented. As applicable, each file shall include:...(5) **written justification for waiver or emergency purchase...**” (emphasis added)

The State Procurement Manual¹⁹ provides:

A waiver “must be documented with a signed and dated request and signed and dated approval ... When seeking the waiver, the request must **identify those specific facts or circumstances** that support a waiver; simply repeating the language of the applicable category is not sufficient.” (emphasis added)

When competition is waived because of a pressing need “circumstances demonstrating the pressing need must be described ... A pressing need is one arising from unforeseen causes including, but not limited to, delay by contractors, delay in transportation, breakdown in machinery or unanticipated volume of work. Lack of reasonable forethought or planning is not normally justification for a pressing need.”

RECOMMENDATIONS

DHHS should ensure contract personnel document specific facts or circumstances when competition is waived.

DHHS should implement formal and cyclical training to ensure employees know when no-bid contracts are appropriate and the documentation needed to support that determination.

AGENCY RESPONSE

The Department agreed with the finding and recommendations. The Department’s full response to this finding begins on page 26.

4. MISSING CONTRACT TERMS RISK MEDICAID RECIPIENT RIGHTS

Terms Missing

A review by the federal Centers for Medicare and Medicaid Services (CMS) of a \$375 million Medicaid contract between the Department of Health and Human Services (DHHS) and the North Carolina Community Care Networks, Inc. (N3CN)²⁰ showed close to 100 missing federal contract terms.

¹⁸ 01 NCAC 05B .1903 Files

¹⁹ North Carolina Procurement Manual, May 8 2013, Version 3.

²⁰ This contract is a primary care case management (PCCM) contract, under which DHHS contracts with N3CN to provide case management services such as location, coordination and monitoring of primary health care services to Medicaid recipient. Under the contract, DHHS pay a periodic per enrollee fee to N3CN. The contract is exempt from state purchasing rules.

According to CMS, DHHS would have to amend the contract to include the missing terms. Given DHHS has planned to draft a new contract with N3CN in 2016, CMS allowed DHHS to instead incorporate the missing terms in the new contract.

Examples of the missing terms are:

- Disallow N3CN from requesting disenrollment because of a change in the enrollee's health status
- Allow enrollees to request disenrollment for reasons such as poor quality of care, lack of access to services covered under the contract, or lack of access to providers experienced in dealing with the enrollee's health care needs
- Require N3CN to cover and pay for emergency services whether or not the doctor or facility that provides the services has a contract with N3CN

CMS determined the missing terms two years after the contract effective date of January 1, 2013. DHHS did not submit the contract to CMS for review until July 20, 2015,²¹ after auditors requested evidence of any CMS review. States may seek review by CMS of draft Medicaid contracts to ensure that Medicaid contract requirements are met.

Recipient Rights at Risk

By this contract, N3CN provides case management services such as location, coordination and monitoring of primary health care services to Medicaid recipients. DHHS pays a periodic per enrollee fee to N3CN. The contract is exempt from state purchasing rules. During the period of this contract, January 1, 2013, to December 31, 2015, N3CN served an average of 1.5 million²² Medicaid recipients. By failing to include certain contract terms, recipient rights to quality, continued services from N3CN are jeopardized for example:

- Recipients may be disenrolled because of a change in their health status
- Recipients may not be able to dis-enroll because of poor quality of care, lack of services covered, or lack of access to experienced providers
- Recipients may not be covered for emergency services regardless of whether provider is under contract with N3CN

Lack of Policy

DHHS has not implemented policies about managed care contracts requiring review by either DHHS or CMS and the timing for such reviews.

CMS publishes the "State Guide to CMS Criteria for Managed Care Contract Review and Approval" to help states verify that their contracts with managed care entities meet all CMS requirements.

²¹ Based on documentation and confirmation provided by CMS Regional Office at Atlanta, GA.

²² Based on report from North Carolina Community Care Networks, Inc. as of April 19, 2016

Law Requires Protection of Recipient Rights

Federal law²³ requires contracts between a state and a primary care case management entity to include terms that protect recipient rights.²⁴

Examples of the required terms are:

- A managed care entity (MCE) may not request disenrollment because of a change in the enrollee's health status
- Recipients are allowed to dis-enroll for reasons including poor quality of care, lack of access to services covered under the contract, or lack of access to providers experienced in dealing with the recipient's health care needs
- A MCE covers and pays for emergency services regardless of whether the provider that furnishes the services has a contract with the MCE
- MCE marketing, including plans and materials, is accurate and does not mislead, confuse, or defraud the recipients or state agency

RECOMMENDATIONS

DHHS should develop a process to ensure draft managed care contracts receive CMS review to ensure executed contracts meet federal requirements.

AGENCY RESPONSE

The Department agreed with the finding and recommendations. The Department's full response to this finding begins on page 27.

²³ 42 CFR 438 Medicaid Managed Care under Chapter IV Centers for Medicare & Medicaid Services, Department of Health and Human Services.

²⁴ The requirements are included in "State Guide to CMS Criteria for Managed Care Contract Review and Approval" (Guide). The Guide covers the standards that are used by CMS Regional Office staff to review and approve State contracts with PCCM. The Guide is based on existing requirements in Title XIX of the Social Security Act, 42 CFR 438 and other applicable laws.



MATTERS FOR FURTHER CONSIDERATION

During the course of an audit, Office of the State Auditor staff may uncover potential issues that are outside of the audit objective. Although the issues may not have been part of the planned objective, the issues need to be presented to those charged with governance of the organization under audit. Below is such an issue.

Department of Health and Human Services Should Consider Evaluating and Monitoring Processes to Contract with Local Management Entities

The nine Medicaid contracts with Local Management Entities (LMEs) were mistakenly classified as no-bid contracts in the Department of Health and Human Services (DHHS) contract database and tested with other no-bid contracts in the audit. DHHS later confirmed these contracts were procured through a competitive request for applications process with existing LMEs.²⁵ As a result, these contracts were outside the scope of the audit and the results of the tests are reported separately.

These contracts had issues similar to those noted with no-bid contracts, the focus of this audit. Contracting processes at DHHS did not ensure that Medicaid contracts with LMEs received required reviews and approvals or that related documents were retained.

Eight of nine Medicaid contracts – and/or subsequent amendments – with LMEs lacked required review and approval.

- Five of the nine contracts (56%) did not have the required Attorney General (AG) review.²⁶ The value of these contracts was approximately \$1.49 billion.
- Three of the nine contracts (33%) did not have required approval from the DHHS Office of Procurement and Contract Services (OPCS). The value of these contracts was approximately \$850.3 million.

In addition, for some of the contracts that had the required review and approval, DHHS was missing records of the review and approval. As a result, those records had to be obtained from the federal Centers for Medicare and Medicaid Services and the AG.

- Records for four of nine contracts (44%) were obtained from CMS. The value of these contracts was approximately \$1.5 billion.
- Records for one of nine contracts (11%) were obtained from the AG's Office. The value of this contract was approximately \$531 million.

Contracts that are reviewed and approved are at less risk of being unenforceable, not achieving intended purposes, noncompliant with applicable laws and regulations, and costly.

Contracts with documentation of review and approval demonstrate transparency and accountability for public funds.

²⁵ As described in DHHS Policies and Procedures, Chapter VII: Procurement and Contracts Services, *effective 12/18/03*.

²⁶ Based on documentation and confirmation provided by personnel at the Department of Justice.

DHHS should consider periodically evaluating processes to contract with LMEs consistent with federal and state requirements. DHHS should also consider periodically monitoring the effectiveness and efficiency of contracting processes with LMEs.

Effective Safeguards Are Needed to Ensure Required Contract Reviews and Approvals

Non-compliance in Department of Health and Human Services (DHHS) no-bid contracts as identified in this audit indicates a continuing trend of deficiencies in the State's contracting practices.

This audit found that many contracts lacked review and approval by the Attorney General's Office, the Division of Purchase and Contract, and the Office of Information Technology Services.²⁷ Those reviews and approvals are required by state laws and regulations.

Despite legislative efforts and previous audit recommendations, the State still needs effective safeguards to ensure contracts are reviewed and approved as required.

- 1) The General Assembly enacted Session Law 2010-194²⁸ in October 2010 to "provide oversight of the review and award of contracts."
- 2) The State Auditor issued reports:
 - *June 2012 – Department of Administration – Division of Purchase and Contract*
The Division did not develop final written guidance and procedures to state agencies that would allow orderly and efficient submission of proposed state contracts over \$1 million to the Department of Justice for review.
 - *June 2012 – Department of Justice*
The Department did not try to identify all services contracts needing review. Instead, the Department relied on state agencies to comply with state laws, which require the Department to review proposed service contracts over \$1 million.
- 3) The General Assembly enacted Session Law 2013-234 in July 2013 "to amend the laws requiring negotiation and review of certain state contracts, to provide oversight and reporting of certain contract awards, and to provide for contract management and administration."

Without proper review and approval, a greater risk exists that contracts are not in proper legal form, do not accomplish intended purposes, inappropriately waive competition, and overspend public funds.

²⁷ Reestablished by Session Law 2015-241 as the Department of Information Technology

²⁸ The law was amended by Session Law 2011-326 to include a technical correction.



APPENDICES

Contracts Lacking Attorney General Review

Three contracts with a value of \$6.1 million lacked review by the Attorney General.

1. Myers and Stauffer, LC, September 11, 2012, \$3.15 million, management of data validation program for nursing facilities
2. North Carolina Health Information Exchange, September 25, 2012, \$1.71 million, development of a health information exchange infrastructure
3. Southwestern Child Development Commission, Inc., August 3, 2011, \$1.21 million, statewide management to support improvement of child care services for North Carolina school age children

Contracts Lacking State Purchasing and Contract (P&C) or Information Technology Services (ITS) Approval

Nine contracts and/or amendments with a value of \$9.5 million lacked approval.

By P&C:

1. American Red Cross, September 7, 2012, \$39,050, CPR certification and training
2. American Red Cross, August 1, 2013, \$27,500, CPR certification and training
3. Empowering Lives Guardianship Services, LLC, September 13, 2012, \$608,793, guardianship services
4. Fluent Language Solutions, July 1, 2013, \$1.05 million, standard interpretation services
5. Hope for the Future, September 4, 2012, \$752,551, guardianship service
6. NC Health Insurance Risk Pool, Inc., December 1, 2012, \$3.90 million, insurance coverage to HIV positive individuals
7. Southern Regional AHEC, November 1, 2011, \$929,290, training services to employees of DHHS facilities
8. WakeMed, July 20, 2012, \$452,532, problem gambling training for clinicians

By ITS:

1. North Carolina Health Information Exchange, September 25, 2012, \$1.71 million, development of a health information exchange infrastructure

Contracts Lacking DHHS Administration Approval

By OPCS

Seven contracts and/or amendments with a value of \$2.5 million lacked approval by the DHHS Office of Procurement and Contract Services (OPCS).

1. American Red Cross, September 7, 2012, \$39,050, CPR certification and training
2. American Red Cross, August 1, 2013, \$27,500, CPR certification and training
3. Clinical Staffing, Inc., July 1, 2013, \$100,000, nurse staffing services
4. Fluent Language Solutions, July 1, 2013, \$149,000, standard interpretation services
5. North Carolina Health Information Exchange, September 25, 2012, \$1.71 million, development of a health information exchange infrastructure
6. Supplemental Health Care, April 1, 2013, \$300,000, nurse staffing services
7. WakeMed, July 20, 2012, \$150,844, problem gambling training for clinicians

By B&A

Thirteen contracts and/or amendments with a value of \$11.8 million lacked approval by the DHHS Division of Budget and Analysis (B&A).

1. American Red Cross, September 7, 2012, \$39,050, CPR certification and training
2. American Red Cross, August 1, 2013, \$27,500, CPR certification and training
3. Brogan & Partners Advertising Consultancy, Inc., April 1, 2012, \$751,948, media campaign for smoking cessation
4. Captrat, Inc., April 1, 2012, \$751,947, media campaign for smoking cessation
5. Empowering Lives Guardianship Services, LLC, September 13, 2012, \$608,793, guardianship services
6. Fluent Language Solutions, July 1, 2013, \$149,000, standard interpretation services
7. Hope for the Future, September 4, 2012, \$752,551, guardianship service
8. North Carolina Health Information Exchange, September 25, 2012, \$1.71 million, development of a health information exchange infrastructure
9. NC Health Insurance Risk Pool, Inc., December 1, 2012, \$3.90 million, insurance coverage to HIV positive individuals
10. Southern Regional AHEC, November 1, 2011, \$929,290, training services to employees of DHHS facilities
11. TALX Corporation, July 1, 2013, \$840,000, online employment and income verifications
12. TALX Corporation, July 30, 2012, \$840,000, online employment and income verifications
13. WakeMed, July 20, 2012, \$452,532, problem gambling training for clinicians

By DIRM

Five contracts and/or amendments with a value of \$4.2 million lacked approval by the DHHS Division of Information Resource Management (DIRM).

1. Child and Parent Support Services, Inc., July 23, 2012, \$183,900, training for clinicians to work with traumatized children
2. Health Information Designs, Inc., January 3, 2012, \$662,354, maintenance and operation of control substance prescription database
3. North Carolina Health Information Exchange, September 25, 2012, \$1.71 million, development of a health information exchange infrastructure
4. TALX Corporation, July 1, 2013, \$840,000, online employment and income verifications
5. TALX Corporation, July 30, 2012, \$840,000, online employment and income verifications

Contracts with No Documentation of Negotiation

Thirty-three contracts and amendments with a value of \$43.6 million had no documentation of negotiation.

1. Alvarez & Marsal Public Sector Services, LLC, February 7, 2014, \$6.8 million, technical assistance in training, program operation, and human resource functions
2. American Red Cross, August 1, 2013, \$27,500, CPR certification and training
3. American Red Cross, September 7, 2012, \$39,050, CPR certification and training
4. CHG Companies, August 1, 2013, \$500,000, temporary physician staffing
5. CHG Companies, July 1, 2012, \$500,000, temporary physician staffing
6. CHG Companies, October 1, 2013, \$1.8 million, temporary physician staffing
7. Clinical Staffing, April 1, 2013, \$1.13 million, temporary nurse staffing
8. Clinical Staffing, January 1, 2013, \$500,000, temporary nurse staffing
9. Consolidated Staffing Inc., July 1, 2012, \$1.50 million, temporary medical staffing
10. Fluent Language Solutions, Inc., July 1, 2013, \$1.05 million, standard interpretation services
11. KFH Group, Inc., May 31, 2013, \$1.11 million, non-emergency medical transportation funds management review
12. Locum Tenens.com LLC, July 1, 2011, \$750,000, temporary psychiatrist staffing
13. Locum Tenens.com LLC, July 1, 2013, \$1.50 million, temporary psychiatrist staffing
14. Locum Tenens.com LLC, July 1, 2013, \$636,000, temporary psychiatrist staffing
15. Locum Tenens.com LLC, April 8, 2013, \$484,000, temporary psychiatrist staffing
16. North Carolina Health Information Exchange, September 25, 2012, \$1.71 million, development of a health information exchange infrastructure
17. Private Diagnostic Clinic PLLC, July 17, 2013, \$582,066, anesthesiologist service
18. Professional Nursing Solution, July 1, 2012, \$1.50 million, temporary nurse staffing
19. Professional Nursing Solutions, August 1, 2013, \$2 million, temporary nurse staffing
20. Professional Nursing Solutions, July 1, 2011, \$800,000, temporary nurse staffing
21. Quadel Consulting Corporation, February 11, 2013, \$6.9 million, administration of housing assistance program
22. Soliant Physician Staffing LLC, July 1, 2011, \$800,000, temporary physician staffing
23. Soliant Physician Staffing LLC, July 1, 2013, \$900,000, temporary physician staffing
24. Soliant Physician Staffing LLC, July 15, 2013, \$542,000, temporary physician staffing
25. Southern Regional AHEC, November 1, 2011, \$929,290, training services to employees of DHHS facilities
26. Staff Care, Inc., July 1, 2011, \$800,000, temporary physician staffing
27. Staff Care, July 1, 2013, \$1.50 million, temporary psychiatrist staffing

28. Staff care, July 22, 2013, \$800,000, temporary medical staffing
29. Supplemental Health Care, July 1, 2011, \$1.43 million, temporary nurse staffing
30. Supplemental Health Care, July 1, 2013, \$1.50 million, temporary nurse staffing
31. Supplemental Health Care, September 1, 2013, \$1 million, temporary nurse staffing
32. Therapeutic Solutions of NC, LLC, July 1, 2013, \$1.07 million, occupational therapy services
33. WakeMed, July 20, 2012, \$452,532, problem gambling training for clinicians

Contracts Lacking Justification to Waive Competition

Twenty-seven no-bid contracts and amendments with a value of about \$25.5 million lacked justification to waive competition.

1. American Red Cross, August 1, 2013, \$27,500, CPR certification and training
2. American Red Cross, September 7, 2012, \$39,050, CPR certification and training
3. CHG Companies, August 1, 2013, \$500,000, temporary physician staffing
4. CHG Companies, July 1, 2012, \$500,000, temporary physician staffing
5. CHG Companies, October 1, 2013, \$1.8 million, temporary physician staffing
6. Clinical Staffing, April 1, 2013, \$1.13 million, temporary nurse staffing
7. Clinical Staffing, January 1, 2013, \$500,000, temporary nurse staffing
8. Consolidated Staffing Inc., July 1, 2012, \$1.50 million, temporary medical staffing
9. Fluent Language Solutions, Inc., July 1, 2013, \$1.05 million, standard interpretation services
10. Locum Tenens.com LLC, July 1, 2011, \$750,000, temporary psychiatrist staffing
11. Locum Tenens.com LLC, April 8, 2013, \$484,000, temporary psychiatrist staffing
12. Locum Tenens.com LLC, July 1, 2013, \$1.50 million, temporary psychiatrist staffing
13. Locum Tenens.com LLC, July 1, 2013, \$636,000, temporary psychiatrist staffing
14. Morcom Medical Consultants, August 12, 2013, \$672,000, temporary physician staffing
15. Professional Nursing Solution, July 1, 2012, \$1.50 million, temporary nurse staffing
16. Professional Nursing Solutions, August 1, 2013, \$2 million, temporary nurse staffing
17. Professional Nursing Solutions, July 1, 2011, \$800,000, temporary nurse staffing
18. Soliant Physician Staffing LLC, July 1, 2013, 900,000, temporary physician staffing
19. Soliant Physician Staffing LLC, July 15, 2013, \$542,000, temporary physician staffing
20. Staff Care, Inc., July 1, 2011, \$800,000, temporary physician staffing
21. Staff Care, July 1, 2011, \$532,200, temporary medical staffing
22. Staff Care, July 1, 2013, \$1.50 million, temporary psychiatrist staffing
23. Staff care, July 22, 2013, \$800,000, temporary medical staffing
24. Supplemental Health Care, July 1, 2011, \$1.43 million, temporary nurse staffing
25. Supplemental Health Care, July 1, 2013, \$1.50 million, temporary nurse staffing
26. Supplemental Health Care, September 1, 2013, \$1 million, temporary nurse staffing
27. Therapeutic Solutions of NC, LLC, July 1, 2013, \$1.07 million, occupational therapy services



RESPONSE FROM DHHS



North Carolina Department of Health and Human Services

Pat McCrory
Governor

Richard O. Brajer
Secretary

July 26, 2016

The Honorable Beth A. Wood, State Auditor
Office of the State Auditor
2 South Salisbury Street
20601 Mail Service Center
Raleigh, North Carolina 27699-0601

Dear Auditor Wood:

Redesigning the Procurement, Contracts and Grants process and improving the overall contracting process continues to be an important initiative for the Department. Director of Procurement, Contracts and Grants, Patti Bowers, was appointed last November and reports directly to the Secretary to demonstrate our commitment to process improvement for this important business support function.

We have reviewed the draft performance report titled Waiver of Competition Contracts. The following represents our response and corrective action plan to the Audit Findings and Recommendations.

AUDIT FINDINGS, RECOMMENDATIONS, AND RESPONSES

1. MANY NO-BID CONTRACTS LACKED REQUIRED REVIEW AND APPROVAL TO PROTECT STATE INTERESTS

Recommendations:

DHHS should evaluate and monitor contracting processes to ensure that personnel are applying state and department laws, code, policies and procedures effectively and efficiently.

DHHS should update its policies and procedures to align with applicable state laws, code, policy and procedures in a manner that personnel can apply effectively and efficiently.

DHHS should implement formal and cyclical training to ensure all contract personnel can consistently apply state laws, regulations, and DHHS policies.



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DHHS should seek clarification from state purchasing authorities and develop guidance to facilitate consistent interpretation and application of state contract laws, code, policies and procedures.

Agency Response:

The Department agrees that policies and procedures should be strengthened to ensure that required reviews and approvals of no-bid contracts are properly obtained and documented. The Department is working closely with P&C, ITSS and other state and federal partners to ensure appropriate and consistent interpretation of laws, rules, policies and procedures.

Not all contracts are subject to the oversight of the P&C or ITSS even though they may be determined to be a purchase of service. For example, two contracts to provide guardianship services were entered in Open Window and documented incorrectly as a purchase of service and waiver of competition pursuant to 01 NCAC 05B .1401. The manner in which the determination was made is misleading and the internal questionnaire will be revised to more accurately and objectively reflect the decision making process.

In addition to evaluating all procurement, contracts and grants related statutes, rules, policies and procedures, the Department is conducting an assessment of the Open Window system. The goal of the assessment is to identify and make necessary modifications to the system to ensure appropriate guidance is provided and followed so that the contracting process may be appropriately evaluated and monitored.

In November 2015, the Department began a restructuring and process improvement initiative for all procurement, contracts and grants functions, and is in the process of assessing all contracting processes. The initiative will strengthen policies and procedures to ensure required approvals are obtained by the AG, P&C and ITSS, DHHS OPCS, B&A, and IT when required.

P&C implemented a more structured approach to providing procurement and contract management training beginning in 2013. Since then, 149+ DHHS employees with procurement and contracts responsibilities have attended courses including NC Contract Administration, NC Procurement, NC RFP and Solicitation Documents and the Law. DHHS will also implement training specific to DHHS policies and procedures and systems to ensure all contract personnel are trained.

Owner: Director, Office of Procurement, Contracts and Grants and staff.

Date of implementation/completion: June 30, 2017.

2. MANY NO-BID CONTRACTS LACKED DOCUMENTATION OF NEGOTIATION TO IMPROVE PRICING OR TERMS

Recommendations:

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DHHS should incorporate best practices of negotiating no-bid contracts and retaining related documentation into its internal policies and procedures

DHHS should implement formal and cyclical training to ensure employees know the need to negotiate no-bid contracts, and document efforts of negotiation.

Agency Response:

While the Department is confident that contracting staff engage in negotiations with vendors to obtain the best pricing possible for goods and services, the Department agrees that contract negotiations should be documented on material points and the documentation should be maintained for management review, audit and reference purposes.

Negotiations were conducted for a \$6.8 million contract for technical assistance in training, program operation and human resources functions. Two iterations of solicitation documents or proposals were submitted by the vendor, however the file lacked written evidence of any counteroffers by the Department.

As noted, the Department will strengthen processes and procedures for documenting contract negotiations when appropriate and will provide training to ensure negotiations are documented in writing. Policies and procedures as well as training will include requirements for retaining documents supporting negotiating efforts.

Owner: Director, Office of Procurement, Contracts and Grants and staff.

Date of implementation/completion: June 30, 2017.

3. MANY NO-BID CONTRACTS LACKED ADEQUATE WRITTEN JUSTIFICATION TO WAIVE COMPETITION, WHICH INCREASES THE RISK OF FAVORITISM, UNFAVORABLE TERMS, AND POOR PERFORMANCE

Recommendations:

DHHS should ensure contract personnel document specific facts or circumstances why competition is waived

DHHS should implement formal and cyclical training to ensure employees know when no-bid contracts are appropriate and the documentation needed to support that determination.

Agency Response:

The Department agrees that policies and procedures should be enhanced to ensure written justification for executing a no-bid contract is documented and maintained.

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An exemption from the usual contractual service review process through P&C for certain direct medical care services has been in place since 1991. The 25 of 27 contracts noted as staffing contracts were subject to this exemption. A lack of alternative guidance and/or misinterpretation of the conditions of this exemption to DHHS facilities has led to confusion on the process and conditions for waiving competition when contracting with individuals, clinics, professional organizations, professional associations, hospitals, or similar entities. Policies and procedures will be enhanced to address the variety of contract related circumstances that may exist - including emergencies and staffing shortages - for difficult to recruit and retain positions on an immediate and ongoing basis.

A competitive Request for Proposal (RFP) has recently been awarded to multiple vendors for temporary nursing and health care technicians. This new contract will streamline the process and provide competitive pricing for obtaining nurses and healthcare technicians, which are in extremely short supply and difficult to recruit and retain. Additionally, the new contract terms will ensure compliance with general contracting requirements when the provider is a third party vendor. A similar RFP will be released for locum tenens in the near future.

Owner: Director, Office of Procurement, Contracts and Grants and staff.

Date of implementation/completion: June 30, 2017.

4. MISSING CONTRACT TERMS RISK MEDICAID RECIPIENT RIGHTS

Recommendations:

DHHS should develop a process to ensure draft managed care contracts receive CMS review to ensure executed contracts meet federal requirements.

Agency Response:

The Department will implement policies and procedures based on guidance received from CMS about which contracts require review and the timing of such reviews to avoid further confusion. DHHS will also ensure that contract language is specific in addressing any references to state and federal terms and conditions to ensure they are clearly part of the contract. DHHS will resolve any discrepancies in renegotiating the contract with the vendor and expect to complete negotiations during the last calendar quarter of 2016.

Owner: Director, Office of Procurement, Contracts and Grants and staff.

Date of implementation/completion: June 30, 2017.

MATTERS FOR FURTHER CONSIDERATION

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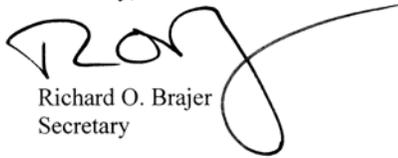
- **Department of Health and Human Services Should Consider Evaluating and Monitoring Processes to Contract with Local Management Entities**
- **Effective Safeguards Are Needed to Ensure Required Contract Reviews and Approvals**

Agency Response to Matters for Further Consideration

As previously noted, in November 2015, the Department began a restructuring and process improvement initiative for all procurement, contracts and grants functions and is in the process of assessing all contracting processes. The result of the initiative will be the enhancement and implementation of policies and procedures to ensure the Department's contract management processes are uniformly executed in accordance with required state and federal laws and industry best practices to reduce risks associated with the contracting process.

We appreciate the assistance and professionalism provided by your staff in the performance of this audit. If you need any additional information, please contact John Thompson at (919) 527-6854.

Sincerely,



Richard O. Brajer
Secretary

RB:jet

cc: Patti Bowers, Director of Procurement, Contracts and Grants
Joseph Cooper, Jr., Chief Information Officer
Rod Davis, Chief Financial Officer
Randall Williams, Deputy Secretary for Health Services
Dave Richard, Deputy Secretary of Division of Medical Assistance
Dale Armstrong, Deputy Secretary of State Operated Health Care Facilities
Sherry Bradsher, Deputy Secretary of Human Services
Mark Payne, Assistant Secretary of Audit and Health Service Regulation
Trey Suttan, Chief Financial Officer, Division of Medical Assistance
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