

# State Procurement and Leasing

COVER PAGE PLACEHOLDER  
LSO PROGRAM EVALUATION

**Authorization**

Wyoming statute 28-8-107(b) authorizes the Legislative Service Office (LSO) to conduct program evaluations, performance audits, and analyses of policy alternatives. These reports are assigned by and reported to the Wyoming Legislature, Management Audit Committee. Generally, the purpose of such research is to provide a base of knowledge from which policymakers can make informed decisions.

Confidential Draft



# Wyoming Legislative Service Office

## Executive Summary

### State Procurement and Leasing

Program Evaluation staff to review the statewide leasing and procurement functions. The Committee was specifically interested in knowing more about the centralized processes associated with non-construction procurement and real property leasing by state agencies.

Overall, LSO staff found that the Department of Administration and Information (A&I) Leasing Office and Procurement Section practices do provide safeguards for the State, but improvements could be made to strengthen existing protections. For clarity, and because the leasing and procurement functions are separate units within A&I, the report has two sections, one addressing the leasing function and another the procurement function.

*During the evaluation, A&I developed and shared several planned changes to improve the leasing and the procurement functions to better protect the State. The evaluation report findings and recommendations are intended to compliment, not supplant, these ongoing efforts.*

#### Section 1: Leasing Function

Currently, the State Building Commission (SBC) oversees the leasing function. Since the 1990s, A&I, through the Leasing Office administers the function on behalf of the SBC and has been responsible for state agency real property leasing statewide.

LSO staff note under the current structure, all leasing function processes and procedures are reactive to agency requests and needs. While the agencies should be responsible for lease related decisions and logistics, the Leasing Office should be proactive and provide more direct guidance to agencies.

A&I lacks the resources to perform the analytics necessary to determine if proposed leases are the best value for the State.

In addition to providing more guidance to agencies, A&I should continue its space utilization study and review the Leasing Office enforcement authority

LSO also noted that the history of the leasing function has led to some ambiguity in the current structure. Specifically, while the SBC secretary has authority to promulgate rules, A&I has no authority to do so, even though it administers the leasing function. The SBC and A&I should review existing statutes, rules, and policies and update them as necessary. Further, the Legislature, SBC, and A&I should study what is the best placement and structure for the leasing function.

#### Section 2: Procurement Function

Since the 1970s A&I has been granted broad authority to assist state agencies with purchasing various goods and services. While procurement processes are uniform, there are variances in the process depending on dollar amount, what a state agency is purchasing, and the circumstances of the purchase.

During the evaluation, LSO staff noted that limited tracking mechanisms and data exists related to the current use of statewide contracts. To determine if statewide contracts are beneficial to the State, there needs to be a centralized tracking mechanism to identify agency utilization.

The State also lacks a centralized approach to mitigating the impact of noncompliant vendors, which could include vendors who do not provide agreed upon services. A&I should implement rules and policies related to management of noncompliant vendors.

Current procurement statutes are not centralized. The purpose of centralization is to consolidate all relevant provisions into a single location. The State should update the procurement statutes and/or consider creating a Procurement Act.

There is little recourse the Procurement Section can pursue to address procurement process violations. Although, statutes do not prohibit enforcement of procurement policy and rules, the Procurement Section has

elected to focus on training to ensure compliance. A&I should further develop and require training for state agencies' staff that are responsible for procurement.

Several concerns exist related to Procurement Section data and determining the optimal option for Wyoming to address the issues will rely heavily on the capabilities of Procurement Section staff, the needs of the State, and the resources available. At a minimum, A&I should improve its internal data practices and examine eProcurement options and alternatives. Further, A&I should update the existing Bid Exception Approval (BEA) System and associated statutes, rules, and policies.

### ***Matters for further consideration***

LSO staff also identified a few areas outside the scope of the evaluation as matters for further consideration. Examples of these areas include a review of the State Construction Department, a review of agency-specific practices (e.g. contract administration), a review of vendor preferences, or a review to determine if the State needs a legislative interim committee to oversee centralized "state government operations."

## **Agency Responses**

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### **Department of Administration and Information**

The Department generally agreed with, and supports, the findings and recommendations in the evaluation report. In the intervening time A&I has made improvements to its leasing function and procurement function practices and is committed to continue to finding solutions to address areas identified in the evaluation report. According to A&I, they believe they "can work together with both the executive and legislative branches to further strengthen the State of Wyoming procurement and leasing activities for better efficiencies and cost savings."

### **State Building Commission**

The State Building Commission agreed with the recommendations and indicated that the process to review and update the rules is currently underway.

## Recommendation Locator

Chapter Number	Rec. Number	Recommendation	Page Number	Party Addressed	Agency Response
1	1.1	The Leasing Office should develop more complete guidelines to provide to state agencies as they seek new or different space to help them better account, plan, and prepare their request for the Department of Administration and Information approval.	13	A&I	Agree
1	1.2	The Department of Administration and Information should continue its space utilization study, consider implementation of a space allocation strategy, and inclusion of a compliance section to provide the Leasing Office with authority to enforce these policies.	16	A&I	Partially agree
2	2.1	The State Building Commission and its secretary, and the Department of Administration and Information should review and identify updates to existing statutes, rules, and policies to reflect the current structure and processes of the statewide leasing function.	18	SBC and A&I	Agree
2	2.2	The Legislature, State Building Commission and its secretary, and the Department of Administration and Information should study and consider changes to the organizational placement and structure for the leasing function.	19	Legislature, SBC, and A&I	Agree/ Partially agree
3	3.1	The Procurement Section should study the current use of statewide contracts. The study should include, at a minimum, data related to purchases by agency, commodity, and vendor.	29	A&I	Agree
3	3.2	Based upon the results of this study and working with the Procurement Section, the Legislature could consider appropriately mandating certain statewide contract use or determine what opportunities the State should pursue independently.	30	Legislature and A&I	Partially agree
3	3.3	The Management Audit Committee could consider a separate evaluation focusing on state agency practices related to contract negotiation, administration, and monitoring.	32	Management Audit Committee	A&I – Partially agree

Chapter Number	Rec. Number	Recommendation	Page Number	Party Addressed	Agency Response
3	3.4	The Department of Administration and Information should implement policies and promulgate rules related to the management of noncompliant vendors.	32	A&I	Agree
3	3.5	The Department of Administration and Information should review the American Bar Association Model Procurement Code, and other states' procurement acts, and provide recommendations to the Legislature related to adopting certain provisions to create a centralized procurement act.	34	A&I	Partially agree
4	4.1	<p>The Procurement Section should consider the following related to enforcement authority:</p> <ul style="list-style-type: none"> <li>▪ Review statutes to determine whether enforcement can be pursued under current statutory provisions;</li> <li>▪ Review the Procurement Section rules to determine whether amending rules will provide enforcement authority.</li> </ul>	40	A&I	Agree
4	4.2	The Legislature should consider amending the Department of Administration and Information statutes to formally delegate procurement authority to state agencies.	40	A&I	Partially agree
4	4.3	<p>The Department of Administration and Information should consider the following:</p> <ul style="list-style-type: none"> <li>▪ Make an online procurement process refresher course a requirement every three-years for state employees involved with procurement activities;</li> <li>▪ Make an online procurement process refresher course an annual requirement for noncompliant state employees;</li> <li>▪ Develop a “noncompliance” form for noncompliant state employees and associated supervisors to review and sign;</li> <li>▪ Develop procurement training videos for the webpage for state employees to access.</li> </ul>	41	A&I	Agree

Chapter Number	Rec. Number	Recommendation	Page Number	Party Addressed	Agency Response
4	4.4	<p>The Department of Administration and Information should consider the following related to Procurement Section staff:</p> <ul style="list-style-type: none"> <li>▪ Develop a plan as retirements occur to focus on hiring individuals already certified in public procurement;</li> <li>▪ Develop a plan as retirements occur to provide access to certification opportunities for Section staff.</li> </ul>	41	A&I	Agree
5	5.1	The Department of Administration and Information should study eProcurement options.	47	A&I	Agree
5	5.2	The Department of Administration and Information should centralize its procurement data.	47	A&I	Agree
5	5.3	The Procurement Section must implement internal controls and data protocols to ensure data is valid and protected from intentional and unintentional errors.	48	A&I	Agree
5	5.4	The Procurement Section should standardize data verification and reporting to ensure accuracy of information provided to all stakeholders.	48	A&I	Agree
6	6.1	The Department of Administration and Information should update the BEA system to include the ability to export the data.	57	A&I	Partially agree
6	6.2	The Department of Administration and Information should review its statutes, rules, and policies related to BEAs and consider adopting best practices.	57	A&I	Agree





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# List of Acronyms

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## State Procurement and Leasing

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ABA Model Code .....	American Bar Association Procurement Code
A&I .....	Department of Administration and Information
BEA .....	Bid Exception Approval
CPO .....	Chief Procurement Officer
FY .....	Fiscal Year
GSD .....	A&I General Services Division
ITB .....	Invitation to Bid
LSO .....	Legislative Service Office
MMCAP .....	Minnesota Multistate Contract Alliance for Pharmacy
NASPO .....	National Association of State Procurement Officials
NCSL .....	National Conference of State Legislatures
NIGP .....	The Institute for Public Procurement
RFP .....	Request for Proposal
SBC .....	State Building Commission
SCD .....	State Construction Department
WOLFS .....	Wyoming Online Financial System
W.S. ....	Wyoming Statute
WSCA .....	Western States Contracting Alliance

**Please note that Appendix C contains a glossary of Procurement Section and Leasing Office terms used in this report.**

# Introduction

The Management Audit Committee (Committee) directed the Legislative Service Office (LSO) Program Evaluation staff to begin an evaluation of state procurement and leasing during its December 5-6, 2016 meeting based on the scoping paper presented.

Based on Committee discussion LSO staff narrowed the focus of this evaluation to:

1. What impact has the current procurement and leasing structure and requirements had on the decisions and subsequent outcomes?
2. What safeguards and controls are in place to ensure that state agencies and entities are implementing procurement and leasing requirements as directed by statutes, rules, etc.?
3. In what way could the current structure or process for procurement and leasing be adjusted to provide additional oversight and assurances for the decisions rendered?

Evaluation work took place from December 2016 through May 2018. However, the evaluation was not continuous and included two substantial breaks when limited work was conducted on the project due to circumstances outside of this evaluation. The first break took place from December 2016 through April 2017. The second break took place from October 2017 through March 2018.

For details about the methodology used for the evaluation, refer to **Appendix A**.

## Department of Administration and Information

The establishment of the current Department of Administration and Information (A&I) was a part of broader government reorganization in 1991. In addition to the Leasing Office of the Director, A&I consists of the Budget Division, Economic Analysis Division, General Services Division (GSD), Human Resources Division, and State Library Division. The leasing and procurement functions are in the GSD.

Although the GSD oversees both functions, each is separate and distinct from the other. Therefore, the report has two sections:

- Section 1: Leasing Function..... pg. 5
- Section 2: Procurement Function..... pg. 21

## Evaluation Scope Limitations and Considerations

During the evaluation, several scope limitations and considerations occurred that directly contributed to the structure and content of this report.

### **The Legislature created the State Construction Department.**

In 2016 Senate Enrolled Act 59 (Senate File 92), authorized the merger of the A&I Construction Management Division and the School Facilities Department

1 into a new agency. Starting in July 2016, A&I and the newly created State  
2 Construction Department (SCD) established working understandings for the  
3 processing of construction-related procurement and continuation of the leasing  
4 functions.

5 This transition period coincided with this evaluation. Therefore, in July 2017,  
6 the Committee approved eliminating all construction-related procurement of  
7 goods and services from the scope of the evaluation.

8 Now that the transition period has been ongoing for two years, the Committee  
9 should consider authorizing an evaluation of the SCD.

10 **The Legislature authorized the Government Efficiency Commission.**

11 The Legislature created the Government Efficiency Commission  
12 (Commission) in 2017 Senate Enrolled Act 91 (Senate File 156) to “review  
13 issues related to efficiencies in Wyoming state government.” In 2018 Senate  
14 Enrolled Act 70 (Senate File 120), the Legislature re-authorized the  
15 Commission to continue and expand its work during the 2019-2020 biennium.  
16 As of May 2018, the specific nature of the work by the Commission has yet to  
17 be determined; however, the Governor’s Office has issued a request for  
18 proposal to work on the items outlined in legislation.

19 LSO staff followed the work of the Commission and tracked areas that could  
20 affect either the procurement or leasing functions. Based on these interactions  
21 and observations, there were two potential areas where the Commission work  
22 tangentially relates to this evaluation.

- 23 ▪ ***Strategic Sourcing.*** An area of interest to the Commission has been  
24 ensuring that the procurement function is as strategic and efficient as  
25 possible. Of specific interest to the Commission was the study and  
26 possible implementation of statewide strategic sourcing.
- 27 ▪ ***Real Property Management.*** The Commission has also expressed  
28 interest in better statewide real property management practices,  
29 including the creation of space inventory and utilization policies.

30 The Committee should consider reviewing the work of the Commission to  
31 avoid potential duplication of legislative effort. The Committee may also  
32 consider providing this evaluation report to the Commission.

33 **The processes are agency-centric.**

34 A final observation throughout the evaluation was the agency-centric nature of  
35 both the procurement and leasing functions. Under the current structure, the  
36 system is considerably more decentralized than evaluators initially anticipated.  
37 Different processes, responsibilities, and duties are assigned to the agencies  
38 rather than the centralized procurement or leasing functions. Given Committee  
39 interest in the centralized procurement and leasing functions, evaluators did not  
40 examine *agency-specific* processes, procedures, or documents.

41 However, the Committee should consider authorizing a review of agencies’  
42 practices. To accomplish this review, the focus would have to be narrow and

1 specific. For example, the Committee could authorize a review of a few  
2 agencies' practices related to contract administration and closeout to get a  
3 baseline for what variances exist.

#### 4 **Acknowledgements**

5 LSO staff expresses appreciation to those individuals and agencies that assisted  
6 with our research. We convey specific gratitude to the Department of  
7 Administration and Information, the General Services Division, the  
8 Procurement Section, and the Leasing Office staff for accommodating our  
9 numerous requests for documents, data, and interviews. We also appreciate the  
10 assistance of the State Auditor's Office, State Construction Department, State  
11 Building Commission, Attorney General's Office, Department of Enterprise  
12 Technology Services, A&I Accounting Office, and A&I Budget Division.  
13 Finally, we appreciate other stakeholders for providing feedback on our surveys  
14 and in person as we sought to understand the extent and scope of the statewide  
15 procurement and leasing functions.  
16



## Section 1: Statewide Leasing Function Introduction

*Please note that while this introduction provides background information about the leasing function as it currently exists, A&I has shared several planned changes to improve efficiency and better protect the State.*

The General Services Division (GSD), through the Leasing Office, is responsible for all real property leasing statewide. The Leasing Office administers the program according to statute and State Building Commission (SBC) rules and policies.

### **The leasing legal framework is complex.**

Currently, the leasing function is under the purview of the SBC. W.S. 9-5-101 through 9-5-108 define SBC duties related to state leased or owned buildings. W.S. 9-2-1016(b) provides:

The department [A&I] through the general services division shall:

(xix) Lease all property for the state in accordance with rules of the state building commission. Leasing of property by the state shall be conducted on a bid and proposal basis with advertising of space needs and square footage in community or local newspapers. Leasing contracts may be entered into by noncompetitive negotiation only if:

(A) The administrator determines in writing that competitive bidding is not feasible; or

(B) The lessor is a governmental agency.<sup>1</sup>

Pursuant to W.S. 9-2-1016(b)(xxi), the GSD shall, “administratively implement the state building commission's rules relating to the leasing, routine maintenance, management, operation and equipping of state office buildings as provided in W.S. 9-1-501 through 9-1-508.”<sup>2</sup>

Starting in 2016, the State Construction Department (SCD), Construction Management Division administrator became the SBC secretary. It is unclear if the secretary has any additional administrative work related to the leasing function as the charge in statute specifically relates to state capital construction.

***Statutory Exemptions.*** According to statute, entities exempt from the leasing process include: the Wyoming Department of Transportation; the Wyoming Game and Fish Department; the University of Wyoming; community colleges; the Legislature and Judicial Branch.

### **Current Leasing Office staff and duties.**

The Leasing Office currently has a manager and one employee. According to A&I, the Leasing Office is responsible for assisting agencies in finding new space, writing contracts and negotiating lease agreements, maintaining leased

<sup>1</sup> The Leasing Office also processes renewals of existing leases as noncompetitive negotiations.

<sup>2</sup> Evaluators identified a scrivener's error, which will be included for consideration in the 2019 Revisor's Bill.

space records, providing proper documentation to A&I Accounting to prepare payment documents, and assisting with the preparation of bid documents.

The Leasing Office relies on direct communication via phone calls and e-mail with agencies, as well as existing institutional knowledge to perform its duties. To ensure that the Leasing Office remains operational, A&I is actively working on its succession plans, considering certain skills, certifications, education and experience in real property management, realty, and commercial real estate markets. As such, evaluators recommend review of the succession plans during the follow-up, as noted in the Matters for Further Consideration on page 59.

**General space philosophy is proactive but has limits.**

According to A&I, saving the State money is a high priority. They have made a conscious effort to ensure that General Fund agencies are in state-owned space, and federally or other funded agencies are in leased space. However, given the rural nature of Wyoming, agency needs statewide, and the public-private relationships with lessors, this objective will take time to fully achieve.

***Co-location in smaller communities.*** Currently, most leases are in Cheyenne, so finding state-owned space is a matter of determining what is available, as discussed in Chapter 2. In other communities, the Leasing Office will contact other public-sector entities, such as Wyoming Department of Transportation (WYDOT), a library, or the county, to check for available space. The Leasing Office will encourage logical co-location options. For example, the Department of Workforce Services and Department of Family Services share much of the same clientele and have voluntarily co-located in communities statewide. Not only does this co-location provide a savings to the State but it also ensures that these agencies can provide better service to the public.

***\$1 million in lease savings.*** In 2016, the Governor asked A&I to find at least \$1M in leasing savings. In response, A&I sent a letter to each existing lessor asking them to reduce their leases to accommodate the “penny-plan” budget reductions. The Director indicated that A&I did receive a lot of feedback and pushback from lessors. Ultimately, A&I secured \$350,000 in one-time savings. However, A&I indicated that the savings are not sustainable because lessor expenses go up and after three or four years, the leases necessarily also increase.

**Current Leasing Office processes.**

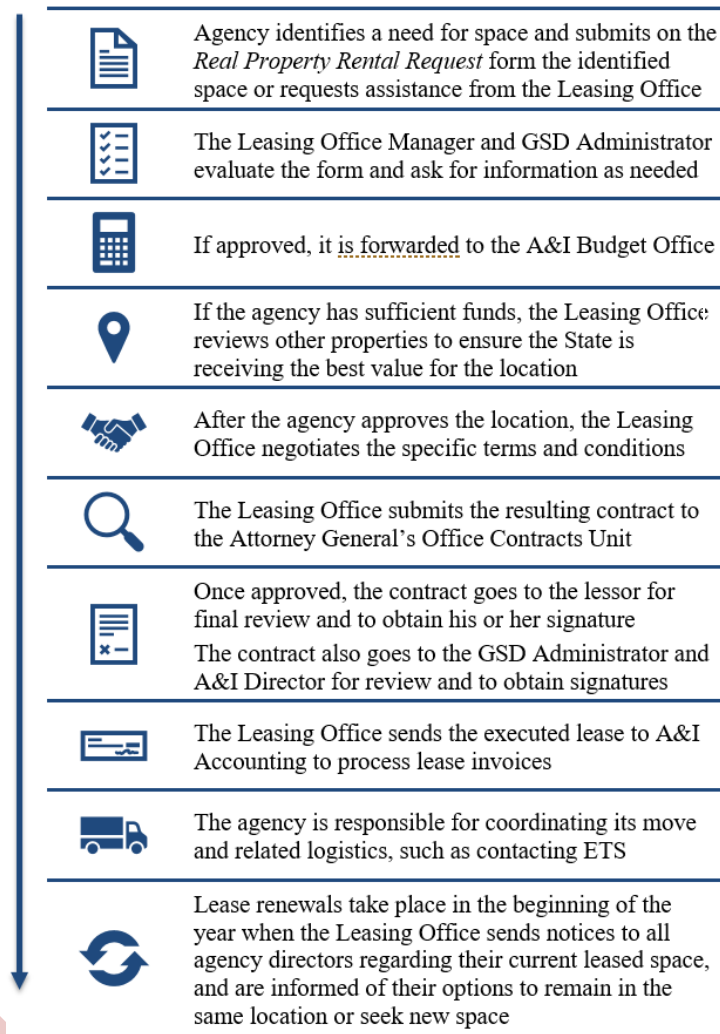
Currently, the Leasing Office has three types of leases: new, renewal, and temporary.<sup>3</sup> The terms of each lease vary based on agency needs, lessor requests, and location. Typically, A&I prefers contracts to begin on July 1 and expire June 30 of the following year. However, this practice is not always achievable for the start of new leases due to the timing of when agencies determine they have a need for space. Figure 1, below, provides a simplified explanation of the process.

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<sup>3</sup> Temporary leases are uncommon and are typically used to bridge between the end of a lease and the start of a new one.



**Figure 1. Simplified Description of the Leasing Process.**



Source: Legislative Service Office illustration based on information provided by the Department of Administration and Information.

In addition to working with the agency and lessor, the Leasing Office must also coordinate with other state agencies that are outside its direct control, but have a role in the leasing process:

- The A&I Budget Division reviews the request from a funding perspective
- The Attorney General's Office reviews the lease contracts as to form
- The A&I Procurement Section is responsible for assisting with the RFP process, if there is one
- The A&I Accounting Section is responsible for review and processing of all payment information
- The State Auditor's Office authorizes new vendors; if there are any issues with the vendor, its number, or its payments, the matter is sent to A&I to be addressed

1 Completing each step in the process has pre-established requirements and timeline  
2 expectations that can lead to significant delays if there are any unaddressed  
3 concerns or issues at any stage.

4 ***Negotiations.*** The Leasing Office is responsible for contract development and  
5 lease negotiations. According to A&I, once an agency agrees to a space, the  
6 leasing negotiations only take a few days of back and forth communication  
7 between the lessor and the Leasing Office. Results of an LSO survey revealed a  
8 few agencies were concerned with the leasing negotiations, but only in specific  
9 instances. Additionally, the Leasing Office case files did not contain evidence of  
10 negotiations between either the agency, the Leasing Office and/or the lessor.  
11 However, as A&I is looking to implement new electronic systems to manage its  
12 processes, evaluators recommend reviewing how negotiations will be handled in  
13 the future during the follow-up.

14 ***The Leasing Office handles lessee or lessor complaints mostly informally.***  
15 When addressing complaints or concerns, agencies can address the matter directly  
16 with the lessor. If the agency feels they are not getting an appropriate response,  
17 the Leasing Office can provide additional assistance. On the rare occasion that  
18 the Leasing Office becomes involved in addressing complaints or concerns, it  
19 does so through phone calls and e-mails. If there are reoccurring problems, the  
20 agency and/or the Leasing Office can request the lessor make the adjustments or  
21 repairs. If the lessor refuses, the State may terminate the lease and seek the  
22 Attorney General's Office assistance in redressing the matter.

23 ***Proactive remedy to address janitorial, maintenance, and repair concerns.***  
24 Recently, the Leasing Office added a clause to its contract template that details  
25 the lessors' responsibilities regarding janitorial services, maintenance, and repairs.  
26 It allows the agencies to "self-help" if the lessor refuses to make needed repairs,  
27 then the costs of the repairs will be deducted from the lease. This addition began  
28 in 2017 and applies to all new and renewing contracts. However, several  
29 contracts have yet to renew and are not covered under this clause. Evaluators  
30 recommend review of this issue during the follow-up.

31 ***Renewal of Existing Lease Contracts.*** Renewal of existing leases was an area of  
32 concern prior to May 2018 because evaluators found evidence where a few  
33 contracts were executed by A&I after June 30 when the lease expired resulting in  
34 agencies occupying space without an active lease. According to A&I, the  
35 implementation of DocuSign, an electronic signature technology, has significantly  
36 decreased processing time for all leases from weeks to days. Given the newness  
37 of DocuSign, evaluators were unable to independently verify if there was a  
38 decrease in processing time or if the implementation did address the issue of  
39 contracts executed after expiration. As such, evaluators recommend verification  
40 of the impacts of the DocuSign implementation during the follow-up.

41 ***Accounting and Payments.*** As part of current practice, agencies reimburse the  
42 Leasing Office for lease payments.<sup>4</sup> Typically, when an agency starts a new lease

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<sup>4</sup> In at least one instance, an agency paid the lessor directly, rather than reimburse the Leasing Office.

1 the agency reimburses the Leasing Office for the lease payment until it is  
2 accounted for in the next biennial budget. Once the lease becomes part of the  
3 budget, the agency will reimburse the General Fund for the lease payments.

4 Prior to July 2017, the Leasing Office processed all lease payments. After July  
5 2017, as part of broader A&I fiscal consolidation, all accounting and payment  
6 responsibilities are under the A&I Accounting Office. Specifically, the A&I  
7 Accounting Office is now responsible for receiving reimbursement payments,  
8 completing year end processing, and tracking leasing details, such as amounts  
9 pre-paid or still owed.

10 ***Denials.*** According to A&I, since FY2012, the Leasing Office has only denied  
11 one request made by an agency for leased space. The reason for denying this  
12 request was anticipation of Leasing Office budget reductions compounded with  
13 the significant increase in the amount for the proposed lease.

14 **There are limited existing reporting requirements.**

15 The Leasing Office submits annual reports to the Joint Appropriations Committee  
16 (JAC) and quarterly reports to the State Building Commission (SBC). Each lease  
17 report contained basic details about the outstanding state leases such as the  
18 agency/division, property location, lease amount, fund type, and lease term. The  
19 lease reports indicated that leases could be funded using single or multiple sources.  
20 The major funding sources are General Fund, Federal Fund, and Other Funds. An  
21 example of Other funds includes the fees boards and commissions charge.

22 **Leasing Office data and technology limitations.**

23 According to A&I, the Leasing Office uses an Access database to track all  
24 leasing information. Further, the Leasing Office uses various Cloud-based Excel  
25 spreadsheets to track other information such as contract execution details and  
26 payment information. Aside from these electronic sources, the remainder of the  
27 leasing processes are manual and paper-based. A&I is considering several  
28 options to upgrade its processes. These improvements include the  
29 implementation of DocuSign, review of a new electronic contract management  
30 system module, and use of an existing State system for space management.  
31 Since A&I is actively seeking to address its data and technology limitations,  
32 evaluators recommended review on the progress and/or newly implemented  
33 systems during the follow-up as identified with the other Matters for Further  
34 Consideration on page 59.



## Chapter 1: Leasing Function Process Concerns

Evaluators identified several areas where improvements to the leasing function could result in better service to state agencies and better protections to the State. These areas relate to providing guidance to agencies, strengthening Office processes, and addressing leasing function standardization.

### **Finding 1.1: The Leasing Office should provide more guidance to agencies when they seek new or different space, prior to approval of a request.**

The agencies depend on the Leasing Office to provide guidance from identification of a need for space through the remainder of the lease. Results of an LSO survey of agencies regarding the leasing function indicates that overall most respondents were generally satisfied with their current leased facilities. Additional respondents felt that Leasing Office staff were knowledgeable about their jobs. This perspective aligns with the focus A&I places on being customer service oriented as it works with agencies.

Most agencies change leased locations infrequently, and the processes are not part of what they do on a day-to-day basis. Therefore, the Leasing Office could provide its services more consistently and efficiently if it was proactive and offered more guidance at the start of the process.

#### **Agencies initiate requests and define space needs.**

Current practice relies on agencies to identify and determine their space needs. Evaluators observed that agencies often found space based on phone calls, internet search, and discussions with local individuals, including realtors. Given the rural nature of Wyoming combined with the diversity of communities, this approach is understandable.

However, the Leasing Office duties and responsibilities require it to assist agencies, while ensuring that the State is receiving the best value. Current Leasing Office practice is to, on a case-by-case basis, compare proposed lease rates to market rates, look at other state leases in that area, and check with local realtors. The Leasing Office takes into consideration other variables such as the age of the building, the location, and the services provided. The Leasing Office does not conduct site visits due to budget constraints and relies on the agencies to visit the location.

Rather than being reactive to agency requests, the Leasing Office could provide guidance on all the considerations which go into leasing new space during the agency's initial search. The Leasing Office could also provide more guidance as to what option would be the best value to the agency and State. The Leasing Office would be able to discuss with the agency considerations related to the space such as needed modifications or upgrades (e.g. for security, public access, or ADA compliance), moving expenses or logistics, furniture, and any additional equipment. Then the agency could

make an informed decision about the space and the total cost, in terms of both time and resources required to move.

**Agencies are responsible for coordinating their lease related logistics.**

Agencies may be unaware of all aspects associated with the logistics of leasing space, creating additional delays in the process. For example, agencies are responsible for contacting the Department of Enterprise Technology Services (ETS) to ensure the space has sufficient connectivity to conduct state business, which requires time and study for ETS.

According to ETS, they are often unaware an agency is moving. When they do receive notice, it is not always sufficient to ensure those agencies have the connectivity they need, when they need it. Establishing network connections for agencies can also be complicated when modifications to existing structures may be necessary, such as installing equipment. Further complications arise if a lessor refuses ETS staff entry to the premises to make these modifications.

While the agencies should retain responsibility over coordinating these logistics, the Leasing Office should provide clearer guidance and coordination to ensure a smooth and cost-effective transition. In many instances, new leases will require additional resources and approval by the agency director. If the Leasing Office provides additional guidance at the beginning of the process, then directors will have a better sense of the commitments and considerations necessary. Furthermore, the guidance will provide a protection to the State by ensuring that all parties understand the requirements and expectations.

## **Other States and Wyoming Agencies Provide Models to Consider**

Other states provide resources to agencies to answer basic questions, guidelines on space expectations, checklists for moving, and timelines. These models also provide differing process practices. The following are a few specific examples of practices from the WYDOT and other states.

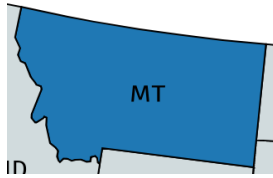


### ***Wyoming Department of Transportation***

As a statutorily exempt entity, WYDOT is the contracting authority with lessors. As such, it has its own processes related to leasing. The following are a few examples:

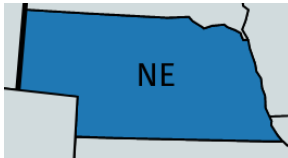
- As needed, WYDOT field personnel will conduct a walk-through to inspect the properties *before* contract negotiation
- For each lease, the WYDOT process includes using manually modified templates and payment tracking software to follow leases from start to finish
- WYDOT determines the best value for a lease using fair market values and comparables for the area





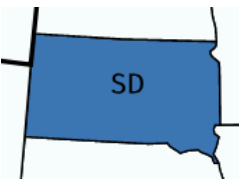
### *Montana*

- When the situation requires a “build to suit” (to the agency’s specifications) a RFP is performed
- Conducts a market survey analysis every 2 years



### *Nebraska*

- The Nebraska website includes information such as bid opportunities, an External Leasing Manual, a Lease Requisition form, a Facility Use Manual and FAQ’s
- In obtaining space, agencies are required to perform a RFP for space over 1,000 sq. ft., or if it is for another political entity
- A web-based multi-listing program is used to perform the cost analysis



### *South Dakota*

- The South Dakota Office of Space Management has created a listserv to provide email notifications of leased space needs to interested parties

**Recommendation 1.1: The Leasing Office should develop more complete guidelines to provide to state agencies as they seek new or different space to help them better account, plan, and prepare their request for the Department of Administration and Information approval.**

Under the current structure, all leasing function processes and procedures are reactive to agency requests and needs. Instead, A&I should develop guidelines for agencies regarding what are considered appropriate requests, timeline expectations, required resources, and the coordination that may be necessary to navigate the leasing process. Further, while the agencies should be responsible for these decisions and logistics, the Leasing Office should be proactive and provide more direct guidance to agencies at key deadlines (e.g. one month before the move) to ensure that there are no outstanding, unaddressed concerns. The director of each agency and the appropriate supporting personnel should be included in these discussions.

**Finding 1.2: Current resources, policies, and practices do not support A&I’s broader strategy for statewide space utilization to optimize the use of State resources regarding leased space.**

**A comprehensive, statewide real estate inventory is necessary to provide cost analysis.**

Without complete information the State is unable to determine if it is getting the best deal or the most appropriate space. Although required by rules, A&I does not know the current condition of state-owned space. Further, A&I does not have information on leased space outside Cheyenne, such as market rate comparisons. Additionally, A&I does not have the ability with current resources to conduct these reviews or rate comparisons to determine if the current and proposed lease space is at market rates. Without a complete inventory of State-owned real property and the ability to conduct analytics, the Leasing Office lacks reliable information to know whether current and proposed leases are the best deal for the state.

**The State Building Commission rules contain optional standards.**

Current SBC rules include provisions regarding suggested space for agencies, as follows:

Chapter 5, Section 4. Uniform Standards for Assessing and Approving Agency Building and Other Space Needs.

a) Uniform standards for building and space needs are for planning purposes only; and are not intended to be regulatory/mandatory, i.e., agency compliance is not required:

(i) Space planning shall provide a maximum of approximately 100 square feet for clerical staff; a maximum of 125 square feet for support staff; a maximum of 150 square feet for management staff; and a maximum of approximately [sic] 200 square feet for directors.

Space allocation is for planning purposes only and agencies are not required to follow the provided suggestions. The guidelines do not account for meeting rooms, reception rooms, ratio of employees to restrooms, parking spaces, etc. According to A&I plans are in place to work with a consultant on a space study. The consultant was necessary because A&I does not have the staff capacity to conduct the work. The eventual goal is to tie the results of the space study with employee classifications to determine appropriate space allocations and other considerations.

A&I noted that for the results of the study to have an impact, agencies would have to be held accountable. For example, employees would have to adhere to operating rules, such as no space heaters. However, because A&I lacks any enforcement capabilities related to leasing, consideration would need to be made about how to hold agencies accountable.

To facilitate space management, A&I anticipates the need for more resources, including one additional position in the Leasing Office with real estate and facilities management expertise to assist with implementation.

**State Building Commission rules require an inventory and other pertinent information be used when making leasing decisions.**



Specifically, Chapter 5, Section 4, provision (b) of the SBC rules requires the GSD to annually assess agency building requirements, requests, and other space needs according to assessment procedures, which includes:

- Collecting data;
- Describing the condition through surveys; and
- Cross-referencing agency requests with the survey data.

In Chapter 5, Section 4, provision (g), the SBC is tasked with duties associated with the GSD assessment.

On or before November 1st of each year and based upon the needs assessment, the SBC shall establish and prioritize construction, renovation and *leasing needs*. They shall identify and prioritize potential projects to be studied for inclusion in the Wyoming public buildings construction program. Construction and renovation needs shall be prioritized for the current fiscal year and each of the following fiscal years. (*LSO emphasis*)

The SBC should establish and prioritize, construction, renovation, and leasing needs based on the GSD assessments. However, the GSD has not conducted these assessments.

## Other States and Wyoming Agencies Provide Models to Consider

Wyoming state governmental entities and other states provide possible models for office structuring and various leasing functions.



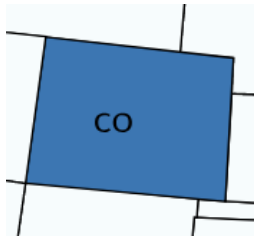
### ***The University of Wyoming (UW)***

- UW has a Real Estate Operations Office, which includes the leasing function. Among its responsibilities are coordinating resources to make informed decisions with accurate, reliable, and complete data for all constituents.
- UW also offers an example for tracking and maintaining information about its real estate assets to increase efficiency. The Real Estate Operations Office in collaboration with Wyoming Geographic Information Science Center organizes and tracks UW's real property data. Data resides in an Arc Spatial Data Engine database accessed through a web-based portal.



### ***Wyoming Department of Transportation***

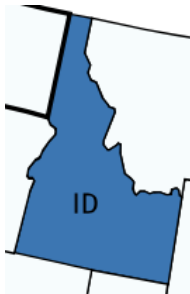
- When new lease space is necessary, WYDOT standards require locations to be decent, safe, sanitary, and contain adequate hookups for office technology or other specialized requirements.
- WYDOT leasing staff education and experience expectations typically include work relevant to real estate property management.



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### *Colorado*

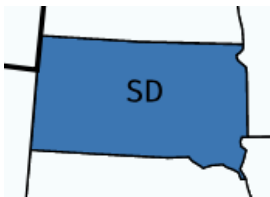
- Uses a Real Estate Leasing Program that offers informational links on their website for agencies including the leasing policy manual, space standards, and a leasing checklist.
- Colorado's State Buildings and Real Estate Program is responsible for overseeing all leases to serve agency needs and fulfill specific requirements of the its state constitution and statutes.



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### *Idaho*

- The leasing program is part of the Idaho Department of Administration, Division of Public Works, which manages construction on state-owned buildings and facilities.
- Has standard requirements for new space related to ADA, and other specifications of the agencies, such as security requirements.
- The Facilities Questionnaire, standards sheet, and other related documents ask for a significant amount of information to make the calculations and determine what would be an appropriate space allocation.



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### *South Dakota*

- Uses specific guidelines for Space Allocation and Approval. The South Dakota Office of Space Management reviews agency needs and requirements for space and makes specific recommendations to the Commissioner of Administration concerning the amount and location of available space that will most efficiently satisfy the requesting agency's needs.
- It also recommends the best location as well as space layout and design.

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**Recommendation 1.2: The Department of Administration and Information should continue its space utilization study, consider implementation of a space allocation strategy, and inclusion of a compliance section to provide the Leasing Office with authority to enforce these policies.**

A&I should also provide a report of the results to the Committee during the follow-up.

## Chapter 2: Updates to Leasing Structure are Needed

### Finding 2.1: Administration of the leasing function has historically been unclear.

The structure of the Leasing Office directly impacts its ability to have well defined, efficient, and effective processes because authority to update rules has become less clear.

**The lack of clarity of the leasing function structure began prior to 1995, continued into the 2000s, and resurfaced after the creation of the State Construction Department.**

This matter is noted in the 1995 Facilities Management Division Program Evaluation, “the statutes *disperse facility-related responsibilities among many agencies*. Further, they establish a structure under which [Facilities Management Division] has *dual allegiances*: it is a division of A&I but at the same time serves as staff to the [Capitol Building Commission] and is accountable to the state’s five elected officials” (*LSO emphasis*).<sup>5</sup>

In 1997, the Legislature designated the GSD Administrator as the SBC secretary. In this role the GSD Administrator was responsible for the leasing function in its entirety and served as the liaison between the SBC and Leasing Office. The GSD Administrator was also responsible for promulgating all rules for the leasing function pursuant to SBC directives.

In July 2004, a separate entity for construction management was created in “response to statutory requirements and needs identified by the State Building Commission, the Wyoming State Legislature and [A&I].” By 2007, budget documents reflect that the construction management entity was its own budget unit within A&I separate and distinct from the GSD and appeared to have assumed responsibility for the “acquisition of leased space for state agencies.”

Then in 2013, W.S. 9-2-1016(b)(xxi) was amended by the Legislature to name the “manager of the construction management program” within the GSD to function as the SBC secretary. However, this legislation appears to conflict with the budget documents, that show construction management as an independent entity within A&I separate from the GSD.

After July 2016, the newly created SCD, Construction Management Division Administrator became the SBC secretary and assumed responsibility for certain aspects of the leasing function such as promulgating rules. But responsibility for the leasing function under W.S. 9-5-102 and 104 remained with the GSD rather than moving to the SCD.

Given the ambiguity of the relationship between these entities evaluators observed that under current processes, the SBC secretary appears to rely on the GSD to administer the leasing function. According to SCD and A&I, the

<sup>5</sup> Sometime after 1997, the Capitol Building Commission became known as the State Building Commission.

current arrangement is sufficient for the time being because of the existing working relationship, direct communication, and the physical proximity of the two departments. Since both departments agreed to a continuation of business as usual, they do not perceive the separation of leasing related duties between the GSD and the SCD, Construction Management Division as an issue.

Currently, the leasing function relies on institutional knowledge and existing working relationships to operate as it does. However, both SCD and A&I acknowledge that in the future when either department has leadership changes or there is staff turnover the existing relationship may be different, and modifications to the arrangement will become necessary.

**The SBC secretary has authority to promulgate rules, while the GSD Administrator has no authority in this process, even though the leasing function is housed in A&I.**

SBC statutes and rules related to leasing do not reflect the current organizational structure and require updating. The following are a few examples of issues evaluators identified during a review of SBC statutes, rules, and policies.

While W.S. 9-5-106(b), identifies A&I as the leasing administrating entity; this statute has not been updated since the 1997, and does not reference the current secretary.<sup>6</sup>

SBC rules related to the leasing function do not appear to reflect the 2016 statutory changes involving the creation of the SCD. A few examples include:

- Chapter 7 rules incorrectly cite W.S. 9-2-1023(a)(i) as the leasing program authorization for A&I.
- Chapter 9, Section 2 rules require SBC's formal approval *prior* to purchase or lease, which is a practice not currently conducted.
- Chapter 10 references the Department of Commerce, which has not existed for many years.

The primary concern is that the GSD administrator does not have authority related to rule promulgation for the leasing function. The SCD, Construction Management Division administrator has the authority to promulgate rules that directly affect GSD's internal operations, with no other formal role or authority in the leasing function.

**Recommendation 2.1: The State Building Commission and its secretary, and the Department of Administration and Information should review and identify updates to existing statutes, rules, and policies to reflect the current structure and processes of the statewide leasing function.**

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<sup>6</sup> Evaluators identified a scrivener's error, which will be included for consideration in the 2019 Revisor's Bill.

At the very least, the statutes relating to the leasing function need to be updated to reflect current practice or modified to accommodate new expectations.

**Recommendation 2.2: The Legislature, State Building Commission and its secretary, and the Department of Administration and Information should study and consider changes to the organizational placement and structure for the leasing function.**

A broader question that should be addressed is determining the proper placement of the leasing function. Currently, the structure and its reliance on existing agreements and relationships, while sufficient for the time being, is not necessarily sustainable. Further, while there may be some apparent overlap in the responsibilities of the A&I GSD and the SCD, Construction Management Division, they are two separate entities.

The discussion should include options for changing the Leasing Office structure and organization, such as a study of a centralized real property management entity. Currently, the Leasing Office lacks the organizational structure, the statutory authority, the technological, real estate-based training, experience, and certifications necessary for the leasing function to focus on real estate management for the entire state. The study should include consideration for hiring staff with real estate education, certification, or experience to better identify market values, utilize current state building space.



## Section 2: Statewide Procurement Function Introduction

*Please note that while this introduction provides background information about the procurement function as it currently exists, A&I have shared several planned changes to improve efficiency and better protect the State.*

The GSD, through the Procurement Section, is responsible for all State procurement of goods and services.<sup>7</sup>

### **Procurement Legal Framework.**

A legal framework for state procurement has existed since 1919, when the State Board of Supplies was created. The modern variation was established in 1971 with the creation of the Department of Administration and Fiscal Control, which is the immediate predecessor of A&I. For most of its history, A&I has been granted broad authority to assist agencies with purchasing goods and services.

A few relevant statutory definitions are:

- W.S. 9-2-1016(a)(i): Procurement “means buying, purchasing, renting, leasing or otherwise acquiring any supplies or services. It also includes all functions that pertain to the obtaining of any supply or service, including description of requirements, selection and solicitation of sources, preparation and award of contract and all phases of contract administration.”
- W.S. 9-2-1016(a)(ii): Services mean “the furnishing of labor, time or effort by a contractor to an agency. The term does not include employment agreements.”
- W.S. 9-2-1016(a)(iii): Supplies are “(A) All property, including but not limited to, furniture, fixtures, stationery, printing, paper, fuel and equipment of every kind required for use in the offices, service and functions performed by agencies, and for repairing, heating and lighting the state buildings; and (B) Insurance and bonds from licensed Wyoming agents as required.”

**Professional Services.** Please note that the procurement of specific, professional services (i.e. architects, engineers, and land surveyors) has different statutory requirements and processes subject to W.S. 9-2-1027 through 9-2-1033. Therefore, while the Procurement Section may assist agencies acquiring these professional services, the requirements, processes, and authorities involved are different from the more general procurement statutes.

### **A simplified explanation of the procurement processes.**

The processing of a purchase relies on three factors: dollar amount; what an agency is purchasing; and the circumstances of the purchase.

<sup>7</sup> Due to the narrowed scope of the evaluation, this summary focuses only on *non-construction* goods and services.



***Goods and Services Under \$7,500:*** Any purchases under \$7,500 do not require a competitive process. Although, agencies *may* contact the Procurement Section to obtain best price assistance through formal bids, written quotes, or competitive or noncompetitive negotiations. There are a few caveats. First, all informational technology purchases over \$500 must be approved by ETS. Second, all service contracts over \$1,500 must be approved by the Governor or his or her designee. Finally, all goods over \$2,500, regardless of process type, require Wyoming Online Financial System (WOLFS) approval from the Procurement Section through a requisition.

***Goods and Services Exceeding \$7,500:*** All nonexempt expenditures exceeding \$7,500 must be formally bid through the Procurement Section. However, it is up to the agency to determine if they would like to proceed with a competitive process (i.e. a request for proposal (RFP), an invitation to bid (ITB)) or seek an exception request). For a RFP or ITB, the agency is required to provide the Procurement Section with documentation outlining the specifications for the project, such as the design and performance expectations, minimum requirements, and how proposals will be evaluated. The Procurement Section then determines, based on the information submitted by the agency, the appropriate method of competitive procurement.

If the agency pursues an exception request, then it follows the Bid Exception Approval process, discussed in detail in Chapter 6.

#### **Procurement Section Staff and Duties.**

At the beginning of the evaluation there were three Procurement buyers, two office assistants, a manager, and a Procurement Officer. The manager and the Procurement Officer both had buyer duties in addition to their other responsibilities. Since July 2018, due to re-organization and attrition, the Procurement Section has three full-time buyers, one office assistant, and a Procurement Manager, who no longer has buyer responsibilities.

Each buyer has a set of assigned commodities and provides direct support to state agencies based on these assignments. In total, there are 171 different commodity classifications representing non-construction and construction goods and services. A complete, current list of the commodities and assigned buyer is available on the A&I website.

Specific duties and responsibilities vary based on buyer classification. A few examples include:

- Provide oversight and monitoring of agency-wide procurement activities for compliance with procurement rules and policies.
- Advise and support agency staff regarding the procurement process, provide technical assistance, and conduct trainings as requested.
- Act as a liaison between agencies and vendors, maintain business relationships, and foster a positive customer service experience.



- Negotiate or mediate with agencies and/or concerned outside parties to resolve issues or complaints.

In addition to facilitating the process, Procurement Section staff are also responsible for providing a significant amount of WOLFS approval and support to agencies as they encumber and expend funds related to the purchases. According to A&I, these transactions comprise the majority of Procurement Section staff's day-to-day activities.

### **Concerns exist with protests, but there are few.**

The only known location for procedures for protesting procurements by the State is in Chapter 4 of the A&I Purchasing Division rules.<sup>8</sup> These rules outline the general process A&I follows in addressing a protest. The rules provide that protesters can file for a hearing upon completion of the internal process. Upon further investigation evaluators noted that there were few protests, most of which were addressed upon completion of the A&I internal process.

Areas of concern were the inconsistent practice of documenting informal complaints and the lack of a centralized location to find relevant materials. Procurement Section buyers maintain records of informal complaints individually. However, during case file review, evaluators did not find any evidence or documentation of informal complaints. Even though Procurement Section staff stated they do not have many informal complaints, and state agencies suggested in the LSO survey that they generally do not ask the Procurement Section to assist with informal complaints, evaluators still have concerns about this practice. These concerns stem from a position of protecting the State and the possibility of a formal complaint rising from an informal one. The Procurement Section should consider documenting informal complaints.

### **Statutory exemptions to the procurement process.**

There are three types of existing exemptions to the procurement process.

First, there are several entities completely exempt from using statewide procurement including: the Wyoming Department of Transportation; University of Wyoming; community colleges; school districts; the Business Council; the Legislature and Judicial Branch.

Second, W.S. 9-2-1016(b)(iv)(F) serves as a *catch all* for unique exceptions.

This paragraph shall not apply to the procurement by the department of corrections of raw materials used in a correctional industries program to manufacture goods or to provide services under W.S. 7-16-206(a)(i), the procurement of goods or services from the department of corrections under W.S. 7-16-206(a)(i) when the goods or services produced are not available from other Wyoming manufacturers or service providers, the procurement of professional

<sup>8</sup> Procurement is a section in A&I and not a division, even though the rules identify it as a "division."

1 services under W.S. 9-2-1027 through 9-2-1033, nor to purchases of  
2 feed by the game and fish department for winter elk ranges.  
3 Subparagraph (E) of this paragraph shall not apply to the  
4 procurement of services or supplies by the offices of state elected  
5 officials. Subparagraph (D) of this paragraph shall not apply to the  
6 procurement of services by the offices of state elected officials if the  
7 contract is for twenty thousand dollars (\$20,000.00) or less.

8 Third the Legislature has granted exemptions to agencies in very specific  
9 circumstances. For example, in 2013 Session Laws, Ch. 117, §3, the  
10 Department of Health was specifically exempt from the procurement process  
11 as it sought contract services to conduct a study related to Medicaid reform.

12 For reference, these exempt entities can work with the Procurement Section,  
13 should they choose to do so. Most exempt entities have established their own  
14 internal procurement processes. In addition, several other states have similar  
15 exemptions and exceptions to the procurement process, such as those for the  
16 Legislature, Judicial Branch, and universities. However, best practice is that  
17 procurement should be a competitive process, with the fewest exceptions or  
18 exemptions possible.

19 **There is existing ambiguity about the administrator mentioned in statute.**

20 According to A&I, "For purpose of obtaining the Administrator's approval in  
21 writing, the Administrator is the Administrator of the Agency, or the person in  
22 an agency who has been granted authority to do so." Another interpretation of  
23 W.S. 9-2-1016(b), is that administrator means the administrator of the A&I  
24 GSD, not the administrator of another agency. Although another agency  
25 administrator may be better suited to determine if following the competitive  
26 process is best, the Legislature has tasked the A&I GSD with administration of  
27 the procurement function. The Legislature should clarify its intent in statute.  
28

## Chapter 3: Procurement Function Process Concerns

Evaluators identified areas where improvements to the procurement function could provide the State with greater protections and opportunities. Specific areas are:

- Utilization of Statewide Contracts .....pg. 25
- Management of Noncompliant Vendors .....pg. 30
- Procurement Act and the ABA Model Procurement Code .....pg. 33

### Finding 3.1: Utilization of statewide contracts is unknown.

Limited tracking mechanisms and data exists related to the current use of statewide contracts. To determine if statewide contracts are beneficial to the State, there needs to be a centralized tracking mechanism to identify agency interest and utilization.

According to the Institute for Public Procurement (NIGP), cooperative procurement, which is referred to as statewide contracts in Wyoming, refers to

the combining of requirements of two or more public procurement entities to leverage the benefits of volume purchases, delivery and supply chain advantages, best practices, and the reduction of administrative time and expenses.

These contracts usually combine requirements and resources of multiple organizations. In Wyoming, all statewide contracts are the result of competitive procurement and are administered either by the Procurement Section for the State (i.e. state administered) or by a national organization.

#### **There are several statewide contracts currently available.**

On its website, the Procurement Section provides a list of available statewide contracts for goods and services. As of September 2017, there were 56 statewide contracts for goods and services ranging from computer hardware and software to industrial supplies and copy machines. These contracts come from one of three sources:

- ***National Association of State Procurement Officials (NASPO) ValuePoint.***<sup>9</sup> The NASPO ValuePoint website contains the original contract documents and supporting state addendum for each agreement made by Wyoming. These contracts vary greatly and cover a wide

<sup>9</sup> Established in 1993 as the Western States Contracting Alliance (WSCA), NASPO ValuePoint is a nonprofit cooperative purchasing organization that serves all 50 states, the District of Columbia, and the organized U.S. territories, as well as their political subdivisions and other eligible entities. While NASPO ValuePoint does not charge a membership fee, it does collect an administrative fee up to 0.25% from each vendor for sales made. These fees support the lead state model, which ensures that every NASPO ValuePoint contract is the result of a formal competitive solicitation conducted by trained, professional procurement officials of a lead state's central procurement office. Once a NASPO ValuePoint contract is established, all other interested parties enter into a Participating Addendum. These addendums bind the contractor and participating entity to the master agreement but are sufficiently flexibility to permit negotiation of additional terms and conditions as needed.

variety of goods and services from small package delivery to body armor and breast pumps.

- ***Minnesota Multistate Contract Alliance for Pharmacy (MMCAP).*** Wyoming uses the MMCAP primarily for medical supplies and pharmaceuticals.
- ***Procurement Section.*** There are several statewide contracts administered by the State, including one for copy machines and air filters.

Under current practice, except for the copy machine contract, the Procurement Section permits state agencies to use statewide contracts in whatever manner they choose. In addition to providing the statewide contract information on its website, the Procurement Section also provides one-on-one support to state agencies as needed.

**Existing concerns and limitations with statewide contracts utilization.**

There are three contributing factors that are important to understanding why the Procurement Section has yet to require statewide contract use.

***Culture and Current Processes.*** The agency-centric nature of the procurement function has led to an inability for the Procurement Section to meaningfully administer the use of statewide contracts. Except for copier machines, statewide contracts utilization is completely at the discretion of each agency, who have varying familiarity with current statewide contracts and knowledge of the processes. To encourage the use of statewide contracts, the Procurement Section attempted to send information to agencies. However, these efforts were largely unsuccessful and eventually discontinued. Overcoming the cultural barriers associated with the agency-centric procurement function will require increased two-way communication and increased education at all levels of state government.

***Limitation of Resources (Time and Money).*** In addition to needs for changing cultural expectations, the Procurement Section has limited resources. State administered contracts can be very resource intense. However, the resources required vary upon the source of the contract. If the State administers a contract it is more labor intensive. Comparatively, NASPO ValuePoint contracts are initially more intense with the establishment of the participating addendum, but gradually require fewer resources over time because the State does not monitor usage, unlike other states.

***No tracking.*** The Procurement Section does not know what statewide contracts are being used because there is no centralized repository for this information. There is limited information for State administered contracts that are maintained by the responsible Procurement Section buyer. Further, there is potential to obtain information from either NASPO ValuePoint or MMCAP; however, the Procurement Section has not sought to obtain detailed, agency-specific data because of a lack of resources and a history of focusing on processes over analysis.

Of those agencies that participated in the LSO survey, most are aware of the statewide contracts and many respondents indicated that they used them occasionally to frequently. The main reason for using the statewide contracts is for better pricing or to purchase a specific good or service. Without additional information from the Procurement Section, evaluators could not quantify the statewide contract use.

### **Summary of Other States**

Evaluators noted that several other states do use statewide contracts, some of which are mandatory. The following are examples of statewide contract practices in other states.

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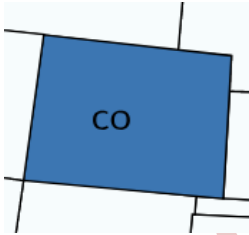
#### ***Alaska***



The *Contract Award Manual* is a listing of all available statewide contracts by category, then commodity with the assigned contracting officer. Each link contained additional information, such as the terms and conditions. In total, there are 15 contract categories, 76 different commodities, and 12 different contracting officers/responsible entities. Several contracts are designated as mandatory for use by state agencies.

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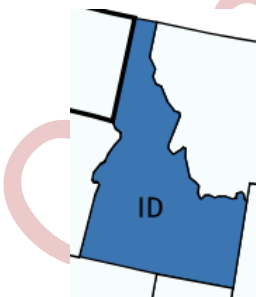
#### ***Colorado***



The website *SourcingColorado* contains links to statewide contracts and identifies common items found on the price agreements, such as office supplies, paper, vehicles, copiers, computers, etc. The price agreement holders must report quarterly volume to the State Purchasing Office.

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#### ***Idaho***

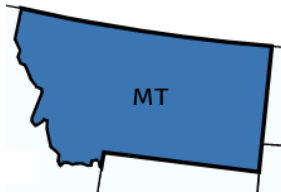


Idaho recently updated its statutes and rules to explicitly allow for greater participation in cooperative purchasing. In some instances, these cooperative contracts are mandatory for executive branch agencies.

To determine use, Idaho reviews quarterly reports from contractors, benchmark pricing, and surveys of the agencies. However, this monitoring has its limits. Idaho can only obtain independent information from the fiscal or eProcurement systems and requires the cooperation of the agencies for any additional details.

Further, in terms of enforcement of use of statewide contracts, Idaho can only reduce or eliminate delegated agency purchasing authority.

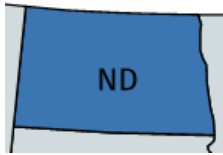
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### **Montana**

The Procurement Office has statewide contracts and encourages overall use, but does not require use, unless it is specified as an exclusive contract. Montana has an internal review process for usage reports vendors provide. Further, Montana rules and statutes contain information such as definitions for cooperative purchasing, and requirements for using federal supply schedules. Other guidance created by Montana provides details about cooperative purchasing, who can participate, and generally how the program works.

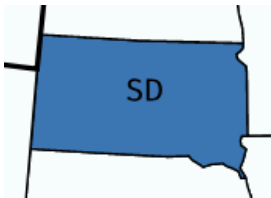


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### **North Dakota**

Cooperative purchasing in North Dakota is in statute. Specifically, 54-44.04-13 states that the Office of Management and Budget “*shall* purchase commodities/services as requested by state agencies and institutions under jurisdiction of [the] state board of higher education, legislative, and judicial branches.”

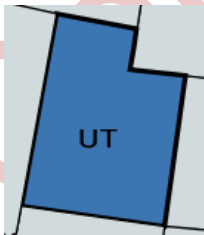
In North Dakota certain contracts are mandatory and agencies must request approval if a mandatory state contract does not meet the needs of the agency. Examples of these mandatory contracts include Auction Services (online), Courier Services, Elevator Services, and a wide variety of printing services.



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### **South Dakota**

There is a list of all statewide contracts, which executive branch agencies are required to use. Local governments may also make purchases from these contracts, if the vendor offers the same terms and conditions as for state agencies. For executive branch agencies, South Dakota conducts a survey to identify use and reviews accounting data to supplement this information and determines the effectiveness of those contracts.



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### **Utah**

In December 2014, the Utah Legislative Auditor General published its *Review of Allegations Concerning Utah’s Purchasing Interactions with WSCA-NASPO*. The results of the report found that participation in WSCA-NASPO contracts saved Utah money by avoiding duplication of work because it could use contracts created by other states. Additionally, most WSCA-NASPO contracts had lower prices and administrative fees than other purchasing cooperatives. Finally, because WSCA-NASPO provides reimbursement for the time and expenses incurred by the state when it led a contract or was part of a sourcing team, Utah found more benefit by being an active participant in the process.

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**Following best practice should alleviate a few existing concerns.**

According to best practice provided by NIGP, utilization of statewide contracts should be

on a case-by-case basis, and only after proper due diligence has been performed. Cooperative procurement contracts are usually based on the combined requirements of multiple organizations. Government entities can save time and money, obtain higher quality products and services, and standardize products and services by using cooperative contracts...After conducting extensive due diligence and market research, public procurement should, where permissible by law or regulation, consider the use of cooperative contracts, in order to lower prices, lower administrative costs, increase competition, and obtain more favorable terms and conditions. When using cooperative contracts attention should be given to ensuring legal compliance, open competition, and effective/efficient use of time and resources.<sup>10</sup>

**Statewide Copier Contract**

There is precedent within the State to pursue the best alternative possible for statewide contracts and demonstrates the Procurement Section's application of best practice.

Through independent research, the Procurement Section determined that it could negotiate a better rate on its copier machine contracts than those from other established cooperative agreements. The Procurement Section then let a RFP and conducted a competitive process to identify vendors to provide copier machine services, conducted the negotiations, and generated the contracts currently in use. This example can serve as the model for how the Procurement Section should operate its other statewide contracts. There is no blanket solution. Instead with careful considerations of the alternatives, the State can determine where to administer its own contracts rather than require use of an established statewide contract.

**Recommendation 3.1: The Procurement Section should study the current use of statewide contracts. The study should include, at a minimum, data related to purchases by agency, commodity, and vendor.**

The State has limited access to, and no centralized, data related to statewide contract use. As a part of this study, the Procurement Section should note all

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<sup>10</sup> Since 1944, the Institute for Public Procurement, also referred to as the National Institute for Governmental Purchasing, Inc. (NIGP), has been "developing, supporting and promoting the public procurement profession through premier educational and research programs, professional support, technical services and advocacy initiatives that benefit members and constituents." The NIGP is an international, not-for-profit educational association organized into chapters across the United States and Canada. Until recent budget cuts, Wyoming was a member of NIGP.

1 additional considerations such as presence of local vendors, total cost of  
2 items, and any benefits (e.g. price discounts on volume purchases).

3 **Recommendation 3.2: Based upon the results of this study and**  
4 **working with the Procurement Section, the Legislature could consider**  
5 **appropriately mandating certain statewide contract use or determine**  
6 **what opportunities the State should pursue independently.**

7 Understandably, this review should be conducted with best practices in mind  
8 and in consultation with agencies and other stakeholders.

9 **Finding 3.2: Management of data on noncompliant vendors is**  
10 **nonexistent.**

11 The State lacks a centralized approach to mitigating the impact of  
12 noncompliant vendors, which could include vendors who do not provide  
13 agreed upon services. The Procurement Section has established due diligence  
14 procedures to ensure vendor selection follows existing statute, rules, and  
15 policies. The Procurement Section does not have a role in the subsequent  
16 contract administration, where agencies could identify problem vendors.

17 While contract administration is, and should remain, under the purview of the  
18 agencies, who are the subject matter experts, there is no evidence that there is  
19 any centralized, systematic approach for the sharing of vendor related  
20 information between agencies and/or the Procurement Section. Agencies  
21 possess knowledge about vendor performance that could be useful to other  
22 agencies. However, the identification of problematic vendors should be a  
23 collaboration between the agencies, who are responsible for contract  
24 administration and the Procurement Section who is responsible for  
25 facilitating the selection process.

26 **Currently, the Procurement Section does not maintain any vendor**  
27 **information and relies on Public Purchase self-services.**

28 Prior to 2014, the Procurement Section maintained vendor lists solely for  
29 notification purposes. Starting in 2014, the Procurement Section began using  
30 Public Purchase.<sup>11</sup> With the move to this online system, the Procurement  
31 Section began requiring all vendors to self-register and manage their profiles.  
32 The Procurement Section does provide limited support for vendors including  
33 answering questions and assisting with registration. There is no centralized  
34 data source for this information, which is problematic.

35 Evaluators did not examine agency practices and procedures during this  
36 evaluation and only focused on the centralized procurement functions. Based  
37 on case file review, interviews, and process observations, evaluators did not  
38 see evidence of problem vendors.

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<sup>11</sup> Public Purchase is a free, online government bid notification website. The Public Purchase website allows vendors to access invitations for bids and closed bids after self-registration. This system also allows vendors to ask questions and see agency responses relating to a specific project. The Procurement Section uses Public Purchase for its bids.



However, as the data is not centralized, the Procurement Section documents may not have included references to these issues or concerns. For example, even if an agency identified a “problem” vendor, there is currently no centralized process for sharing the information with the Procurement Section. Further, there are no policies or procedures that would enable the Procurement Section to prohibit that vendor from conducting business with the State in the future.

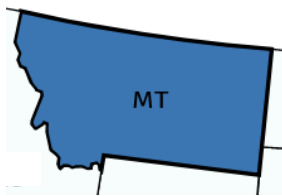
More concerning, identification of the information needed to protect the State can only occur after contract administration. Therefore, to address the issue, agencies must keep track of problematic vendors, then convey this data and information to the Procurement Section for future use. Such a system would require both the agency and the Procurement Section to be far more engaged than the current process suggests.

#### **Other states have practices for managing noncompliant vendors.**

Based on a 2016 States Survey conducted by NASPO, most responding states (31 of 47), including Montana and North Dakota, have a list of suspended vendors. Additionally, research indicated that Casper College also has policies related to vendor suspension.

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#### ***Montana***

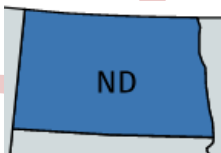


The State Procurement Bureau website states that “The following vendors have been debarred from doing business with the State of Montana. State agencies may not enter into contracts with these vendors until the debarment period has expired; see 18-4-241, MCA, and ARM 2.5.402.

Vendors are responsible for re-registering as a vendor for the State of Montana upon completion of their removal/suspension period.” There are three vendors on the current list who are “Debarred Through Indefinite.”

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#### ***North Dakota***



According to the State Procurement Office, it “maintains the State Bidders List of vendors who have applied to receive notice solicitations for commodities and services. Under state procurement rules, vendors may be subject to suspension or debarment from the Bidders List for cause. NDAC 4-12-05 contains the rules that pertain to suspension or debarment from the Bidders List.” As of May 1, 2017, there are two vendors on this list.

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***Casper College***

Casper College asks its staff to make note when they have interactions with a “bad” vendor and keep this information with the project file.

Further, the Casper College Policy Manual – Purchasing 5.8, defines *Vendor Disbarment* as the “Prohibition of a vendor from doing business with the college. The college sets the debarment period base on the seriousness of the offence and may debar a vendor for any of the following reasons or for any reason allowable under federal or state law.”

For example, Casper College policy permits debarment for “Failure to perform in accordance with the terms of one or more contracts following notice of such failure, a history of performance failure, or unsatisfactory performance of one or more contracts.”

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**Recommendation 3.3: The Management Audit Committee could consider a separate evaluation focusing on state agency practices related to contract negotiation, administration, and monitoring.**

Throughout the contracting process, the Procurement Section provides minimal support to the agencies for contract negotiations, administration, or monitoring. As the focus of the evaluation was the *centralized* procurement function, evaluators did not review any agency processes or case files. Therefore, agency contract administration is one area the Committee could follow-up with in a future evaluation.

**Recommendation 3.4: The Department of Administration and Information should implement policies and promulgate rules related to the management of noncompliant vendors.**

Regarding the procurement function, A&I is authorized to protect the State’s interest through rules. Therefore, A&I should implement policies and/or promulgate rules requiring new centralized, systematic procedures for agencies to report issues or concerns with vendors to the Procurement Section. As the State seeks to find the best value for its goods and services it must know more about vendor performance, interactions, and history to make the most appropriate decisions.

The agency documentation and data should be a part of the project file and a centralized database. The Procurement Section would review this database when determining if a vendor is responsive and responsible to a RFP, an ITB, or an exception request. If A&I determines that it does not have the authority to require these rules or policies, then it should recommend statutory changes to the Legislature.

### 1 **Finding 3.3: Wyoming has not adopted a procurement act or code.**

2 Presently, Wyoming's procurement statutes (W.S. 9-2-1016) are included in  
 3 the A&I GSD statutes. However, there are other procurement provisions  
 4 related to vendors, construction, and professional services (i.e. architects,  
 5 engineers, and land surveyors) found across a variety of statutes. For example,  
 6 W.S. 16-6-301, includes the provisions for printing contracts procured by  
 7 public entities. The scattering of procurement provisions across statutes makes  
 8 it difficult to determine the breadth of Wyoming's procurement requirements.

#### 9 **American Bar Association (ABA) Model Procurement Code.**

10 In 2000, the ABA revised a 1979 model procurement code for state and local  
 11 governments to use in their procurement processes. The purpose of revising  
 12 the model code was to:

- 13       ▪ Reduce transaction costs for all governmental entities at the state and  
 14       local levels;
- 15       ▪ Reduce transaction costs to private sector suppliers of goods and  
 16       services;
- 17       ▪ Substantially increase available levels and ranges of competition  
 18       through modern methods of electronic communications; and
- 19       ▪ Encourage the competitive use of new technologies, new methods of  
 20       performing, and new forms of project delivery in public procurement,  
 21       particularly in the construction area.

22 The model covers 11 procurement principles applicable to any public entity:

- 23       1. Competition
- 24       2. Ethics
- 25       3. Predictability (stability, advanced publication, accountability)
- 26       4. Clear Statements of Procurement Needs
- 27       5. Equal Treatment of Bidders/Offerors
- 28       6. Methods of Source Selection
- 29       7. Bid/Proposal Evaluation
- 30       8. Reduction in Transaction Costs for Public and Private Sector Entities
- 31       9. Procurement of Construction Related Services
- 32       10. Remedies
- 33       11. Facilitation of Intergovernmental Transactions (cooperative  
 34       procurements)

35 While the model was created to provide basic policies applicable to the  
 36 conduct of procurement by all public entities, the ABA focused on developing  
 37 "a "model" rather than a "uniform" procurement code because of the diverse

1 organizational structures used by the States and the multitude of local  
2 government bodies and the differences in their procurement needs.”

3 **Other states have fully, or partially, adopted provisions of the ABA**  
4 **Model Procurement Code.**

5 In 2016, NASPO conducted a survey to identify procurement practices across  
6 the states. Notably, Wyoming was one of three states that did not participate in  
7 the survey. The survey results revealed two states, Kentucky and Maryland,  
8 fully adopted the 2000 ABA Model Procurement Code, and 20 states partially  
9 adopted it. Included in the 20 states are commonly used comparators for  
10 Wyoming: Alaska, Idaho, Montana, North Dakota, and South Dakota.

11 **Recommendation 3.5: The Department of Administration and**  
12 **Information should review the American Bar Association Model**  
13 **Procurement Code, and other states’ procurement acts, and provide**  
14 **recommendations to the Legislature related to adopting certain**  
15 **provisions to create a centralized procurement act.**

16 The purpose of a centralized procurement act would be to consolidate all  
17 procurement related statutes and provisions into a single location.  
18  
19  
20

## Chapter 4: Procurement Enforcement and Training

### Finding 4.1      The lack of formal procurement process enforcement and consistent training for state employees creates opportunities for procurement process violations.

There is little recourse the Procurement Section can pursue to address procurement process violations due to a lack of statutory enforcement authority. As a result, the Procurement Section relies on providing additional training to prevent subsequent violations, especially if it involves a “repeat offender.” Although the Procurement Section offers training to state employees in these situations, it is at the agency’s discretion whether the training occurs. The lack of enforcement authority could expose the State to situations in which it does not get the best value and could lead to litigation.

***Lack of Enforcement Authority.*** Statutes do not clearly authorize the Procurement Section to exercise enforcement authority against agencies that violate the procurement process. Importantly, the statutes also do not expressly prohibit the Procurement Section from enforcing adherence to the procurement process. Although, the statutes do not prohibit enforcement of procurement policy, the Procurement Section has elected to focus on training to ensure compliance.

For example, a state employee made a purchase in excess of \$7,500 and did not go through the required process. The employee contacted the Procurement Section with questions about how to pay the invoice. Since A&I determined that the vendor acted in good faith, the invoice was paid, the state employee was offered training, and counseled to follow the process in the future.

#### **There is potential for enforcement ability.**

The A&I 2015-2020 Strategic Plan notes that “...procurement/purchasing which is a section of GSD develops formal competitive bids and requests for proposal to acquire goods and services for the State of Wyoming. This section *develops and enforces compliance* with statewide purchasing procedures...” (*LSO emphasis*).

Wyoming Statute 9-2-1016(b)(i) requires the GSD to adopt rules governing procurement and that, “No agency shall procure supplies or services except in compliance with the rules adopted by the Department.” In lieu of seeking statutory changes, amending current rules could provide the flexibility to develop appropriate enforcement protocols when agencies conduct procurement outside the required process.

Specifically, Chapter 1, Section 4(a) of the Purchasing Division rules states, “The *Division shall ensure that these rules are enforced*, and that the provisions of these rules are applied uniformly and fairly throughout the

Executive Branch” (*LSO emphasis*).<sup>12</sup> In addition, Section 4(b) also envisions the agencies carry some responsibility for enforcement of the procurement rules as well,

“Agency heads...shall ensure that all agency employees comply with the provisions of these rules... [and that] employees of the agency are knowledgeable of pertinent provisions of these rules, when...required for proper execution of their duties.”

While the Procurement Section has no formal enforcement process in place, there are examples of enforcement protocols identified within Wyoming entities, and in other states.

## Other States and Wyoming Agencies’ Provide Models to Consider

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### *Alaska*

Alaska uses a “procurement violation process” when a procurement staff member operates outside the procurement process. The procurement violation process includes remedial training and possible disciplinary action, such as reducing an employee’s procurement authority.

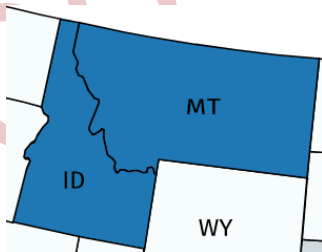
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### *Casper College*

Similar to the Procurement Section, Casper College’s procurement office does not have a formal enforcement or monitoring process; however, when a violation is discovered, the appropriate dean or director will be notified to discuss the situation. Typically, the noncompliant employee and the employee’s supervisor will have to sign a “Noncompliance” form, which depending on the violation, may require review and signature by a vice president of the College.

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### *Idaho and Montana*

In both Montana and Idaho, the procurement offices are authorized to delegate procurement authority to state agencies. Although there are no statutory enforcement penalties, delegated authority can be rescinded by the procurement office forcing the noncompliant agency to submit all procurement requests to the central procurement office.

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<sup>12</sup> Procurement is a section in A&I and not a division, even though the rules identify it as a “division.”



### **Mandatory agency training could address enforcement issues.**

While offering training is an important component to promote the integrity of the procurement process, evaluators identified circumstances that impact whether agencies honor the process. The Procurement Section provides training on an “as needed” or “as requested” basis to state employees responsible for the procurement of goods and services for their agency. Limited resources are available (e.g. PowerPoint presentation(s), procurement manual, etc.), to offer state employees assistance in learning basic procurement standards, principles, policies, and requirements. In addition to these resources, agency staff frequently contact Procurement Section staff for guidance through the process, which is different from formal training. Nonetheless, whether agency staff are new or existing, the Procurement Section does not require training on the process.

***Evaluation Survey.*** Evaluators developed a survey for stakeholders to gain a frontline staff perspective of many facets of the process, including the training provided by Procurement Section staff. Based on the survey results, fewer than half of the respondents to the survey have received training on the procurement process. Several agencies noted the one-on-one, verbal, or case-by-case basis training occurred more informally over time.

An important resource provided by the Procurement Section is its Policy and Procedures Manual (Manual). Results of evaluators’ survey indicate many state employees either do not know how to access the Manual, despite it being online, or do not use the Manual. By admission, A&I agreed that the Manual could be improved to make it more useful to state employees outside the Procurement Section. In addition, comments from the survey noted most state employees do not receive updates to the manual.

The survey also sought to understand state employees’ perspectives regarding procurement process training. In general, state employees who responded to the survey indicated they wanted more training and assistance related to the overall procurement process, an updated and scenario-based manual, and training on bid waivers.

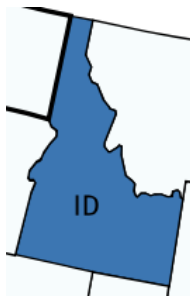
## **Other States and Wyoming Agencies’ Provide Models to Consider**

### ***Alaska***



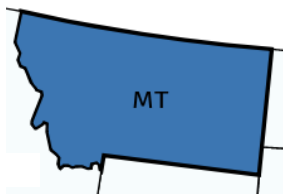
Alaska developed two manuals, “Procurement for Executives” and “Procurement for Non-Procurement Staff,” and is developing short classes related to each manual. Additionally, Alaska has provided procurement classes to those who are not dedicated procurement staff as requested or they may attend the regularly scheduled procurement classes. Refresher courses are required for certified procurement officers.





### ***Idaho***

Idaho provides regular trainings, typically one class per month, for procurement staff. Recently, the Idaho Legislature mandated the procurement office provide purchasing training to any state employee who may be involved in any facet of purchasing, including support staff placing orders on statewide contracts, staff that develop statements of work, serving as a solicitation evaluator, etc. Additionally, periodic refresher training is mandatory for state agencies with delegated authority. The Idaho Legislature also approved an additional position for a dedicated training specialist.



### ***Montana***

Montana's procurement office offers four procurement classes twice annually:

- Basic Procurement
- Advanced Procurement
- Initiating and Navigating the RFP Process
- Contract Management

Procurement training is required per each agencies' delegation agreement for dedicated procurement staff. Training is also offered on an as requested basis. Montana's procurement office is also in the process of developing a state procurement certification program, which will require ongoing education to maintain the certification.

## **Best Practice Suggests Certification of Section Staff**

The Procurement Section currently has one certified procurement staff member.<sup>13</sup> Best practice suggests staff certification in public procurement provides a level of protection for the State while fostering confidence that procurement activities are conducted to maximize the best value for the State and to protect against potentially litigious situations. Procurement Section staff have expressed interest in working toward certification. However, according to A&I, the lack of financial resources, as well as the organizational culture, prevents staff from pursuing certification. Historically, having a public procurement certification has not led to increased responsibility or compensation.

### **Best practice certification considerations for Chief Procurement Officers.**

There are advantages to employing certified staff, particularly a certified Chief Procurement Officer (CPO) as manager/administrator of a state's

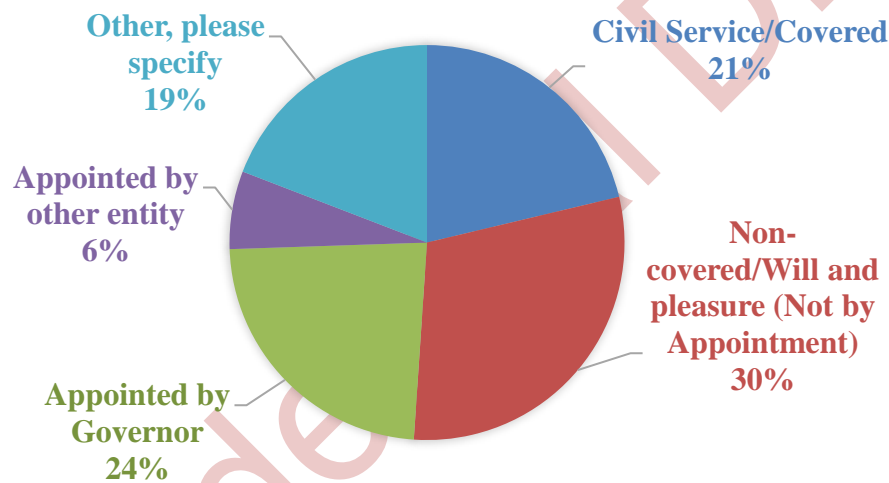
<sup>13</sup> Within public procurement, the Universal Public Procurement Certification Council (UPPCC) offers two types of certifications with require specific qualifications and examinations to achieve. The first type of certification is known as a *Certified Professional Public Buyer* (CPPB), which is a staff level certification. The second is a *Certified Public Procurement Officer* (CPPO), which is a manager level certification.

procurement office. NASPO identifies major responsibilities of a CPO as having final authority in the procurement process as related to

- Rules, policies, and procedures
- Outlining how goods and services may be procured
- Establishment of statewide and agency-specific contracts
- Contract oversight, administration, management, and compliance
- Resolution of contract disputes

The 2016 NASPO state procurement survey revealed 40 of the 47 states that responded to the survey have a single CPO that “leads the state central procurement office and is responsible for the control of all procurement efforts across the state, as established by statute or law.” Although most states have a CPO, Figure 3 shows the variation in the position classification.

**Figure 3. 2016 NASPO Survey, CPO Position Classification**



Source: Legislative Service Office analysis of NASPO 2016 Survey Results.

Note: An example of “Other, please specify” includes multiple classifications such as “Civil Service - Not Covered” and “Appointed by Governor - At-will and Pleasure.”

### **Best Practice certification considerations for buyers.**

Certification of additional procurement staff supports the efforts of the CPO. Other states offer pathways to certification for all employees involved in procurement. In 2002, North Dakota developed a Procurement Officer Training program, at no cost to employees, commensurate with the type of procurement conducted by an employee. There are three levels of certification, and each level is a pre-requisite for the next.

- Level I is for state employees who make small purchases (\$2,500 and below);
- Level II is for state employees who make purchases \$2,501 to \$25,000; and
- Level III is for state employees who make purchases over \$25,000.

1 In Idaho, for agencies with delegated authority to make purchases, there are  
2 different levels of training, including a set of core classes, some of which are  
3 required.

4 Within the State, the Wyoming Department of Transportation (WYDOT)  
5 maintains an in-house training process based upon its internal operation  
6 policies and procedures. In addition, WYDOT utilizes trainings through  
7 NIGP and other national organizations. Currently, WYDOT has two staff  
8 members (manager and assistant manager) who are certified, and the  
9 remaining procurement staff are working towards certification.

## 10 **A&I Succession Planning Should Include Consideration of Certifications**

11 According to A&I, although resources are not available for the Procurement  
12 Section to provide certification training for staff, this is a component that should  
13 be considered as the Procurement Section engages in succession planning.  
14 More than half of Procurement Section staff are, or will be, eligible for  
15 retirement in the next three to five years. This includes the current procurement  
16 manager, who is one of the most tenured staff in the Procurement Section.

17 As A&I develops its succession plans and looks at re-staffing the Procurement  
18 Section, it should consider offering staff opportunities to become certified in  
19 public procurement. In 2015, NIGP conducted a survey of procurement  
20 professionals across the nation and revealed generally that both certified and  
21 uncertified procurement officials agreed that, "Certification helps to define the  
22 profession," and of the certified managers that responded, a majority agreed  
23 that "certified employees know what is required to perform their jobs better  
24 than uncertified officials." Something as simple as having certified staff  
25 professionalizes procurement offices and provides a level of confidence, and  
26 scrutiny, that the State is receiving the best value for taxpayer dollars.

### 27 **Recommendation 4.1: The Procurement Section should consider** 28 **the following related to enforcement authority:**

- 29 • **Review statutes to determine whether enforcement can be**  
30 **pursued under current statutory provisions;**
- 31 • **Review the Procurement Section rules to determine whether**  
32 **amending rules will provide enforcement authority.**

33 The Procurement Section should review, with the assistance of its Attorney  
34 General representative, whether enforcement authority is permissible under  
35 current statutory language. Further, an in-depth look at Procurement Section  
36 rules should be undertaken to determine whether enforcement may be  
37 addressed in rules. If A&I determines that statutory changes are necessary,  
38 then it should provide those suggestions to the Legislature.

### 39 **Recommendation 4.2: The Legislature should consider amending** 40 **the Department of Administration and Information statutes to formally** 41 **delegate procurement authority to state agencies.**

Complimentary to the recommendation above, the Legislature should determine whether formal delegation of authority from the Procurement Section to state agencies should be amended into statute. In conjunction with any enforcement authority granted to the Procurement Section, rescinding this delegation of authority could act as a consequence of violating procurement process. Rescission of delegated authority would require the noncompliant agency to use the Procurement Section for all its procurement requirements.

**Recommendation 4.3: The Department of Administration and Information should consider the following:**

- **Make an online procurement process refresher course a requirement every three-years for state employees involved with procurement activities;**
- **Make an online procurement process refresher course an annual requirement for noncompliant state employees;**
- **Develop a “noncompliance” form for noncompliant state employees and associated supervisors to review and sign;**
- **Develop procurement training videos for the webpage for state employees to access.**

Considering the Procurement Section has a small staff, it is understandable that taking time to provide training to state employees can make it difficult for staff to complete procurement duties in a timely fashion. The Procurement Section should expand its training options to offer state employees training without necessarily needing to provide training in person. For state employees that operate outside of the procurement process, particularly the “repeat offenders,” there are options such as developing a noncompliance form which would serve to further solidify the importance of operating within procurement process parameters. Additionally, requiring refresher training online every three years, like Risk Management defensive driving, will keep state employees consistent with their understanding of the process. A stricter approach should be used for “repeat offenders” to ensure they understand and adhere to the process.

**Recommendation 4.4: The Department of Administration and Information should consider the following related to Procurement Section staff:**

- **Develop a plan as retirements occur to focus on hiring individuals already certified in public procurement;**
- **Develop a plan as retirements occur to provide access to certification opportunities for Section staff.**

The Procurement Section could experience significant challenges should those eligible to retire in the next few years do so. Without succession planning,

1 filling those positions with competent procurement staff may be complicated,  
2 potentially leaving the Procurement Section with a large gap in experience  
3 and knowledge of the procurement process. Hiring individuals already  
4 possessing a certification in public procurement and providing opportunities  
5 for current staff to become certified would mitigate difficulties as retirements  
6 occur within the Procurement Section.

## Chapter 5: Improve the Usability of Procurement Data

Evaluators identified several concerns related to Procurement Section data. Specifically, existing data entry and management practices are inadequate and contribute to the inability for the Procurement Section to perform procurement-related analyses. Reliable data is necessary for agencies to make purchasing choices, for A&I to create and enforce policy, and for the Legislature to make informed decisions about the procurement function.

### **Finding 5.1. Due to current Procurement Section practices, the State lacks the capacity to use its data to perform analyses.**

The Committee expressed interest in knowing more about the impact the current procurement structure and requirements have on purchasing decisions and outcomes. One way to determine impact would be to conduct different analyses, such as a spend analysis. According to NIGP, spend analysis is defined as

the process of collecting, cleansing, classifying, and analyzing expenditure data from all sources within the organization (i.e., purchasing card, eProcurement systems, etc.). The process analyzes the current, past, and forecasted expenditures to allow visibility of data within the organization at various levels, e.g. by supplier, commodity, service, or by department [within the organization]. Spend Analysis can be used to make management decisions by providing answers to such questions as what was bought, when was it bought, where was it purchased, how many suppliers were used, how much was spent with each supplier, and how much was paid for the item.

Spend analysis is the first step in developing and achieving an overall strategic procurement strategy for the organization. When done correctly, it allows the organization to identify opportunities to leverage buying power, reduce costs, improve operational performance and provide better management and oversight of suppliers, while improving relationships with internal and external stakeholders.<sup>14</sup>

Evaluators identified concerns with the current data sources and management practices of the Procurement Section that would make performing a spend analysis impossible given current resources.

#### **There is no single, comprehensive source for all procurement data.**

The Procurement Section does not have a comprehensive system to manage its data. Instead, the Procurement Section relies on gathering and compiling data from multiple Excel spreadsheets, non-extractable data systems, and WOLFS.

<sup>14</sup> Institute for Public Procurement (NIGP) *Principles and Practices of Public Procurement – Spend Analysis* (2012).

Currently, Procurement Section buyers are responsible for managing their procurement data and information independently, and typically, in Excel spreadsheets. To generate reports, the Procurement Section must spend a significant amount of time collecting and assembling the information from these different sources. The ad hoc nature of the current arrangement has contributed to evaluator concerns with data usability.

**The data sources the Procurement Section currently uses are incomplete and do not include other essential considerations.**

Procurement Section data only contains internal information and does not link to the statewide accounting system (WOLFS), nor does it contain information about statewide contracts, change orders or other amendments, small purchases, or transactions conducted independently by the agencies. To perform meaningful analysis and provide context for the procurement function, it is important to have a comprehensive look at statewide purchasing. However, the data sets currently missing or not used include:

- Noncompetitive procurement (e.g. emergency purchases)
- Total cost (e.g. change orders or amendments)
- Small purchases under \$2,500
- Purchases under \$7,500 threshold
- Statewide contract use
- Procurement card use
- WOLFS information

**There are not sufficient internal controls to ensure data integrity**

The Procurement Section does not keep records with the intention of data analysis and utilization. Statutes do not charge the Procurement Section with any type of data capture or reporting. Further, the focus of the Procurement Section has been on present needs and concerns, as well as reacting to more immediate duties, responsibilities, and requests. There is limited capacity within the Procurement Section to generate reports or review its data.

Despite these limitations, the data has been used to provide information to the public, other agencies, the Legislature, and evaluators. There are few internal controls to protect the integrity of the data, no validation or verification procedures, no checks to ensure data entry was correct, nor does there appear to be any protocols to prevent the accidental changing or deletion of a record(s). Further, all current data sources rely on buyer input, which is not consistent.

A few examples of observed issues with the data integrity include:

- In one instance evaluators observed that two separate columns were swapped in a data set affecting 15 entries.
- No clear distinction between what the Procurement Section is responsible for, and what it is not. According to statute, the State Construction Department (SCD) should conduct its own procurement. Although A&I has an understanding with the SCD regarding these



purchases, evaluators were unable to distinguish, within the data sets, which entries were for construction. For example, asbestos abatement is a service, but could also be considered construction in relation to a renovation project.

- Due to buyer preference, and limited explanations within the documents, there was no way to determine if the dates provided accounted for other considerations such as amendments.
- There were 178 entries where a single Bid Number was used for at least two or more entries. Of these, there were six instances where the Procurement Section used a Bid Number for seemingly unrelated procurements.
- Evaluators observed inconsistencies in labeling. For example, buyers have listed A&I Motor Pool entries as: A&I MVMS, A&I/MVMS, A&I-MVMS, and MVMS. Although these are all entries for the A&I Motor Pool, using the Procurement Section data as is, each appears to be a separate entity.

Based on firsthand observation and interviews, there are no specified policies, procedures, standards, or expectations related to data entry or management.

**There are two identified risks as demonstrated in a publicly reported figure.**

The precise effects of the limited data are not quantifiable; however, the two major risks based on the current data limitations are:

- Data, while not entirely inaccurate, is unreliable
- Ad hoc reporting is time and resource intensive

When fulfilling requests, the Procurement Section must work to gather the information, compile it into something meaningful, then provide it to the requestor. However, the information in these reports is dependent upon data entry and management practices that are inconsistent. These inconsistencies can lead to inaccuracies in the report and the possibility that decisions will be made based on incorrect data. One example is as follows.

***\$440 million in procurement.*** In June 2017, A&I informed the Government Efficiency Commission that the State has \$440 million in procurement annually, and it administers around 1,600 contracts and 3,800 total purchase orders. Evaluators were unable to locate a centralized source of data that contained the total amount of procurement conducted by the State annually. While evaluators were aware of multiple data sources, none were comprehensive. Therefore, when the \$440 million figure was presented, evaluators sought to understand how the Procurement Section derived this number. The Procurement Section obtained the data by looking at the Excel workbooks maintained by each buyer for their individual contracts. Procurement Section staff then combined this amount with Master Contracts List data and the total amount of purchase orders.

In addition to the concern that evaluators were unable to independently verify the \$440 million figure, other concerns about this data include:

- The information appears to be based on one year (FY2016) and does not represent an annual average, although this calculation would be possible if the Procurement Section provided several years' worth of calculated amounts
- The information includes items that should not be included (e.g. requisition for items below \$2,500) and may not include total cost of contracts (e.g. amendments)
- It is unclear if the data set includes noncompetitive procurement
- It is unclear what type of validation or verification was performed to ensure that the figure was accurately reported

Further, A&I note that the amounts used for the estimate were based on spending authority rather than actual expenditures.

## **Spend Analysis Best Practices**

According to NIGP best practice, "excellence in spend data management requires that spend data extraction, classification, enhancement, and analysis activities be supported by automation and services that can streamline existing procedures and make spending analysis a repeatable process."

To facilitate best practice, most states have contemplated using comprehensive electronic systems to manage their procurement functions. However, "the implementation of technology-based procurement and sourcing solutions does not change the underlying laws and policies, but nonetheless can change how a procurement process is conducted. Procurement professionals should examine all such changes to preserve process integrity and to perpetually strengthen basic procurement values."

### **According to NIGP the most common technology employed is an eProcurement system.**

Where "a well-designed e-procurement implementation can lead to improved efficiency and enhanced competition... it is possible that efficiency measures and streamlined workflows may diminish the role of procurement professionals in the conduct of the procurement process through reduced contact with the transaction." Further, "caution must be exercised to ensure that the implementation of technology does not result in reduced responsiveness to stake holders." For example, in some instances, due to the implementation of new technologies, certain stakeholders, such as small business, may require additional assistance to participate.

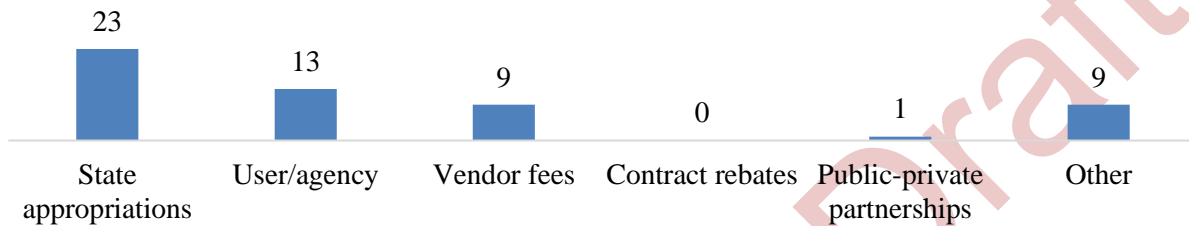
### **2016 NASPO Other States Survey: eProcurement.**

Of all respondents, only three states, including Nebraska, do not have an eProcurement or enterprise resource planning system. The remaining 44 states

use a variety of products both off-the-shelf and developed “in-house.” Nine states, including Alaska and Colorado, use CGI and its relevant modules.<sup>15</sup>

**eProcurement funding.** Forty-four states provided data about the funding for eProcurement systems. As shown in Figure 4, below, most states use “state appropriations” for its eProcurement systems. Unfortunately, NASPO did not ask states to provide any other data related to these funds.

**Figure 4. 2016 NASPO Survey, Funding eProcurement systems<sup>1</sup>**



Source: Legislative Service Office analysis of NASPO 2016 Survey Results.

<sup>1</sup> Examples of the “Other” category includes “Administrative fee paid by contractors,” “Our operation is self-funded through Administrative Fees on Statewide Contracts,” and “eProcurement system within Peoplesoft is paid for through our State Accounting Office who invoices all user agencies for their associated portion.”

Throughout the evaluation the Procurement Section made, and continues to make, efforts to standardize and improve its data. Along with encouraging the continuation of ongoing efforts, the following recommendations provide additional suggestions to ensure access to reliable and accurate data.

One of the most important considerations is limited available resources. The resources required to study the issue of data management in addition to the duties already performed by Procurement Section staff could be substantial. Therefore, it would be an effort to address these issues going forward without sufficient resources to ensure the procurement function continued.

### **Recommendation 5.1: The Department of Administration and Information should study eProcurement options.**

Although there are technological options such as implementation of a complete eProcurement system, other alternatives exist. Determining the optimal option for Wyoming will rely heavily on the capabilities of Procurement Section staff, the needs of the State, and the resources available. Therefore, the Procurement Section should consider not only a comprehensive eProcurement option, but other less cumbersome solutions. The Procurement Section should study what capabilities and outstanding concerns need to be addressed.

### **Recommendation 5.2: The Department of Administration and Information should centralize its procurement data.**

The Procurement Section should create a comprehensive data source with all expenditure information – to include all information maintained by the

<sup>15</sup> CGI is the current contractor providing the State, through the State Auditor’s Office, with its enterprise resource planning services, and includes the Wyoming Online Financial System (WOLFS).

Procurement Section, and those data sources not currently tracked (e.g. statewide contract use or small purchases under \$2,500). Knowing what does not go through procurement is just as critical to understanding how State funds are expended.

**Recommendation 5.3: The Procurement Section must implement internal controls and data protocols to ensure data is valid and protected from intentional and unintentional errors.**

**Recommendation 5.4: The Procurement Section should standardize data verification and reporting to ensure accuracy of information provided to all stakeholders.**

## Chapter 6 Bid Exception Approval Data Limitations

*The Committee expressed interest in knowing more about bid exception approvals and use, with a focus on appropriateness. While evaluators did attempt to use the existing BEA data to perform various analyses, unfortunately, due to multiple concerns with the validity and reliability of the data, the resulting work did not meet evidentiary standards for inclusion in this report. Instead, the results were evidence that there are concerns with how the Procurement Section keeps, manages, and reports BEA data. If A&I addresses these concerns, then an analysis of appropriateness and use could be performed at a later date.*

The State manages its limited or noncompetitive procurement through bid exception approvals (BEAs), commonly referred to as bid exception waivers. According to NASPO, “Non-competitive/sole source procurement is a sensitive topic in the public sector. While competition is the preferred method of performing a procurement process, non-competitive procurements such as sole source procurements are not categorically a “bad thing,” and may be the appropriate tool under certain circumstances.” Wyoming does a good job of providing public access to BEA data online compared to other states, but still has areas for improvement with its data.

### **Finding 6.1: During review of the BEA processes and data, evaluators noted a need for improvements in two areas.**

First, the BEA data, housed in an electronic system, has several limitations that restricts the ability to perform analyses. Second, the BEA process needs some added internal controls to provide adequate protections.

#### **Current processes are provided in statutes, rules, and policies.**

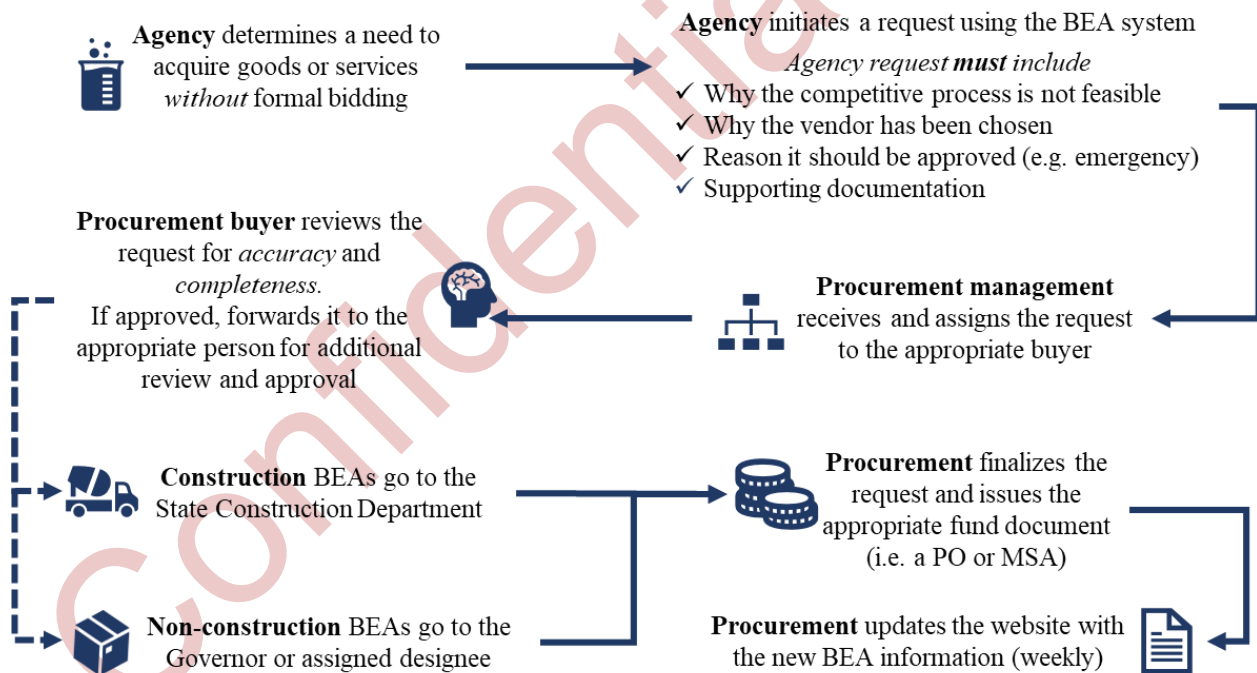
Per W.S. 9-2-1016(b)(iv)(C), the purchase of supplies and services over \$7,500 shall be acquired using a competitive process, unless the administrator determines in writing that such a process would not be feasible, then they may use noncompetitive negotiations. Section 2c of the Procurement Section Policy Manual refers to *Bid Exception Approval Requests Exceeding \$7,500*, as follows:

All expenditures in excess of \$7,500.00 shall be formally bid by the Procurement Office unless the formal bidding requirement is reviewed by Procurement and approved by the Governor or his designee. Agencies have designated personnel who are able to initiate Bid Exception Approvals using the A&I online request system. Proper documentation must be uploaded to the request supporting the need for approval. Designated personnel can track progress of the request using [a] designated section. Approval must be prior to any commitment and must be for one or more of the following reasons:

- Sole Source and/or Nonnegotiated means that bidding is not feasible because the requested commodities or services are available from one vendor.
- Negotiated approval means that competitive pricing was obtained by means other than formalized bidding with the prior knowledge and approval of Procurement because formalized bidding would cause undue delay in consummating the purchase or would yield no results. The Procurement Office will review each request. Per W.S. 9-2-1016(b)[(iv)] (B) the governor does not need to approve the request.
- Emergency means the Agency has a need to make a purchase due to an emergency situation. Written or verbal approval should be obtained from the Procurement Manager and followed up by a formal request.

As illustrated in Figure 5, below, the Procurement Section Policy Manual Section 2c provides an outline of the BEA process.

**Figure 5. BEA Workflow According to Procurement Policy Section 2c**



Source: Legislative Service Office illustration of Procurement Policy Section 2c.

**Prior to September 2014.** Review of BEAs used a combination of electronic and paper-based processes. The electronic portion consisted of an Access database and Excel spreadsheet, both manually updated and maintained. Each agency request and subsequent approvals were conducted using paper-based processes. The A&I Director felt that the paper-based processes were inefficient and consulted with the Procurement Section to find a better solution.



**Transition to an Electronic System.** Rather than purchasing an off-the-shelf solution, A&I chose to work with ETS to develop an appropriate in-house solution. About one year after the work began the ETS contractor completed the current Bid Exception Approval System. Beginning in fall 2015, A&I transitioned to using an entirely electronic system to process BEAs. The new system included an online request and approval function to automate the overall workflow and review/approval steps required of agencies and A&I staff. There have been a few updates since implementation of the BEA system to make it more robust; however, other features, such as reporting capabilities, have not been added.

### **Current data system capabilities**

The following are a few of the current capabilities, limitations, and internal controls present in the BEA system.

- **Secure access.** In addition to Procurement Section staff, only certain individuals have access to the BEA system, such as agency personnel who have permission to submit BEA requests or those outside A&I who approve specific types of requests (e.g. State Construction Department representative). Evaluators were granted complete access to the BEA system from creating a request through final approval.
- **Clear, but open-ended request form.** Agencies must submit BEA requests via the online system by completing the form, which includes a space for justification and uploaded supporting documentation. Based on evaluator observations when using the BEA system, most of the data entry fields are open-ended, which means agencies can choose to answer the prompts according to its internal preferences, processes, and procedures.
- **The BEA system has limited, built-in internal tracking.** The BEA system automatically documents each step of the process in both the “Audit” and “Conversations” fields. The Audit feature identifies the time-date stamp of an action, who took the action, and provides relevant details (e.g. “Document Uploaded” or “Status Changed to: Returned to Requester”). The Conversation feature provides a space within the system for all parties to communicate with one another. For example, the Procurement Section buyer could send a question to the agency for further clarification or additional documentation.
- **Entries have limited searchability/retrievability.** The BEA system also included a search feature that presented a few unique challenges to finding specific entries. For example, the search criteria did not include amount or item. Although robust, without certain information (e.g. Record No.), finding specific entries is difficult. Further, search options are “set” meaning a person must restart a search if an incorrect selection is made. Finally, at random points searches will error out and need to be restarted from scratch. These limitations can make finding the appropriate entry difficult and time consuming.



**Current process for posting BEA data online.**

There are two websites dedicated to making BEA data publicly available. First, the Procurement Section maintains a listing of all ***non-construction*** BEAs by categories (e.g. Emergency versus Professional Services) on its website. Second, SCD maintains all ***construction*** BEAs on its website. As of March 2018, both sites still provide links to one another. The original separation of non-construction and construction BEAs took place shortly after the creation of the SCD in 2016. Further, although A&I continues to facilitate the processing of construction BEAs through its online system, according to the SCD website statutory responsibility for approving of and “reporting on capital construction... shifted to the Construction Management Division of the State Construction Department.”

Due to the inability for the BEA system to generate reports, A&I originally created and maintained an Excel spreadsheet to track the requests. Procurement Section staff manually updated and then uploaded the data onto its website weekly.

Following input from various sources including the Attorney General’s Office, starting in 2017, the Procurement Section discontinued tracking its BEA requests using an Excel spreadsheet. Instead, Section staff updates a Word document that is saved as a PDF and then uploaded to the A&I website once a week.

**Concerns with Current BEA Data Collection**

The following are a few areas of concern evaluators noted.

**Statute only requires the SCD to collect and maintain data on construction related BEAs.**

The only reference in statutes, rules, and policies for what BEAs are *required* to be publicly available, concerns construction BEAs, and can be found in W.S. 16-6-1001(a)(i)(E), which states

Any approved waiver shall be documented in writing and provided to the governor. Notice of all approved waivers shall also be published on a website maintained by the state construction department, including a statement of the grounds for the waiver.

However, just as there is no requirement to report non-construction BEAs, there are also no apparent prohibitions to doing so should A&I decide it is necessary and appropriate. The current A&I Director has stated that he does permit the posting of BEA data to facilitate more procurement function transparency. This practice appears to be in keeping with best practice, which is to provide noncompetitive procurement information to the public.

**BEA data is not extractable in any form.**

From the beginning, evaluators discovered that the BEA system lacks any type of reporting functionality and could not produce extracts of BEA data. The inability to extract data from the BEA system means there is no way to

review and validate the information, except to manually review every entry individually. The lack of BEA system reporting is a known issue, but according to A&I has not been addressed due to a lack of resources. Currently, even though the system is automated, all reports must be manually extracted from the BEA system by Procurement Section staff.

**There were inconsistencies in the BEA data.**

The determination that the BEA data was unreliable stemmed from numerous concerns evaluators identified during Fieldwork. These inconsistencies create a situation where reporting of accurate BEA information is difficult. A few of these issues are:

- ***Duplicate BEA Numbers.*** There were several entries with duplicate BEA numbers. In most instances, the duplications were for identical dollar amounts or when the award went to multiple vendors. However, there were two instances the same BEA numbers were used for unrelated procurement entries that did not share a dollar amount or vendor.
- ***Inconsistency of Numbering System.*** Although the A&I website lists “Approval No.” as one piece of information provided to the public, this number can be misleading. When using the BEA system, searching by the “Approval No.” returns a null result. The number needed is the “Request Number” when looking at the individual record or “Record Number” when performing a search.
- ***Inconsistencies in data labeling and entry.*** As noted in review of other data sets, see Chapter 5, there were also inconsistencies in labeling BEAs. For example, references were made to the “Office of State Lands and Investments,” “State Lands,” “State Lands & Investment Office,” “State Lands & Investments,” and “State Lands and Investments.” Example of inconsistent labeling was the complete absence of record numbers outside the BEA system. Without the record number, there was no way for evaluators to conclusively match identified entries. Further it was this discovery of inconsistent labeling that revealed the information in the previously used Excel spreadsheet and the BEA system were not always identical (e.g. dates are close but not matching).
- ***Duplicate entries do not appear to always be duplicate entries.*** Evaluators learned that A&I consider entries labeled as “Returned to Requestor” to be formal denials. When an entry was “Returned to Requestor,” agencies could try re-submitting their request again. In these instances, the entries were not true duplicates because although the entries were similar, one had been “formally” denied. It remains difficult to determine if an entry is a true duplicate or merely a relic of the process.

## Scope and Internal Control Concerns with BEAs

### Data entry inconsistencies lead to BEA system limitations.

Although the BEA system does contain a “Denied” status option, the Procurement Section has never used it. Instead, evaluators noted a significant number of entries were identified as “Returned to Requestor.” According to A&I, entries identified as “Returned to Requestor” are seen internally as formal denials. However, evaluators observed that not all instances where an entry was “Returned to Requestor” resulted in the request ending. Further, there were instances where an entry was “Returned to Requestor” and a duplicate request was submitted later with additional or altered information.

Unless an individual manually compares individual entries, reviews the Audit and Conversation details, or has knowledge of the project, there is no way to consistently identify the number of entries in the BEA system and status.

### Ability to deviate from the established process.

The purpose of the BEA system is to enable agencies to request exceptions for the Procurement Section to provide review, and for the appropriate authority to provide final approval or denial. The system should provide sufficient internal controls to protect the State. However, in at least two instances practice deviated from those controls.

First, a BEA request for services was submitted by an agency but rejected by the assigned buyer because the justification was insufficient. However, A&I administration ultimately approved the request. Evaluators did not find evidence within the BEA system as to why the request was approved by A&I administration.

Second, in another example an agency executed a contract and then sought a BEA. According to current policies, contracts are not supposed to be negotiated until after a BEA request is completed and approved. In this instance, although the contract renewal the following year was denied a BEA, the agency was permitted to execute the original contract prior to obtaining a BEA.

If the State is relying upon the professional expertise of individual buyers to protect Wyoming’s best interest, by agencies ignoring their recommendations, the State appears to be exposing itself to unnecessary risk. Further, in those instances where clarifying discussions took place outside the BEA system, there is no record of the event (e.g. phone conversations), so there is no evidence to support the final decision.

## Best Practice<sup>16</sup>

The NASPO provides several best practice considerations related to limited or noncompetitive procurement.<sup>17</sup> Best practice requires procurement

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<sup>16</sup> Throughout this section, best practice references “sole source,” which is equivalent to the Wyoming term “bid exception approval” and includes sole source, noncompetitive, and emergency purchases.

<sup>17</sup> National Association of State Procurement Officials (NASPO) 2016 *State Procurement Practices Survey* results.

professionals to thoughtfully assess the current state processes and practices for non-competitive procurement. The following are a few considerations and standards for procurement professionals as they seek to improve these non-competitive practices. Supplementing the best practices suggested by NASPO are a few practices of note from other states.

**Understanding the difference between what is sole source and what is not is based on circumstances related to the goods or services being acquired but does not mean that everything is permissible.**

According to NASPO there is no common definition for sole source used by all states. A few examples of permissible sole source procurements include:

- Only one known source can provide the commodity or service as determined by documented research.
- Only one known source can meet the business needs of the agency/state due to issues such as compatibility, public safety requirements, or other unique requirements, to meet the state's business need.
- There are limited or proprietary systems considerations.
- A specific professional expert is necessary.
- There are external limitations, such as availability of products or services within a limited geographic boundary.

Conversely, NASPO cautions that, "An agency requirement for a particular proprietary product or service does not automatically justify a sole source procurement if there is more than one potential bidder or offeror for that item." Further, "Preference for a brand product or a good's or service's "uniqueness" alone may not qualify the producer or supplier of the good or service as a sole provider."

***Nebraska requires a letter from the manufacturer.*** Although not seen in any other state, in Nebraska, Sole Source Requests must be accompanied by a letter from the manufacturer, not a sales representative, on company letterhead verifying that they are the only provider of the good or service.

***South Dakota requires written evidence of research.*** Specifically, for a sole source purchase to be made, South Dakota requires written documents including a letter stating what the requester has done to ensure the purchase is truly sole source and a written quote from the vendor that includes all costs.

***Idaho documentation must also include a written statement.*** Specifically, requesting agencies must provide documentation that demonstrates it has thoroughly researched available alternatives (e.g. commodities and suppliers).

**Best practices related to reducing the use of sole source procurement and encouraging the use of competitive processes.**

- ***Use standardized templates.*** NASPO recommends that procurement professionals provide a standardized template for written justification

and should include space for documenting the research conducted to validate the sole source request.

- ***Require and publish public notices of intent to sole source.*** NASPO recommends publishing all sole source requests for public notice. Posting sole source requests provides potential vendors the opportunity to indicate interest, which could lead to the use of a competitive process. NASPO recommends that this requirement should be established in either state laws, rules, regulations, or policies.













Based on evaluator research of commonly used comparator states, Idaho, North Dakota, and South Dakota all have examples of requirements to post public notice of sole source procurement.

- ***Educate agencies.*** NASPO recommends educating agencies about ending any unnecessary reliance on non-competitive contracts. Several states have extensive education programs, as discussed in Chapter 4.
- ***Establish timely market research and acquisition processes.*** One unique aspect to Colorado, is the requirement that the price or cost analysis should be included with the procurement file before execution of a purchase order or when the contract is routed for approval. Normally, price analysis is not done in competitive solicitations where “adequate competition” exists, because the competitive process takes care of the “fairness and reasonableness” of prices. “In a sole source situation where no price competition exists, some analysis must be done to insure [sic] that the requirements of the controller’s statute are met, i.e., that prices or rates are “fair and reasonable.””
- ***Maintain and publish a record of all sole source contracts.*** NASPO recommends, at a minimum, states should maintain a record listing all sole source contracts. Additionally, states should consider publishing a record of sole source contracts, and/or submit a copy to the governor’s office or legislature, if requested.

## Other Comparator States and BEA Data

For reference, all seven of the other states reviewed for this evaluation addressed noncompetitive procurement of goods and services. A summary of the data in each of the seven states can be found in Table 1, on the next page. Notably, unlike Wyoming, most of these comparator states do not have BEA-like information publicly available.

**Table 1. Seven SPL-Comparator States Sole Source Practice Summary**

Area of Interest	AK	CO	ID	MT	NE	ND	SD	WY
Source of authority is in statute?	✓	✓	✓	✓	✓	✓	✓	✓
Is there a definition in statute?	✓	✓	✓	✓	✓	✓	✓	✓
Are the procedures in statute?	○	✗	✓	○	✗	✓	✗	✗
Are there related rules?	✓	✓	✓	✓	✓	✓	○	✓
Are there related manuals?	✓	○	✓	○	✓	✓	✓	✓
Is there any other guidance?	✓	✓	✓	○	○	✓	○	○
What is the documentation type? (  = paper and  = electronic)			 / 				 / 	
Is there data publicly available?	✓	✓	✗	✓	✗	✗	○	✓
Is this data current?	✗	✓	○	✓	○	○	○	✓
Is there other possible data? (i.e. not public, but tracked)	✓	✓	✓	✓	✓	✓	✓	✓

Source: Legislative Service Office analysis of other states research.

Key: ✓ is Yes ○ is Unclear/Unknown ✗ is No

Note: For the paper processes, there may very well be an electronic system for processing and approval, but it was not listed on the public website.

### **Recommendation 6.1: The Department of Administration and Information should update the BEA system to include the ability to export the data.**

With the understanding that the original contractor is no longer in business, A&I should explore options for updating its current BEA system to include export capabilities. This capability will be essential in maintaining historic records should the Procurement Section ever decide to move to a new system or retire the current one. Further, the Procurement Section should also use the “Denial” option instead of “Return to Requestor” to maintain a better decision or audit trail.

### **Recommendation 6.2: The Department of Administration and Information should review its statutes, rules, and policies related to BEAs and consider adopting best practices.**

The Procurement Section should review other states and national best practices to improve current Wyoming processes. For example, the Procurement Section could consider implementing a Notice of Sole Source policy to serve as verification of the unique nature of the purchase. Additionally, the Procurement Section could consider requiring letters of verification from manufacturers or others to confirm the sole source claim. If A&I encounters areas where statutory changes are necessary, then it should propose these to the Legislature.







## Matters for Further Consideration

The following are areas identified as outside the scope of the evaluation but may be areas of interest to the Committee because they impact the efficiency and effectiveness of the procurement and leasing functions.

### **The Department of Administration and Information does not have a legislative interim committee it reports to for all its functions.**

Given the diverse nature of A&I responsibilities (e.g. procurement, leasing, employees' group insurance, human resources, facilities management, budget & fiscal, etc.), there is no single interim committee solely dedicated to providing oversight and direction to the entire department.

Further, given the increasing interest and shift towards centralization of statewide services, it appears as if there is not a single legislative interim committee responsible for oversight of generalized government operations.

Traditionally, A&I, the Department of Enterprise Technology Services (ETS) and the State Construction Department (SCD) have reported to the Joint Appropriations Committee (JAC). However, as noted by A&I, often the JAC is simply too busy with its duties and obligations to provide sufficient oversight to all the operations conducted by A&I.

The Committee may wish to review this matter and determine if a select or interim committee dedicated to government operations could be appropriate. Such a legislative committee could provide continuity and feedback as the State moves toward finding greater efficiencies in government operations.

### **Review of other state expenditures, such as purchasing cards and small purchases, could be beneficial.**

As discussed in Chapter 5, data limitations are the reason a comprehensive review of other State expenditures is limited. Specifically, A&I considers these other expenditures to be outside the purview of the Procurement Section. Although evaluators agree that these expenditures were outside the scope of the evaluation, a thorough review of these expenditures is needed. As discussed in Chapter 5, best practice indicates that coordinated strategic procurement efforts require comprehensive data and information for all expenditures.

### **Review of current vendor preferences could be beneficial.**

Although not directly related to this evaluation, other states and national best practice research revealed that in-state vendor preference is an issue with multiple considerations including reciprocity, appropriateness, and effectiveness. Recently, the Governor issued 2018 Executive Order 2 establishing a preference for in-state vendors for technology purchases. The Committee could consider conducting a review of existing procurement related preferences.

**The Committee could consider a one-year follow-up to review several outstanding items of interest.**

Based on the contents of this evaluation, there are several areas where A&I, the GSD, the Procurement Section, and Leasing Office are making progress. However, to ensure that this progress continues and accomplishes its purposes the Committee should consider a targeted one-year follow-up to review the following areas:

- A&I centralized contracts unit or repository update
- DocuSign implementation impact
- eProcurement study results
- Statute updates
- Website review
- Rules changes updates
- Succession planning and organizational structure update
- Training updates
- Bid exception approval data improvements

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## **Agency Response**

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**Department of Administration and Information**

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Confidential Draft



## OFFICE OF THE DIRECTOR

*Matthew H. Mead, Governor* | *Dean Fausset, Director*

August 16, 2018

The Honorable Mike Madden, Chairman  
The Honorable Dave Kinskey, Vice-Chairman  
Management Audit Committee  
200 West 24th Street (and via email)  
Cheyenne, WY 82002

RE: Formal Written Response - LSO Program Audit on Leasing and Procurement

Dear Representative Madden and Senator Kinskey:

A&I appreciates the opportunity to respond to the Management Audit Committee's review of the Department's Procurement and Leasing Section. I want to personally thank LSO staff members who undertook the audit with our staff for their professionalism and thoroughness. A&I was fully transparent with the LSO staff by providing them with access to all documents and systems to complete their audit.

I can speak confidently when I say to you the Department of Administration & Information is fully committed to continuous improvements in procurement and leasing and has not sat idle since the LSO audit began. We have dedicated and professional staff members who take their jobs seriously to provide the best customer service possible, as well as manage the resources entrusted to us. We have taken significant steps to continue the work that needs to be done, and it will be highlighted in my responses to you.

As I believe the audit demonstrated, the small number of staff (7) allocated and budgeted for the programs provide a critical service to other agencies and have achieved significant progress in an ongoing effort to modernize the systems that support leasing and procurement functions. The department looks forward to improvements planned over the next year to automate lease requests, renewals and contracting, and utilize systems to improve consistency, uniformity and control costs.

You will note in my response, A&I concurs with most of the LSO audit recommendations and in those areas where we partially agree I will explain, and from my point of view, where we differ.



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So what have we been doing since the April 2016 Entrance Conference that began the audit? The following list illustrates significant movement by the department and the staff:

- Implementation of several new new software systems:
  - AiM Facilities Management module
  - Leasing module
  - Space utilization module
  - Energy efficiencies module
- New website
- Space Utilization study

I will provide more information and insight on these initiatives in my responses to your recommendations.

Respectfully,



Dean Fausset, Director

Department of Administration and Information

cc: Matt Mead, Governor  
Joy Hill, Program Evaluation Manager  
Elizabeth Martineau, Program Evaluator, LSO  
Karla Smith, Senior Program Evaluator, LSO  
Russ Noel, A&I Deputy Director  
Rich Merrill, GSD Administrator

encl.



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**A&I RESPONSES**  
**2017-18 LSO Audit on Leasing and Procurement**

**LSO Audit Committee Recommendation Number 1.1**

The Leasing Office should develop more complete guidelines to provide to state agencies as they seek new or different space to help them better account, plan, and prepare their request for the Department of Administration and Information approval.

**A&I Response:**

Agree

*A&I will develop a complete set of guidelines that provides more explanation and definitions and will be incorporated into the new AiM system. The guidelines will be a part of A&I's overall goal to ensure more consistency and uniformity and control costs.*

The current process requires completion of an **Agency Real Property Rental Request** form that also serves as a needs assessment. The current form is to be completed and signed by the Agency Director. A&I will develop guidelines for agencies that provide a summary of the overall process and more explanation for the fields included. The form and guidelines will be incorporated into an e-booklet with an introductory section and separate the current information into functional categories.

The new guidelines will explain the Leasing Office is a statewide program and serves as the leasing agent to all state agencies (exceptions: Department of Transportation, Game and Fish, University of Wyoming). Services provided include: acquisition of leased space, contract initiation and management, processing of rental payments, billing agencies for general fund reimbursements, and resolution of space related issues. A&I's specific goal is to lease space at or below the standard market rate for the area.

With the implementation of the Leasing Module in AiM, an Assetworks company, a cloud based database platform is being used for data gathering and storage. Implementation includes converting the Microsoft Access Database into the AiM database, verifying the accuracy of the data, and establishing workflows. Within the next two years, data collection will be real time from the agencies through automated forms and workflows. The guidelines, definitions and explanations will be incorporated into this system.





**LSO Audit Committee Recommendation Number 1.2**

The Department of Administration and Information should continue its space utilization study, consider implementation of a space allocation strategy, and inclusion of a compliance section to provide the Leasing Office with authority to enforce these policies.

**A&I Response:**

Partially Agree

*A&I has initiated and will continue the space utilization study to be completed by the end of this calendar year.* The department's consultant, Facility Engineering Associates (FEA), will provide recommendations for maximizing building space and establishing building assembly standards and guidelines. Expectations for these standards are as follows:

- To fully assign space allocation, tenant fit-out, consolidate state services, and
- Provide a major component of controlling the cost of building operation and maintenance.

A longer-term goal is to incorporate these standards into the guidelines anticipated by the audit's first recommendation in order to promote more uniformity and consistency.

The standards and guidelines will also standardize the expectations of tenants and create a starting point to reference during facility management planning, agency space assignment, building renovation and new building scope development, building design, and building operation.

Complexities of this space utilization study requires at least a three phase approach:

1. Phase 1 - **Establish the overall strategy and objectives** with expected outcomes; work with stakeholders; confirm building types; confirm space and space types; develop a matrix for evaluation; use the AiM database for building data management; energy management strategy development; revise Phase 2 scope if needed; updated schedule; and final level of detail being provided in rule change.
2. Phase 2 - **Develop space utilization standards and guidelines** for all identified space types collecting and analyzing stakeholder data; collaborating with stakeholders on the new standards; and presenting final recommendations to the SBC for approval, adoption and implementation.





3. Phase 3 - **Implement standards and guidelines** based on SBC guidance; present any revisions to stakeholders; finalize possible legislation; provide support as needed for SBC and legislative session; and deliver the final standards and guidelines.

During the July 2018 SBC meeting, A&I provided information about the space utilization study and a brief summary of the schedule involved with the study:

- May 29, 2018 - Kickoff meeting with the consultant, A&I, and the State Construction Department (SCD) was held
- May 29 to July 20, 2018 - Consultant reviewing latest building space programming of the Herschler building and Casper Office building
- May 29 to August 15, 2018 - GSD is conducting a room-by-room analysis of every building to verify occupancy and space use. All information is being placed into AiM.
- July 30, 2018 - Stakeholder meeting with Consultant
- September 14, 2018 - Draft of initial study results of current space use
- October 11, 2018 - Presentation to the SBC

*In regard to partial agreement with this recommendation, A&I will consult with the AG's office to understand whether the Leasing Office has authority for rulemaking or enforcement of standards.* The agency will incorporate its advice in advance on statutory revisions to the legislature consistent with the following recommendation (Number 2.1).

**LSO Audit Committee Recommendation Number 2.1**

The State Building Commission and its secretary, and the Department of Administration and Information should review and identify updates to existing SBC and statutes, rules, and policies to reflect the current structure and processes of the A&I statewide leasing function.

**A&I Response:**

Agree

*In the past two months, A&I initiated a review of these statutes with the Attorney General's office to ensure there is a clear division of responsibilities and that structures and practices are reflected correctly.*

The current rules are twenty-one years old; therefore, the rules and statutes require review and changes specifically for the leasing function of the SBC. Collaboration with the Secretary of the SBC is also part of this process and the Attorney General's office. Upon agreement between the



SBC Secretary and the GSD Administrator on the revised rules, an updated set of rules will be presented to the SBC.

**LSO Audit Committee Recommendation Number 2.2**

The Legislature, State Building Commission and its secretary, and the Legislature, Department of Administration and Information should study and consider changes to the organizational placement and structure for the leasing function.

**A&I Response:**

Partially Agree

***Leasing, along with building maintenance and management, are distinct functions from the contracting and management involved with construction. Leasing, as a part of the overall procurement process, involves specialized skills, accountabilities and training and utilize separate software systems that dovetail with space utilization and building maintenance.***

The legislature's rationale for segregating and creating a separate agency for state building construction is as follows:

*"During the 2016 Legislative Budget Session, SF0092, SEA No. 0059, established the consolidation of state construction entities by combining the construction management program, which was within the Department of Administration and Information, with the School Facilities Department to create the State Construction Department. The act provided that the functions of the General Services Division within the Department of Administration and Information relating to routine maintenance and leasing of property remain with the Department of Administration and Information, W.S. 9-2-1016 (b) (xix), and (xxi). Construction related functions would be transferred to the new department."*<sup>1</sup>

***Leasing is an administrative function of government operation and the Department of Administration and Information is the properly assigned agency.*** Since July 2016 the leasing section has implemented significant changes to the leasing program that includes improved leases; additional reporting; implementation of digital signatures; office site visits on a regular basis; and engagement of landlords.

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<sup>1</sup> Legislative website, 2016 Session, Summary of SF 92



**LSO Audit Committee Recommendation Number 3.1**

The Procurement Section should study the current use of statewide contracts. The study should include, at a minimum, data related to purchases by agency, commodity, and vendor.

**A&I Response:**

Agree

*A&I agrees with this recommendation and is currently utilizing statewide contracts; however, we also concur additional statewide contracts need to be negotiated for purposes of strategic sourcing.*

There is no statute, rule, or policy mandating the A&I Procurement Section data capture regarding agency purchases. If a study is performed, consideration should be given regarding data in amounts under the dollar threshold that is required by statute.

A&I currently has numerous statewide contracts in place for utilization by state agencies and the potential use by political subdivisions (community colleges, cities, counties, school districts, etc). A current list of statewide contracts is available via the procurement website. As of today, the list includes the following commodities and vendors (*political subdivision available in italics*):

**Computer hardware and software**

*Cisco (ISC, Venture)*  
*Avaya Inc*  
*Fujitsu Network Communications Inc.*  
*Apple, Inc*  
*Dell Marketing LP*  
*Howard Technology Solutions*  
*Lenovo*  
*Microsoft*  
*Transource Service Corp*  
*HP, Inc.*  
*CDW Government LLC*  
*SHI International, Corp.*  
*Insight*

**Medical Supplies**

*MMCAP*  
*Evenflo, Inc.*  
*Hygeia II Medical Group*  
*Medela Inc.*  
*Orasure*  
*Cardiac Science Corporation (AED Everywhere)*

**Laboratory Supplies**

*Fisher Scientific Co, LLC*  
*VWR International*  
*Nikon Instruments, Inc*



<b><i>Office Equipment/Supplies</i></b>  <i>The Hon Company</i> <i>National Office Furniture, Inc.</i> <i>Wright Line</i> <i>Pitney Bowes, Inc.</i> <i>Neopost USA, Inc.</i> <i>Kyocera</i> <i>Xerox</i> <i>Krueger International</i> <i>Office Depot</i> <i>Staples</i> <i>Hewlett Packard Enterprise</i> <i>Brocade Communications (Optiv, Accuvant, Red Sky, &amp; The Root Group)</i> <i>AT&amp;T</i> <i>Verizon</i> <i>Discontcell, Inc.</i> <i>Exemplis</i> <i>Steelcase/Officescapes</i> <i>Fed Ex</i> <i>United Parcel Services</i>	<b><i>Air Filters</i></b> <i>Climate Control Systems &amp; Service</i> <i>Scan Air Filters, Inc</i> <i>American Air Filter</i> <i>Climate Control Systems &amp; Service</i> <i>Scan Air Filters, Inc</i>  <b><i>Miscellaneous - Auto Related</i></b> <i>Bridgestone America Tire Operations</i> <i>Michelin North America, Inc.</i> <i>Goodyear Tire and Rubber Company</i> <i>Genuine Auto Parts (dba NAPA)</i>  <b><i>Body Armor</i></b> <i>Point Blank Enterprises, Inc.</i> <i>Survival Armor, Inc.</i> <i>GH Armor</i>  <b><i>Industrial Supplies</i></b> <i>Grainger</i> <i>MSC</i> <i>Fastenal</i>
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In an effort to gather information to satisfy the desired minimum data requirements listed above, A&I contacted NASPO and acquired a contract purchase report. The report does not specifically identify which entity is utilizing the individual contracts. A&I will continue work with NASPO, as well as the individual contracted vendors, to identify better data extraction and reporting.

One clear example of centralized procurement success is the copier program. Following an RFP, the contract was signed directly with the manufacturer and included a provision that allowed for local installing dealers. Ultimately, this effort resulted in better contract pricing and included opportunities for Wyoming vendors. To date, 544 contracts have been issued as the result of the RFP. This statewide contract involved a substantial amount of staff resources over a six month time period. The copier program serves as a model benchmark.

**Based on the recommendations issued as the result of this LSO Audit, the A&I Procurement Section will implement this approach in other areas. Additional efforts are subject to the limited amount of staff resources. A&I may request additional staff,**



**computer systems, and any other resources deemed necessary. Mandatory procedures for agencies to follow when using statewide contracts may become necessary.**

On July 31, 2018 the Procurement Section facilitated a meeting in Cheyenne with NASPO, Laramie County School District #1, Laramie County Community College, and the City of Cheyenne to begin some collective efforts on statewide purchasing. A&I will be meeting with political subdivisions to identify areas of interest and to produce stronger strategic sourcing efforts. Beginning in October 2018, an organized effort will be made to facilitate more frequent purchase types with as many political subdivisions as possible. At this point and based on our experience, the State of Wyoming will need additional personnel and resources to fully integrate this effort into day to day operation.

**LSO Audit Committee Recommendation Number 3.2**

Based upon the results of this study and working with the Procurement Section, the Legislature could consider appropriately mandating certain statewide contract use or determine what opportunities the State should pursue independently.

**A&I Response:**

Partially Agree

*A&I concurs it may be beneficial for the state to mandate centralized procurement of certain large volume purchases such as copiers, computers, furniture, etc. However, this may be best handled by the executive branch through rules, policies and procedures rather than through legislative action.*

Currently, the only contract mandated to state agencies is the copier contract. The copier program's success began according to existing RFP guidelines. The RFP included historical data relative to volume usage enabling potential proposers to consider when establishing their cost proposal. Additionally, the RFP allowed for multiple awards affording agencies an option which best meets their individual needs. In the case of the copier program, two contracts were established between the State of Wyoming and the manufacturers. Local Wyoming business entities benefited from the contracts by providing statewide installation and ongoing service.

Similar studies prior to legislative mandates should be required. The study should include volume and agency dollar spending and would require the assistance of the State Auditor's Office. Consideration should be given to include local governments, if law allows.



A coordinated effort between the Wyoming Legislature, A&I and local communities should occur when identifying areas where mandated use will result in considerable cost savings and higher efficiencies. Any proposed legislation should be written that promotes open and fair competition and promotes, when possible, an element of Wyoming inclusion.

Public notices should be considered so Wyoming vendors can be included. Proposed changes may affect opportunities throughout duration of the contract.

**LSO Audit Committee Recommendation Number 3.3**

The Management Audit Committee could consider a separate evaluation focusing on state agency practices related to contract negotiation, administration, and monitoring.

**A&I Response:**

Partially Agree

*State agency practices related to contract negotiation, administration, and monitoring is an executive branch administrative function which the department will consider. It is A&I's opinion there is no need for a separate LSO evaluation, rather this may best be delegated to the agency and be a follow up item when LSO completes their follow-up evaluation in a year or so.*

Although the Procurement Section works closely with the Attorney General's Office regarding contract templates, there is no requirement of the Procurement Section to manage contracts for state agencies. **As an alternative to performing a separate evaluation focused on contract negotiations, administration, and monitoring of agency practices, the evaluation should focus on centralization of these duties.** This would provide consistency in contract preparation, contract execution, data collection, combine resources from state agencies, and streamline processes.

By focusing on these practices and developing a set of standards for use and application, agencies can perform these functions with a uniformed approach.

**The A&I Procurement Section will take the lead on state agency practices related to contract negotiation, administration, and monitoring. The A&I Procurement Section will collaborate with stakeholders to include: the Attorney General's Office, Budget Division, State Auditor's Office, state agency representatives and LSO staff. Existing staff levels may not be sufficient and require additional resources.**



**LSO Audit Committee Recommendation Number 3.4**

The Department of Administration and Information should implement policies and promulgate rules related to the management of noncompliant vendors.

**A&I Response:**

Agree

*A&I will continue to coordinate with the AG's office to adopt and implement procedures for agencies to document poor performance or non-compliance and provide education.*

A&I currently consults with the Attorney General's Office on a case-by-case basis for advice on matters involving a vendor's poor performance or non-compliance.

Historically, A&I has not been notified of vendor issues until the product or service is re-bid or at the time an intent to award has been established. At that time, agencies often request that a vendor not be considered due to poor performance. An effort to develop standard procedures for reporting and documenting negative performance history will be established in accordance with advice provided by the Attorney General's Office.

**LSO Audit Committee Recommendation Number 3.5**

The Department of Administration and Information should review the American Bar Association Model Procurement Code, and other states' procurement acts, and provide recommendations to the Legislature related to adopting certain provisions to create a centralized procurement act.

**A&I Response:**

Partially Agree

*A&I has reviewed the American Bar Association Model Procurement Code and will review other state's procurement practices. This review will be coordinated with the Wyoming Attorney General's Office.*

Some key outcomes that will guide review and assessment include the following:

- Quality goods and services should be at a fair and reasonable cost





- Procurement procedures are conducted in a fair and impartial manner with any avoidance of any appearance of impropriety
- Qualified vendors have access to public business

**A&I views the the creation of a centralized procurement act as an executive branch administrative function and will review best practices referenced and others to determine the need for change. These changes may be implemented administratively through rule and policies and if needed, the department will approach the legislature for changes to the statutes. Additionally, progress can be reported to the Management Audit Committee in future follow up reviews.**

The A&I Procurement Section should be given broad authority to make decisions in accordance with statute, rule and policy. Future efforts will include a full staff review of the code to identify similarities and differences. Any revision to existing practices will involve the Attorney General's Office prior to any recommendation to the Legislature.

**LSO Audit Committee Recommendation Number 4.1**

The Procurement Section should consider the following related to enforcement authority:

- Review statutes to determine whether enforcement can be pursued under current statutory provisions;
- Review the Procurement Section rules to determine whether amending rules will provide enforcement authority.

**A&I Response:**

Agree

***The A&I Procurement Section will consult with its assigned attorney(s) in the Wyoming Attorney General's Office to formally conduct a review of the current statutory provisions and Procurement Section rules.***

Chapter One, Section Four of our current rules state, "The Division shall ensure that these rules are enforced, and that the provisions of these rules are applied uniformly and fairly throughout the Executive Branch." However, the rule does not include any enforcement authority if rules are violated, and statutes may not be construed to allow for it.



The A&I Procurement Office is currently in discussion with the Wyoming Attorney General's Office on revisions to the existing RFP and other sections of the policy manual. Further discussion will include the potential for rule enforcement authority.

Another essential element will involve more extensive agency training. A survey of our user agencies resulted in the desire for more procurement process training and assistance. By offering comprehensive training to agencies, any violation, especially in a repetitive nature; may be subject to suspension, removal of procurement authority, or other disciplinary action outlined.

**LSO Audit Committee Recommendation Number 4.2**

The Legislature should consider amending the Department of Administration and Information statutes to formally delegate procurement authority to state agencies.

**A&I Response:**

Partially Agree

*A&I agrees further study needs to be conducted by the department in order to recommend whether statutes should be changed to formally delegate procurement authority to state agencies. If needed, this could potentially be handled as an administrative action by the department through rules and regulation. A&I will conduct a thorough review of the advantages and disadvantages and present them to the Management Audit Committee, along with the review of enforcement authority as stated in recommendation 4.1 of this Audit.*

Changes to legislation delegating authority to agencies, whether increasing or decreasing it, should include clear divisions of responsibility and reporting relationships between A&I and other agencies to ensure efficiency and proper checks and balances. **At this time, the A&I Procurement Section does not have the ability to capture complete data to support a change in authority. Investing in software that captures all agency activity and allows for shared access is necessary.**

Beginning with the WOLFS Accounting System, the A&I Procurement Office will explore data capabilities to identify all volume currently outside our statutory authority. Access to this information may provide an insight on how agencies are conducting their purchasing practices. If the data supports that agencies could manage higher purchasing authority and realize better efficiencies, delegation could be considered. Contrarily, if data indicates that agencies are not making efforts towards obtaining competitive pricing, not utilizing state contracts for their needs



and directing purchases to one source on a repetitive basis, restricting authority and providing additional training would be required.

**Until such an assessment is completed, formal delegation could be considered, but implementation should be informed with the findings of a review.**

**LSO Audit Committee Recommendation Number 4.3**

The Department of Administration and Information should consider the following:  
Make an online procurement process refresher course a requirement every three-years for state employees involved with procurement activities; Make an online procurement process refresher course an annual requirement for non-compliant state employees; Develop a "non-compliance" form for non-compliant state employees and associated supervisors to review and sign; Develop procurement training videos for the web page for employees access.

**A&I Response:**

Agree

***A&I agrees to develop online training for procurement for state agencies.*** An online training course would be an efficient method to access comprehensive training. Agency employees could have immediate access to information on a continuous basis.

The A&I Procurement Section staff currently offers training on an as-needed basis specific to individual agency needs. Training options include bid/RFP procedures; dollar amount requirements; exemptions; bid exception request process; and construction related procurements. Additionally, the Purchasing Policy and Procedures Manual is available on the website for easy access and reference.

The expectation is for compliant employees to voluntarily recertify every three years, similar to other training programs offered by A&I. An annual refresher course could be required for non-compliant employees. Training should be mandatory.

**A&I agrees to development of a “non-compliance” form for non-compliant state employees with associated supervisors review and signature.** An annual refresher course will be taken until employee demonstrates compliance, and the associated supervisor acknowledges such.

Required resources include monitoring and tracking software; videography services and/or training software.



**LSO Audit Committee Recommendation Number 4.4**

The Department of Administration and Information should consider the following related to Procurement Section staff:

- Develop a plan as retirements occur to focus on hiring individuals already certified in public procurement;
- Develop a plan as retirements occur to provide access to certification opportunities for Section staff.

**A&I Response:**

Agree

*A&I agrees and has already begun to develop a succession plan for procurement buyers, as well as efforts to train and develop existing employees. This will serve to enhance their skills in an effort to better align with transaction processes and best practices in public procurement. We recognize that certified public buyers are necessary and preferred when possible to recruit.*

Recruitment efforts to fill position vacancies in the past have focused on individuals who possess WOLFS accounting experience. The Procurement staff dedicates a large amount of time reviewing and approving WOLFS transactions submitted daily by state agencies.

Buyers who participate in the certification process constantly strive to improve knowledge of methods and processes that affect purchasing performance; maintain high standards of personal conduct and avoid conflicts of interest that jeopardize impartiality. This statement is not to suggest our staff conducts activities to the contrary, the statement merely supports the recommendation that certification no longer remains optional.

Continued efforts will be made to encourage staff to obtain public procurement certification, participate in public purchasing forums and collaborate with purchasing staff within local governments to share ideas and resources.



**LSO Audit Committee Recommendation Number 5.1**

The Department of Administration and Information should study eProcurement options.

**A&I Response:**

Agree

*We agree that the eProcurement options should be studied and appropriate software solutions should be implemented where it is efficient and there is opportunity to do so.*

Currently the limited staff in A&I Procurement Section creates EXCEL spreadsheets for internal tracking. Admittedly, inadvertent input errors can be created when shared or managed with external clients.

eProcurement, as defined in the Appendix, "...offers a point, click, buy, ship Internet technology." No eProcurement demonstration viewed to date has offered this feature. The A&I Procurement Section will continue to seek companies and or software solutions. The ability to procure software would be dependent on the availability of funding.

Spend analysis will involve tracking actual expenditures through the State Auditor's Office. Access to current expenditure data is necessary to identify the volume and amount spent by state agencies on goods and services. As many of the expenditures fall under our dollar threshold, it is imperative to have access to the information so that the data set is complete.

Any eProcurement system should integrate with the current WOLFS system. Our office will contact the State Auditor's Office to explore potential solutions offered through the current accounting system. Current WOLFS upgrades may offer better opportunities towards system integration. Procurement will reach out to members of the WOLFS unit to initiate discussion.

The A&I Procurement Section is currently using different systems to perform different functions. For example, contracts are submitted through the Cobblestone system implemented by the AG's office. The Public Purchase solution facilitates our competitive bids and spending authority, and encumbrances are part of the WOLFS System. While these systems all perform distinct functions, solutions for moving back and forth between systems or data sharing should be studied.



**LSO Audit Committee Recommendation Number 5.2**

The Department of Administration and Information should centralize its procurement data.

**A&I Response:**

Agree

*Current statutes do not charge the A&I Procurement Section with any type of data capture or reporting. Centralization of small purchase data, as mentioned in the findings, would require collaboration with the State Auditor's Office.*

To date, available data has not been shared with the A&I Procurement Section, and the primary functions of the office have not included data collection. This pertains to P-Card usage and expenditure reporting.

Non-competitive procurement, as mentioned in the audit findings, would potentially require software, which would be dependent upon available funding. The vendor that created the system being utilized for submission of non-competitive procurements is no longer in existence. The Department of Enterprise Technology Services currently assists when problems arise.

The recent implementation of a commercial off-the-shelf contract workflow system by the Attorney General's Office (Cobblestone) may be a viable option for non-competitive procurement submission and reporting. Discussion will take place with the Attorney General's Office at a later date since the implementation is relatively new and untested.

One recent effort seems notable in this regard. A&I's Procurement Manager worked with the State Auditor's Office to identify a change to automated purchase orders. As a result, purchase orders can be sorted by agency number, and encumbrance totals by agency can be retrieved automatically. Collaboration also yielded access to fiscal year reporting that captures the number of Purchase Orders and corresponding total dollar amounts issued for individual agencies. This information is furnished to the A&I Budget Office for cost allocation purposes.



**LSO Audit Committee Recommendation Number 5.3**

The Procurement Section must implement internal controls and data protocols to ensure data is valid and protected from intentional and unintentional errors.

**A&I Response:**

Agree

***By centralizing data, ensuring uniformity of reporting fields and assigning responsibility to one individual, errors in data capture can be alleviated. Additionally, agreement on the type of fields and spreadsheet design will result in better accuracy and efficiencies in data collection and reporting.***

To satisfy data requests, the A&I Procurement Section provided LSO access to spreadsheets created for internal use only. Each individual buyer maintains data according to the range of assigned commodities. Although the information is essentially the same, uniformity in the spreadsheet design is not.

Acquiring an eProcurement system may serve as a solution and replace antiquated methods of gathering and maintaining data. Future research into solutions that track spending history will also consider automated fields that offer better data integrity by protecting against manual error. System components should include not only the extraction and filter of data, but could offer the ability of insight and analysis and possibly forecasting strategies.

**LSO Audit Committee Recommendation Number 5.4**

The Procurement Section should standardize data verification and reporting to ensure accuracy of information provided to all stakeholders.

**A&I Response:**

Agree

***The accuracy and integrity of data is essential for internal operation and external reporting. Manual reporting methods should be replaced.***

Standardization provides structured methods resulting in not only time savings, but building customer trust in the information we provide. On occasion, the A&I Procurement Section staff is approached by vendors offering automated solutions. Due to lack of funding and the State





Auditor's Office integration requirements, we are only able to explore options at this time. Defining specific data requirements is important and standardizing verification. Each stakeholder may have a different need for access to a particular set of data.

Migrating to an automated form of data collection, maintenance and reporting should be considered in an effort to provide accuracy and transparency. Until resources become available to move to a more automated system, the A&I Procurement Section staff will meet to discuss and determine a uniform set of standards for manual reporting.

**LSO Audit Committee Recommendation Number 6.1**

The Department of Administration and Information should update the BEA system to include the ability to export the data.

**A&I Response:**

Partially Agree

*A&I agrees the Bid Waiver Exception Approval (BEA) system should be updated to allow for the extraction and export of data; however, this will require appropriations to accomplish. A&I implemented the current customized system in cooperation with the Department of Enterprise Technology Services and an outside consultant. A&I's partial agreement is because until additional funding is available, the department does not have the resources to complete this.*

The process of obtaining information from each approved BEA is accomplished through manual extraction by staff. The ability to export data electronically through software would be welcome and is dependent on the availability of funding.

The statement outlined in the LSO report (page 52, line 24) is correct: "Statute only requires the SCD to collect and maintain data on construction related BEAs." However, to facilitate transparency, A&I has posted all approved noncompetitive BEA's on the website. A reporting function should eliminate invalid entries, and provide tracking capability.

The paper process for requesting approval of non-competitive purchases was antiquated and time consuming. A joint effort among ETS, a specific staff augmentation contract vendor and A&I resulted in creation of an online system for submission of non-competitive requests that improves efficiency. The electronic system was initiated in the Fall of 2014.



The turn-around time improved substantially and resulted in a centralized, standardized tool for all users. Other than data extraction to an Excel spreadsheet, or manual extraction into individually categorized WORD documents, no other data extraction component exists within the current system.

The recommendation to update the BEA system may not be a viable option because the entity that created the system is no longer in existence. The Department of Enterprise Technology Services currently assists when problems arise. The recent implementation of a commercial off-the-shelf contract workflow system implemented by the Attorney General's Office (Cobblestone), may also be a viable option to utilize in the future for BEA submission and the recommended ability to export the data. Discussion will take place with the Attorney General's Office at a later date since the implementation is relatively new and untested.

**LSO Audit Committee Recommendation Number 6.2**

The Department of Administration and Information should review its statutes, rules, and policies related to BEAs and consider adopting best practices.

**A&I Response:**

Agree

*A&I will review its statutes, rules, and policies and consider adopting best practices pertaining to sole source requests. Review of best practices relative to sole source procurements may result in publishing sole source requests on the website for a specified amount of time as a public notice to allow vendors the opportunity to indicate interest, which could lead to the use of a competitive process.*

A second consideration of requiring verification from manufacturers or others to confirm the sole source claim could also be reviewed and executed. This practice could be adopted into policy.

Current practice conforms with statute 9-2-1016(b)(iv)(C) which states: "Contracts may be made by non-competitive negotiation only when competition is not feasible, as determined in writing prior to award by the administrator and approved by the governor or his designee. An elected state official may also contract for supplies or services for his office by non-competitive negotiation if the contract is for twenty thousand dollars (\$20,000.00) or less and he determines that competition is not feasible." The requesting agency provides justification, as well as uploaded documentation supporting the non-competitive/sole source request. This is accomplished through the online BEA system. Each request is reviewed and scrutinized by the



responsible Procurement buyer; Procurement Manager; and Governor's designee prior to final approval.

## **CONCLUSION**

A&I appreciates the opportunity to review and consider your findings. We believe we can work together with both the executive and legislative branches to further strengthen the State of Wyoming procurement and leasing activities for better efficiencies and cost savings. We are appreciative of your review and giving us the opportunity to explain what we are currently doing and plan to do in the future. We fully support the findings of this study and will continue to work to find solutions; however, A&I will require the commitment and assistance of future executive branch leadership and the legislature through appropriations and statutory changes. We also look forward to working with the Legislature's Efficiency Commission to find more opportunities.



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## **Agency Response**

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### **State Building Commission**

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THE STATE

OF WYOMING

# State Building Commission

Governor Matthew H. Mead, Chairman

Edward A. Buchanan, Secretary of State

Cynthia I. Cloud, State Auditor

Mark Gordon, State Treasurer

Jillian Balow, Superintendent of Public Instruction

August 20, 2018

Chairman Michael Madden, Vice Chairman Dave Kinskey, and the Management Audit Committee  
213 State Capitol  
Cheyenne, Wyoming 82002

Subject: State Procurement and Leasing Program Evaluation Report  
The State Building Commissions (SBC) response to the Legislative Service Office (LSO) Program Evaluation Report, State Procurement and Leasing (SPL) draft report for their review.

The SBC members have reviewed the Document provided by LSO with the following comments:

## Regarding Chapter 1, Rec # 1.1

**Recommendation:** The leasing Office should develop more complete guidelines to provide to State agencies as they seek new or different space to help them better account, plan, and prepare their request for the Department of Administration and Information (A & I) approval.

**SBC Response:** State Building Commission agrees with the recommendation to develop guidelines to be used by State agencies to assist them in the preparation of their request for lease space. This process is already in the development stages.

## Regarding Chapter 1, Rec # 1.2

**Recommendation:** The Department of Administration and Information should continue its space utilization study; consider implementation of a space allocation strategy, and inclusion of a compliance section to provide the Leasing Office with authority to enforce the policy.

**SBC Response:** State Building Commission agrees with the recommendation to continue with the space utilization study. A & I is on track as they continue to work on this process. The current rules use uniform standards for building and space needs for planning purposes. The leasing office should have the ability to enforce the standards and guidelines are being developed.

## Regarding Chapter 1, Rec # 2.1

**Recommendation:** The State Building Commission and its Secretary, and the Department of Administration and Information should review and identify updates to existing statute, rules, and policies to reflect the current structure and processes of the statewide leasing function.

**SBC Response:** The State Building Commission agrees with the recommendation. The secretary of the commission in conjunction with A & I is currently in the process of reviewing and updating the existing rules as they pertain to the leasing program.

**Regarding Chapter 1, Rec # 2.2**

**Recommendation:** The Legislature, State Building Commission and its Secretary, and the Department of Administration and Information should study and consider changes to the organizational placement and structure for the leasing function.

**SBC Response:** The State Building Commission agrees with the recommendation.







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# Appendix A

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## Methodology

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This evaluation was conducted according to statutory requirements and professional standards and methods for governmental audits and evaluations. The research was conducted from December 2016 through May 2018.

Please note, the evaluation was not continuous and included two substantial breaks in the process where limited work was being conducted on the project. The first break took place from December 2016 through April 2017 to accommodate the duties of evaluators during the 2017 General Session and completion of the Early Intervention Education Program, Phase 2 (EIEP) evaluation. The second break took place from October 2017 through March 2018 due to staff reorganization and to accommodate the duties of evaluators during the 2018 Budget Session.

The general analytical time frame covered by this evaluation includes documents and data from FY2014 through FY2017, unless noted otherwise.

## Research Methods

### Interviews, Surveys, Observations, Requests.

1. Interviewed and/or surveyed executive branch programmatic staff at the Department of Administration and Information, General Services Division, Procurement Section and the Leasing Office staff. Conducted in-person observations of processes with each staff member.
2. Interviewed and/or surveyed other executive branch agencies about their experience and perspective related to the procurement and leasing functions.
3. Interviewed and/or surveyed staff in the Attorney General's Office, the A&I Budget Division, A&I Accounting Office, and the State Construction Department.
4. Engaged the State Building Commission, through its secretary, on the issue of the leasing function and real property management.
5. Observed executive branch meetings where the statewide procurement and leasing functions were discussed.
6. Conducted online surveys of selected vendors and lessors about their experience and perspective related to the procurement and leasing function.
7. Observed Wyoming Legislature committee meetings, both interim meetings and during the legislative sessions, including the following:

1 Joint Appropriations Committee and the Government Efficiency  
2 Commission.

- 3 8. Developed research questions to clarify agencies' practices based on  
4 procurement and leasing function requirements or criteria (i.e. statute,  
5 rules, policies, guidelines, etc.) and submitted questions for written  
6 response.

7 **Document Review.**

- 8 1. Reviewed current statutes and researched legislative history and  
9 session law changes to State laws governing the procurement and  
10 leasing functions.  
11 2. Reviewed current procurement and leasing function rules and  
12 regulations, policies, guidelines, manuals, and other administrative  
13 documentation.  
14 3. Reviewed programmatic financial information (i.e. budgets, revenues,  
15 expenditures).  
16 4. Requested and reviewed relevant legal guidance provided to A&I from  
17 the Leasing Office of the Wyoming Attorney General as related to the  
18 procurement or leasing functions.  
19 5. Developed a sample list of projects for process and performance  
20 review. Developed a casefile review template of project processing  
21 standards from application submission through annual reporting  
22 requirements. Requested access to and reviewed project casefiles.

23 **Data Review.**

- 24 1. Requested and reviewed programmatic data, individualized and  
25 aggregated, from the Procurement Section and Leasing Office.  
26 Requested and received direct access to relevant data systems used by  
27 Procurement Section staff to administer and track information related  
28 to individual projects.  
29 2. Requested and reviewed procurement or leasing related reports.  
30 3. Requested and reviewed information and data provided by A&I to the  
31 Government Efficiency Commission consultant during the 2017  
32 interim.

33 **Seven State Procurement and Leasing Comparators.**

34 Due to Wyoming's rural nature and low population, it is typically difficult to  
35 find strong comparator states. For purposes of this audit, evaluators looked at  
36 a few factors to select comparator states. Evaluators began by looking at  
37 those states used for the 2011 Proficiency Assessment of Wyoming Students  
38 (PAWS) test audit. Then evaluators selected specific states for comparisons  
39 based on population, median household income, and proximity to Wyoming.  
40 These states are Alaska, Colorado, Idaho, Montana, Nebraska, North Dakota,  
41 and South Dakota.

1                   **Other In-state Comparators.**

2                   In addition to comparing Wyoming’s procurement and leasing processes to  
3                   those of other states, evaluators also looked to entities within Wyoming that  
4                   are known to have procurement and/or leasing processes of their own. The  
5                   entities selected were Wyoming Department of Transportation, University of  
6                   Wyoming, Laramie County Community College, and Casper College.  
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# Appendix B

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## Relevant Wyoming Legal Provisions

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### Wyoming Constitution Provisions

**Article 3.** Legislative Department, **Section 31.** Supplies for legislature and departments.

### Wyoming Statutory Provisions

**Title 9.** Administration of Government, **Chapter 2.** Agencies, Boards, Commissions and Departments, **Article 10.** The Department of Administration and Information

W.S. 9-2-1016, General Services Division (1971)

W.S. 9-2-1027 through 9-2-1033, Professional Architectural, Engineering and Land Surveying Services Procurement Act (1983)

**Title 9.** Administration of Government, **Chapter 2.** Agencies, Boards, Commissions and Departments, **Article 20.** Government Departments

W.S. 9-2-2020, State Construction Department (2016, created)

**Title 9.** Administration of Government, **Chapter 2.** Agencies, Boards, Commissions and Departments, **Article 30.** State Construction Department

W.S. 9-2-3001 through 9-2-3004, State Construction Department (2016, created)

**Title 16.** City, County, State and Local Powers, **Chapter 6.** Public Property,

W.S. 16-6-119, State Construction, right to reject bids or responses (1987)

W.S. 16-6-301, Public Printing Contracts, Preference for resident bidders (1959)

W.S. 16-6-701, Construction Contracts with Public Entities definitions (1989)

W.S. 16-6-1001, Capitol Construction Projects (2011)

### Department of Administration and Information Rules

#### Purchasing Division (0006)

Chapter 1. General Provisions

Chapter 2. Limitations on Procurement

Chapter 3. Preferences

Chapter 4. Protests

#### State Building Commission (0012)

Chapter 1. General Provisions

Chapter 2. Meetings

Chapter 3. [none]

- Chapter 4. Public Hearings
- Chapter 5. Management of State Buildings
- Chapter 6. Control of the State Capitol Building
- Chapter 7. Leasing of Property
- Chapter 8. [none]
- Chapter 9. Purchase or Lease of State Lands and Buildings
- Chapter 10. Maintaining, Operating, Equipping & Leasing State Bldgs.

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# Appendix C

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## Glossary of Terms

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1 These definitions are provided to help explain key concepts in the report. The language may not  
2 directly reflect legal definitions in federal and state statutes or rules and regulations.

### 3 **Section 1: Leasing**

4 **Lessee.** The party to whom a lease is granted.

5 **Lessor.** The party who owns the property in question and grants the lease.

6 **Market Value.** The price which a product, service, or property might be expected to bring if  
7 offered for sale in a fair market, i.e., a market that is not prone to fluctuations.

### 8 **Section 2: Procurement**

9 **Best Interest.** A term which grants the Chief Procurement Officer the discretion to take the most  
10 advantageous action on behalf of the entity they represent, usually in the absence of law  
11 or regulation. (NASPO, 2001)

12 **Bid.** The response submitted by a bidder to an Invitation for Bids (IFB) See also Solicitation

13 **Bidder.** A person or entity who submits a bid in response to an Invitation for Bids (IFB),  
14 Invitation to Tender (ITT), or other formal solicitation type where price is the primary  
15 factor in the evaluation process for award determination.

16 **Bidder List.** A listing of names and addresses of suppliers from whom bids, proposals, or  
17 quotations can be solicited. The list is generally retained in a retrievable database.

18 **Centralized Procurement.** An organizational structure where the rights, powers, duties, and  
19 authority relating to purchasing are vested in the Chief Procurement Officer (CPO).  
20 While the CPO may delegate some of these powers to others, the final authority  
21 resides with the CPO

22 **Change Order.** A written alteration that is issued to modify or amend a contract or purchase  
23 order. A bilateral (agreed to by all parties) or unilateral (government orders a contract  
24 change without the consent of the contractor) request that directs the contractor to make  
25 changes to the contracted scope of work or specifications. In reference to construction  
26 contracts, it relates primarily to changes caused by unanticipated conditions encountered  
27 during construction not covered by the drawings, plans, or specifications of the project.

28 **Chief Procurement Officer (CPO).** The person holding the position as head of the  
29 Procurement Office in the entity or jurisdiction.

30 **Commodity.** A marketable item produced to fulfill a need or want, and references both goods  
31 and services.

32 **Competitive Negotiation.** A procurement method for obtaining goods, services, and  
33 construction in which discussion and negotiations may be conducted with responsible



proposers who submit responsive proposals. The process concludes with the award of a contract to the proposer who offers best value.

**Contractor.** Any individual or business having a contract with a governmental body to furnish goods, services, or construction for an agreed-upon price.

**Cooperative Procurement (Purchasing).** 1. The action taken when two or more entities combine their requirements to obtain advantages of volume purchases, including administrative savings and other benefits. 2. A variety of arrangements, whereby two or more public procurement entities (or agencies) purchase from the same supplier or multiple suppliers using a single Invitation for Bids (IFB) or Request for Proposals (RFP). 3. Cooperative procurement efforts may result in contracts that other entities may “piggyback.”

**Decentralized Procurement.** An organizational structure in which designated personnel/operating departments from within the organization have the delegated authority to decide on sources of supply and contract directly with suppliers without consulting or receiving the approval from the Chief Procurement Officer (CPO). It should be noted that the scope and degree, if any, of decentralized procurement varies from agency to agency. Example: In some agencies, all of the IT (Information Technology) software and hardware decisions and purchases are unilaterally made by the Chief Information Technology Officer while in other entities all of those same IT purchases are directly made by the procurement department.

**Delegated Purchase.** Authorized or appointed individuals, outside the procurement department, are delegated authority under the entity’s rules and procedures that allows them to make small dollar purchases on behalf of the entity.

**Emergency Purchase.** A purchase made due to an unexpected and urgent request where health and safety or the conservation of public resources is at risk. Usually formal competitive bidding procedures are waived.

**eProcurement.** Conducting all or some of the procurement function over the Internet through point, click, buy, and ship Internet technology. (Martin & Miller, 2006)

**Goods.** Anything purchased other than services or real property. Objects that can satisfy people’s wants.

**Invitation for Bids (IFB).** A procurement method used to solicit competitive sealed bid responses.

**Lowest Responsive and Responsible Bidder.** The bidder who fully complied with all of the bid requirements and whose past performance, reputation, and financial capability is deemed acceptable, and who has offered the most advantageous pricing or cost benefit, based on the criteria stipulated in the bid documents.

**Non-Competitive Negotiation.** The process of arriving at an agreement through discussion and compromise when only one source is available to meet the requirement.

**Non-Responsible.** A contractor, business entity, or individual that responds to a solicitation that does not have the ability or capability to fully perform the requirements of the solicitation. A business entity or individual who does not possess the integrity and reliability to assure contractual performance.

**Non-Responsive.** A response to a solicitation that does not conform to the mandatory or essential requirements contained in the solicitation.

1 **Offeror.** A generic term that refers to a person or entity who submits an offer in response to a  
2 solicitation.

3 **Preference.** An advantage given to bidders/proposers in a competition for contract award,  
4 which may be granted based on pre-established criteria such as ethnicity, residence,  
5 business location, origination of the product or service, business classification (e.g., small  
6 business), or other reasons. A governmental bias.

7 **Procurement.** Purchasing, renting, leasing, or otherwise acquiring any supplies, services, or  
8 construction; includes all functions that pertain to the acquisition, including description of  
9 requirements, selection, and solicitation of sources, preparation and award of contract,  
10 and all phases of contract administration. The combined functions of purchasing,  
11 inventory control, traffic and transportation, receiving, inspection, storekeeping, salvage,  
12 and disposal operations.

13 **Procurement Card (P-Card).** A payment method whereby internal customers (requisitioners)  
14 are empowered to deal directly with suppliers for purchases using a credit card issued by a  
15 bank or major credit card provider. Generally, a pre-established credit limit is established  
16 for each card issued. The cards enable eProcurement and facilitate on-line ordering,  
17 frequently from pre-approved suppliers under blanket contracts. (Martin & Miller, 2006)

18 **Procurement Methods.** Methods by which goods, services, or material may be acquired by public  
19 purchasers. The methods may include blanket orders, emergency purchases, standing offers,  
20 purchase orders, transfers, competitive bidding, competitive negotiation, intergovernmental  
21 cooperative agreements, small purchase contracts, purchases via a credit card, etc.

22 **Procurement Officer.** Any person duly authorized to enter into and administer a contract and  
23 make written determinations and findings thereto. Also includes an authorized  
24 representative of the procurement officer acting within the limits of his or her authority.

25 **Proposal.** An offer to provide goods or services in response to a Request for Proposals (RFP). A  
26 proposal may be made orally or in writing and may or may not be in response to a  
27 solicitation distributed by a public agency.

28 **Proposer.** A person or entity who submits a proposal in response to a Request for Proposals (RFP).

29 **Protest.** A written objection by an interested party to a solicitation or award of a contract with  
30 the intention of receiving a remedial result.

31 **Purchase Orders (PO).** A purchaser's written document to a supplier formalizing all the terms  
32 and conditions of a proposed transaction, such as a description of the requested items,  
33 cost of items being purchased, delivery schedule, terms of payment, and transportation.

34 **Quotes.** An informal purchasing process which solicits pricing information from several sources.

35 **Request for Proposal (RFP).** The document used to solicit proposals from potential providers  
36 (proposers) for goods and services. Price is usually not a primary evaluation factor.  
37 Provides for the negotiation of all terms, including price, prior to contract award. May  
38 include a provision for the negotiation of best and final offers. May be a single-step or  
39 multi-step process. Introduced in the Armed Services Procurement Act of 1962 as well  
40 as by the Competition in Contracting Act of 1984.

1 **Responsible Bidder/Proposer.** A business entity or individual who has the financial and  
2 technical capacity to perform the requirements of the solicitation and subsequent contract.  
3 See Qualified Bidder

4 **Responsive Bidder/Proposer.** A business entity or individual who has submitted a bid or  
5 proposal that fully conforms in all material respects to the Invitation for Bids (IFB)/Request  
6 for Proposals (RFP) and all of its requirements, including all form and substance.

7 **Service/Service Contract.** 1. An agreement calling for a contractor's time and effort. 2. The  
8 furnishing of labor, time, or effort by a contractor or supplier, which may involve to a  
9 lesser degree, the delivery or supply of products. The Uniform Commercial Code  
10 (UCC)/state commercial codes only apply to a procurement of a product, while state  
11 common law would apply if it is considered a procurement of a service.

12 **Sole Source Procurement.** A situation created due to the inability to obtain competition. A  
13 procurement method where only one supplier possesses the unique ability or capability to  
14 meet the particular requirements of the solicitation. The purchasing authority may require  
15 a justification from the requesting department within the agency explaining why this is  
16 the only source for the requirement.

17 **Solicitation.** An Invitation for Bids, a Request for Proposals, telephone calls, or any document  
18 used to obtain bids or proposals for the purpose of entering into a contract.

19 **Specification.** A precise description of the physical characteristics, quality, or desired outcomes  
20 of a commodity to be procured, which a supplier must be able to produce or deliver to be  
21 considered for award of a contract.

22 **Supplier.** A person or entity that provides goods and/or services [preferred term].

23 **Vendor.** A person or entity that provides goods and/or services, usually for low-cost, low-risk,  
24 and short-term engagements.

# Past Program Evaluations

WYDOT and General Fund Appropriations for Highways .....	May 2008
Wyoming Child Protective Services .....	September 2008
Department of Fire Prevention and Electrical Safety .....	December 2008
Office of Health Care Licensing and Surveys .....	July 2009
Victim Services Division: Phase I .....	August 2009
Victim Services Division: Phase II .....	February 2010
Reading Assessment and Intervention Program .....	February 2010
Office of State Lands & Investments: Management of State Trust Lands .....	June 2010
Proficiency Assessments for Wyoming Students (PAWS) .....	December 2010
Wyoming Unemployment Insurance Program .....	December 2010
Department of Administration and Information: Information Technology Division and Office of Chief Information Officer .....	July 2011
Wyoming Department of Health: Veterans' Home of Wyoming .....	November 2011
Wyoming Aeronautics Commission .....	September 2012
Wyoming Boards and Commissions .....	June 2013
Wyoming's Interim Budget Process to Modify Legislatively Appropriated Funds .....	November 2013
Wyoming Aeronautics Commission (Follow-up Evaluation) .....	November 2013
University of Wyoming: Effectiveness of Block Grant Funding (with Supplement) .....	January 2015
Wyoming Public Purpose Investments (PPIs) .....	August 2015
Wyoming Water Development Commission .....	January 2016
Early Intervention and Education Program, Phase 1 .....	September 2016
Business Ready Communities (BRC) Program .....	December 2016
Early Intervention and Education Program, Phase 2 .....	January 2018

## Evaluation reports can be obtained from:

*Wyoming Legislative Service Office*  
213 State Capitol Building Cheyenne, Wyoming 82002  
Telephone: 307-777-7881 Fax: 307-777-5466  
Website: <http://www.wyoleg.gov/>

