

**ADVISORY LETTER
OF THE PURCHASING/CONTRACTING
PROCEDURES AND CONTROLS
FOR THE STATE OF NEBRASKA**

FOR THE FISCAL YEAR ENDED JUNE 30, 2002

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STATE OF NEBRASKA
PURCHASING/CONTRACTING PROCEDURES AND CONTROLS
For the Fiscal Year Ending June 30, 2002

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Dear Governor Johanns and Senator Coordsen:

In accordance with Neb. Rev. Stat. Section 84-304 R.S. Supp., 2002 we have performed certain procedures related to the objectives enumerated below for the State of Nebraska's contracting and purchasing procedures and internal controls. We conducted the procedures in accordance with *Government Auditing Standards*.

The scope of the procedures performed included the following; however, see the *Restriction on the Scope of the Examination* section below:

- **State Agencies** - All State agencies of the State of Nebraska except the University of Nebraska and the Auditor of Public Accounts (APA). The Department of Revenue annually audits the APA. However, the APA answered the Internal Control Questionnaire (ICQ) referred to in *Restriction on the Scope of the Examination* below, and the same is a part of the public record.
- **Period** - Fiscal Year Ending June 30, 2002.
- **Accounts** - Accounts in the Nebraska Accounting System (NAS) related to the following five general categories of purchases:
 - Purchases of Materials, Supplies, and Equipment
 - Purchases of Services
 - Construction/Repair of Buildings and Roads
 - Lease/Rent Agreements
 - Other Purchases

(Note: For the account codes included within each of the above categories, see Appendix C of this letter).

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The objectives of the procedures were to:

1. Determine the laws and regulations that govern the purchases of materials, supplies, and equipment, services, construction/repair of buildings and roads, lease/rent, and other purchases not falling within the above categories of purchases.
2. Determine the adequacy of procedures/controls the State of Nebraska had centrally, and at the agency level, to ensure purchases were made in accordance with all applicable laws and regulations.
3. Determine if key procedures/controls were actually in place based on a sample testing of purchase transactions.

Restriction on the Scope of the Examination

The scope of the examination as noted above was severely restricted by the use of a letter from the State Attorney General (AG) resulting in a directive from the Governor to code agencies. Following is a chronology of events relating to restrictions on the scope of this examination:

In a letter to the APA, dated July 5, 2002, the AG expressed concerns about the APA's objectives relating to this examination, refused to respond to an ICQ from the APA, and questioned the authority of the APA to use the ICQ. Essentially, the AG stated the APA, through the use of the letter and ICQ, was conducting a performance audit. In addition, he stated his opinion that the APA did not have the authority to conduct performance audits of State agencies.

In a letter to the AG from the APA, dated July 11, 2002, the APA respectfully disagreed with the AG's conclusion that the procedure was a performance audit. In that letter the APA noted the AG's letter of July 5, 2002 provided no analysis of why using the ICQ amounted to performance auditing, and did not attempt to define performance auditing. The APA respectfully requested further explanation, analysis, or documentation so the APA might better understand how the AG reached his conclusions. In a letter dated July 18, 2002, the AG notified the APA an attorney had been "assigned to research the issue." (The result of that research was received by the APA December 2, 2002, in a formal Attorney General's Opinion, issued to the Director of the Department of Administrative Services (DAS), and is briefly discussed below.)

In a letter to the APA from the Governor, dated July 16, 2002, the Governor informed the APA of a memorandum to all code agencies. The memorandum indicated the Governor had concerns about "several aspects of the Auditor's request." The Governor indicated he had contacted the AG and was informed the AG was reviewing the issue. The Governor's memo further stated the following: "My office will be complying with the State Auditor's request by providing her office with actual copies of all requested contracts and public documents. The validity of the Internal Control Questionnaire accompanying the State Auditor's request is under review by the Attorney General; therefore, my office is not responding to the questionnaire pending further legal guidance. By virtue of this memorandum, I am also directing all code directors to provide the Auditor's office with the requested documents but not respond to the questionnaire at this time."

In a letter to the AG from the Director of DAS, dated August 8, 2002, the Director requested an opinion from the AG regarding “Legal Obligation of State Agencies to Respond to Certain Questions Posed by the State Auditor.” The formal opinion in response to that request was issued by the AG on December 2, 2002, subsequent to completion of the fieldwork conducted in relation to this procedure, as Opinion of the Attorney General No. 02030. In relation to the ICQ at issue, the AG opined, “none of the questions appears performance audit related . . . and we believe that agencies should complete the questionnaire in its entirety.” (emphasis added). The Opinion can be accessed at www.ago.state.ne.us/opinion/.

We firmly believe the APA had the authority to perform the planned procedures, and the outlined lack of cooperation with the APA significantly diminished the value of having an independent review of the agencies’ procedures.

Because of these restrictions during the course of our audit work, we were unable to complete objectives 2 and 3 above. That is, we were unable to: a) Determine the adequacy of procedures/controls the State of Nebraska had centrally, and at the agency level, to ensure all purchases were made in accordance with all applicable laws and regulations, and b) Determine if key procedures/controls were actually in place based on a sample testing of purchase transactions.

As a result of such a lack of cooperation, 30 agencies refused to answer the questions on the ICQ. In addition, many agencies also refused to answer other questions asked by the APA regarding specific transactions (related to internal control, compliance with laws and regulations, and general questions regarding transactions). Also, requested documentation for certain transactions by some agencies was not provided.

Therefore, a considerable amount of extra time was consumed in attempting to get questions answered and in obtaining documentation. Some agencies required the APA to submit all requests in writing, a very unusual event, or deferred all questions to agency legal review. Consequently, this lack of cooperation, and the fact the Attorney General’s Opinion was not issued until weeks after our fieldwork was conducted, the APA was prevented from including information relating to the internal control questions in this advisory letter.

The APA anticipates the full cooperation of agencies in subsequent procedures. Specifically, it is our expectation the ICQ’s be answered and all requested information and documentation be immediately provided by all agencies, and that the results of the fieldwork relating to those answers be included in subsequent financial audit procedures.

A summary of our examination results can be found below. Detailed results of our examination can be found in the *Procedures Performed and Comments and Recommendations* section of this letter.

Summary of Results

We performed certain procedures we considered necessary to meet the objectives enumerated above. Those procedures consisted primarily of:

1. Request the agency to complete an ICQ to document the procedures/controls in place over purchases to ensure compliance with all laws and regulations.
2. Select and test a sample of transactions, and related purchasing documentation, to determine if key procedures/controls were in place to ensure purchases were in accordance with all laws and regulations.

The first procedure was applied to all State agencies, by utilizing two different ICQs. A more comprehensive ICQ was used for agencies in which we tested transactions. A shorter version of the ICQ was used for agencies in which no transactions were selected (See lists of agencies in the *Appendices* section of this letter).

The second procedure was applied to certain State agencies. The factors considered in the selection of agencies and the transactions to test were primarily based on obtaining a representative sample of the different types of purchases. The two primary factors considered were:

1. **Dollar amount of transaction** - The dollar amount of a transaction was considered as different processes, procedures, and compliance requirements apply based on the dollar amount of the purchase. The following dollar amounts were considered when selecting a transaction:
 - \$500 to \$4,999.99;
 - \$5,000 to \$9,999.99;
 - \$10,000 to \$24,999.99; and
 - \$25,000 and above
2. **The type of purchase** - The five types of purchases as categorized above.

In summary, based on the procedures performed, we noted the following:

- **Review and analysis of ICQs for agencies in which no transactions were tested.**

We requested information regarding purchasing procedures from 50 agencies. We obtained information from 39 of those agencies. (See lists of agencies in the *Appendices* section of this letter, and for further information see the *Procedures Performed and Comments and Recommendations* section of this letter on pages 13 and 14.)

- **Review and analysis of ICQs for agencies in which transactions were tested.**

We requested information regarding purchasing procedures from 29 agencies. We obtained information from 10 of those agencies. (See list of agencies in the *Appendices* section of this letter, and for further information see the *Procedures Performed and Comments and Recommendations* section of this letter on page 14.)

- **Test sample of transactions and related purchasing documentation, to determine if key procedures/controls were in place, to ensure purchases were in accordance with all laws and regulations.**


We tested 115 purchase transactions from 29 agencies. (See **list of purchases tested in the *Procedures Performed and Comments and Recommendations by Agency* section of this letter.**)

For more information on the above areas, see the *Summary of Testing and Comments* and the *Procedures Performed and Comments and Recommendations* sections of this letter.

We compiled the accompanying financial data on the schedules and charts on pages 114 through 117 from the Nebraska Accounting System (NAS) of the State of Nebraska. We have not audited, examined, or reviewed the accompanying data and, accordingly, do not express an opinion or any other form of assurance on this data.

The information in this advisory letter is intended for the Governor and the Chairman of the Executive Board of the Legislature; however, this advisory letter is a matter of public record and its distribution is not limited.

December 11, 2002


Assistant Deputy Auditor

PURCHASING/CONTRACTING PROCEDURES
AND CONTROLS FOR THE STATE OF NEBRASKA

BACKGROUND

SCOPE OF EXAMINATION

STATE AGENCIES

The State of Nebraska consists of 81 agencies. This examination included all State agencies, except the University of Nebraska and the Auditor of Public Accounts (APA). The University was not included as its purchasing process functions autonomously from the purchasing process of all other State agencies. The APA was not included because such an examination would have lacked independence, as required by audit standards. For the purpose of this examination, we divided the State agencies into two groups—agencies where transactions were tested, and agencies where no transactions were tested. For those agencies where transactions were tested, our objective was to test transactions against supporting documentation, and to determine if the agencies' controls and procedures were in place to ensure compliance with applicable purchasing/contracting laws and regulations. For agencies where no transactions were tested, we asked agencies only to provide information about their purchasing/contracting controls and procedures. A listing of the two groups of agencies is included in the *Appendices* section of this letter.

PURCHASE TYPES

The examination included the following purchase types. The accounts, which came from the Nebraska Accounting System (NAS) Manual, in each purchase type were included based on whether they would normally be processed through the State's purchasing/contracting procedures. The account numbers and general description of the accounts included within each purchase type are identified in *Appendix C*.

- **Purchase of Materials, Supplies, and Equipment** - Includes a wide range of materials and supplies, and equipment, from paper clips to large purchases of computer equipment. The NAS account numbers and their description, included in this category, can be found in the *Appendices* section of this letter.
- **Purchase of Services** - Examples of services included in this category are consulting services, data processing services, legal services, etc. The NAS account numbers and their description, included in this category, can be found in the *Appendices* section of this letter.
- **Construction/Repair of Buildings and Roads** - As the title describes, this category primarily includes the construction or repair of the State's buildings and roads. The NAS account numbers and their description, included in this category, can be found in the *Appendices* section of this letter.

PURCHASING/CONTRACTING PROCEDURES
AND CONTROLS FOR THE STATE OF NEBRASKA

BACKGROUND

(Continued)

SCOPE OF EXAMINATION (Continued)

PURCHASE TYPES (Concluded)

- **Lease/Rent Agreements** - Primarily included in this category are the leasing of buildings and equipment. The NAS account numbers and their description, included in this category, can be found in the *Appendices* section of this letter.

- **Other Purchases** - Included in this category would be all other purchases not included in the above categories. The NAS account numbers and their description, included in this category, can be found in the *Appendices* section of this letter.

LAWS AND REGULATIONS

The laws and regulations governing the purchase of goods and services for the State of Nebraska vary depending on the type and dollar amount of the purchase. As part of our examination, we did a search of State statutes and various State agencies' rules and regulations. From that search we identified what we believe were the most pertinent compliance requirements for agencies of the State of Nebraska. Below is a list of general laws and regulations which we considered in performing this examination. However, this is not an all-inclusive list of laws and regulations relating to purchasing/contracts. For example, some agencies have specific statutory requirements or have developed specific rules and regulations related to a specific type of purchase. They may not be identified here. However, if there existed a specific statute related to a transaction selected for testing, we would have considered testing the transaction for compliance with that specific requirement.

For a list of laws and regulations, by purchase type, that were identified and considered during this examination, see the *Appendices* section of this letter.

TRANSACTIONS TESTED BY PURCHASE TYPE

We selected 115 transactions for testing, with a total dollar amount of \$24,045,117. The distribution of the transactions into the five purchase categories can be found on page 117 of this letter.

- **Purchase of Materials, Supplies, and Equipment**

We selected a total of 44 transactions. The total amount of these purchases was \$890,049.

PURCHASING/CONTRACTING PROCEDURES
AND CONTROLS FOR THE STATE OF NEBRASKA

BACKGROUND

(Concluded)

TRANSACTIONS TESTED BY PURCHASE TYPE (Concluded)

- **Purchase of Services**

We selected a total of 47 transactions. The total amount of these purchases was \$10,725,521.

- **Construction/Repair of Buildings and Roads**

We selected a total of 16 transactions. The total amount of these transactions was \$11,476,892.

- **Lease/Rent Agreements**

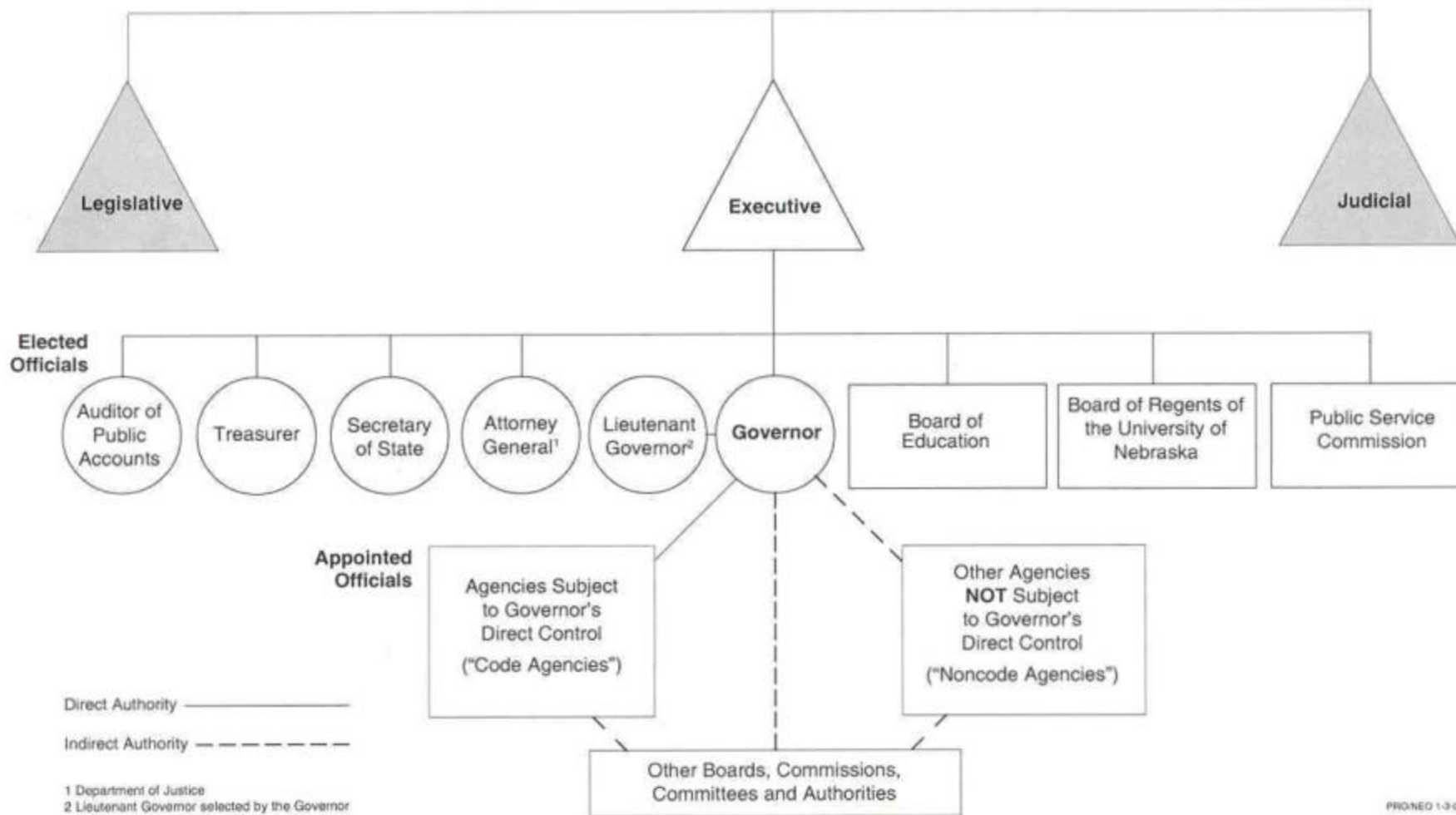
We selected a total of 6 transactions. The total amount of these payments was \$282,570.

- **Other Purchases**

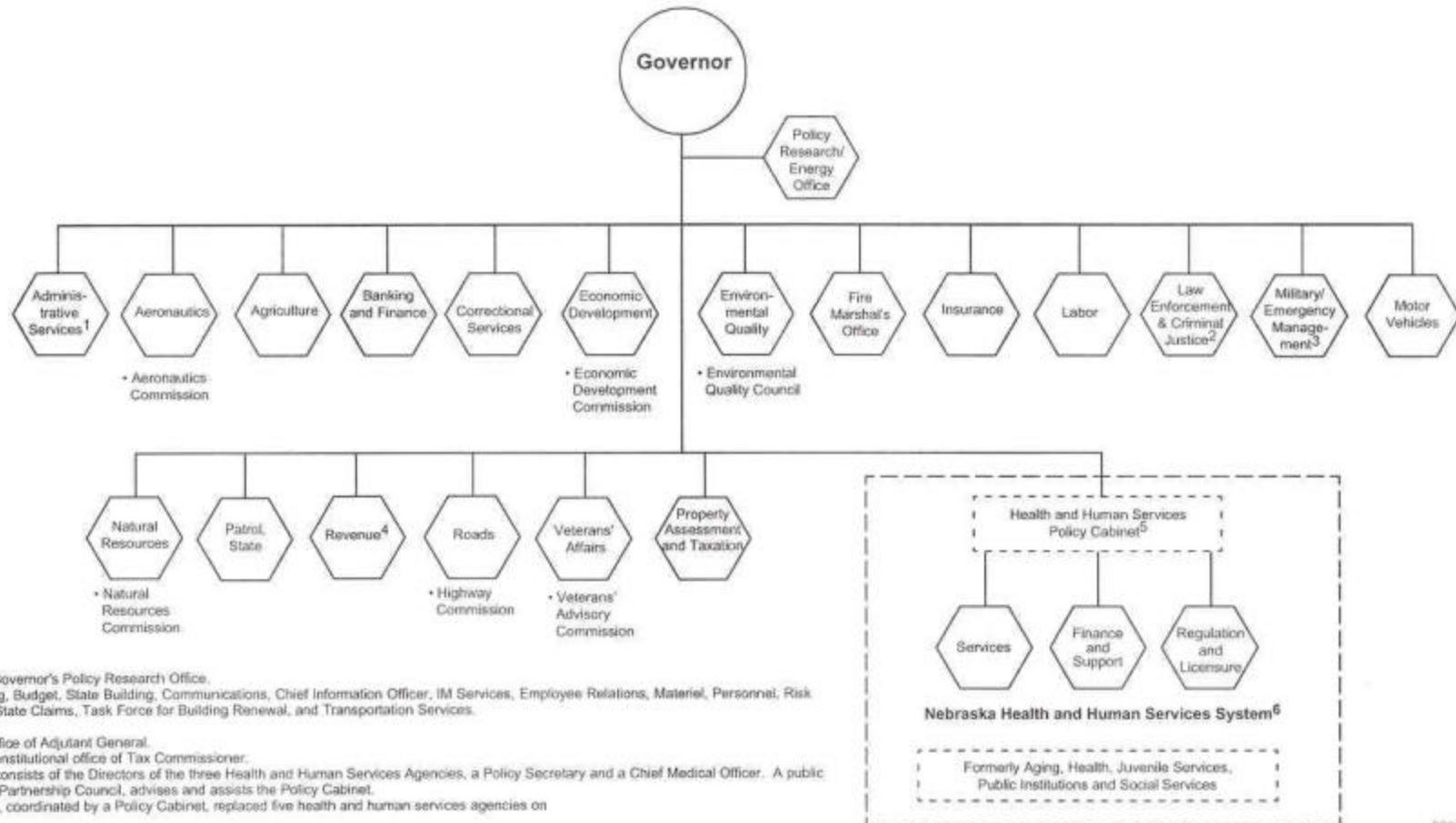
We selected a total of 2 transactions. The total amount of these purchases was \$670,085.

NEBRASKA STATE GOVERNMENT (EXECUTIVE BRANCH)

OVERVIEW



NEBRASKA STATE GOVERNMENT ORGANIZATION — EXECUTIVE BRANCH*
AGENCIES SUBJECT TO GOVERNOR'S DIRECT CONTROL (CODE AGENCIES)



*Source: Nebraska Governor's Policy Research Office.

¹ Divisions: Accounting, Budget, State Building, Communications, Chief Information Officer, IM Services, Employee Relations, Materiel, Personnel, Risk Management and State Claims, Task Force for Building Renewal, and Transportation Services.

² Crime Commission.

³ Director holds the office of Adjutant General.

⁴ Director holds the constitutional office of Tax Commissioner.

⁵ The Policy Cabinet consists of the Directors of the three Health and Human Services Agencies, a Policy Secretary and a Chief Medical Officer. A public advisory body, the Partnership Council, advises and assists the Policy Cabinet.

⁶ Three new agencies, coordinated by a Policy Cabinet, replaced five health and human services agencies on January 1, 1997.

NEBRASKA STATE GOVERNMENT — EXECUTIVE BRANCH
 EXECUTIVE AGENCIES¹ NOT SUBJECT TO GOVERNOR'S DIRECT CONTROL
 (NONCODE AGENCIES)

Abstracters Board of Examiners	Accountability & Disclosure Commission	Accountancy, Board of Public	Advocacy, Commission on Public	Arts Council	Attorney General/ Justice Department *	Auditor of Public Accounts *	Barber Examiners, Board of	Blind & Visually Impaired, Commission for	Brand Committee	Colleges, Board of Trustees of State *	Corn Board	Dairy Industrial Development Board, Nebraska	Deaf & Hard of Hearing, Commission for	Dry Bean Commission
Education, Department of 2 *	Educational Lands & Funds, Board of *	Educational Telecommunications Commission	Electrical Board/ Division, State	Engineers & Architects, Board of	Equal Opportunity Commission	Ethanol Board	Foster Care Review Board	Game & Parks Commission	Geologists, Board of	Grain Sorghum Board	Historical Society, State	Indian Affairs, Commission on		
Industrial Relations, Commission of *	Investment Council	Land Surveyors, Board of Examiners for	Landscape Architects, Board of	Library Commission	Lieutenant Governor *	Liquor Control Commission	Mexican American Commission	Motor Vehicle Industry Licensing Board	Oil & Gas Conservation Commission	Parole, Board of Pardons, Board of *	Post-secondary Education, Coordinating, Commission for *	Power Review Board		
Public Employees Retirement System	Public Service Commission *	Racing Commission	Real Estate Appraiser Board	Real Estate Commission	Rural Development Commission	Secretary of State *	Tax Equalization & Review Commission *	Treasurer, State *	University of Nebraska, Board of Regents *	Wheat Board	Women, Commission on the Status of			

¹ Including elected officials' offices (in bold)

² Includes BOARD OF EDUCATION and COMMISSIONER OF EDUCATION (appointed by board)

* Established in Constitution

PURCHASING/CONTRACTING PROCEDURES
AND CONTROLS FOR THE STATE OF NEBRASKA

SUMMARY OF TESTING AND COMMENTS

In performing the procedures related to the advisory service objectives enumerated in our transmittal letter for the Governor and the Chairman of the Executive Board of the Legislature, we performed certain testing and noted certain matters involving the internal control and other operational matters that are presented here. Comments and recommendations are intended to improve internal controls, ensure compliance, or result in operational efficiencies.

- A. *Internal Control Questionnaires for Agencies Where No Transactions Were Tested:*** We requested information regarding purchasing procedures from 50 agencies. We obtained information from 39 of those agencies.
- B. *Internal Control Questionnaires for Agencies Where Transactions Were Tested:*** We requested information regarding purchasing procedures from 29 agencies. We obtained information from 10 of those agencies.
- C. *Cross-Cutting Comments (Comments Applicable To More Than One Agency):***
1. Internal Control Questionnaire Not Completed
 2. Requested Documentation Not Received
 3. Legal Review of Contracts
- D. *Procedures Performed and Comments and Recommendations by Agency:*** Information in this *Summary of Testing and Comments* section includes a summary by agency of the dollar amount of disbursements by category for the fiscal year ending June 30, 2002, the procedures performed, the transaction(s) tested, and the results of our examination.

More detailed information on the above items is provided hereafter. It should be noted this advisory letter is critical in nature since it contains only our comments and recommendations on the areas noted for improvement.

A draft copy of each individual agency advisory letter was furnished to each agency to provide them an opportunity to review the advisory letter and respond to the comments and recommendations included in the letter. All formal responses received have been incorporated into this advisory letter. Where no response has been included, the agency declined to respond. Responses have been objectively evaluated and recognized, as appropriate, in this advisory letter. Responses that indicate corrective action has been taken were not verified at this time.

PURCHASING/CONTRACTING PROCEDURES
AND CONTROLS FOR THE STATE OF NEBRASKA

**PROCEDURES PERFORMED AND
COMMENTS AND RECOMMENDATIONS**

A. Internal Control Questionnaires for Agencies Where No Transactions Were Tested

We requested information regarding purchasing procedures from 50 agencies. We obtained information from 39 of those agencies.

1. Eleven agencies followed the Governor's directive and did not complete the ICQ. This included the Office of the Lieutenant Governor, Pardons Board, Department of Banking and Finance, Department of Economic Development, Department of Veterans' Affairs, Dairy Industry Development Board, Corn Board, Commission on Indian Affairs, Dry Bean Commission, Property Assessment and Taxation, and Department of Health and Human Services Regulation and Licensure). **(For further information on the Governor's directive, see the *Restriction on the Scope of the Examination* section on page 2 of this letter).**
2. The 39 agencies that returned the ICQ identified the following types of contracts they had been involved in:
 - Three agencies were involved in the purchase of Materials, Supplies, and Equipment.
 - Thirty-five agencies were involved in the purchase of Services.
 - One agency was involved in contracts dealing with Construction/Repair of Buildings and Roads.
 - Four agencies were involved in Lease/Rent Agreements.
3. Thirteen agencies indicated they utilized the Department of Administrative Services (DAS) Materiel Division to facilitate their contract processes.
4. Twenty-six agencies indicated they had direct purchase authority as authorized by the DAS Materiel Division.
5. We also requested agencies to respond to whether or not contracts they entered into would have had a legal review before it was signed, and if a legal review was performed, who would have performed that review. The following is a summary of the responses received:
 - Fifteen agencies indicated they had procedures including a legal review on their contracts.
 - Of those fifteen agencies:
 - Ten agencies indicated they had in-house staff perform their legal review.

PURCHASING/CONTRACTING PROCEDURES
AND CONTROLS FOR THE STATE OF NEBRASKA

**PROCEDURES PERFORMED AND
COMMENTS AND RECOMMENDATIONS**

**A. Internal Control Questionnaires for Agencies Where No Transactions Were Tested
(Concluded)**

- Five agencies indicated they would use the Attorney General's office or DAS Materiel Division's legal expertise if they were entering into a contract.
- Fourteen agencies that had entered into contracts indicated they had no legal review of those contracts. **(See our comment and recommendation on pages 16 and 17 of this letter.)**

B. Internal Control Questionnaires for Agencies Where Transactions Were Tested

We requested information regarding purchasing procedures from 29 agencies. We obtained information from 10 of those agencies.

1. Nineteen agencies followed the Governor's directive and did not complete the ICQ. **(For further information on the Governor's directive, see the *Restriction on the Scope of the Examination* section on page 2 of this letter).**
2. Of the ten agencies that responded, all ten indicated they had procedures including a legal review on their contracts.
 - All ten agencies indicated they had in-house staff perform the legal review.
 - Three of the agencies also indicated they sent some contracts to the Attorney General for review.

For the ten ICQs we received, an overview of the contracting and purchasing processes was done. No specific testing of controls was performed. We did, however, make some observations of these controls during our testing. Generally, no significant weaknesses were noted.

C. Cross-Cutting Comments (Comments Applicable To More Than One Agency)

1. Internal Control Questionnaire Not Completed

One tool auditors use to gain an understanding of an entity's procedures and controls is an Internal Control Questionnaire (ICQ). Good internal controls are required to ensure compliance with all laws and regulations. The documentation of these controls, through the use of an ICQ, is key to obtaining a general understanding of the purchasing/contracting policies, procedures, and controls an agency has in place to ensure their compliance with all laws and regulations.

PURCHASING/CONTRACTING PROCEDURES
AND CONTROLS FOR THE STATE OF NEBRASKA

**PROCEDURES PERFORMED AND
COMMENTS AND RECOMMENDATIONS**

C. Cross-Cutting Comments (Comments Applicable To More Than One Agency)
(Continued)

Two ICQs were developed to be used during the examination. The two ICQs were: 1) ICQ for agencies where no transactions were tested, and 2) ICQ for agencies where transactions were tested. The ICQ sent to agencies where no transactions were tested was a shorter version and was generally sent to agencies with less purchasing activity. The ICQ sent to agencies where transactions were tested was a longer version and was generally sent to agencies with greater purchasing activity. As noted above (**in the A and B sections of the *Procedures Performed and Comments and Recommendations* portion of this letter**) some agencies did not complete the ICQ.

The agencies indicated they did not complete the ICQ based upon a directive from the Governor. That directive came in the form of a memorandum to code agencies, dated July 16, 2002. The Governor indicated the validity of the ICQ was under review by the Attorney General; therefore, his office was not responding to the ICQ pending further review. He further directed all code agencies to not respond to the ICQ at that time. **See the *Restriction on the Scope of the Examination* section on page 2 of this letter.** Because of this directive we were unable to complete the second objective above, as originally planned. Further, such a refusal to cooperate with the APA significantly diminishes the value in having an independent review of the agencies' procedures.

The ICQs the Auditor of Public Accounts requested State agencies to complete are located in the *Appendices* section of this letter.

2. Requested Documentation Not Received

During our examination we were provided documents from our original request for documentation in most cases. However, our review of the documents often generated questions and the need for additional documentation. The requested additional information and documentation was not always provided. The following agencies did not provide all of the information and documentation we requested:

- Office of the State Treasurer
- Department of Health and Human Services
- Department of Health and Human Services Finance and Support
- Department of Correctional Services
- Department of Administrative Services

The reason given by the agencies for not providing this information was they were following the Governor's directive as noted above. However, in that memorandum to code agencies dated July 16, 2002, the Governor also directed all code agency directors "to provide the Auditor's

PURCHASING/CONTRACTING PROCEDURES
AND CONTROLS FOR THE STATE OF NEBRASKA

**PROCEDURES PERFORMED AND
COMMENTS AND RECOMMENDATIONS**

C. Cross-Cutting Comments (Comments Applicable To More Than One Agency)
(Continued)

office with the requested documents . . .” We believe the code agencies above did not comply with the Governor’s directive when they refused to provide documentation that was requested by the APA.

We also believe all of the agencies above are in violation of Neb. Rev. Stat. Section 84-305 R.R.S. 1998. It states, “The Auditor of Public Accounts shall have access to all records of any public entity, in whatever form or mode the records may be, unless the auditor’s access to the records is specifically prohibited or limited by federal or state law.” In their refusal to provide the requested documents, the agencies have cited no law that would prohibit them from complying with the APA’s request.

Because of this, we were unable to determine if the contracts were made in accordance with all applicable laws and regulations, as originally planned. Further, such a refusal to cooperate with the APA significantly diminishes the value in having an independent review of the above agencies’ procedures.

For more details on what requested information and documentation the above agencies did not provide to the APA **see the *Procedures Performed and the Comments and Recommendations by Agency* section of this letter.**

3. Legal Review of Contracts

A contract is a binding agreement between two or more persons. A written contract is a document made by the parties to evidence the terms and conditions of a contract. In the preparation of a contract parties should consider principles of contract law, the specific requirements of the parties, and for state government contracts, federal and State laws and regulations.

Good business practice, and good internal controls over contracts, would require that certain contracts be reviewed by a person or persons, who has the legal expertise and knowledge to determine if the contract is in compliance with contract law, federal and State laws and regulations governing contracts, and to ensure the best interest of the State is being served.

In addition, good internal controls would require that when a legal review is performed that it be documented. This would document the review in accordance with management’s directives.

During our examination we noted the following:

- For the 39 agencies that completed an ICQ only, 14 agencies indicated they had entered into a contract, but no legal review of the contract was performed.

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**C. Cross-Cutting Comments (Comments Applicable To More Than One Agency)
(Concluded)**

- For the 29 agencies where we performed a test of transactions all 29 indicated they had entered into contracts, and their contracts went through a legal review. However, we could not verify the contracts had gone through a legal review for eight agencies, as the review was not documented.

When a legal review of a contract is not performed there is a greater risk that a contract will not be in conformity with contract law, federal and State laws and regulations, and be in the best interest of the State. In addition, when a review is not documented there is no assurance that the review was actually performed.

We recommend the State of Nebraska (specifically the Governor's office, Executive Board of the Legislature, Attorney General's office, and appropriate divisions of the Department of Administrative Services) establish additional policies relating to when contracts should have a legal review. The policies might consider the following, among other things: the type of contract, the dollar amount of the contract, the complexity of the contract, who would perform the review, and how that review would be documented.

D. Procedures Performed and Comments and Recommendations by Agency (In Order of Agency Number as Identified in the Nebraska Accounting System)

Agency 3 - Legislative Council

Per the Nebraska Accounting System (NAS), the Council disbursed the amounts in the following four broadly classified categories of purchases for the fiscal year ending June 30, 2002:

- Purchase of Materials, Supplies, and Equipment (\$826,004)
- Purchase of Services (\$498,940)
- Construction/Repair of Buildings and Roads (\$271,992)
- Lease/Rent Agreements (\$105,257)

The following procedures were performed:

- Requested the completion of an Internal Control Questionnaire to document the procedures/controls your agency had over purchases to ensure compliance with all laws and regulations.
- Selected and tested the following transactions, and related purchasing documentation, to determine if key procedures/controls were in place to ensure purchases were in accordance with all laws and regulations:

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Agency 3 - Legislative Council (Continued)

Service Contracts

- Buck Consultants – Doc # 2100828 (\$10,253)

This contract was an agreement on hourly fees. Buck Consultants was to provide actuarial consulting services for the Retirement Systems Committee and the Legislature.

Based on the above-mentioned procedures, the following comments and recommendations are made for your consideration:

1. Internal Control Questionnaire Not Completed

The Council did not complete an Internal Control Questionnaire (ICQ) as requested. Good internal controls are required to ensure compliance with all laws and regulations. The documentation of these controls, through the use of a questionnaire, is key to obtaining a general understanding of the purchasing/contracting policies, procedures, and controls the Council has in place to ensure their compliance with all laws and regulations. The Council indicated they did not answer our questions due to the pending Attorney General's review.

In a memorandum to Code Agencies, dated July 16, 2002, the Governor indicated the validity of the ICQ was under review by the Attorney General; therefore, his Office was not responding to the ICQ pending further review. He further directed all Code Agencies to not respond to the ICQ at that time. As of the date of this letter neither the Governor nor the Attorney General has communicated to us the results of the Attorney General's review. Because of this, we were unable to complete the second objective above, as originally planned. Further, such a refusal to cooperate with the auditors significantly diminishes the value in having an independent review of the Agency's procedures.

See the *Restriction on the Scope of the Examination* section on page 2 of this letter.

2. Documentation of Review by Legal Counsel

Good business practice, and good internal controls over contracts, requires that certain contracts be reviewed by a person or persons who has the legal expertise and knowledge to determine if the contract is in compliance with Federal and State laws and regulations governing contracts, and to ensure the best interest of the State is being served. In addition, good internal controls would require that when a legal review is performed that it be documented. This would document the review in accordance with management's directives.

We received indication that the contract was reviewed by the legal counsel for the Retirement Committee and the legal counsel for the Executive Board, but such review was not documented.

When a review is not documented there is no assurance that the review was actually performed.

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Agency 3 - Legislative Council (Concluded)

We recommend the legal review of contracts be documented. This can be accomplished by legal counsel signing a checklist or routing sheet for the contract, or by legal counsel drafting a letter stating the recommended changes to the contract or approval of the contract.

Agency 5 - State Court Administrator / Court of Appeals / Supreme Court / State Probation Administration

Per the Nebraska Accounting System (NAS), your Department disbursed the amounts in the following three broadly classified categories of purchases for the fiscal year ending June 30, 2002:

- Purchase of Materials, Supplies, and Equipment (\$943,682)
- Purchase of Services (\$2,362,430)
- Lease/Rent Agreements (\$171,263)

The following procedures were performed:

- Requested the completion of an Internal Control Questionnaire to document the procedures/controls the Court had over purchases to ensure compliance with all laws and regulations.
- Selected and tested the following transactions, and related purchasing documentation, to determine if key procedures/controls were in place to ensure purchases were in accordance with all laws and regulations:
 - Richard Burkhart – Doc # 8110068 (\$10,509.25)

This payment was for work done on the Justice project.

- Midland Computer – Doc # 2110437 (\$1,178.10)

This transaction was for the purchase of software for the Supreme Court.

Based on the above-mentioned procedures, the following comments and recommendations are made for your consideration:

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**Agency 5 - State Court Administrator / Court of Appeals / Supreme Court /
State Probation Administration** (Continued)

1. Direct Purchase of software

We noted the following items as they relate to the purchase of software as described above:

- The Court did not ensure that the vendors from whom they purchased had a Drug-free Workplace Policy on file with the State Purchasing Bureau or the Court before they made a purchase using their direct purchase authority.
- The Court did not have a monthly report on file with the State Purchasing Bureau for the purchases that were made using their direct purchase authority.
- The Court did not have documentation to show the criteria used to select the vendor.

The Department of Administrative Services (DAS) - Materiel Division's Direct Market Purchase Authority Memo states "[Agencies] will be responsible for ensuring that vendors you purchase from support a Drug-free Workplace Environment." This can be accomplished by either of two methods, having a statement on file from the vendor, or including an attestation statement on a signed document such as a contract or an "invitation to bid" document.

A memo dated July 1, 2001 was sent from Doni Peterson, Administrator of DAS - Materiel Division, to all agencies, boards, and commissions concerning direct market purchase authority. The memo stated, "Agencies are required to submit monthly reports for ALL purchases made directly from \$500.00 to \$4999.99."

The memo also stated, "You are strongly urged to obtain a minimum of three bids on orders over \$500. Good internal control also requires that agencies document they received at least three bids to ensure that bidding was competitive.

As a result, the Court was not in compliance with DAS procedures, and DAS did not have the information necessary to monitor direct purchases.

We recommend the Court create procedures to ensure that for all direct purchases, the vendor's drug-free workplace policy is on file or is attested to prior to the purchase. This may include the creation of a checklist to ensure direct purchases proceed through all required steps. We also recommend the Court submit the required direct purchase report on a monthly basis. Finally, we recommend the Court document all bids that are received on direct purchases over \$500.

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**Agency 5 - State Court Administrator / Court of Appeals / Supreme Court /
State Probation Administration** (Concluded)

2. Documentation of Review by Legal Counsel

Good business practice, and good internal controls over contracts, requires that certain contracts be reviewed by a person or persons who has the legal expertise and knowledge to determine if the contract is in compliance with Federal and State laws and regulations governing contracts, and to ensure the best interest of the State is being served. In addition, good internal controls would require that when a legal review is performed that it be documented. This would document the review in accordance with management's directives.

We received indication that staff legal counsel for the Court reviewed the contracts, but such review was not documented.

When a review is not documented there is no assurance the review was actually performed.

We recommend the legal review of contracts be documented. This can be accomplished by legal counsel signing a checklist or routing sheet for the contract, or by legal counsel drafting correspondence stating the recommended changes to the contract or approval of the contract.

**Agency 7 - Office of the Governor / Governor's Policy Research and Energy
Office**

Per the Nebraska Accounting System (NAS), your Agency disbursed the amounts in the following three broadly classified categories of purchases for the fiscal year ending June 30, 2002:

- Purchase of Materials, Supplies, and Equipment (\$124,189)
- Purchase of Services (\$259,700)
- Lease/Rent Agreements (\$56,959)

The following procedures were performed:

- Requested the completion of an Internal Control Questionnaire to document the procedures/controls your Agency had over purchases to ensure compliance with all laws and regulations.

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**Agency 7 - Office of the Governor / Governor's Policy Research and Energy
Office** (Continued)

- Selected and tested the following transactions, and related purchasing documentation, to determine if key procedures/controls were in place to ensure purchases were in accordance with all laws and regulations:
 - Bryan and Bryan, Inc. – Doc #2116382 (\$16,429.00)

This disbursement was for expenses regarding the U.S. Department of Energy Workshop Series.

Based on the above-mentioned procedures, the following comments and recommendation are made for your consideration:

1. Internal Control Questionnaire Not Completed

The agency did not complete an Internal Control Questionnaire (ICQ) as requested. Good internal controls are required to ensure compliance with all laws and regulations. The documentation of these controls, through the use of a questionnaire, is key to obtaining a general understanding of the purchasing/contracting policies, procedures, and controls the agency has in place to ensure their compliance with all laws and regulations.

The Governor indicated in a memorandum, dated July 16, 2002, they did not answer our questions because the validity of the Internal Control Questionnaire was under review by the Attorney General. The agency stated they were awaiting further legal guidance before responding to the questionnaire.

As of the date of this letter the Attorney General has not communicated to us the results of his review. Because the ICQ was not answered, we were unable to complete the second objective above, as originally planned. Further, such a refusal to cooperate with the auditors significantly diminishes the value in having an independent review of the agency's procedures.

See the *Restriction on the Scope of the Examination* section on page 2 of this letter.

2. Documentation of Review by Legal Counsel

Sound business practice, and good internal controls over contracts, require a review of contracts by a person or persons having the legal expertise and knowledge to determine if the contract is in compliance with federal and State laws and regulations governing contracts, and to ensure the best interest of the State is being served. In addition, good internal controls require that when a legal review is performed that it be documented. When a review is not documented there is no assurance that the review was actually performed.

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**Agency 7 - Office of the Governor / Governor's Policy Research and Energy
Office** (Continued)

No documentation was provided to us showing a legal council review of the contract noted above.

We recommend legal counsel review contracts before they are executed and that the review is documented. This can be accomplished by legal counsel signing a checklist or routing sheet for the contract, or by legal counsel drafting correspondence stating the recommended changes to the contract or approval of the contract.

Agency Response: This letter is written in response to your agency's review of a contract awarded by the U.S. Department of Energy to the Bryan & Bryan, Inc. firm. The contract was managed by the Nebraska Energy Office Division of the Governor's Office. Following is our agency's response to comments and recommendations posed by your office:

On July 16, 2002, the Governor advised you that he was concerned that many of the questions contained in the "Internal Control Questionnaire" are performance audit oriented and that, based on this concern, he had directed all agencies under his control to provide any actual documents that your office sought to obtain but to refrain from responding to the survey questionnaire, or to other questions regarding how or why an agency performs its duties, until such time as the Nebraska Attorney General could issue a formal legal opinion on this matter. We have now been made aware of the fact that your office has intentionally asked the Nebraska Attorney General to delay issuance of his pending opinion. Your legal counsel has specifically asked to provide additional documentation to the Attorney General prior to issuance of his legal opinion. As of today, the Nebraska Attorney General is awaiting this documentation. You are well aware, therefore, that no Attorney General's opinion has been issued. At the same time, your office has issued arbitrary deadlines for completion of your survey and questions. The course of action you have elected to choose on this issue is extremely frustrating and disappointing.

The U.S. Department of Energy's procedures dictated the award of this contract. The contract was drafted and executed, on behalf of the U.S. Department of Energy, by the Nebraska Energy Office utilizing a standard form contract document developed by prior agency legal counsel.

As a final comment, your letter asks that we review the accuracy of financial data unrelated to the contract that was specifically reviewed by your office. Our agency has no reason to question the financial information since your office represents that it was obtained from the Nebraska Accounting System. We do, however, question the relevance of this information to the issues raised by your review of one agency contract. Thank you for the opportunity to comment on this matter.

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**Agency 7 - Office of the Governor / Governor's Policy Research and Energy
Office** (Concluded)

APA's Response: See the *Restriction on the Scope of the Examination* section on page 2 of this letter.

Agency 9 - Office of the Secretary of State

Per the Nebraska Accounting System (NAS), your Agency disbursed the amounts in the following three broadly classified categories of purchases for the fiscal year ending June 30, 2002:

- Purchase of Materials, Supplies, and Equipment (\$438,445)
- Purchase of Services (\$1,857,696)
- Lease/Rent Agreements (\$212,096)

The following procedures were performed:

- Requested the completion of an Internal Control Questionnaire to document the procedures/controls your Agency had over purchases to ensure compliance with all laws and regulations.
- Selected and tested the following transactions, and related purchasing documentation, to determine if key procedures/controls were in place to ensure purchases were in accordance with all laws and regulations:
 - Computer Hardware, Inc. – Document # 104025 (\$846)

This was a direct purchase of toner cartridges and there was no contract associated with this transaction.

Based on the above-mentioned procedures, we offer the following comment and recommendation, for your consideration:

Direct Purchase of Toner

We noted the following items as it relates to the direct purchase as described above:

- The Agency did not have documentation that supported they had checked the DAS Materiel website to verify that no State contract existed for the items that were purchased with direct purchase authority.

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Agency 9 - Office of the Secretary of State (Continued)

- The Agency did not have documentation that confirmed they had received a minimum of three bids on direct purchases.
- The Agency did not ensure that the vendors from whom they purchased had a Drug-free Workplace Policy on file with State Purchasing or the Agency before they made a purchase using their direct purchase authority.
- The Agency did not have a monthly report on file with State Purchasing for the purchases that were made using their direct purchase authority.

The DAS – Materiel Procurement Manual For Goods states under Direct Purchase Authority that, “Items for which contracts have been established by the DAS Materiel Division may NOT be purchased from other sources.” Good internal control requires checking State contracts to ensure that agencies are getting the best possible price for anything they purchase and that this review is documented.

A memo dated July 11, 2000, which relates to Direct Market Purchase Authority, was sent to all agencies, boards, and commissions from Doni Peterson, Administrator for DAS Materiel Division and is included in the DAS – Materiel Procurement Manual For Goods. It states, “You are strongly urged to obtain at a minimum, three bids on orders over \$500.” The memo also states, “You will be responsible for ensuring that vendors you purchase from have a Drug-free Workplace Policy on file with State Purchasing or your agency PRIOR to making a purchase.”

It also states, “Agencies are required to submit monthly reports for ALL purchases made directly from \$500.00 to \$4999.99.” Good internal control requires that agencies document they received at least three bids to ensure that bidding was competitive. Good internal control also requires documentation supporting they checked to make sure the Drug-free Workplace Policy was on file.

We recommend the Agency develop procedures to ensure all existing State contracts are inspected to ensure items being purchased through direct purchase authority are not already covered under a State contract. This review of the contracts should also be documented when it is performed. Additionally, we recommend the Agency develop procedures to document all bids that are received when the total direct purchase order is over \$500. Also, we recommend the Agency develop procedures to verify that the vendor’s Drug-free Workplace Policy is on file at State Purchasing or the Agency before they make a direct purchase from a vendor. Finally, we recommend the Agency develop procedures to verify that the monthly report listing of direct purchases between \$500 and \$4,999.99 is sent to DAS Materiel each month.

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Agency 9 - Office of the Secretary of State (Concluded)

Agency Response: In reference to your letter dated August 28, 2002 concerning purchase procedures in the Office of the Secretary of State. The Secretary of State Office has reviewed your recommendations and is evaluating our procurement process. We have taken steps to incorporate the internal controls as recommended in your letter. Specifically, we are doing the following,

- We are in contact with the State of Nebraska approved vendors to secure pricing for supplies that were identified in your letter.*
- We are implementing procedures to ensure that vendors are accepted under the DAS Materiel policies and that reporting requirements are fulfilled.*
- In the future we will document the three informal bids required on direct purchases.*

We want to thank the Auditor of Public Accounts staff for assisting us in identifying internal control weaknesses and bringing these concerns to our attention. We look forward to your continued support in strengthening internal control measures.

Agency 11 - Office of the Attorney General

Per the Nebraska Accounting System (NAS), the Office of the Attorney General disbursed the amounts in the following three broadly classified categories of purchases for the fiscal year ending June 30, 2002:

- Purchase of Materials, Supplies, and Equipment (\$639,178)
- Purchase of Services (\$249,244)
- Lease/Rent Agreements (\$276,098)

The following procedures were performed:

- Requested the completion of an Internal Control Questionnaire to document the procedures/controls the Office of the Attorney General had over purchases to ensure compliance with all laws and regulations.
- Selected and tested the following transaction, and related purchasing documentation, to determine if key procedures/controls were in place to ensure purchases were in accordance with all laws and regulations:

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Agency 11 - Office of the Attorney General (Concluded)

- Purchase from West Group - Document #2124506 in the amount of \$13,963.51. Total contract amount was \$126,480. The purchase was for West Law services.

Based on the above-mentioned procedures, the following comment and recommendation is made for your consideration:

Documentation of Internal Control Procedures

In our review of the transaction noted above the office manager indicated to us she does not sign a contract until the Deputy or Attorney General has reviewed the contract. However, no documentation was provided to us to indicate the Deputy or Attorney General performed this review. The office manager also indicated it is her procedure to initial an invoice to indicate she has verified the services were actually received, the terms and conditions of the contract were met, and the payment requested agrees to the terms of the contract. However, the office manager's initial was not on the invoice supporting the payment as noted above to West Group.

Good internal controls would require when a legal review or when an accounting control procedure is performed that it be documented. This would document that the procedures, in accordance with management's directives, were actually performed.

We believe the two internal control procedures noted above are excellent, however, when an internal control procedure is not documented there is no assurance the procedure was actually performed.

We recommend the internal control procedures the Attorney General's staff indicates are in place be documented.

Agency 12 - Office of the State Treasurer

Per the Nebraska Accounting System (NAS), your Agency disbursed the amounts in the following three broadly classified categories of purchases for the fiscal year ending June 30, 2002:

- Purchase of Materials, Supplies, and Equipment (\$663,545)
- Purchase of Services (\$1,079,471)
- Lease/Rent Agreements (\$356,654)

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Agency 12 - Office of the State Treasurer (Continued)

The following procedures were performed:

- Requested the completion of an Internal Control Questionnaire to document the procedures/controls your Agency had over purchases to ensure compliance with all laws and regulations.
- Selected and tested the following transactions, and related purchasing documentation, to determine if key procedures/controls were in place to ensure purchases were in accordance with all laws and regulations:

- Centurion Inc. - Document #1105451 (\$190,742)

Payment was for the purchase of computer hardware and software for the State Disbursement Unit.

- World Technologies Inc. – Document #2125442 (\$67,203)

Contract provides for computer processing, imaging, and mailing of State warrants related to the State Disbursement Unit's function.

Based on the above procedures, the following comments and recommendations are made for your consideration:

1. Internal Control Questionnaire not Completed

The State Treasurer did not complete an Internal Control Questionnaire (ICQ) as requested. Good internal controls are required to ensure compliance with all laws and regulations. The documentation of these controls, through the use of a questionnaire, is key to obtaining a general understanding of the purchasing/contracting policies, procedures, and controls the State Treasurer has in place to ensure their compliance with all laws and regulations. The State Treasurer indicated they did not answer our questions based upon their consideration of a directive from the Governor to all code agencies.

In a memorandum to Code Agencies, dated July 16, 2002, the Governor indicated the validity of the Internal Control Questionnaire was under review by the Attorney General; therefore, his office was not responding to the questionnaire pending further review. He further directed all code agencies to not respond to the questionnaire at that time. As of the date the letter was issued, neither the Governor nor the Attorney General has communicated to us the results of the Attorney General's review. Because of this directive we were unable to complete our objectives, as originally planned. Further, such a refusal to cooperate with the auditors significantly diminishes the value in having an independent review of the State Treasurer's procedures.

See the *Restriction on the Scope of the Examination* section on page 2 of this letter.

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Agency 12 - Office of the State Treasurer (Continued)

2. Requested Documentation Not Received

We requested information and documentation regarding the agreements between the State Treasurer and two vendors. Certain documentation and information was not supplied regarding the agreements. The following is a list of the information and documentation that was requested:

Document # 105451 - Centurion Inc.

- Was special direct purchase authority granted for this specific purchase? Provide documentation to support the direct purchase authority.
- If special direct purchase authority was not granted, was DAS Form 1909 submitted to DAS-IMServices for approval? Provide documentation to support approval from DAS-IMServices.
- If an “Emergency Situation” existed, was approval received from DAS – Materiel Division, State Purchasing Bureau? If approval was received, was an explanation of the emergency reported in writing, along with a purchase requisition, to the State Purchasing Bureau? Provide documentation to support the emergency.
- Was a documented review of the terms and conditions of the sales agreement completed by legal counsel? Provide documentation to support the review.
- What documentation is available to support the vendor contracted with was not listed on the Federal government’s list of suspended or debarred contractors before the contracts/awards were signed?

Document #2125442 – World Technologies Inc.

- Was a documented review of the terms and conditions of the contract completed by legal counsel? Provide documentation to support the review.
- What process was used to solicit bids? Were public notices placed in the State’s major newspapers? Provide documentation to support the process used.
- Were answers to questions, if any, regarding the meaning or interpretation of any RFP provision provided to all vendors? Provide a copy of the questions and answers provided to all vendors.

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Agency 12 - Office of the State Treasurer (Continued)

- Were all bids received before the bid due date and time? Were proposals opened publicly at the scheduled date and time? Provide supporting documentation.
- Provide documentation supporting the bid tabulation and selection of the “lowest responsible bidder” based on the Proposal Evaluation section of the RFP.
- What documentation is available to support the vendor contracted with was not listed on the Federal government’s list of suspended or debarred contractors before the contracts/awards were signed?
- Auditor attempted to trace the unit prices for each invoice to section “42 - Prices” of the Terms and Conditions of the contract. Some unit amounts on the invoices did not correspond to the contracted price. Were prices renegotiated subsequent to the execution of the contract? Provide documentation.
- Are services and materials combined on the invoices or are they separate? Provide documentation. In addition, several of the invoices contain charges for “Programming.” These charges do not appear to be part of the original contract. Were additional services negotiated subsequent to the execution of the contract? Provide documentation.

As noted above in his memorandum to Code Agencies dated July 16, 2002, the Governor directed all code agency directors to provide the “Auditor’s office with the requested documents...” The State Treasurer is in violation of Neb. Rev. Stat. Section 84-305 R.S.Supp., 1998. It states, “The Auditor of Public Accounts shall have access to all records of any public entity, in whatever form or mode the records may be, unless the auditor’s access to the records is specifically prohibited or limited by federal or state law.” In their refusal to provide the requested documents, the Agency has cited no laws that would prohibit them from complying with the auditor’s request.

Due to the State Treasurer’s refusal to provide the requested documentation and information in a timely manner, we were unable to determine if the contracts were made in accordance with all applicable laws and regulations, as originally planned. Further, such a refusal to cooperate with the auditors significantly diminishes the value in having an independent review of the State Treasurer’s procedures.

PURCHASING/CONTRACTING PROCEDURES
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**PROCEDURES PERFORMED AND
COMMENTS AND RECOMMENDATIONS**

Agency 12 - Office of the State Treasurer (Concluded)

Agency Response: Due its length, the Treasurer's response can be found on pages 132 through 139.

APA's Response: Due to its length, the APA's response can be found on pages 140 through 143.

Agency 13 - Department of Education / Professional Practice Commission

Per the Nebraska Accounting System (NAS), your Department disbursed the amounts in the following four broadly classified categories of purchases for the fiscal year ending June 30, 2002:

- Purchase of Materials, Supplies, and Equipment (\$1,971,700)
- Purchase of Services (\$9,996,480)
- Construction/Repair of Buildings and Roads (\$60,148)
- Lease/Rent Agreements (\$1,259,137)

The following procedures were performed:

- Requested the completion of an Internal Control Questionnaire to document the procedures/controls your Agency had over purchases to ensure compliance with all laws and regulations.
- Selected and tested the following transactions, and related purchasing documentation, to determine if key procedures/controls were in place to ensure purchases were in accordance with all laws and regulations:
 - Deloitte Consulting – Doc # 2134246 (\$105,000)

The total contract amount was \$105,000. Deloitte Consulting was contracted with to update Medicaid reimbursement rates for services delivered to children by Nebraska public schools.

- Educational Service Unit #4 (ESU 4) – Doc # 2130139 (\$742,751)

The total contract amount was \$3,015,569. ESU 4 was to operate the Nebraska Center for the Education of Children Who are Blind or Visually Impaired, including campus facilities and all special educational, outreach, and residential services to school districts and Educational Service Units statewide. This is an on-going contract.

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**PROCEDURES PERFORMED AND
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Agency 13 - Department of Education / Professional Practice Commission
(Concluded)

Based on the above-mentioned procedures, the following comment and recommendation is made for your consideration:

Documentation Supporting Sole Source

For both of the contracts noted above the Department identified the entities as being the only source for the service. However, the Department did not have documentation to support they had used an open competitive process for selecting the entities who provided the contracted services. For example, there was no documentation to support that the Department had attempted to contact other parties to determine if they could provide the needed services. Other documentation that was available was not sufficient to determine the vendor a sole source for the service.

The Governor issued Executive Order 00-04 on December 21, 2000, which State agencies are to follow in selecting and contracting for services. The Department indicated they were following this Executive Order. In part, the Executive Order stated, "State agencies shall immediately utilize an open competitive process for selecting recipients for contracted services." In addition, good internal control requires documentation be retained to support that an open competitive process was followed.

We recommend the Department document their competitive bidding process. This documentation should include how and which entities were considered eligible to provide the service, and how the entity selected to provide the service was selected. This would provide evidence that the contract was competitively bid and also support the award of the contract to the lowest responsible bidder.

Agency 16 - Department of Revenue / State Athletic Commission

Per the Nebraska Accounting System (NAS), your Division disbursed the amounts in the following three broadly classified categories of purchases for the fiscal year ending June 30, 2002:

- Purchase of Materials, Supplies, and Equipment (\$1,352,485)
- Purchase of Services (\$12,238,488)
- Lease/Rent Agreements (\$870,830)

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**PROCEDURES PERFORMED AND
COMMENTS AND RECOMMENDATIONS**

Agency 16 - Department of Revenue / State Athletic Commission (Concluded)

The following procedures were performed:

- Requested the completion of an Internal Control Questionnaire to document the procedures/controls your Division had over purchases to ensure compliance with all laws and regulations.
- Selected and tested the following transactions, and related purchasing documentation, to determine if key procedures/controls were in place to ensure purchases were in accordance with all laws and regulations:

- G-TECH Corporation – Doc # 2158195 (\$770,087.15)

The total contract amount was based upon a percentage of the sales of online lottery tickets.

- G-TECH Corporation – Doc # 2159148 (\$307,693.90)

The total contract amount was based upon a percentage of the sales of scratch tickets that were sold.

- Ayres & Associates, Inc. – Doc # 8158047 (\$9,054.61)

The total contract amount was based upon a percentage of the Division's budget for advertising. The contract included advertising services and production of items used for advertising various lottery games.

Based on the above-mentioned procedures, we noted no exceptions in our examination of the above transactions and their related supporting documentation.

Agency 17 - Department of Aeronautics

Per the Nebraska Accounting System (NAS), your Department disbursed the amounts in the following four broadly classified categories of purchases for the fiscal year ending June 30, 2002:

- Purchase of Materials, Supplies, and Equipment (\$252,559)
- Purchase of Services (\$854,774)
- Construction/Repair of Buildings and Roads (\$487,669)
- Lease/Rent Agreements (\$248,082)

PURCHASING/CONTRACTING PROCEDURES
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**PROCEDURES PERFORMED AND
COMMENTS AND RECOMMENDATIONS**

Agency 17 - Department of Aeronautics (Continued)

The following procedures were performed:

- Requested the completion of an Internal Control Questionnaire to document the procedures/controls your agency had over purchases to ensure compliance with all laws and regulations.
- Selected and tested the following transactions, and related purchasing documentation, to determine if key procedures/controls were in place to ensure purchases were in accordance with all laws and regulations:

Materials, Supplies, and Equipment Contracts

- Deery American Corporation – Doc # 2160768 (\$8,489)

The contract was a price agreement. Deery American Corporation was to provide rubber asphalt joint seal for the Department.

- Central Cylinder Service Inc. – Doc # 2160507 (\$65,000)

This was a direct purchase of overhauls for two aircraft engines.

Construction / Repair of Buildings and Equipment

- Werner Construction Co. – Doc # 2160350 (\$184,032)

This total contract amount was for \$188,082. Werner Construction was contracted for improvements to a State airfield.

Based on the above-mentioned procedures, the following comments and recommendations are made for your consideration:

1. Internal Control Questionnaire not completed

The Department did not complete an Internal Control Questionnaire (ICQ) as requested. Good internal controls are required to ensure compliance with all laws and regulations. The documentation of these controls, through the use of a questionnaire, is key to obtaining a general understanding of the purchasing/contracting policies, procedures, and controls the Department has in place to ensure their compliance with all laws and regulations. The Department indicated they did not answer our questions based upon a directive from the Governor.

PURCHASING/CONTRACTING PROCEDURES
AND CONTROLS FOR THE STATE OF NEBRASKA

**PROCEDURES PERFORMED AND
COMMENTS AND RECOMMENDATIONS**

Agency 17 - Department of Aeronautics (Continued)

In a memorandum to Code Agencies, dated July 16, 2002, the Governor indicated the validity of the ICQ was under review by the Attorney General; therefore, his office was not responding to the ICQ pending further review. He further directed all code agencies to not respond to the ICQ at that time. As of the date of this letter neither the Governor nor the Attorney General has communicated to us the results of the Attorney General's review. Because of this directive we were unable to complete the second objective above, as originally planned. Further, such a refusal to cooperate with the auditors significantly diminishes the value in having an independent review of the Department's procedures.

Agency Response: We are not answering the ICQ in accordance with the Governor's July 16th, 2002 memorandum to Code Agencies. The Auditor is fully aware that the Attorney General's office has not issued an opinion on the ICQ because the Auditor's legal counsel is in the process of attempting to legally justify the Auditor's authority in this matter to the Attorney General.

APA's Response: See the *Restriction on the Scope of the Examination* section on page 2 of this letter.

2. Drug-free Workplace Policy for Vendors

The DAS-Materiel Division's Direct Market Purchase Authority Memo states, "(Agencies) will be responsible for ensuring that vendors ... purchase(d) from support a Drug-free Workplace Environment." This can be accomplished by two methods, having a statement on file from the vendor, or including an attestation statement on a signed document such as a contract or an "invitation to bid" document.

One purchase was tested that fell within the Direct Market Purchase Authority for the Department, Central Cylinder Service Inc., as described above. For this purchase, the drug-free workplace policy was not on file for the vendor, nor did the vendor give a written attestation as to having such a policy.

This results in the Department being in noncompliance with policies and procedures of the Department of Administrative Services – Materiel Division.

We recommend the Department create procedures to ensure that for all direct purchases, the vendor's drug-free workplace policy is on file or is attested to prior to the purchase. This may include changes to Department procedural manuals or the creation of a checklist to ensure direct purchases proceed through all required steps.

PURCHASING/CONTRACTING PROCEDURES
AND CONTROLS FOR THE STATE OF NEBRASKA

**PROCEDURES PERFORMED AND
COMMENTS AND RECOMMENDATIONS**

Agency 17 - Department of Aeronautics (Concluded)

Agency Response: We contacted Central Cylinder Service, Inc. and they sent us a written attestation as to having such a policy; which attestation is now in our files.

3. Documentation of Review by Legal Counsel

Good business practice, and good internal controls over contracts, would require that certain contracts be reviewed by a person or persons, who has the legal expertise and knowledge to determine if the contract is in compliance with federal and State laws and regulations governing contracts, and to ensure the best interest of the State is being served. In addition, good internal controls would require that when a legal review is performed that it be documented. This would document the review in accordance with management's directives.

We received indication that the contract with Werner Construction Co. was reviewed by legal counsel for the Department, but such review was not documented.

When a review is not documented there is no assurance that the review was actually performed.

We recommend the legal review of contracts be documented. This can be accomplished by legal counsel signing a checklist or routing sheet for the contract, or by legal counsel drafting correspondence stating the recommended changes to the contract or approval of the contract.

Agency Response: Review of contracts is documented on Legal Counsel's time sheet. In the future, Legal Counsel's review will be documented in a more easily accessible location.

Agency 18 - Department of Agriculture

Per the Nebraska Accounting System (NAS), your Department disbursed the amounts in the following three broadly classified categories of purchases for the fiscal year ending June 30, 2002:

- Purchase of Materials, Supplies, and Equipment (\$688,426)
- Purchase of Services (2,319,420)
- Lease/Rent Agreements (370,896)

PURCHASING/CONTRACTING PROCEDURES
AND CONTROLS FOR THE STATE OF NEBRASKA

**PROCEDURES PERFORMED AND
COMMENTS AND RECOMMENDATIONS**

Agency 18 - Department of Agriculture (Continued)

The following procedures were performed:

- Requested the completion of an Internal Control Questionnaire to document the procedures/controls your Department had over purchases to ensure compliance with all laws and regulations.
- Selected and tested the following transactions, and related purchasing documentation, to determine if key procedures/controls were in place to ensure purchases were in accordance with all laws and regulations:

Materials, Supplies, and Equipment

- Daniels Manufacturing Co. – Doc # 2162529 (\$561)

This was a direct purchase of additional pieces added to a previously purchased portable corral. There was no contract associated with this transaction. Daniels Manufacturing Co. was the original provider of the portable corral.

- Scheels All Sports – Doc # 2164929 (\$3,975)

This was a direct purchase of 15 Global Positioning System (GPS) units and accessories. There was no contract associated with this transaction.

Services

- University of Nebraska Institute of Agriculture and Natural Resources (IANR) – Doc # 278683 (\$300,000)

Through Neb. Rev. Stat. Section 81-2,162.27(2) R.S.Supp., 2001, the Legislature authorized the Department of Agriculture to contract with IANR for research not to exceed \$300,000 from the Fertilizers and Soil Conditioners Administrative Fund. IANR was to conduct a research project entitled “Harnessing Breakthroughs in Nutrient Management and Information Technology for Greater Profitability in Corn, Soybeans, and Dry Beans.”

Based on the above-mentioned procedures, the following comments and recommendations are made for your consideration:

PURCHASING/CONTRACTING PROCEDURES
AND CONTROLS FOR THE STATE OF NEBRASKA

**PROCEDURES PERFORMED AND
COMMENTS AND RECOMMENDATIONS**

Agency 18 - Department of Agriculture (Continued)

1. Internal Control Questionnaire Not Completed

The Department did not complete an Internal Control Questionnaire (ICQ) as requested. Good internal controls are required to ensure compliance with all laws and regulations. The documentation of these controls, through the use of a questionnaire, is key to obtaining a general understanding of the purchasing/contracting policies, procedures, and controls the Department has in place to ensure their compliance with all laws and regulations. The Department indicated they did not answer our questions based upon a directive from the Governor.

In a memorandum to Code Agencies, dated July 16, 2002, the Governor indicated the validity of the ICQ was under review by the Attorney General; therefore, his Office was not responding to the ICQ pending further review. He further directed all Code Agencies to not respond to the ICQ at that time. As of the date of this letter neither the Governor nor the Attorney General has communicated to us the results of the Attorney General's review. Because of his directive we were unable to complete the second objective above, as originally planned. Further, such a refusal to cooperate with the auditors significantly diminishes the value in having an independent review of the Department's procedures.

See the *Restriction on the Scope of the Examination* section on page 2 of this letter.

2. Contract was not Monitored

Good business practices require a contract be monitored to ensure services which are being paid for are actually received, and the terms and conditions of the contract are being complied with.

The contract with the University of Nebraska Institute of Agriculture and Natural Resources (IANR) was not being monitored.

The contract states IANR shall return any unused funds. As referenced in the contract, Neb. Rev. Stat. Section 81-2,162.27(2) R.S.Supp., 2002 states, "...no state funds shall be used for administrative purposes by the university in conjunction with the project..." Both of the preceding are areas that should be monitored by the Department.

By not monitoring this contract, the Department has increased the risk that these funds may be used improperly or contrary to statute.

We recommend the Department request the appropriate information from IANR and create procedures for monitoring all contracts.

PURCHASING/CONTRACTING PROCEDURES
AND CONTROLS FOR THE STATE OF NEBRASKA

**PROCEDURES PERFORMED AND
COMMENTS AND RECOMMENDATIONS**

Agency 18 - Department of Agriculture (Concluded)

Agency Response: Various records of the Nebraska Department of Agriculture (NDA), along with other State agencies, are routinely audited by the Auditor of Public Accounts. The primary purpose of these audits is to make certain that State agencies have key procedures and controls in place and that any purchases being made are in accordance with all applicable laws and regulations.

Recently, the NDA was part of an audit done by the Auditor of Public Accounts in which one of the account concerns they listed was in regards to an agreement the NDA has with your Department. As they indicate in their letter to us, they stress the importance of having the NDA monitor this contract to assure that no State funds are used for administrative purposes by the University in conjunction with the project. I have made a copy of their letter to us for your review.

As you know, LB 329 which was passed by the Ninety-seventh Legislature and signed into law by Governor Johanns required the NDA to contract with the University of Nebraska, Institute of Agriculture and Natural Resources (IANR), Department of Agronomy and Horticulture, for agronomic crop production research on precise nitrogen management in center pivot irrigated corn systems. The NDA was to provide \$300,000 for this research with the funding to be provided to IANR no later than October 1, 2001, with the funding source of this project coming from the Fertilizer and Soil Conditioner Administrative Cash Fund. The NDA supported this research, as did the industry that pays fees into the Fertilizer and Soil Conditioner Administrative Cash Fund. An agreement was entered into on July 27, 2001, between the NDA and IANR with the transfer of dollars taking place on August 3, 2001, in the form of Intrastate Transaction Document (ITD). The project referred to in the agreement is "Harnessing Breakthroughs in Nutrient Management and Information Technology for Greater Profitability in Corn, Soybeans, and Dry Beans." A description of the project, principal investigators, objectives, research approach, time tables, potential benefits, and a budget for the project were all included in the agreement. The project duration is scheduled to be from January 1, 2002, to December 31, 2004.

As you know, the agreement indicates the term of the agreement begins on July 1, 2001. This date was listed for the purpose of allowing funds to be transferred to IANR prior to the October 1, 2001, which was required by LB 329. As we discussed, it is our intent to audit the agreement on an annual basis using the calendar year as the time period to be reviewed. The first calendar year review (2002) will take place sometime in late January of 2003.

PURCHASING/CONTRACTING PROCEDURES
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**PROCEDURES PERFORMED AND
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Agency 22 - Department of Insurance

Per the Nebraska Accounting System (NAS), the Department disbursed the amounts in the following three broadly classified categories of purchases for the fiscal year ending June 30, 2002:

- Purchase of Materials, Supplies, and Equipment (\$117,339)
- Purchase of Services (\$297,500)
- Lease/Rent Agreements (\$214,027)

The following procedures were performed:

- Requested the completion of an Internal Control Questionnaire to document the procedures/controls your Department had over purchases to ensure compliance with all laws and regulations.
- Selected and tested the following transactions, and related purchasing documentation, to determine if key procedures/controls were in place to ensure purchases were in accordance with all laws and regulations:
 - Central National Insurance Co. – Doc # 2189433 (\$9,281.25)

This contract did not have any set amount because it was a price agreement where services would be performed at any hourly rate, based upon need. The total amount paid under this contract for fiscal year 2002 was \$85,181. Central National Insurance provided claim adjudication for the Excess Liability Fund of the State of Nebraska.

Based on the above-mentioned procedures, the following comments and recommendations were made for the Department's consideration:

1. Internal Control Questionnaire Not Completed

The Department did not complete an Internal Control Questionnaire (ICQ) as requested. Good internal controls are required to ensure compliance with all laws and regulations. The documentation of these controls, through the use of a questionnaire, is key to obtaining a general understanding of the purchasing/contracting policies, procedures, and controls the Department has in place to ensure their compliance with all laws and regulations. The Department indicated they did not answer our questions based upon a directive from the Governor.

PURCHASING/CONTRACTING PROCEDURES
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**PROCEDURES PERFORMED AND
COMMENTS AND RECOMMENDATIONS**

Agency 22 - Department of Insurance (Continued)

In a memorandum to Code Agencies, dated July 16, 2002, the Governor indicated the validity of the ICQ was under review by the Attorney General; therefore, his Office was not responding to the ICQ pending further review. He further directed all Code Agencies to not respond to the ICQ at that time. As of the date of this letter neither the Governor nor the Attorney General has communicated to us the results of the Attorney General's review. Because of this directive we were unable to complete the second objective above, as originally planned. Further, such a refusal to cooperate with the auditors significantly diminishes the value in having an independent review of the Department's procedures.

See the *Restriction on the Scope of the Examination* section on page 2 of this letter.

2. Central National Insurance Contract

We noted the following items as they relate to the Central National Insurance contract as described above:

- The Department had a contract with Central National Insurance that was intended to be temporary. The Department indicated they had an emergency situation at the time they executed the agreement. As documented by the Department, the Administrator of the Excess Liability Fund took a sudden leave of absence for an undeterminable amount of time with no one within the Department able to assume this responsibility. Claims and settlement decisions against the fund continued to be received by the Department. Because of the complexity of the settlement decisions, experienced claims specialists were required. As of March 2000, there were over 200 unsettled claims that required immediate attention. The contract did not contain an exact date as to when it would end. It has been in effect since March 2000.
- The Department did not have documentation that showed they had attempted to re-bid the contract after the original emergency situation.
- The Department did not have documentation that confirmed they were monitoring the contract to ensure they were receiving the services for which they were paying. The invoices they received listed only a general description of services performed and a listing of the hours spent each week performing those services. The invoice did not show any breakdown of which claims or files were being worked on.

Good business practices require a contract to have specific terms regarding how long a contract will be in effect and how often it needs to be renewed or re-bid. They also require a contract be bid competitively to make sure the Department is receiving the best possible value for the money they are spending. Finally, good business practices require a contract be monitored to ensure services that are being paid for are actually being received.

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Agency 22 - Department of Insurance (Concluded)

We recommend the Department review the contract and determine if the contract should be modified to include a set time period the contract will be in effect. The Department should determine, and document, if the contract should now be bid out, or if it would be in the best interest of the State to terminate the contract. We also recommend the Department monitor this contract more closely and document the review. One way to accomplish this might be to request further documentation from the contractor to assist with the monitoring process. For example, the Department might request the contractor send in documentation showing the breakdown of the time spent on each claim, rather than just a sum of the hours for the week.

Agency Response: On June 1, 2000, a district court opined that the \$1.25 million limit on the total amount of damages recoverable in a medical malpractice action was unconstitutional. This case was appealed to the Nebraska Supreme Court. It has been the department's intent to terminate this contract upon the Supreme Court rendering a decision. Unfortunately, the original timeframe for this decision has continually been rescheduled and required the continuation of this contract.

As was discussed with the auditor's office, one of the duties of central national is to estimate reserve requirements for cases filed against the fund. Reserving procedures are based on claim history and individual experience and can vary based on the individual. This estimation is used to actuarially determine the liability of the fund and to support the surcharge amount required to be paid to participate in the act. Because of the need to maintain consistency in the calculation of this liability, the department felt and continues to feel that re-bidding the contract would create inconsistencies that would render the liability calculation meaningless. Upon a decision from the Supreme Court, the department will review the need to re-bid this contract or hire an administrator for this program.

The department also discussed with the auditor's office that documentation showing the breakdown of time spent on each claim, rather than just a sum of the hours for the week would accomplish nothing. Because the department is not actively involved in the settlement of the cases, any estimation of the time that should have been spent on the claim by central national would be a guess on the department's part. The auditor's recommendation would do nothing to improve the monitoring of this contract. The department prefers to monitor overall expenses and if any irregularities are noted, to question central national directly.

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Agency 23 - Department of Labor

Per the Nebraska Accounting System (NAS), your Department disbursed the amounts in the following three broadly classified categories of purchases for the fiscal year ending June 30, 2002:

- Purchase of Materials, Supplies, and Equipment (\$1,745,973)
- Purchase of Services (\$5,249,030)
- Lease/Rent Agreements (\$1,374,520)

The following procedures were performed:

- Requested the completion of an Internal Control Questionnaire to document the procedures/controls your Department had over purchases to ensure compliance with all laws and regulations.
- Selected and tested the following transactions, and related purchasing documentation, to determine if key procedures/controls were in place to ensure purchases were in accordance with all laws and regulations:
 - All Makes Office Equipment - Document #2191808 (\$6,320.72), purchase of lateral files.
 - Isodisc - Document #2194998 (\$938.85), purchase of office supplies.
 - ASAP Software, Western States Contract - Document #2193496 (\$19,015.19), purchase of office supplies.
 - Govconnect/Renaissance – Document #2194536 (\$111,401.00), contract amount \$1,392,507, Remote initial claims project.

Based on the above-mentioned procedures, the following comments and recommendations are made for your consideration:

1. Internal Control Questionnaire Not Completed

The Department did not complete an Internal Control Questionnaire (ICQ) as requested. Good internal controls are required to ensure compliance with all laws and regulations. The documentation of these controls, through the use of a questionnaire, is key to obtaining a general

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Agency 23 - Department of Labor (Continued)

understanding of the purchasing/contracting policies, procedures, and controls the Department has in place to ensure their compliance with all laws and regulations. The Department indicated they did not answer our questions based upon a directive from the Governor.

In a memorandum to Code Agencies, dated July 16, 2002, the Governor indicated the validity of the ICQ was under review by the Attorney General; therefore, his Office was not responding to the ICQ pending further review. He further directed all Code Agencies to not respond to the ICQ at that time. As of the date of this letter neither the Governor nor the Attorney General has communicated to us the results of the Attorney General's review. Because of this directive we were unable to complete the second objective above, as originally planned. Further, such a refusal to cooperate with the auditors significantly diminishes the value in having an independent review of the Department's procedures.

Agency Response: We did not refuse to cooperate with the auditors. We did indicate that at this time we are not planning to complete the internal questionnaire. Our Agency takes great pride in our cooperation with the Auditors and strives to create a positive interaction and exchange of information.

APA's Response: See the *Restriction on the Scope of the Examination* section on page 2 of this letter.

2. Direct Purchase of Office Supplies

We noted the following items as it related to the direct purchase from Isodisc as described in 2 above:

- The Department did not have documentation that confirmed they had received a minimum of three bids on direct purchases.
- The Department did not ensure that the vendors from whom they purchased had a Drug-free Workplace Policy on file with State Purchasing or the Department before they made a purchase using their direct purchase authority.

A memo dated July 1, 2001, which related to Direct Market Purchase Authority, was sent to all agencies, boards, and commissions from Doni Peterson, Administrator for DAS Materiel Division. It states, "You are strongly urged to obtain a minimum three bids on orders over \$500." The memo also states, "You will be responsible for ensuring that vendors you purchase

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Agency 23 - Department of Labor (Concluded)

from support a Drug-free Workplace Environment.” Good internal control requires that agencies document they received at least three bids to ensure that bidding was competitive. Good internal control also requires agencies to document those vendors from which they purchase goods directly support a Drug-free Workplace Environment. Doni Peterson’s letter provided guidance on how this might be accomplished.

We recommend the Department develop procedures to document all bids that are received when the total direct purchase order is over \$500. Also, we recommend the Department develop procedures to document how vendors they purchase from directly, support a Drug-free Workplace Environment.

Agency Response: The Department does have procedures in place to document all bids when the total direct purchase is over \$500.00. The supply in question was \$600.00 and inadvertently was ordered without documenting the bids received or a drug-free workplace. We now have on file a copy of the company's drug-free workplace policy. We will make every effort to document bids and that vendors support a drug-free workplace with all purchases that are \$500.00 or more.

Agency 24 - Department of Motor Vehicles

Per the Nebraska Accounting System (NAS), your Department disbursed the amounts in the following three broadly classified categories of purchases for the fiscal year ending June 30, 2002:

- Purchase of Materials, Supplies, and Equipment (\$5,115,986)
- Purchase of Services (\$1,865,005)
- Lease/Rent Agreements (\$743,272)

The following procedures were performed:

- Requested the completion of an Internal Control Questionnaire to document the procedures/controls your Department had over purchases to ensure compliance with all laws and regulations.
- Selected and tested the following transactions, and related purchasing documentation, to determine if key procedures/controls were in place to ensure purchases were in accordance with all laws and regulations:

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Agency 24 - Department of Motor Vehicles (Concluded)

- Polaroid Corporation – Doc # 8200489 (\$49,298.49)

This payment was for the driver's licenses and ID cards that were produced for the month.

Based on the above-mentioned procedures, the following comment is made for your consideration:

1. Internal Control Questionnaire Not Completed

The Department did not complete an Internal Control Questionnaire (ICQ) as requested. Good internal controls are required to ensure compliance with all laws and regulations. The documentation of these controls, through the use of a questionnaire, is key to obtaining a general understanding of the purchasing/contracting policies, procedures, and controls the Department has in place to ensure their compliance with all laws and regulations. The Department indicated they did not answer our questions based upon a directive from the Governor.

In a memorandum to Code Agencies, dated July 16, 2002, the Governor indicated the validity of the ICQ was under review by the Attorney General; therefore, his Office was not responding to the ICQ pending further review. He further directed all Code Agencies to not respond to the ICQ at that time. As of the date of this letter neither the Governor nor the Attorney General has communicated to us the results of the Attorney General's review. Because of this directive we were unable to complete the second objective above, as originally planned. Further, such a refusal to cooperate with the auditors significantly diminishes the value in having an independent review of the Department's procedures.

See the *Restriction on the Scope of the Examination* section on page 2 of this letter.

Agency 25 – Department of Health and Human Services

Per the Nebraska Accounting System (NAS), your Department disbursed the amounts in the following four broadly classified categories of purchases for the fiscal year ending June 30, 2002:

- Purchase of Materials, Supplies, and Equipment (\$19,065,719)
- Purchase of Services (\$52,090,505)
- Construction/Repair of Buildings and Roads (\$3,654,567)
- Lease/Rent Agreements (\$3,388,884)

PURCHASING/CONTRACTING PROCEDURES
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COMMENTS AND RECOMMENDATIONS**

Agency 25 - Department of Health and Human Services (Continued)

The following procedures were performed:

- Requested the completion of an Internal Control Questionnaire to document the procedures/controls your Department had over purchases to ensure compliance with all laws and regulations.
- Selected and tested the following transactions, and related purchasing documentation, to determine if key procedures/controls were in place to ensure purchases were in accordance with all laws and regulations:

- Vista Staffing – Doc #2221335 (\$9,957.00)

This was a payment for medical services performed at the Hastings Regional Center.

- Precipitation, Inc. – Doc #2170311 (\$94,580.40)

This was a payment for the purchase of furniture for the Norfolk Veterans Home Project.

- Buller Fixture Company – Doc #2273391 (\$921.91)

This transaction was for the purchase of food service supplies.

- Egan Supply – Doc #2209376 (\$2,418.09)

This payment was for the purchase of vacuum cleaners.

- Midwest Food Distributors – Doc #8220462 (\$19,919.14)

This was a payment for the purchase of food for the Hastings Regional Center.

- Newton Manufacturing – Doc #2301748 (\$6,584.03)

This payment was for the purchase of tote bags and plastic drinking bottles for a women's program.

- Wyeth – Doc #2305163 (\$4,440.00)

This transaction was for the purchase of birth control devices.

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Agency 25 - Department of Health and Human Services (Continued)

- Young Williams P.C. – Doc #2485165 (\$382,189.50)

This was a contractual payment for child support enforcement services.

- Rushmore Group, LLC – Doc #2254171 (\$86,961.33)

This payment was for management of the Food Stamp Program.

- Nixon Group, Inc. – Doc #2303270 (\$100,000.00)

This was a contractual payment for management of the Tobacco Free Nebraska Program.

Based on the above-mentioned procedures, the following comments are made for your consideration:

1. Internal Control Questionnaire Not Completed

The Department did not complete an Internal Control Questionnaire (ICQ) as requested. Good internal controls are required to ensure compliance with all laws and regulations. The documentation of these controls, through the use of a questionnaire, is key to obtaining a general understanding of the purchasing/contracting policies, procedures, and controls the Department has in place to ensure their compliance with all laws and regulations. The Department indicated they did not answer our questions based upon a directive from the Governor.

In a memorandum to Code Agencies, dated July 16, 2002, the Governor indicated the validity of the ICQ was under review by the Attorney General; therefore, his Office was not responding to the ICQ pending further review. He further directed all Code Agencies to not respond to the ICQ at that time. As of the date of this letter neither the Governor nor the Attorney General has communicated to us the results of the Attorney General's review. Because of this directive we were unable to complete the second objective above, as originally planned. Further, such a refusal to cooperate with the auditors significantly diminishes the value in having an independent review of the Department's procedures.

See the *Restriction on the Scope of the Examination* section on page 2 of this letter.

2. Requested Documentation Not Received

We requested information and documentation regarding the agreements between the Department of Health and Human Services and several vendors. Certain documentation and information was not supplied regarding the agreements. The following is a list of the documentation and information that was requested:

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Agency 25 - Department of Health and Human Services (Continued)

Document #2485165 - Young Williams P.C.

1. Please provide documentation to support the open competitive bidding process and the bidding tabulation to support the selection of the bidder.
2. If the open competitive bidding process was not followed, please provide documentation for justification.
3. Please provide documentation to support that legal counsel reviewed the terms of the contract before it was signed and executed.
4. Please provide copies of Addendum No. 1 and Addendum No. 2 to the contract.
5. Please provide documentation for on-site visits to support the monitoring of the contract. (Per Section 4.1.5)

Document #2254171 –Rushmore Group, LLC

1. Please provide documentation to support that legal counsel reviewed the terms of the contract before it was signed and executed.
2. Please provide documentation to support the selection committee's individual evaluation scores used in the selection of the bidder. (Department does not have on file at this time.)

Document #2221335 – Vista Staffing

1. Please provide documentation for the selection process for the physicians (credentials verification process per contract).
2. Please provide a copy of the prior written approval from HHSS (per contract).
3. Please provide documentation for Vista Staffing's actual cost for automobile expense. (Supporting documentation shows \$25 per day.)
4. Please provide documentation to support that legal counsel reviewed the terms of the contract before it was signed and executed.

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Agency 25 - Department of Health and Human Services (Continued)

Document #2301748 – Newton Manufacturing

1. Were three informal bids received as instructed by a memo from DAS-Materiel, State Purchasing Bureau dated July 11, 2000? Please provide documentation to support the three bids received or justification for less than three bids.
2. Was a drug free work place policy on file with HHSS before the purchase was made according to the same memo?
3. Was the direct purchase properly reported to DAS-Materiel Division, State Purchasing Bureau as required by Neb. Rev. Stat. Section 81-161.03? Please provide a copy of the monthly report that includes document #2301748.

Document #2305163 - Wyeth

1. Attached to the disbursement document was an invoice that states, “Direct buy approval on file in DAS Purchasing.” Was “special” direct purchase authority granted for this particular purchase or was it acquired under the normal direct purchase authority granted to HHSS? Please provide documentation supporting any “special” direct purchase authority.
2. Was the direct purchase reported to DAS Purchasing as required by Neb. Rev. Stat. Section 81-161.03? Please provide documentation supporting the direct purchase was reported to DAS Purchasing.
3. Is this considered a “sole source” or “restrictive” purchase? Provide documentation supporting justification for the sole source or restrictive purchase.
4. Was the vendor’s “drug-free workplace policy” on file with HHSS or DAS Purchasing before the purchase?

As noted above, in his memorandum to Code Agencies dated July 16, 2002, the Governor directed all code agency directors “to provide the Auditor’s office with the requested documents . . .” We believe the Department of Health and Human Services is in violation of the Governor’s directive since they have refused to provide documentation that was requested by the Auditor’s office.

PURCHASING/CONTRACTING PROCEDURES
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Agency 25 - Department of Health and Human Services (Concluded)

The Department is also in violation of Neb. Rev. Stat. Section 84-305 R.R.S. 1998. It states, "The Auditor of Public Accounts shall have access to all records of any public entity, in whatever form or mode the records may be, unless the auditor's access to the records is specifically prohibited or limited by federal or state law." In their refusal to provide the requested documents, the Department has cited no law that would prohibit them from complying with the auditor's request.

Because of this, we were unable to determine if the contracts were made in accordance with all applicable laws and regulations, as originally planned. Further, such a refusal to cooperate with the auditors significantly diminishes the value in having an independent review of the Department's procedures.

Agency Response: We have reviewed your draft advisory letter of October 8, 2002. The Department's position on providing copies of the requested documents has not changed from our previous communication. Those requests will remain pending until the receipt of the Attorney General's opinion on this matter.

APA's Response: See the *Restriction on the Scope of the Examination* section on page 2 of this letter.

Agency 26 - Department of Health and Human Services Finance and Support

Per the Nebraska Accounting System (NAS), your Department disbursed the amounts in the following four broadly classified categories of purchases for the fiscal year ending June 30, 2002:

- Purchase of Materials, Supplies, and Equipment (\$4,389,776)
- Purchase of Services (\$50,781,317)
- Construction/Repair of Buildings and Roads (\$32,783)
- Lease/Rent Agreements (\$1,935,266)

The following procedures were performed:

- Requested the completion of an Internal Control Questionnaire to document the procedures/controls your Department had over purchases to ensure compliance with all laws and regulations.
- Selected and tested the following transactions, and related purchasing documentation, to determine if key procedures/controls were in place to ensure purchases were in accordance with all laws and regulations:

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**PROCEDURES PERFORMED AND
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Agency 26 - Department of Health and Human Services Finance and Support
(Continued)

- Nebraska Schools Medicaid Consortium – Doc #2285368 (\$1,645,585.20)

This transaction was for payment of services for administering case planning and coordination through Early Periodic Screening, Diagnosis and Treatment (EPSDT), also known as Health Check.

- FileNET Corporation – Doc #8284851 (\$21,875.00)

This was a contract for maintenance services to the Optical Imaging System of the State of Nebraska.

- Nebraska Health System – Doc #2296905 (\$18,792.20)

This was a payment for services related to the chronic renal disease program.

- First Health Services – Doc #2300259 (\$287,500.00)

This was a contractual payment for conversion and implementation of a pharmacy system.

- City of Lincoln Health Department – Doc #2300059 (\$735,170.00)

This was a payment on a contract for Medicaid and Managed Care enrollment broker services.

- Norfolk Public Schools – Doc #2285175 (\$310,664.20)

This transaction was for payment of services for administering case planning and coordination through EPSDT, also known as Health Check.

- Jared S. Kramer – Doc #2289362 (\$195,000.00)

This payment was for loans made under the Rural Health Systems and Professional Incentive Act to thirteen medical students for \$15,000 each under the Medical Student Loan Program.

Based on the above procedures, the following comments are made for your consideration:

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**PROCEDURES PERFORMED AND
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Agency 26 - Department of Health and Human Services Finance and Support
(Continued)

1. Internal Control Questionnaire Not Completed

The Department did not complete an Internal Control Questionnaire (ICQ) as requested. Good internal controls are required to ensure compliance with all laws and regulations. The documentation of these controls, through the use of a questionnaire, is key to obtaining a general understanding of the purchasing/contracting policies, procedures, and controls the Department has in place to ensure their compliance with all laws and regulations. The Department indicated they did not answer our questions based upon a directive from the Governor.

In a memorandum to Code Agencies, dated July 16, 2002, the Governor indicated the validity of the ICQ was under review by the Attorney General; therefore, his Office was not responding to the ICQ pending further review. He further directed all Code Agencies to not respond to the ICQ at that time. As of the date of this letter neither the Governor nor the Attorney General has communicated to us the results of the Attorney General's review. Because of this directive, we were unable to complete the second objective above, as originally planned. Further, such a refusal to cooperate with the auditors significantly diminishes the value in having an independent review of the Department's procedures.

2. Requested Documentation Not Received

We requested information and documentation regarding the agreements between the Department of Health and Human Services Finance and Support and several vendors. Certain documentation and information was not supplied regarding the agreements. The following is a list of the documentation and information that was requested:

Document #8284851 – FileNET Corporation

1. Please provide documentation to support the open competitive bidding process and the bidding tabulation to support the selection of the bidder.
2. If the open competitive bidding process was not followed, please provide documentation for justification.
3. Please provide a copy of the Request for Proposal.
4. Please provide a copy of the separate agreement between FileNET and the State for the technical consulting service to support invoice #90071911.

PURCHASING/CONTRACTING PROCEDURES
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Agency 26 - Department of Health and Human Services Finance and Support
(Continued)

5. Please provide documentation to support that legal counsel reviewed the terms of the contract before it was signed and executed.

Document #2300259 First Health Services

1. Please provide documentation to support the open competitive bidding process and the bidding tabulation to support the selection of the bidder.
2. Please provide documentation to support the extension of this contract without rebidding.

Document #2300059 - City Of Lincoln Health Department

1. Please provide documentation to support the open competitive bidding process and the bidding tabulation to support the selection of the bidder.
2. If the open competitive bidding process was not followed, please provide documentation for justification.
3. Please provide a copy of the federal law pertaining to the intergovernmental agreement (per David Cygan).
4. Please provide a copy of the Request for Proposal.
5. Please provide documentation to support the on-site visits to monitor the contract.

Document #2285175 - Norfolk Public Schools

1. Please provide documentation to support a review of the contract was completed by legal counsel before the contract was signed and executed.
2. According to Part IV of the contract, a designated representative from the school district and the State Medicaid Agency shall meet annually for the purpose of program review and evaluation of policies for implementing the provisions of the interagency agreement. The school district agrees to provide information needed to measure outcomes included in the State evaluation plan. Please provide documentation supporting a review and evaluation of the program was completed.

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Agency 26 - Department of Health and Human Services Finance and Support
(Continued)

3. The claim amount on the Claim Invoice for the period October, November, and December 1999 was \$452 less than the claim amount on the attached supporting documentation. Was part of the claim denied or calculated incorrectly? Please provide documentation to support the reason for the difference between the two amounts.

Document #2285368 - Nebraska Schools Medicaid Consortium

1. Please provide documentation to support a review of the contract was completed by legal counsel before the contract was signed and executed.
2. According to Part IV of the contract, a designated representative from the consortium, listed school districts, and the State Medicaid Agency shall meet annually for the purpose of program review and evaluation of policies for implementing the provisions of the interagency agreement. The consortium and school districts agree to provide information needed to measure outcomes included in the State evaluation plan. Please provide documentation supporting a review and evaluation of the program was completed.

Both Document #2285175 and Document #2285368 payments relate to EPSDT Administrative Outreach and Case Management through Health Check: Document #2285175 payable to Norfolk Public Schools and Document #2285368 payable to the Nebraska Schools Consortium.

1. In general, why are contracts like these not “bid out” to private firms? Are there Federal rules or regulations that require school districts or ESUs to be responsible for this type of service?
2. Please provide documentation to support the decision to reimburse only 70% of the claim.

Document #2296905 – Nebraska Health System

1. According to Willard Bouwens, no contract exists between the State of Nebraska and Nebraska Health System. What is Nebraska Health System?
2. Who qualifies for services under this program?
3. What services are performed?
4. Does HHS receive invoices from Nebraska Health System for each client?

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Agency 26 - Department of Health and Human Services Finance and Support
(Continued)

Document # 2289362 – Jared S. Kramer

1. Provide documentation describing the process used to select the recipients of the loans.
2. Provide documentation supporting the process used to monitor the agreement from the time the agreement is signed until the time the agreement is fulfilled.
3. What documentation is required to forgive the loan in total?
4. Please provide documentation to support legal counsel reviewed the terms of the agreement before it was signed and executed.

As noted above, in his memorandum to Code Agencies dated July 16, 2002, the Governor directed all code agency directors “to provide the Auditor’s office with the requested documents . . .” We believe the Department of Health and Human Services Finance and Support is in violation of the Governor’s directive since they have refused to provide documentation that was requested by the Auditor’s office.

The Department is also in violation of Neb. Rev. Stat. Section 84-305 R.R.S. 1998. It states, “The Auditor of Public Accounts shall have access to all records of any public entity, in whatever form or mode the records may be, unless the auditor’s access to the records is specifically prohibited or limited by federal or state law.” In their refusal to provide the requested documents, the Department has cited no law that would prohibit them from complying with the auditor’s request.

Because of this, we were unable to determine if the contracts were made in accordance with all applicable laws and regulations, as originally planned. Further, such a refusal to cooperate with the auditors significantly diminishes the value in having an independent review of the Department’s procedures.

Agency Response: I have reviewed your draft advisory letter of October 8, 2002. The Department’s position on providing copies of the requested documents has not changed from our letter of September 16, 2002.

You have indicated that two contracts (FileNet Corporation and Nebraska Health System) were not provided to you. There is no contract for Nebraska Health System as we indicated, and I have attached the one for FileNet. In addition, two documents which explain the amounts paid

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(Concluded)

on the Norfolk Public Schools (Doc. #2285175) and the Nebraska Schools Consortium (Doc. #2285368). Payments are made at a reduced rate and then adjusted when the claim rates are approved by the federal agency.

The Department's position on responding to questions about procedures and processes also has not changed from the September 16, 2002 letter. Those requests will remain pending until the receipt of the Attorney General's opinion on this matter.

APA's Response: The documentation provided to us as a response to our letter to HHS – Finance and Support was not adequate documentation for any of the items mentioned above. The documentation and information requested has still not been received as of the date of this letter. See the *Restriction on the Scope of the Examination* section on page 2 of this letter.

Agency 27 - Department of Roads

Per the Nebraska Accounting System (NAS), your Department disbursed the amounts in the following five broadly classified categories of purchases for the fiscal year ending June 30, 2002:

- Purchase of Materials, Supplies, and Equipment (\$43,439,136)
- Purchase of Services (\$45,533,884)
- Construction/Repair of Buildings and Roads (\$320,575,197)
- Lease/Rent Agreements (\$2,750,664)
- Other Purchases (\$11,297,430)

The following procedures were performed:

- Requested the completion of an Internal Control Questionnaire to document the procedures/controls your Agency had over purchases to ensure compliance with all laws and regulations.
- Selected and tested the following transactions, and related purchasing documentation, to determine if key procedures/controls were in place to ensure purchases were in accordance with all laws and regulations:

Materials, Supplies, and Equipment Contracts

- Schaeffer's TV and Appliance – Doc # 184222 (\$1,184)

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Agency 27 - Department of Roads (Continued)

This was a direct purchase of two TV-VCR combos and there was no contract associated with this transaction.

- Dean's Camera Center – Doc # 197772 (\$9,591)

This was a purchase of 11 digital cameras, plus accessories, and there was no contract associated with this transaction.

- Rockbrook Camera – Doc # 182728 (\$2,777)

This was a direct purchase of six digital cameras, plus accessories, and there was no contract associated with this transaction.

- Flex-O-Lite – Doc # 198560 (\$64,958)

The contract was a price agreement. Flex-O-Lite was contracted to provide glass pavement marking beads for use on traffic paint.

- Hannebaum Grain Co. – Doc # 172482 (\$4,837)

The contract was a price agreement. Hannebaum Grain Co. was contracted to provide crushed rock salt for highway use.

Service Contracts

- HDR Engineering– Doc # 190132 (\$502,315)

The total contract was for costs not to exceed \$6,521,760 plus a fixed-fee-for-profit of \$687,229. HDR Engineering was contracted to provide engineering consultant services for the final design of a highway project.

- C-Cubed Inc. – Doc # 191805 (\$5,480)

The contract was for a fixed hourly rate at an estimated amount of hours for the year. C-Cubed Inc. was contracted to provide multiple individuals for Information Technology staff. We tested only one position from this contract. The contract amount based on the estimated hours for this individual was \$120,000.

- Matthew Associates Inc. – Doc # 177794 (\$69,895)

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Agency 27 - Department of Roads (Continued)

The contract was for a fixed hourly rate at an estimated amount of hours for the year. Matthew Associates Inc. was contracted to provide multiple individuals for Information Technology staff. We tested only one position from this contract. The contract amount based on the estimated hours for this individual was \$156,000.

- Snitily Carr Production Group – Doc # 198132 (\$59,981)

The contract was for media placement costs covering three months at a fixed amount of \$59,981. Snitily Carr Production Group was contracted to purchase television commercial spots for a highway safety commercial.

Construction / Repair of Buildings and Equipment

- TJ Osborn Construction – Project R-42-01, Doc # 194818 (\$91,305)

The total contract amount for this project was \$101,450. TJ Osborn Construction was contracted to install a sewer system connection at a Department facility.

- Chas. Vrana & Son Construction Co. – Project EACNH-EACBR-6-7 (133), Doc # 178427 (\$2,911,297)

The total contract amount for this project was \$19,642,855. Chas. Vrana & Son Construction Co. was contracted for highway construction.

- Werner Construction Inc. – Project EACIM-80-1 (154) / S-L17B (1004), Doc # 175168 (\$931,639)

The total contract amount for this project was \$7,806,789. Werner Construction Inc. was contracted for highway construction.

- Hawkins Construction Co. – Project F-77-2 (1037), Doc # 180754 (\$1,620,129)

The total contract amount for this project was \$10,490,309. Hawkins Construction Co. was contracted for highway construction.

- Cedar Valley Corp. – Project EACNH-30-5 (121), Doc # 183445 (\$1,888,009)

The total contract amount for this project was \$9,556,841. Cedar Valley Corp. was contracted for highway construction.

- Paulsen, Inc. – Project PEP-136-3 (1014) / S-89-3 (1012), Doc # 171657 (\$658,649)

PURCHASING/CONTRACTING PROCEDURES
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Agency 27 - Department of Roads (Continued)

The total contract amount for this project was \$1,126,759. Paulsen, Inc. was contracted for highway construction.

Other Contracts

- Right-of-Way purchase – C.N. 21794, Doc # 187692 (\$74,401)

The total contract amount was for \$74,401. This was for the purchase of right-of-way property.

Based on the above-mentioned procedures, the following comments and recommendations are made for your consideration:

1. Internal Control Questionnaire not completed

The Department did not complete an Internal Control Questionnaire (ICQ) as requested. Good internal controls are required to ensure compliance with all laws and regulations. The documentation of these controls, through the use of a questionnaire, is key to obtaining a general understanding of the purchasing/contracting policies, procedures, and controls the Department has in place to ensure their compliance with all laws and regulations. The Department indicated they did not answer our questions based upon a directive from the Governor.

In a memorandum to Code Agencies, dated July 16, 2002, the Governor indicated the validity of the ICQ was under review by the Attorney General; therefore, his Office was not responding to the ICQ pending further review. He further directed all Code Agencies to not respond to the ICQ at that time. As of the date of this letter neither the Governor nor the Attorney General has communicated to us the results of the Attorney General's review. Because of this directive we were unable to complete the second objective above, as originally planned. Further, such a refusal to cooperate with the auditors significantly diminishes the value in having an independent review of the Department's procedures.

Agency Response: We are not answering the ICQ in accordance with the Governor's July 16, 2002 memorandum to Code Agencies. The Auditor is fully aware that the Attorney General's office has not issued an opinion on the ICQ because the Auditor's legal counsel is in the process of attempting to legally justify the Auditor's authority in this matter to the Attorney General.

APA's Response: See the *Restriction on the Scope of the Examination* section on page 2 of this letter.

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Agency 27 - Department of Roads (Continued)

2. Drug-free Workplace Policy for Vendors

The Department of Administrative Services (DAS) - Materiel Division's Direct Market Purchase Authority Memo states "(Agencies) will be responsible for ensuring that vendors ... purchase(d) from support a Drug-free Workplace Environment." This can be accomplished by either of two methods, having a statement on file from the vendor, or including an attestation statement on a signed document such as a contract or an "invitation to bid" document.

Two purchases were tested that fell within the Direct Market Purchase Authority for the Department (\$500 to \$5,000), one from Schaefer's TV and Appliance and one from Rockbrook Camera, as described above. For both purchases, the drug-free workplace policy was not on file for the vendor, nor did the vendor give a written attestation as to having such a policy.

This results in the Department being in noncompliance with policies and procedures of the DAS - Materiel Division.

We recommend the Department create procedures to ensure that for all direct purchases, the vendor's drug-free workplace policy is on file or is attested to prior to the purchase. This may include changes to Department procedural manuals or the creation of a checklist to ensure direct purchases proceed through all required steps.

Agency Response: We have a procedure in place that has been used for several years (adopted from DAS procedures). In checking with DAS, Rockbrook Camera has on file a drug free policy #10,512. Schaefer's TV and Appliance had no policy on file at either location. We have obtained one on Sept. 11, 2002. This is checked as we make awards to vendors and since Schaefer's is a long-standing vendor they were overlooked.

3. Informal Bidding

The Department received direct purchase authorization from the State Purchasing Bureau for a purchase from Dean's Camera Center, as described above. The Department did not secure competitive bidding in accordance with DAS' Manual for the Procurement of Goods, due to having only two bids.

Neb. Rev. Stat. Section 81-1118(5)(b) states, all purchases shall be made "by a competitive informal bidding ... in all cases in which the purchases are of estimated value equal to or exceeding five thousand dollars but less than ten thousand dollars." DAS - Materiel Division's Manual for the Procurement of Goods, Section III (C) states that for informal purchases, ". . .

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Agency 27 - Department of Roads (Continued)

Whenever possible a minimum of three (3) competitive bids should be solicited, received and documented” The Manual for the Procurement of Goods, Section III (F) requires Agencies to file a justification letter, citing this purchase as “Restrictive” along with appropriate justification, with the Materiel Division when the Agency cannot receive the minimum number of bids. The Department did not file this letter (as required, due to less than three bids), nor would this letter have been accepted because the items purchased would not qualify as “restrictive.”

When the Department submitted the Purchase Requisition to the State Purchasing Bureau, it attached the two informal bids it had received. The buyer approved the Purchase Requisition for Direct Purchase Authorization, and wrote “See attached Justification - Agency secured competitive bids.” Based on this, the Department believed they had done what was required of them.

As a result, the Department was not in compliance with State Statute or DAS policies and procedures, and there is the inability, due to lack of sufficient bids, to determine if the purchase was in the best interest of the State.

We recommend the Department gain an increased understanding of statutes, regulations, and policies of the State and DAS-Materiel Division with regard to purchases. This should be followed by updating or creating a written Department policy and procedure process for employees who handle the purchasing responsibilities.

Agency Response: NDOR personnel are aware of purchasing requirements and creating new policy or procedures to address this issue does not appear to be warranted at this time. In this case, NDOR felt it was acting with the concurrence of DAS. In a letter dated January 14, 2002, NDOR advised DAS that bid requests had been sent to three vendors but only two had responded. We asked: “Will this need to be rebid or can it be approved for direct purchases?” We also indicated if DAS felt it was necessary to rebid, that we would submit a requisition to do so. When we received the direct purchase authority, we assumed that DAS felt the two bids were acceptable. A copy of our letter to DAS is on file.

4. Records Retention

Two Information Systems contracts were tested, G-Cubed Inc. and Matthew Associates Inc. The Request for Resumes and the accepted resume could not be located for the C-Cubed Inc. contract, and the rejected resumes for both contracts could not be located.

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Agency 27 - Department of Roads (Continued)

The Department has retention schedules for contracts written under other divisions, but does not have one for the Information Systems Division. The retention schedules for other divisions require microfilming and retaining documentation for a longer period of time, such as 10 or 25 years.

We recommend the Department review its Records Retention schedule and consider changes in regard to Information Systems contracts.

Agency Response: The Information Systems Division will be discussing this situation with the Records Management staff to determine the appropriate retention period and the media used to retain the documents. They will prepare a document that describes the process to be followed and include it in the division's standard operating procedures.

5. Monitoring of Contract Personnel

For the C-Cubed Inc. contract, time reports were received and reviewed for two-week periods.

The contract stated that time reports shall be prepared weekly and submitted for review to the State. Good internal control requires that service providers are monitored on a regular and timely basis to ensure the State is receiving what it is paying for.

As a result, the contractor was not performing under the conditions of the contract. The effectiveness of monitoring is greatly reduced as the time period being monitored increases.

We recommend the Department require the contractor to perform under the conditions of the contract.

Agency Response: The Information Systems Division will be preparing a standard operating procedure to cover this area and will include it within the division's standard operating procedures.

6. Public Notice

We tested the TJ Osborn Construction contract, as described above. The public notice for this contract was published in two newspapers for one day.

Neb. Rev. Stat. Section 72-803 requires that advertisements for buildings and other improvements costing more than forty thousand dollars shall be published in accordance with rules and regulations adopted and promulgated by the State Building Division. Title 7 NAC

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Agency 27 - Department of Roads (Continued)

Chapter 7 section 009.01A states, “the public notice shall appear once a week for three (3) consecutive weeks in a statewide publication and in the locality of the project. The notice shall not appear on a weekend or a holiday.”

The Department was not in compliance with State Statute. Potential bidders did not receive the required time to develop and submit bids for these contracts.

We recommend the Department create procedures to ensure the public notice requirements are met for each contract. This may include changes to Department procedural manuals or the creation of checklists to ensure contracts proceed through all required steps.

Agency Response: The contract with TJ Osborn Construction was advertised in the Omaha and Lincoln papers on Sunday, November 25, 2001. We received six bids. The Department of Roads is working with the State Building Division in updating their revised bidding guidelines on capital construction. This manual is not official at this time; however, we have been following those guidelines in our bidding procedures.

7. Documentation of Review by Legal Counsel

Good business practice, and good internal controls over contracts, would require that certain contracts be reviewed by a person or persons, who have the legal expertise and knowledge to determine if the contract is in compliance with federal and State laws and regulations governing contracts, and to ensure the best interest of the State is being served. In addition, good internal controls require that when a legal review is performed that it be documented. This would document the review in accordance with management’s directives.

The Retention Schedule for the Department of Roads – Legal Division, section 37-140-6 (A), provides for the retention of miscellaneous files, records, and informal legal opinions. This section states, “Correspondence and written responses produced by the Attorney General’s Office – Roads Section” will be retained for 20 years.

The Department has developed standard contracts for certain services and purchases for which it repeatedly contracts. These include highway construction, professional engineering services, information technology services, and right-of-way purchases. The Attorney General’s Office – Roads Section reviews and advises the Department on its standard contracts as requested and as appropriate. There was no documentation of any standard contract reviews for this period. There was also no written policy regarding when and which contracts to be reviewed.

When a review is not documented there is no assurance the review was actually performed.

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Agency 27 - Department of Roads (Continued)

We recommend the legal review of contracts be documented. This can be accomplished by legal counsel signing a checklist or routing sheet for the contract, or by legal counsel drafting correspondence stating the recommended changes to the contract and/or the approval of a contract. Furthermore, we recommend the Department create policies and procedures regarding when a contract should be reviewed. Such policies could include criteria such as the type of contract, dollar amount, and a schedule to review the standard contracts, in their entirety, on a regular basis.

Agency Response: The Department has in place sufficient internal controls to seek legal advice regarding changes to form contracts. The Department will continue to seek legal review of changes to form contracts as necessary and proper.

The Department believes that the lack of documentation of legal review has not created a problem concerning the effectiveness or the enforceability of its contracts. Over the years, the Department's form contracts have been subjected to legal review even though that review has not always resulted in a documented response from counsel.

8. Direct Purchase Report was not on file with the Department of Administrative Services (DAS)

A memo dated July 1, 2001 was sent from Doni Peterson, Administrator of DAS - Materiel Division, to all agencies, boards, and commissions concerning direct market purchase authority. The memo stated, "Agencies are required to submit monthly reports for ALL purchases made directly from \$500.00 to \$4999.99."

The Department did not submit any monthly reports for the entire period. The individual who previously completed this task was working on the NIS project during the period.

As a result, the Department was not in compliance with DAS procedures, and DAS did not have the information necessary to monitor direct purchases.

We recommend the Department assign these duties and submit the required direct purchase report on a monthly basis.

Agency Response: Reporting responsibility has been reassigned to another employee. The report has been filed for June and July and we are presently working on August of 2002.

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Agency 27 - Department of Roads (Concluded)

Best Practices

The following are procedures used at the Department which we feel are good practices that could be used by other agencies in improving their processes.

- Certificate of Negotiator: This conflict of interest form is a good practice because it reinforces to both the Negotiator and the public that there will be no personal benefit from this transaction to the Negotiator. Given the environment and scrutiny these transactions can receive from the public, we feel this is a best practice.
- Price Quotation Request: This document is an excellent way for the Department to conduct direct purchase bidding by fax. When accompanied by a page listing the details of the item(s) to be bid on, this sheet provides the necessary information for the Department, and complies with the Drug-free workplace policy.

Agency 29 - Natural Resources Commission

Per the Nebraska Accounting System (NAS), your Department disbursed the amounts in the following three broadly classified categories of purchases for the fiscal year ending June 30, 2002:

- Purchase of Materials, Supplies, and Equipment (\$433,032)
- Purchase of Services (\$5,337,279)
- Lease/Rent Agreements (\$219,998)

The following procedures were performed:

- Requested the completion of an Internal Control Questionnaire to document the procedures/controls your Department had over purchases to ensure compliance with all laws and regulations.
- Selected and tested the following transactions, and related purchasing documentation, to determine if key procedures/controls were in place to ensure purchases were in accordance with all laws and regulations:
 - Dell Marketing L.P. – Doc # 2307871 (\$4,991.34)

This payment was for the purchase of two Dell computers.

- Nebraska Community Foundation – Doc # 2307587 (\$91,666.67)

This payment was Nebraska's contribution for a cooperative agreement to develop a recovery implementation program for endangered species that utilize the Platte River.

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Agency 29 - Natural Resources Commission (Concluded)

Based on the above-mentioned procedures, the following comment is made for your consideration:

1. Internal Control Questionnaire Not Completed

The Department did not complete an Internal Control Questionnaire (ICQ) as requested. Good internal controls are required to ensure compliance with all laws and regulations. The documentation of these controls, through the use of a questionnaire, is key to obtaining a general understanding of the purchasing/contracting policies, procedures, and controls the Department has in place to ensure their compliance with all laws and regulations. The Department indicated they did not answer our questions based upon a directive from the Governor.

In a memorandum to Code Agencies, dated July 16, 2002, the Governor indicated the validity of the ICQ was under review by the Attorney General; therefore, his Office was not responding to the ICQ pending further review. He further directed all Code Agencies to not respond to the ICQ at that time. As of the date of this letter neither the Governor nor the Attorney General has communicated to us the results of the Attorney General's review. Because of this directive we were unable to complete the second objective above, as originally planned. Further, such a refusal to cooperate with the auditors significantly diminishes the value in having an independent review of the Department's procedures.

See the *Restriction on the Scope of the Examination* section on page 2 of this letter.

Agency 31 - Military Department

Per the Nebraska Accounting System (NAS), your Department disbursed the amounts in the following four broadly classified categories of purchases for the fiscal year ending June 30, 2002:

- Purchase of Materials, Supplies, and Equipment (\$491,606)
- Purchase of Services (\$3,070,311)
- Construction/Repair of Buildings and Roads (\$1,065,792)
- Lease/Rent Agreements (\$68,488)
- Requested the completion of an Internal Control Questionnaire to document the procedures/controls your Department had over purchases to ensure compliance with all laws and regulations.

The following procedures were performed:

- Selected and tested the following transactions, and related purchasing documentation, to determine if key procedures/controls were in place to ensure purchases were in accordance with all laws and regulations:

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Agency 31 - Military Department (Concluded)

- Visualrisk Technologies – Doc # 2313337 (\$25,000.00)

This payment was for the purchase of a map software package.

- John Luce Company, Inc. – Doc # 8314164 (\$41,273.77)

This payment was for part of a contract for a building renovation project at the Camp Ashland Training Site.

- The Board Store – Doc # 2314780 (\$8,725.25)

This payment was for the construction of office equipment and furniture.

Based on the above-mentioned procedures, the following comment and recommendation is made for your consideration:

1. Documentation supporting inspection by State Building Division

The agency did not have documentation to support that the State Building Division had conducted an inspection of the construction/renovation project that was performed on a building at the Camp Ashland Training Site.

Neb. Rev. Stat. Section 81-1108.15 R.S.Supp., 2001, states that, the State Building Division “shall have the primary functions and responsibilities of . . . facilities construction.... (3) Facilities construction shall include the following powers and duties: (a) To maintain close contact with and inspections of each project so as to assure execution of time-cost schedules and efficient contract performance if such project’s total design and construction cost is more than fifty thousand dollars.”

We recommend the agency develop procedures to ensure all construction contracts over fifty thousand dollars are inspected by State Building Division. We also recommend the agency document any of these inspections by State Building Division.

Agency 32 - Board of Educational Lands and Funds

Per the Nebraska Accounting System (NAS), the Board disbursed the amounts in the following four broadly classified categories of purchases for the fiscal year ending June 30, 2002:

- Purchase of Materials, Supplies, and Equipment (\$212,266)

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Agency 32 - Board of Educational Lands and Funds (Concluded)

- Purchase of Services (\$643,610)
- Construction/Repair of Buildings and Roads (\$446,567)
- Lease/Rent Agreements (\$27,739)

The following procedures were performed:

- Requested the completion of an Internal Control Questionnaire to document the procedures/controls your agency had over purchases to ensure compliance with all laws and regulations.
- Selected and tested the following transactions, and related purchasing documentation, to determine if key procedures/controls were in place to ensure purchases were in accordance with all laws and regulations:
 - Ainsworth Irrigation District – Doc # 230026 (\$33,586.74)

This transaction involved a payment to an irrigation district for services pertaining to land owned by the Board of Educational Lands and Funds. The payment amount was based on a set assessment rate that was charged per acre of land that was owned. The assessment rate was used to pay the budget expenses for the Irrigation District Board. The expenses were then allocated to all the landowners in the irrigation district, based on the number of acres that each landowner had in the district. There was no contract and there was no negotiation of the rate that was assessed.

Based on the above-mentioned procedures, the following comment is made for your consideration:

1. Internal Control Questionnaire Not Completed

The Board did not complete an Internal Control Questionnaire (ICQ) as requested. Good internal controls are required to ensure compliance with all laws and regulations. The documentation of these controls, through the use of a questionnaire, is key to obtaining a general understanding of the purchasing/contracting policies, procedures, and controls the Board has in place to ensure their compliance with all laws and regulations. The Board indicated they did not answer our questions based on their consideration of a directive from the Governor to all code agencies. (Note: Board of Educational Lands and Funds is not a code agency)

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Agency 32 - Board of Educational Lands and Funds (Concluded)

In a memorandum to Code Agencies, dated July 16, 2002, the Governor indicated the validity of the ICQ was under review by the Attorney General; therefore, his Office was not responding to the ICQ pending further review. He further directed all Code Agencies to not respond to the ICQ at that time. As of the date of this letter neither the Governor nor the Attorney General has communicated to us the results of the Attorney General's review. Because of this directive we were unable to complete the second objective above, as originally planned. Further, such a refusal to cooperate with the auditors significantly diminishes the value in having an independent review of the Board's procedures.

Agency response: The only transaction tested involved payment of the tolls and assessments (irrigation taxes) levied by the Ainsworth Irrigation District which has taxation authority. This payment is required by Section 72-232.06.

We are aware that the Governor has requested an Attorney General's Opinion concerning the Internal Control Questionnaire. Prudent fiscal management dictates that we not expend resources replying to the ICQ until we know whether and to what extent, if any, we ought to do so. Therefore, we respectfully decline to respond further at this time.

Thanks.

APA's Response: See the *Restriction on the Scope of the Examination* section on page 2 of this letter.

Agency 33 - Game and Parks Commission

Per the Nebraska Accounting System (NAS), your Commission disbursed the amounts in the following five broadly classified categories of purchases for the fiscal year ending June 30, 2002:

- Purchase of Materials, Supplies, and Equipment (\$9,082,606)
- Purchase of Services (\$11,080,624)
- Construction/Repair of Buildings and Land (\$7,509,304)
- Lease/Rent Agreements (\$413,374)
- Other Purchases (\$1,932,071)

The following procedures were performed:

- Requested the completion of an Internal Control Questionnaire to document the procedures/controls your Commission had over purchases to ensure compliance with all laws and regulations.

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Agency 33 - Game and Parks Commission (Continued)

- Selected and tested the following transactions, and related purchasing documentation, to determine if key procedures/controls were in place to ensure purchases were in accordance with all laws and regulations:

Materials, Supplies, and Equipment

- Bait Buster – Doc #2317464 (\$4,780)

This contract was for a total of \$33,360. Bait Buster was to provide minnows for the Commission.

- Midwest Candy & Tobacco – Doc #2341398 (\$1,417)

This was a direct purchase of items for resale. There was no contract associated with this transaction.

- Rann Manufacturing Inc. – Doc #2342862 (\$2,243)

This was a direct purchase of items for resale. There was no contract associated with this transaction.

Services

- 711 Spraying LLC – Doc #8321163 (\$4,999)

This was for weed control on a Wildlife Management Area. This was the total contract amount.

Construction / Repair of Buildings and Land

- Sampson Construction Co. Inc. – Doc #2317943 (\$822,493)

The total contract amount for this project was \$3,888,652. Sampson Construction Co. Inc. was contracted to build the Family Aquatic Center at Eugene T. Mahoney State Park.

Other Contracts

- Land purchase – Doc #2318588 (\$595,684)

This was the total contract amount. The purchase of land was for a wildlife management area.

Based on the above-mentioned procedures, the following comment and recommendation is made for your consideration:

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Agency 33 - Game and Parks Commission (Continued)

1. Drug-free Workplace Policy for Vendors

The DAS-Materiel Division's Direct Market Purchase Authority Memo states "(Agencies) will be responsible for ensuring that vendors . . . purchase(d) from support a Drug-free Workplace Environment." This can be accomplished by either of two methods, having a statement on file from the vendor, or including an attestation statement on a signed document such as a contract or an "invitation to bid" document.

Two purchases were tested that fell within the Direct Market Purchase Authority for the Commission, one from Midwest Candy & Tobacco and one from Rann Manufacturing Inc., as described above. For both purchases, the drug-free workplace policy was not on file for the vendor, nor did the vendor give a written attestation as to having such a policy.

This results in the Commission being in noncompliance with policies and procedures of the DAS-Materiel Division.

We recommend the Commission create procedures to ensure that for all direct purchases, the vendor's drug-free workplace policy is on file or is attested to prior to the purchase. This may include changes to Commission procedural manuals or the creation of a checklist to ensure direct purchases proceed through all required steps.

Agency Response: The Nebraska Game and Parks Commission is in receipt of your findings, letter dated October 7, 2002, related to purchases for the fiscal year ending June 30, 2002. As there was only one comment and recommendation provided, our commitments will be confined to the same topic (Drug-free Workplace Policy for Vendors).

Our agency's Direct Purchase Authority Policy has a section identified as the Drug-Free Work Place Policy which reads as follows: "All field locations and administrative units must adhere to the drug-free work place policy as established by the State. You are responsible for ensuring that vendors or suppliers that you purchase from have a Drug-Free Work Place Policy on file with the Materiel Division, Department of Administrative Services, or with the Commission. Single purchases under \$500 are exempt from this requirement. The Drug-Free Work Place Policy applies to purchasing services as well as commodities."

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Agency 33 - Game and Parks Commission (Concluded)

Agency Response, Concluded:

We acknowledge that the two purchases identified did not have a drug-free work place policy on file for the respective vendors. We will be reiterating to our field staff, especially in those locations where there have been recent turnovers, the importance of ensuring the agency's Direct Purchase Authority Policy is followed. Additionally we will ensure that we obtain copies of the drug-free work place policy, or attestation to same, from the two vendors identified in the audit findings.

As you have no doubt discovered with other agencies, the Drug-Free Work Place Policy for vendors is a rather difficult policy to track. The Materiel Division, Department of Administrative Services at one time tried to keep a file updated on all vendors that had a policy in place. The number of vendors that any one agency, let alone the state as a whole deals with in a given year, makes it a challenge and labor intensive effort to keep a list current.

The Materiel Division has since developed a new approach to ensuring that vendors are in compliance. The new approach, which we have modeled, provides a list of "Standard Conditions and Terms of Bid Solicitation and Offer" which includes attestation to providing a drug-free work place. This list and attestation is part of the "Invitation to Bid" document. While we utilize this form for larger purchases (>\$1,500), it has not been routinely used for smaller purchases for which we have empowered field personnel to buy direct. While field staff are to secure at least three bids for purchases of \$500 to \$1499, we have not required a formal bid process utilizing the Invitation to Bid document. We will explore procedural changes that will ensure that the drug-free work place policy of vendors is documented adequately.

As always, we appreciate the review of our processes as it helps us to identify areas that may need improvement. Please convey our sincere appreciation to your staff for the courtesy and professional manner in which the audit was conducted.

Agency 37 - Workers' Compensation Court

Per the Nebraska Accounting System (NAS), your Department disbursed the amounts in the following three broadly classified categories of purchases for the fiscal year ending June 30, 2002:

- Purchase of Materials, Supplies, and Equipment (\$211,891)
- Purchase of Services (\$228,608)
- Lease/Rent Agreements (\$173,095)

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Agency 37 - Workers' Compensation Court (Continued)

The following procedures were performed:

- Requested the completion of an Internal Control Questionnaire to document the procedures/controls your Department had over purchases to ensure compliance with all laws and regulations.
- Selected and tested the following transactions, and related purchasing documentation, to determine if key procedures/controls were in place to ensure purchases were in accordance with all laws and regulations:

Materials, Supplies, and Equipment

- Premio Computer Inc. – Doc # 2380581 (\$5,985)

This was a purchase of computer network hardware, and there was no contract associated with this transaction.

Based on the above-mentioned procedures, the following comment is made for your consideration:

1. Internal Control Questionnaire Not Completed

The Agency did not complete an Internal Control Questionnaire (ICQ) as requested. Good internal controls are required to ensure compliance with all laws and regulations. The documentation of these controls, through the use of a questionnaire, is key to obtaining a general understanding of the purchasing/contracting policies, procedures, and controls the Agency has in place to ensure their compliance with all laws and regulations. The Agency indicated they did not answer our questions based on their consideration of a directive from the Governor to all Code Agencies. (Note: Workers' Compensation Court is not a Code Agency)

In a memorandum to Code Agencies, dated July 16, 2002, the Governor indicated the validity of the ICQ was under review by the Attorney General; therefore, his Office was not responding to the ICQ pending further review. He further directed all Code Agencies to not respond to the ICQ at that time. As of the date of this letter neither the Governor nor the Attorney General has communicated to us the results of the Attorney General's review. Because of this directive we were unable to complete the second objective above, as originally planned. Further, such a refusal to cooperate with the auditors significantly diminishes the value in having an independent review of the Agency's procedures.

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Agency 37 - Workers' Compensation Court (Concluded)

Agency Response: As noted in your letter, we have not responded to the Internal Control Questionnaire based on our consideration of the Governor's directive of July 16, 2002 to all code agencies. While not a code agency, we share the Governor's concerns and would prefer to await the outcome of the review by the Attorney General before responding further.

APA's Response: See the *Restriction on the Scope of the Examination* section on page 2 of this letter.

Agency 46 - Department of Correctional Services

Per the Nebraska Accounting System (NAS), your Department disbursed the amounts in the following four broadly classified categories of purchases for the fiscal year ending June 30, 2002:

- Purchase of Materials, Supplies, and Equipment (\$24,598,822)
- Purchase of Services (\$15,567,888)
- Construction/Repair of Buildings and Roads (\$5,771,712)
- Lease/Rent Agreements (\$423,811)

The following procedures were performed:

- Requested the completion of an Internal Control Questionnaire to document the procedures/controls your Department had over purchases to ensure compliance with all laws and regulations.
- Selected and tested the following transactions, and related purchasing documentation, to determine if key procedures/controls were in place to ensure purchases were in accordance with all laws and regulations:
 - Leggett & Platt – Doc # 2385825 (\$49,338.52)

This payment was for the purchase of chair kits for Cornhusker State Industries.

- Bob Barker Co. – Doc # 2391816 (\$9,962.50)

This was a direct purchase of prison jumpsuits.

- Fruit of the Loom – Doc # 2387336 (\$3,644.75)

This payment was for the purchase of underwear and t-shirts from the statewide contract.

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Agency 46 - Department of Correctional Services (Continued)

- Motorola – Doc # 2395570 (\$11,486.31)

This transaction was for the purchase of two-way communications equipment.

- Abatar Institutional Food Co. – Doc # 2393249 (\$19,447.06)

This payment was for the purchase of various food, beverage, school, and personal hygiene products for resale in the inmate canteens.

- Hawkins Construction Co. – Doc # 2389811 (\$756,301.99)

This was a partial payment for the construction of the Tecumseh Correctional Facility.

- St. Joseph Hospital – Doc # 2398207 (\$233,719.48)

This payment was for medical services for inmates of the Department of Correctional Services.

Based on the above-mentioned procedures, the following comments are made for your consideration:

1. Internal Control Questionnaire Not Completed

The Department did not complete an Internal Control Questionnaire (ICQ) as requested. Good internal controls are required to ensure compliance with all laws and regulations. The documentation of these controls, through the use of a questionnaire, is key to obtaining a general understanding of the purchasing/contracting policies, procedures, and controls the Department has in place to ensure their compliance with all laws and regulations. The Department indicated they did not answer our questions based upon a directive from the Governor.

In a memorandum to Code Agencies, dated July 16, 2002, the Governor indicated the validity of the ICQ was under review by the Attorney General; therefore, his Office was not responding to the ICQ pending further review. He further directed all Code Agencies to do the following: “By virtue of this memorandum, I am also directing all code directors to provide the Auditor’s office with the requested documents but not respond to the questionnaire at this time”. As of the date of this letter neither the Governor nor the Attorney General has communicated to us the results of the Attorney General’s review. Because of this directive we were unable to complete the second

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Agency 46 - Department of Correctional Services (Continued)

objective above, as originally planned. Further, such a refusal to cooperate with the auditors significantly diminishes the value in having an independent review of the Department's procedures.

See the *Restriction on the Scope of the Examination* section on page 2 of this letter.

2. Requested Documentation Not Received

We requested information and documentation regarding the agreement between the Department of Correctional Services and Creighton Saint Joseph PHO, Inc. The documentation and information was not supplied regarding the agreement. The following is a list of the documentation and information that was requested:

- Was Executive Order 95-4 applied to this particular agreement? Is there any documentation to support why it was or was not applied?
- Was this agreement for services bid out?
- If it was bid out, is there any documentation showing the other bids that were received or any bid tabulation?
- If the agreement was not bid out, is there any documentation explaining why the agreement was not bid out?
- Are the "usual and customary charges" mentioned in the agreement defined somewhere?
- Is there a listing of the "usual and customary charges" that can be used for confirming the fees that were charged were correct?
- Does the Department have agreements with all the medical facilities in the surrounding area?

As noted above, in his memorandum to Code Agencies dated July 16, 2002, the Governor directed all code agency directors "to provide the Auditor's office with the requested documents..."

We believe the Department is in violation of the Governor's directive. The Department has refused to provide documentation that was requested by the Auditor's office.

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Agency 46 - Department of Correctional Services (Concluded)

The Department is also in violation of Neb. Rev. Stat. Section 84-305 R.R.S. 1998. It states, "The Auditor of Public Accounts shall have access to all records of any public entity, in whatever form or mode the records may be, unless the auditor's access to the records is specifically prohibited or limited by federal or state law." In their refusal to provide the requested documents, the Department has cited no law that would prohibit them from complying with the auditor's request.

Because of this, we were unable to determine if the contract was made in accordance with all applicable laws and regulations, as originally planned. Further, such a refusal to cooperate with the auditors significantly diminishes the value in having an independent review of the Department's procedures.

Best Practices

The following are procedures used at the Department that we feel are good practices that could be used by other agencies in improving their processes.

- Project Summary: This sheet provided an excellent summary of the entire construction project.
- Contract Summary: The sheet was an excellent summary of the contractual process. It included all the necessary authorized signatures and the approval of the contract by legal counsel.

Agency 47 - Educational Telecommunications Commission

Per the Nebraska Accounting System (NAS), your Commission disbursed the amounts in the following three broadly classified categories of purchases for the fiscal year ending June 30, 2002:

- Purchase of Materials, Supplies, and Equipment (\$1,843,873)
- Purchase of Services (\$3,097,693)
- Lease/Rent Agreements (\$2,917,063)

The following procedures were performed:

- Requested the completion of an Internal Control Questionnaire to document the procedures/controls your Commission had over purchases to ensure compliance with all laws and regulations.

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Agency 47 - Educational Telecommunications Commission (Concluded)

- Selected and tested the following transactions, and related purchasing documentation, to determine if key procedures/controls were in place to ensure purchases were in accordance with all laws and regulations:

Services

- Loral Skynet – Doc # 2412063 (\$237,110)

The contract was for capacity on a satellite transponder. The contract was for a total amount of \$14,226,600.

Based on the above-mentioned procedures, we noted no exceptions in our examination of the above transaction and its related supporting documentation.

Agency 50 - State College System; Chadron, Peru, and Wayne State Colleges

Per the Nebraska Accounting System (NAS), the System disbursed the amounts in the following four broadly classified categories of purchases for the fiscal year ending June 30, 2002:

- Purchase of Materials, Supplies, and Equipment (\$5,342,695)
- Purchase of Services (\$13,023,487)
- Construction/Repair of Buildings and Roads (\$4,496,442)
- Lease/Rent Agreements (\$530,645)

The following procedures were performed:

- Requested the completion of an Internal Control Questionnaire to document the procedures/controls the System had over purchases to ensure compliance with all laws and regulations.
- Selected and tested the following transactions, and related purchasing documentation, to determine if key procedures/controls were in place to ensure purchases were in accordance with all laws and regulations:
 - Rogge Davis Construction – Doc # 248054 (\$442,150.00)

This was a construction contract for building renovations and additions to the Hoyt Science and Campus Services buildings at Peru State College. The original contract amount was \$5,238,752. The total amount for change orders was an additional \$223,718.

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Agency 50 - State College System; Chadron, Peru, and Wayne State Colleges
(Concluded)

- Chartwells – Doc # 267736 (\$11,413.27)

This was a service contract for Chartwells to provide the food service for Wayne State College. The contract amount was based on a per meal cost.

- Walling Water Management – Doc # 251945 (\$970.80)

This transaction was for the purchase of chemicals to be used in the boilers. There was no contract for these purchases. Each purchase was made monthly or as chemicals were needed.

- Ideal Linen Supply – Doc # 248958 (\$21,029.24)

This was a price agreement contract to purchase custodial equipment and supplies for Chadron State College.

- Heinrich Envelope Inc. – Doc # 268275 (\$7,937.32)

This transaction was for the purchase of personalized stationery for Wayne State College.

Based on the above-mentioned procedures, we noted no exceptions in our examination of the above transactions and their related supporting documentation.

Agency 64 - State Patrol

Per the Nebraska Accounting System (NAS), your Agency disbursed the amounts in the following three broadly classified categories of purchases for the fiscal year ending June 30, 2002:

- Purchase of Materials, Supplies, and Equipment (\$6,001,293)
- Purchase of Services (\$3,590,231)
- Lease/Rent Agreements (\$1,065,719)

The following procedures were performed:

- Requested the completion of an Internal Control Questionnaire to document the procedures/controls your Agency had over purchases to ensure compliance with all laws and regulations.

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Agency 64 - State Patrol (Continued)

- Selected and tested the following transactions, and related purchasing documentation, to determine if key procedures/controls were in place to ensure purchases were in accordance with all laws and regulations:

Materials, Supplies, and Equipment

- Misko Sports, Inc. – Doc # 297303 (\$14,645)

This contract was a price agreement. Misko Sports, Inc. was to provide uniform boots for the Agency.

- OMB Police Supply – Doc # 298638 (\$38,429)

This contract was a price agreement. OMB Police Supply was to provide practice and duty ammunition for the Agency.

- Cast Products Inc. – Doc # 302725 (\$2,919)

This was a direct purchase of speakers for patrol vehicles. There was no contract associated with this transaction.

Services

- MSI Systems Integrators – Doc # 9297045 (\$40,736)

The total contract amount was for a fixed fee of \$101,840, payable in three installments. MSI Systems Integrators was to convert and integrate existing databases into two platforms.

Based on the above-mentioned procedures, the following comments and recommendations are made for your consideration:

1. Internal Control Questionnaire Not Completed

The Agency did not complete an Internal Control Questionnaire (ICQ) as requested. Good internal controls are required to ensure compliance with all laws and regulations. The documentation of these controls, through the use of a questionnaire, is key to obtaining a general understanding of the purchasing/contracting policies, procedures, and controls the Agency has in place to ensure their compliance with all laws and regulations. The Agency indicated they did not answer our questions based upon a directive from the Governor.

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Agency 64 - State Patrol (Continued)

In a memorandum to Code Agencies, dated July 16, 2002, the Governor indicated the validity of the ICQ was under review by the Attorney General; therefore, his Office was not responding to the ICQ pending further review. He further directed all Code Agencies to not respond to the ICQ at that time. As of the date of this letter neither the Governor nor the Attorney General has communicated to us the results of the Attorney General's review. Because of this directive we were unable to complete the second objective above, as originally planned. Further, such a refusal to cooperate with the auditors significantly diminishes the value in having an independent review of the Agency's procedures.

Agency Response: While the Nebraska State Patrol appreciates the value of an independent review of the Agency's procedures, the agency was following the direction of the Governor, pending the review by the Attorney General.

APA's Response: See the *Restriction on the Scope of the Examination* section on page 2 of this letter.

2. Contract not on file

The General Records Retention Schedule 124-1-143 states contracts shall be maintained three years after completion of the contract.

The contract with MSI Systems Integrators is represented by two documents, the "master agreement" and a "work order." The Agency could not locate the master agreement. The final payment on this contract was made on August 6, 2001.

As a result, there is an increased risk to the State when it does not have a copy of a legal document it has executed.

We recommend the Agency review its procedures to ensure all documents which are a part of the contract are retained for the period of time required by the Retention Schedule.

Agency Response: The Nebraska State Patrol did, in fact, have a contract on file for the specific work accomplished. The contract contained a clause referencing the "Master Agreement" with the vendor. That is the specific document which could not be located. The original "Master Agreement" was completed by a Division Administrator, who has subsequently retired. The Nebraska State Patrol takes considerable effort to ensure that contracts are maintained.

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Agency 64 - State Patrol (Continued)

3. Contract was not submitted to by the Department of Administrative Services (DAS) for Approval

Executive Order 00-04 section 3.8 states for contracts in excess of \$25,000, "DAS Materiel Division shall provide procedures to grant limited exemptions for 'sole source,' 'specialized sources,' 'emergency,' and other unique requirements, subject to review by the DAS Director."

The Agency's contract with MSI Systems Integrators was not sent to DAS for approval. The Agency stated this was a "sole source" project, however the Agency did not procure the required approval from DAS prior to entering into the contract.

The Agency was not in compliance with Executive Order 00-04. Whenever bidding is restricted, such as by designating a "sole source" provider, an independent review should be conducted to ensure this is in the best interest of the State.

We recommend the Agency review its policies and procedures to ensure compliance with existing rules and regulations.

Agency Response: The Captain in charge of completing the referenced project was not aware of the requirement that all contracts were to be submitted to DAS. The Nebraska State Patrol has subsequently provided training to all employees who might be responsible for purchases and executing contracts.

4. Purchase Splitting

Neb. Rev. Stat. section 81-1118(5)(b) R.S.Supp., 2000 states purchases exceeding \$5,000 but less than \$10,000 shall be let by a competitive informal bidding process by the DAS-Materiel Division. Neb. Rev. Stat. section 81-1118(5)(e) R.S.Supp., 2000 states, "All contracts for purchases and leases shall be bid as a single whole item. In no case shall contracts be divided or fractionated in order to produce several contracts which are of an estimated value below that required for competitive bidding."

An order to Cast Products, Inc. for goods totaling \$5,838 was separated into two purchases and purchased under the Agency's Direct Purchase Authority, and thus did not go through the Department of Administrative Services (DAS) for competitive bidding. One of these two purchases was selected for testing and is listed above.

PURCHASING/CONTRACTING PROCEDURES
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Agency 64 - State Patrol (Concluded)

The Agency is not in compliance with State Statute. Furthermore, it is in the best interest of the State to bid out purchases.

We recommend the Agency review its policies and procedures to ensure purchases are not fractionated to avoid competitive bidding requirements.

Agency Response: The Equipment and Supply Division has recognized the requirement to engage in competitive bidding and has procured a contract for the items in question.

Agency 65 - Department of Administrative Services

Per the Nebraska Accounting System (NAS), the Department of Administrative Services disbursed the amounts in the following four broadly classified categories of purchases for the fiscal year ending June 30, 2002:

- Purchase of Materials, Supplies, and Equipment (\$24,163,419)
- Purchase of Services (\$74,466,631)
- Construction/Repair of Buildings and Roads (\$16,972,735)
- Lease/Rent Agreements (\$19,769,839)

Agency Response: These figures, including the break-down of debits, credits, and net amount included in the addendum are correct. The Department has not verified your transaction counts, but does not question the validity of those numbers given the debits, credits, and net amounts are correct. While we do not question the validity of these figures, we do question how this information is relevant to your report on specific contracts completed by the Department's divisions.

You cite as your authority for conducting the statewide contract review, Neb. Rev. Stat. Sections 84-304(3) and 84-305. The Department, through its request for an opinion from the Attorney General and through previous discussions with you about this review, has expressed its continuing concern that the review you have conducted is a performance review rather than a review to determine "the fiscal conditions...including any irregularities or misconduct of officers or employees, any misappropriation or misuse of public funds or property, and any improper system or method of bookkeeping or condition of accounts" as authorized in Neb. Rev. Stat. Section 84-304(3).

PURCHASING/CONTRACTING PROCEDURES
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Agency 65 - Department of Administrative Services (Continued)

APA's Response: The APA has the authority to review all records of any public entity unless the auditor's access to the records is specifically prohibited or limited by federal or State law. The APA does not believe any of the procedures performed during our examination constitute a performance audit. For a full response, see the *Restriction on the Scope of the Examination* section on page 2 of this letter.

The following procedures were performed:

- Requested the completion of an Internal Control Questionnaire to document the procedures/controls your Department had over purchases to ensure compliance with all laws and regulations.
- Selected and tested the transactions listed in the division sections, and related purchasing documentation, to determine if key procedures/controls were in place to ensure purchases were in accordance with all laws and regulations.

Based on the above-mentioned procedures, the following comments and recommendation are made for your consideration:

1. Internal Control Questionnaire Not Completed

The Department did not complete an Internal Control Questionnaire (ICQ) as requested. Good internal controls are required to ensure compliance with all laws and regulations. The documentation of these controls, through the use of a questionnaire, is key to obtaining a general understanding of the purchasing/contracting policies, procedures, and controls the Department has in place to ensure their compliance with all laws and regulations. The Department indicated they did not answer our questions based upon a directive from the Governor.

In a memorandum to Code Agencies, dated July 16, 2002, the Governor indicated the validity of the ICQ was under review by the Attorney General; therefore, his Office was not responding to the ICQ pending further review. He further directed all Code Agencies to not respond to the ICQ at that time. As of the date of this letter neither the Governor nor the Attorney General has communicated to us the results of the Attorney General's review. Because of this directive we were unable to complete the second objective above, as originally planned. Further, such a refusal to cooperate with the auditors significantly diminishes the value in having an independent review of the Department's procedures.

PURCHASING/CONTRACTING PROCEDURES
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Agency 65 - Department of Administrative Services (Continued)

Agency Response: The Department was advised in a July 16, 2002 memorandum from the Governor that the Department was to provide you any documents you requested. The memorandum further advised that we should not answer the questionnaire or similar questions related to how the Department conducts its business until such time as we received an Attorney General's opinion. The Department requested and has been waiting for this opinion from the Attorney General for quite some time. It is our understanding that the delay in issuing the opinion is related to a request from your legal counsel that the opinion be delayed until you have time to provide information to be considered in the opinion. It seems inappropriate for the Auditor's office to issue a report to the Governor, the Legislature, and the public indicating that we failed to comply with your arbitrary deadlines when you know that your office is at least partly responsible for our failure to comply.

APA's Response: As an independent member of the Executive Branch, the Attorney General (AG) has full authority over when opinions will be issued. The APA did request the AG consider information that we were in the process of gathering. See also the *Restriction on the Scope of the Examination* section on page 2 of this letter.

2. Requested Documentation Not Received

We requested information and documentation regarding various contracts between the Department of Administrative Services and several vendors. Certain documentation and information was not supplied regarding the contracts. The specific documentation and information that was requested are included in the individual division sections.

As noted above, in his memorandum to Code Agencies dated July 16, 2002, the Governor directed all code agency directors "to provide the Auditor's office with the requested documents..." We believe the Department is in violation of the Governor's directive since they have refused to provide documentation that was requested by the Auditor's office.

The Department is also in violation of Neb. Rev. Stat. Section 84-305 R.R.S. 1998. It states, "The Auditor of Public Accounts shall have access to all records of any public entity, in whatever form or mode the records may be, unless the auditor's access to the records is specifically prohibited or limited by federal or state law." In their refusal to provide the requested documents, the Department has cited no law that would prohibit them from complying with the auditor's request.

Because of this, we were unable to determine if the contracts were made in accordance with all applicable laws and regulations, as originally planned. Further, such a refusal to cooperate with the auditors significantly diminishes the value in having an independent review of the Department's procedures.

PURCHASING/CONTRACTING PROCEDURES
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Agency 65 - Department of Administrative Services (Continued)

Agency Response: DAS has fully complied with all requests for documentation. The Department is awaiting the opinion from the Attorney General's office before answering any questions. Responses to specific information you believe was requested but not received are contained in the response to the addendum below.

APA's Response: We believe all our requests for information and documentation are appropriate and necessary to perform our statutory requirements related to financial transactions of the State of Nebraska. Where you indicate access to information requested was communicated to us but we did not take appropriate action to get that information, we have no documentation of these communications. We will be making a request to review such information in the future. Again, see the *Restriction on the Scope of the Examination* section on page 2 of this letter.

3. Documentation of Review by Legal Counsel

Sound business practice, and good internal controls over contracts, require a review of contracts by a person or persons having the legal expertise and knowledge to determine if the contract is in compliance with Federal and State laws and regulations governing contracts, and to ensure the best interest of the State is being served. In addition, good internal controls require that when a legal review is performed that it be documented. We received indication that staff legal counsel for the Department reviewed the contracts, but such review was not documented. When a review is not documented there is no assurance the review was actually performed.

We recommend the Department's legal counsel review contracts before they are executed and that the review is documented. This can be accomplished by legal counsel signing a checklist or routing sheet for the contract, or by legal counsel drafting correspondence stating the recommended changes to the contract or approval of the contract.

Agency Response: Sound business practice and good internal controls do not require a legal review of every contract. The Department has standard terms and conditions which have been reviewed by legal counsel. In cases where the standard terms and conditions are used there is no advantage to having additional legal review. Neither this Department's legal counsel, nor the Attorney General's Office, have the resources to conduct such unnecessary reviews which would waste both time and resources with no advantage to the State. All Department contracts which vary from standard terms and conditions are reviewed by legal counsel. The method of documentation of such review varies and may be in such forms as email, memorandum, or letters. Further, we are aware of no legal cases against the State which relate to inappropriate terms in a contract.

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Agency 65 - Department of Administrative Services (Continued)

APA's Response: In our comment we made two recommendations. That is, contracts should have a legal review and that the legal review should be documented. The level of legal review to be performed is a management decision. For example, management may decide certain contracts follow a standard format and thus any in-depth legal review would be unnecessary. However, whatever level of review is considered to be appropriate by management, the review should be documented (a standard routing slip initialed by legal counsel, for example).

State Building Division

Per the Nebraska Accounting System (NAS), the State Building Division disbursed the amounts in the following four broadly classified categories of purchases for the fiscal year ending June 30, 2002:

- Purchase of Materials, Supplies, and Equipment (\$2,623,019)
- Purchase of Services (\$10,525,908)
- Construction/Repair of Buildings and Roads (\$6,428,078)
- Lease/Rent Agreements (\$8,997,696)

Agency Response: These figures, including the break-down of debits, credits, and net amount included in the addendum are correct. The Division has not verified your transaction counts, but does not question the validity of those numbers given the debits, credits, and net amounts are correct. While we do not question the validity of these figures, we do question how this information is relevant to your report or your review of eleven specific contracts by the State Building Division.

The following procedures were performed:

- Requested the completion of an Internal Control Questionnaire to document the procedures/controls your Department had over purchases to ensure compliance with all laws and regulations.
- Selected and tested the following transactions, and related purchasing documentation, to determine if key procedures/controls were in place to ensure purchases were in accordance with all laws and regulations:

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Agency 65 - Department of Administrative Services (Continued)

State Building Division (Continued)

- Utilicorp United, Inc. – Doc # 2440027 (\$49,628.62)

This was a payment for natural gas usage for the month at the Beatrice State Developmental Center.

- First Federal Lincoln Bank – Doc # 2441388 (\$9,991.20)

This was a payment for a lease of space by Health and Human Services in Lincoln, Nebraska.

- Wells Fargo Bank – Doc # 2438307 (\$59,256.46)

This was a payment for a lease agreement between the State of Nebraska and the Nebraska State Building Corporation.

- JRM NE Management & Leasing - Doc # 2443193 (\$56,945.98)

The payment was for a lease of space by Health and Human Services at Gold's Galleria in Lincoln, Nebraska.

- Gold's Limited Partnership – Doc # 2436140 (\$54,506.68)

The payment was for a lease of space by Health and Human Services at Gold's Galleria in Lincoln, Nebraska.

- Keystone Landing – Doc # 2438076 (\$48,800.00)

The contractual payment was for the lease of space for the Department of Labor in Omaha, Nebraska at Keystone Landing.

- Pacific Realty Com LLC – Doc # 2439660 (\$53,070.12)

The payment was for the lease of space for several agencies in the Atrium Building in Lincoln, Nebraska.

- Asbestos Removers Inc. – Doc # 2436051 (\$36,200.00)

This was a payment on a construction contract to remove and dispose of materials containing asbestos from Bensen Hall.

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Agency 65 - Department of Administrative Services (Continued)

State Building Division (Continued)

- FBG Service Corporation – Doc # 2435310 (\$78,838.06)

This was a contractual payment for monthly cleaning services.

- Fenton Art Glass Co. – Doc # 8434742 (\$30,029.16)

This payment was for partial payment of the contract to make four iron blow moulds and completed ornamental glass light shades for the east chamber of the Capitol.

- Mark 1 Waterproofing & Restoration Co. – Doc # 2438694 (\$742,907.50)

This was a partial payment for work performed on the State Capitol Masonry Restoration Project.

Based on the above-mentioned procedures, the following comments and recommendations are made for your consideration:

1. Requested Documentation Not Received

We requested information and documentation regarding the contracts between the State Building Division and several vendors. Certain documentation and information was not supplied regarding the contracts. The following is a list of the information and documentation that was requested:

Lease Contracts

Document #2443193 – JRM NE Management & Leasing & Document #2436140 – Gold’s Limited Partnership

1. One payment for the space leased at Gold’s Galleria was to “Gold’s Limited Partnership” and the other was to “JRM NE Management & Leasing”; why were payments made to two different entities? (General information)

Agency Response: This is a question and not a request for a document. In accordance with the Governor’s July 16, 2002 directive, the Department cannot answer this question until such time as we receive an Attorney General’s opinion indicating such response would be appropriate.

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Agency 65 - Department of Administrative Services (Continued)

State Building Division (Continued)

APA's Response: See response to Department of Administrative Services Comment #2 – Requested Documentation Not Received on page 87.

Document #2438076 – Keystone Landing

1. The payment does not correspond to the terms of the original contract. According to documentation in the first amendment to the lease, there was a disagreement over the amount of rent to be paid to the Lessor. The Lessor alleged default for periods before July 1, 2001. Payment of \$48,800 cured the alleged default. According to the original lease agreement, the term of the lease commenced on January 15, 2001. Were rent payments subsequently made on the first day of each month? (General Information) What documentation supports the calculation of the amount alleged to be in default and the amount subsequently paid? (Documentation)

Agency Response: This is a question and not a request for a document. In accordance with the Governor's July 16, 2002 directive, the Department cannot answer this question until such time as we receive an Attorney General's opinion indicating such response would be appropriate.

As the Department indicated in its previous response to you, the calculation of the appropriate amount to be paid was completed by the Building Division in consultation with legal counsel for the Department, legal counsel for the Department of Labor, and a representative of the Attorney General's Office. This calculation documentation is part of an on-going dispute between the State and the landlord. Release of such documentation to the Auditor's Office would represent a waiver of attorney-client privilege afforded by Neb. Rev. Stat. 27-503. Such a waiver of privilege and the related right to withhold such documents from the Landlord under the public record statutes found in Neb. Rev. Stat. 84-712.05(4) would be irresponsible and not in the best interest of the State. The Department has therefore not provided the requested documentation and will not provide it until such time as the dispute between the State and the Landlord has been finally resolved.

APA's Response: The Statutes cited do not authorize an agency to refuse to provide documents to the APA. Neb. Rev. Stat. Section 84-305 outlines our authority to look at all documentation. The APA is required by State Statute and has procedures in place, to keep all confidential information confidential under penalty of law. See also the *Restriction on the Scope of the Examination* section on page 2 of this letter.

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Agency 65 - Department of Administrative Services (Continued)

State Building Division (Continued)

Service Contracts

Document #2435310 – FBG Service Corp.

1. Request to review the contract file for contract SCA-0172. (Documentation)

Agency Response: You requested access to the contract file, you did not want copies of the file. The Department complied with your request by indicating in our prior response that “This contract file is maintained by Perry Shuman. Access can be arranged by calling Perry at 471-0411.” To our knowledge you did not contact Perry, who had been instructed to provide you access to the contract upon your request.

2. Included with the document are three credit memos related to services performed in the months of May and June 2001. Two credit memos are for the month of June. Each credit memo indicates a “Shortage of Hours.” How are the terms and conditions of the contract monitored to determine the agency received the contracted services? (Internal Control)

Agency Response: This is a question and not a request for a document. In accordance with the Governor’s July 16, 2002 directive, the Department cannot answer this question until such time as we receive an Attorney General’s opinion indicating such response would be appropriate.

APA’s Response: See the *Restriction on the Scope of the Examination* section on page 2 of this letter.

3. Per Change Order #1, the revised contract grand total was \$294,285.24 for the period July 1, 2000 through June 30, 2001. A letter dated June 7, 2001 was sent to FBG requesting to extend the contract for another year (July 1, 2001 through June 30, 2002). FBG was instructed to sign the letter and return it to the agency if they agreed. The letter also indicated FBG could make changes to the contract, for example, the contract price. According to the information provided to us, the letter was signed by FBG and no changes were made. It appears the same contract total in place for FY 2001, as per Change Order #1, is in place for FY2002. Is this correct? (Documentation)

Agency Response: These are questions and not requests for documents. In accordance with the Governor’s July 16, 2002 directive, the Department cannot answer these questions until such time as we receive an Attorney General’s opinion indicating such response would be appropriate.

APA’s Response: See the *Restriction on the Scope of the Examination* section on page 2 of this letter.

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Agency 65 - Department of Administrative Services (Continued)

State Building Division (Continued)

Included with the document are three invoices for the months of July, August, and September 2001. The invoice numbers are 195064, 198018, and 200563 respectively. Each invoice includes charges for monthly cleaning services for Div 2 and Div 3 for a total per invoice of \$25,797.89. According to the contracted amount, the monthly billing would be \$24,523.77 (\$294,285.24 divided by 12 months). Was there a change to the contracted amount? What documentation is available to support the 'new' amount? (Documentation)

Agency Response: The contract, which was previously supplied to the Auditor's Office, provides for a 5% increase for each renewal term.

In addition, the invoice for September 2001 was changed. The amounts were crossed out and new amounts were written by hand (\$23,924.96). Why were the amounts changed? (Documentation)

Agency Response: This is a question and not a request for a document. In accordance with the Governor's July 16, 2002 directive, the Department cannot answer this question until such time as we receive an Attorney General's opinion indicating such response would be appropriate.

APA's Response: See response to Department of Administrative Services Comment #2 – Requested Documentation Not Received on page 87. See also the *Restriction on the Scope of the Examination* section on page 2 of this letter.

2. Certificate From The Committee on Building Maintenance Not On File

For three of the lease contracts we tested, we noted that the certificate from the Committee on Building Maintenance was not on file with the State Building Division. From correspondence with the State Building Division we were unable to determine if the certificate was no longer on file or if the certificate was never included in the request to the Director of Administrative Services.

Neb. Rev. Stat. Section 81-1108.22(2) R.R.S. 1999, states that, "When any board, agency, commission, or department of the state government not otherwise specifically authorized by law desires to use funds available for the purpose of renting office space outside of the State Capitol, it shall submit a request to the Director of Administrative Services accompanied by a certificate from the Committee on Building Maintenance..." Good internal control also requires documentation be kept on file to support the approval of the lease contract.

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Agency 65 - Department of Administrative Services (Continued)

State Building Division (Concluded)

We recommend the State Building Division keep the certificates on file to document the reasons for the approval of the lease contracts.

Materiel Division

Per the Nebraska Accounting System (NAS), the Materiel Division disbursed the amounts in the following four broadly classified categories of purchases for the fiscal year ending June 30, 2002:

- Purchase of Materials, Supplies, and Equipment (\$6,772,422)
- Purchase of Services (\$1,117,495)
- Construction/Repair of Buildings and Roads (\$1,861)
- Lease/Rent Agreements (\$641,949)

Department Response: These figures, including the break-down of debits, credits, net amount, and transaction count, included in the addendum, are correct. While we do not question the validity of these figures, we do question how this information is relevant to your report on your review of six specific contracts by Materiel Division.

The following procedures were performed:

- Requested the completion of an Internal Control Questionnaire to document the procedures/controls your Department had over purchases to ensure compliance with all laws and regulations.
- Selected and tested the following transactions, and related purchasing documentation, to determine if key procedures/controls were in place to ensure purchases were in accordance with all laws and regulations:
 - Duostat Company – Doc # 2445889 (\$2,720.56)

This was a purchase of materials for the DAS Print Shop.

- Selected and tested the following statewide contracts, and related purchasing documentation, to determine if key procedures/controls were in place to ensure purchases were in accordance with all laws and regulations:

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Agency 65 - Department of Administrative Services (Continued)

Materiel Division (Continued)

- IDEXX Distribution Corp. (CA-5117)

This contract was for water testing materials and supplies.

- Ikon Office Solutions (CA-5684)

This contract was for the purchase of high-speed digital copiers.

- Knoll, Inc. (CA-3780)

This contract was for systems furniture.

- Koch Materials (CA-5804E)

This contract was for liquid asphalt road oil.

- IBM Corporation (SCA-0116)

This was a service contract for data processing services.

Based on the above-mentioned procedures, the following comments and recommendations are made for your consideration:

1. Requested Documentation Not Received

We requested information and documentation regarding the agreements between the Materiel Division and several vendors. Certain documentation and information was not supplied regarding the agreements. The following is a list of the information and documentation that was requested:

1. According to Executive Order 00-04 paragraph 3.0, "For those contracts not currently covered by state or federal law, each agency shall follow the process prescribed by the *Procedure for the Procurement of Contractual Services* manual of the Department of Administrative Services – Materiel Division or an alternative process approved by the Director of Administrative Services." What process does DAS-Materiel Division use to approve other agencies' alternative processes? How often are other agencies' processes reviewed? How is the review documented? (Internal Control) (Documentation)

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Agency 65 - Department of Administrative Services (Continued)

Materiel Division (Continued)

2. According to a memo from DAS – Materiel Division dated 7/27/01, the procedure of Agency Directors taking responsibility for sole source or restrictive purchases is no longer a requirement for purchases over \$10,000. Agency personnel still need to document, in writing, the justification for “sole source or restrictive” purchases, but the DAS – Materiel Division is responsible for determining if the sole source or restrictive purchase is appropriate. How does DAS-Materiel Division determine and document the sole source or restrictive purchase is appropriate? (Internal Control) (Documentation)

Do the procedures in Exhibit 4 of the Procurement Manual still apply for purchases *under* \$10,000? (Internal Control)

3. According to your response dated 8/12/02, a process exists to ensure bids are “secure and unopened” until the appropriate time. What is the process? (Internal Control)
4. According to your response dated 8/12/02, a process exists to ensure standard and additional terms and conditions of contracts are legal. What is the process? (Internal Control) How is this process documented?
5. According to your response dated 8/12/02, a decision process exists to renew or not renew contracts. What is the process? (Internal Control) How is this process documented?
6. According to your response dated 8/12/02, a process exists to ensure there are no conflicts of interest. What is the process? (Internal Control) How is this process documented?
7. How does DAS – Materiel Division, State Purchasing Bureau ensure compliance with Neb. Rev. Stat. Section 81-161? (Compliance)

Agency Response to Questions 1 through 7: These are questions and not requests for documents. In accordance with the Governor’s July 16, 2002 directive, the Department cannot answer these questions until such time as we receive an Attorney General’s opinion indicating such response would be appropriate.

APA’s Response: See the *Restriction on the Scope of the Examination* section on page 2 of this letter.

8. Requested to review the contract files for: Westgroup, Inc. and Geotech, Inc.

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Agency 65 - Department of Administrative Services (Continued)

Materiel Division (Continued)

Agency Response: The referenced contracts are contracts that you reviewed at other agencies. They do not appear to be contracts processed by the Materiel Division. If we were to obtain further information about these contracts, such as the approximate date they were signed, we may be able to assist further.

APA's Response: See response to Department of Administrative Services Comment #2 – Requested Documentation Not Received on page 87.

2. Monitoring of Monthly Direct Purchase Report

Good business practices require that direct purchases by using agencies be monitored to ensure they are following the proper procedures and regulations. Monitoring would also ensure that the purchases are being made in the best interests of the State.

During our review of direct purchases we noted the following:

- Copies of the monthly direct purchase reports were not on file for every agency.
- Copies of the agencies' reports were not on file for every month.
- Many of the monthly reports did not have three bids documented for the direct purchases that were made or a reason for not having three bids.

A memo dated July 1, 2001, which related to Direct Market Purchase Authority, was sent to all agencies, boards, and commissions from the Administrator of the Materiel Division. It states, "You are strongly urged to obtain a minimum three bids on orders over \$500."

Because the reports were not monitored each month it was difficult to know how many direct purchases were made each month. It was also impossible to know if the purchases were being made in the best interests of the State because many of the purchases did not have three bids documented to show a competitive process was used.

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Agency 65 - Department of Administrative Services (Continued)

Materiel Division (Continued)

We recommend the Materiel Division develop procedures to monitor the monthly direct purchase reports that are received each month. Furthermore, we also recommend the Division verify that reports have been received from every agency each month. Finally, we recommend that at least three bids or the reason for not having three bids for direct purchases be documented for each purchase that was made during the month.

Agency Response: The Materiel Division monitors reports to determine if statewide contracts are needed as well as to ensure contract compliance. The Materiel Division strongly encourages obtaining a minimum of three bids on purchases of goods over \$500.00, when possible. The upcoming implementation of the NIS system should provide more accurate and timely information regarding direct purchases.

APA's Response: During our review of the monthly direct purchase reports we did not find and were not provided any documentation showing that the reports were being monitored. We recommend that if the monthly reports are being monitored this process should be documented.

3. Contract Renewal

Sound business practice requires the evaluation of whether it is in the State's best interest to renew a contract or to competitively rebid the contract. For many of the statewide contracts selected for testing, no documentation was available to substantiate the decision to renew the contract instead of competitively rebidding the contract.

Some of the contracts tested were renewed for several years. On two of the statewide contracts there was no documentation showing the basis for renewing the contracts. The IDEXX Distribution Corp. contract and the IBM contract were renewed, but there was no documentation showing the reason for renewing the contracts. On some of the contracts for individual agencies, the agencies were only asked by telephone or e-mail if they felt the contracts should be renewed. The only documentation for these renewals were the agencies' responses stating whether they wanted the contract renewed or not.

PURCHASING/CONTRACTING PROCEDURES
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Agency 65 - Department of Administrative Services (Continued)

Materiel Division (Continued)

According to correspondence received from Materiel Division, a decision process exists regarding when to renew or not to renew contracts. As of the date of this letter, Materiel Division has not communicated to us the process used or documentation to support that the process was used.

We recommend the Materiel Division document the evaluation of contracts and the basis for the decision to renew or competitively rebid contracts.

Agency Response: Contract terms are developed to create the best advantage for the State. For instance, Materiel Division's standard terms and conditions allow the State to cancel a contract without cause. Also, though the State may intend to contract with a specific company for a three year period, often it is in the State's best interest to contract for the first year and have two renewal options because it provides the State greater control and improves the level of service. In an instance like this, no analysis is required for renewal. Conducting an analysis and providing documentation of such analysis would unnecessarily waste time and resources.

APA's Response: We strongly disagree with your response that "Conducting an analysis and providing documentation of such analysis would unnecessarily waste time and resources." Our response to your response starts with two questions. Do economics, vendors, technology, and other contractual factors change over time? If they do change, would you know if the contract that has been renewed for years is still in the State's best interest if an analysis has not been done?

We think the answer to the first question is "yes." Factors do change. We think the answer to the second question is that without some periodic analysis of a contract, management would not know if a contract that has been renewed for years is still in the State's best interest.

We strongly encourage you to reconsider implementing our recommendation.

4. Documentation supporting bid evaluations

Materiel Division did not have documentation that showed the individual scores that were combined into the final bid tabulation for contract SCA-0116. In addition, the Division did not have any written policies and procedures that required the individual bid tabulations to be retained with the contract file.

PURCHASING/CONTRACTING PROCEDURES
AND CONTROLS FOR THE STATE OF NEBRASKA

**PROCEDURES PERFORMED AND
COMMENTS AND RECOMMENDATIONS**

Agency 65 - Department of Administrative Services (Continued)

Materiel Division (Continued)

Neb. Rev. Stat. Section 81-161 R.S.Supp., 2002 requires, "All purchases, leases, or contracts which by law are required to be based on competitive bids shall be made to the lowest responsible bidder..." Good internal control also requires keeping documentation to support the selection of the lowest responsible bidder.

We recommend Materiel Division keep the individual tabulations to support the final tabulation of the lowest responsible bidder. We also recommend the Materiel Division develop written policies and procedures that require the individual tabulations to be retained with the contract files as support for the final bid tabulation.

Agency Response: State Statute 81-161 applies to purchases of goods. Contract SCA-0116 was a service contract and therefore not governed by 81-161. Service contracts are currently governed by Executive Order 00-04, although SCA-0116 was processed prior to implementation of this Executive Order. Executive Order 00-04 does not require determination of the "lowest responsible bidder." The current procedure for service contracts is that the scoring documentation must be kept on file. Materiel Division has a process in place that requires documentation of an award to be included in the bid file.

5. Purchase Splitting

Neb. Rev. Stat. Section 81-1118(5)(b) R.S.Supp., 2002 states purchases equal to or exceeding \$5,000 but less than \$10,000 shall be let by a competitive informal bidding process through the Materiel Division. Neb. Rev. Stat. Section 81-1118(5)(e) R.S.Supp., 2002 states, "All contracts for purchases and leases shall be bid as a single whole item. In no case shall contracts be divided or fractionated in order to produce several contracts which are of an estimated value below that required for competitive bidding."

Orders to Walling Water Management and Buller Fixture Co. for goods totaling \$77,506 and \$122,436 were separated into multiple purchases and purchased under the agencies' Direct Purchase Authority, and thus did not go through a competitive bidding process.

State Building Division made over \$19,000 of purchases from Walling Water Management during fiscal year 2002. This was well over the amount that requires purchases to be competitively bid. The Department of Corrections and the Nebraska State College System spent over \$27,000 each.

PURCHASING/CONTRACTING PROCEDURES
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**PROCEDURES PERFORMED AND
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Agency 65 - Department of Administrative Services (Continued)

Materiel Division (Continued)

The Department of Corrections spent over \$73,000 on purchases from Buller Fixture Company. The Department of Health and Human Services spent over \$47,000 on purchases from Buller Fixture Company. These expenditures were well over the amount that requires competitive bidding.

The Department was not in compliance with State Statute. Furthermore, it is in the best interest of the State to bid out such purchases.

We recommend the Department review its policies and procedures to ensure purchases are not fractionated, avoiding competitive bidding requirements. We also recommend the Department monitor direct purchases to determine if it would be in the best interest of the State to have a statewide contract with vendors where multiple agencies are making purchases.

Agency Response: The Materiel Division monitors direct and competitively bid purchases to determine where statewide contracts are needed and would be of value. Materiel Division has set up numerous statewide contracts in the last few years for products such as office, electrical, and plumbing supplies, newspaper subscriptions, and vehicles. With implementation of the NIS system, information used to determine the need for statewide contracts, as well as information needed to negotiate such contracts, will increase.

The intent of the prohibition against purchase splitting is to eliminate situations where an agency needs to make one \$18,000 purchase and, rather than competitively bid, they split the purchase into two orders of \$9,000, thus avoiding the bidding requirements. Neither the Department of Administrative Services nor any of its divisions have violated this statute. Further, we do not believe the examples you have provided violate this statute and likely do not even warrant a statewide contract.

For example, you cite the fact that State Building Division made over \$19,000 of purchases from Walling Water Management in fiscal year 2002. These purchases were numerous purchases every month from different facilities across the state in small amounts ranging from \$30.00 to \$2,000. The individual purchases were for a variety of products including Cooling Water Treatment, PVDF Injection Assy, Hardness Reagent, Broad Spectrum Microbicide, Chem Film Start-Up Lay-Up Treatment, Bromine Microbicide/algaecide, boiler water treatment, DPD free chlorine/pwd, hardness indicator, neutralizing solution, potassium iodide, return line treatment, lift station treatment, and Pulsafeeder A Plus 22 GPD. Most of these products have a very short

PURCHASING/CONTRACTING PROCEDURES
AND CONTROLS FOR THE STATE OF NEBRASKA

**PROCEDURES PERFORMED AND
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Agency 65 - Department of Administrative Services (Continued)

Materiel Division (Concluded)

Agency Response, Concluded:

shelf-life and the quantities needed vary from facility to facility and from year to year depending on the maintenance and repairs needed on various equipment. Therefore, it would be inappropriate for Building Division to combine these purchases into one purchase per year. Additionally, any savings to be gained by negotiating statewide contracts is likely to be minimal given the numerous products purchased that would each have to have a separate contract.

6. Purchase of Goods Under an Expired Contract Award

Neb. Rev. Stat. Section 81-1118 (5)(a) R.R. Supp., 2002 and the Department of Administrative Services (DAS) – Materiel Division Procurement Manual state a competitive formal process should be used for the procurement of goods and materials for \$10,000 or more. A contract is awarded to the lowest responsible vendor that meets the requirement of the bid. Furthermore, good internal control requires the renewal of a contract before the term of the contract has ended. The renewed contract award should be signed by the appropriate Materiel Division personnel and clearly indicate any new negotiated terms, conditions, or prices.

The contract award with Data Maxx Applied Technologies, Inc., a statewide contract originally negotiated and approved by Materiel Division, expired on June 30, 2000. The contract award provided an option for renewal; however, no documentation of the renewal was provided. Per the purchase invoice, goods were purchased and shipped from the vendor to the State Patrol (the ultimate user of the goods) on May 29, 2001. The Department provided an e-mail from the State Patrol confirming the “new” negotiated price for the goods dated May 9, 2001.

The Department provided a purchase requisition and a letter from Division of Communications requesting sole-source purchasing authority on the purchase requisition. Both were dated December 4, 2001, approximately six months after the purchase of the goods. However, there was no indication the purchase requisition related to the purchase from May 29, 2001.

The Materiel Division did not comply with State Statute or its own policies and procedures.

We recommend the Department comply with State Statute and DAS policies and procedures to ensure a contract is renewed before the purchase of goods is made.

Agency Response: Materiel Division did not violate state statute or its policies and procedures as it did not authorize or make the referenced purchase.

PURCHASING/CONTRACTING PROCEDURES
AND CONTROLS FOR THE STATE OF NEBRASKA

**PROCEDURES PERFORMED AND
COMMENTS AND RECOMMENDATIONS**

Agency 65 - Department of Administrative Services (Continued)

Division of Communications

Per the Nebraska Accounting System (NAS), the Division of Communications disbursed the amounts in the following three broadly classified categories of purchases for the fiscal year ending June 30, 2002:

- Purchase of Materials, Supplies, and Equipment (\$1,736,022)
- Purchase of Services (\$16,819,194)
- Lease/Rent Agreements (\$1,064,711)

Agency Response: These figures, including the break-down of debits, credits, net amount, and transaction count, included in the addendum, are correct. While we do not question the validity of these figures, we do question how this information is relevant to your report on your review of one contract by the Division of Communications.

The following procedures were performed:

- Requested the completion of an Internal Control Questionnaire to document the procedures/controls your Department had over purchases to ensure compliance with all laws and regulations.
- Selected and tested the following transactions, and related purchasing documentation, to determine if key procedures/controls were in place to ensure purchases were in accordance with all laws and regulations:
 - Data Maxx Applied Technologies, Inc. – Doc # 9340767 (\$67,815.00)

This payment was for software enhancements to upgrade software that was in use at the State Patrol.

Based on the above-mentioned procedures, we noted no exceptions in our examination of the above transaction and its related supporting documentation.

PURCHASING/CONTRACTING PROCEDURES
AND CONTROLS FOR THE STATE OF NEBRASKA

**PROCEDURES PERFORMED AND
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Agency 65 - Department of Administrative Services (Continued)

Information Management Services Division

Per the Nebraska Accounting System (NAS), Information Management Services disbursed the amounts in the following three broadly classified categories of purchases for the fiscal year ending June 30, 2002:

- Purchase of Materials, Supplies, and Equipment (\$4,414,848)
- Purchase of Services (\$21,751,432)
- Lease/Rent Agreements (\$8,639,350)

Agency Response: These figures, including the break-down of debits, credits, net amount, and transaction count, included in the addendum, are correct. While we do not question the validity of these figures, we do question how this information is relevant to your report on your review of 2 contracts and 10 other transactions by the Information Management Services Division.

The following procedures were performed:

- Requested the completion of an Internal Control Questionnaire to document the procedures/controls your Department had over purchases to ensure compliance with all laws and regulations.
- Selected and tested the following transactions, and related purchasing documentation, to determine if key procedures/controls were in place to ensure purchases were in accordance with all laws and regulations:
 - Black Box Corporation – Doc # 344503 (\$5,047.21)

This was a purchase of data communication equipment.

- IBM Corporation – Doc # 345187 (\$318,377.34)

This was a contractual payment for enterprise software and services.

- Business Security Software, Inc. – Doc # 345661 (\$92,655.50)
- J. Douglas Scott & Associates – Doc # 344923 (\$77,603.75)
- Analysts International Corp. – Doc # 344648 (\$69,645.00)
- Partners In Results, Inc. – Doc # 344630 (\$52,901.50)
- CSG Systems, Inc. (Planet Consulting, Inc.) – Doc # 345589 (\$83,661.75)

PURCHASING/CONTRACTING PROCEDURES
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Agency 65 - Department of Administrative Services (Continued)

Information Management Services Division (Continued)

The five documents listed above were contractual payments for professional data processing services. Planet Consulting, Inc. was a division of CSG Systems, Inc.

Based on the above-mentioned procedures, the following comments are made for your consideration:

1. Requested Documentation Not Received

We requested information and documentation regarding the contracts between Information Management Services and several vendors. Certain documentation and information was not supplied regarding the contracts. The following is a list of the information and documentation that was requested:

Document #0345187 – IBM Corporation

1. Request access to the contract file. File should contain the RFP, bid tabulation, and documentation supporting the determination and selection of the lowest responsible bidder. (Documentation)

Agency Response: You requested to review the contract file, you did not want copies of the file. The Department complied with your request by indicating in our prior response to you that "Arrangements to review this file can be made by contacting Vern Halstrom at 471-2138." To our knowledge you did not contact Vern, who had been instructed to provide you access to the contract upon your request.

APA's Response: See response to Department of Administrative Services Comment #2 – Requested Documentation Not Received on page 87.

2. Division Not in Compliance with Direct Purchase Procedures

The following items were noted for the purchase from Black Box Corporation:

- The Division did not have a monthly direct purchase report on file at DAS Materiel Division

PURCHASING/CONTRACTING PROCEDURES
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Agency 65 - Department of Administrative Services (Continued)

Information Management Services Division (Continued)

- There was no drug-free workplace policy on file
- Items purchased were available on a statewide contract and there was no documentation showing why the items were not purchased from the statewide contract

Neb. Rev. Stat. Section 81-161.03 R.R. Supp., 2002, requires agencies receiving direct purchase authority to “report their acts and expenditures under such orders to the materiel division in writing . . .”

A memo dated July 1, 2001, which relates to Direct Market Purchase Authority, was sent to all agencies, boards, and commissions from Doni Peterson, Administrator of Materiel Division and is included in the DAS – Materiel Procurement Manual for Goods. It states, “[Agencies] will be responsible for ensuring that vendors you purchase from support a Drug-free Workplace Environment.” It also states, “Agencies are required to submit monthly reports for ALL purchases made from \$500.00 to \$4999.99.”

The DAS – Materiel Procurement Manual for Goods states under Direct Purchase Authority that, “Items for which contracts have been established by the DAS – Materiel Division may NOT be purchased from other sources.”

We recommend the Information Management Services Division comply with the direct purchase procedures set forth by Materiel Division. We recommend the Division develop policies to ensure they comply with the procedures for direct purchase authority.

Agency Response: A review with the Materiel Division revealed that none of the items purchased from Black Box were available on a statewide contract.

3. Written Policies and Procedures

Information Management Services Division did not have any written policies or procedures regarding the request for resumes process or the process to ensure bids are “secure and unopened.” The resumes process involves the bidding of professional data-processing contractual services. The bids are required to remain unopened to ensure they do not become public before the official opening date.

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Agency 65 - Department of Administrative Services (Continued)

Information Management Services Division (Concluded)

Good internal control requires having written policies and procedures. Written policies and procedures need to be available to ensure that everyone is following the correct process. These policies and procedures also help to ensure the Division complies with all the applicable statutes.

We recommend the Division develop written policies and procedures to document the process that is followed.

Agency Response: The contractors and related payments you reviewed were completed under the Division's previous contracting policies. Subsequent to issuing the request for resumes and related contract work orders that you reviewed, the Information Management Services Division completed a competitive bid process for companies who will now supply the Division's contract worker needs. The Division is no longer operating under the process you reviewed.

Task Force for Building Renewal

Per the Nebraska Accounting System (NAS), the Task Force for Building Renewal disbursed the amounts in the following four broadly classified categories of purchases for the fiscal year ending June 30, 2002:

- Purchase of Materials, Supplies, and Equipment (\$43,459)
- Purchase of Services (\$635,549)
- Construction/Repair of Buildings and Roads (\$10,532,577)
- Lease/Rent Agreements (\$20,879)

Department Response: These figures, including the break-down of debits, credits, net amount, and transaction count, included in the addendum, are correct. While we do not question the validity of these figures, we do question how this information is relevant to your report on your review of one contract by the Task Force for Building Renewal.

The following procedures were performed:

- Requested the completion of an Internal Control Questionnaire to document the procedures/controls your Department had over purchases to ensure compliance with all laws and regulations.

PURCHASING/CONTRACTING PROCEDURES
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Agency 65 - Department of Administrative Services (Concluded)

Task Force for Building Renewal (Concluded)

- Selected and tested the following transactions, and related purchasing documentation, to determine if key procedures/controls were in place to ensure purchases were in accordance with all laws and regulations:
 - York International Co. – Doc # 2458532 (\$311,749.60)

This payment was for the purchase of equipment used in a building renewal project.

Based on the above-mentioned procedures, we noted no exceptions in our examination of the above transaction and its related supporting documentation.

Agency 78 - Commission on Law Enforcement and Criminal Justice

Per the Nebraska Accounting System (NAS), the Commission disbursed the amounts in the following four broadly classified categories of purchases for the fiscal year ending June 30, 2002:

- Purchase of Materials, Supplies, and Equipment (\$570,953)
- Purchase of Services (\$1,064,417)
- Construction/Repair of Buildings and Roads (\$1,349,802)
- Lease/Rent Agreements (\$558,358)

The following procedures were performed:

- Requested the completion of an Internal Control Questionnaire to document the procedures/controls the Commission had over purchases to ensure compliance with all laws and regulations.
- Selected and tested the following transactions, and related purchasing documentation, to determine if key procedures/controls were in place to ensure purchases were in accordance with all laws and regulations:
 - Swanson Corp. – Doc # 2468553 (\$12,375.51)

This contract was for the cafeteria food service that was supplied at the Nebraska Law Enforcement Training Center in Grand Island.

PURCHASING/CONTRACTING PROCEDURES
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Agency 78 - Commission on Law Enforcement and Criminal Justice
(Concluded)

- Access Data Corp. – Doc # 8468469 (\$78,000.00)

This contract was for the purchase of law enforcement software installation and training.

Based on the above-mentioned procedures, the following comment is made for your consideration:

1. Internal Control Questionnaire Not Completed

The Commission did not complete an Internal Control Questionnaire (ICQ) as requested. Good internal controls are required to ensure compliance with all laws and regulations. The documentation of these controls, through the use of a questionnaire, is key to obtaining a general understanding of the purchasing/contracting policies, procedures, and controls the Commission has in place to ensure their compliance with all laws and regulations. The Commission indicated they did not answer our questions based upon a directive from the Governor.

In a memorandum to Code Agencies, dated July 16, 2002, the Governor indicated the validity of the ICQ was under review by the Attorney General; therefore, his Office was not responding to the ICQ pending further review. He further directed all Code Agencies to not respond to the ICQ at that time. As of the date of this letter neither the Governor nor the Attorney General has communicated to us the results of the Attorney General's review. Because of this directive we were unable to complete the second objective above, as originally planned. Further, such a refusal to cooperate with the auditors significantly diminishes the value in having an independent review of the Commission's procedures.

See the *Restriction on the Scope of the Examination* section on page 2 of this letter.

Agency 84 - Department of Environmental Quality

Per the Nebraska Accounting System (NAS), your Department disbursed the amounts in the following three broadly classified categories of purchases for the fiscal year ending June 30, 2002:

- Purchase of Materials, Supplies, and Equipment (\$864,479)
- Purchase of Services (\$15,407,880)
- Lease/Rent Agreements (\$680,800)

PURCHASING/CONTRACTING PROCEDURES
AND CONTROLS FOR THE STATE OF NEBRASKA

**PROCEDURES PERFORMED AND
COMMENTS AND RECOMMENDATIONS**

Agency 84 - Department of Environmental Quality (Continued)

The following procedures were performed:

- Requested the completion of an Internal Control Questionnaire to document the procedures/controls your Department had over purchases to ensure compliance with all laws and regulations.
- Selected and tested the following transactions, and related purchasing documentation, to determine if key procedures/controls were in place to ensure purchases were in accordance with all laws and regulations:

Materials, Supplies, and Equipment

- Geotech Environmental Equipment Inc. – Doc # 2476085 (\$14,080)

This purchase was a price agreement for filters. There was no contract associated with this transaction.

Services

- HDR Engineering, Inc. – Doc # 8473534 (\$725,445)
- HDR Engineering, Inc. – Doc # 2476087 (\$1,528,495)

Both payments were for services related to the low-level radioactive waste program. The contract was for program management consultant services, technical services, and maintaining a project office until the program was completed. The agreement was for the cost of services, to include but not limited to hourly rates for personnel, reimbursable expenses, and costs associated with subconsultants.

Based on the above-mentioned procedures, the following comments and recommendations are made for your consideration:

1. Internal Control Questionnaire Not Completed

The Department did not complete an Internal Control Questionnaire (ICQ) as requested. Good internal controls are required to ensure compliance with all laws and regulations. The documentation of these controls, through the use of a questionnaire, is key to obtaining a general understanding of the purchasing/contracting policies, procedures, and controls the Department has in place to ensure their compliance with all laws and regulations. The Department indicated they did not answer our questions based upon a directive from the Governor.

PURCHASING/CONTRACTING PROCEDURES
AND CONTROLS FOR THE STATE OF NEBRASKA

**PROCEDURES PERFORMED AND
COMMENTS AND RECOMMENDATIONS**

Agency 84 - Department of Environmental Quality (Concluded)

In a memorandum to Code Agencies, dated July 16, 2002, the Governor indicated the validity of the ICQ was under review by the Attorney General; therefore, his Office was not responding to the ICQ pending further review. He further directed all Code Agencies to not respond to the ICQ at that time. As of the date of this letter neither the Governor nor the Attorney General has communicated to us the results of the Attorney General's review. Because of this directive we were unable to complete the second objective above, as originally planned. Further, such a refusal to cooperate with the auditors significantly diminishes the value in having an independent review of the Department's procedures.

See the *Restriction on the Scope of the Examination* section on page 2 of this letter.

2. Documentation of Review by Legal Counsel

Good business practice, and good internal controls over contracts, would require that certain contracts be reviewed by a person or persons, who has the legal expertise and knowledge to determine if the contract is in compliance with federal and State laws and regulations governing contracts, and to ensure the best interest of the State is being served. In addition, good internal controls would require that when a legal review is performed that it be documented. This would document the review in accordance with management's directives.

The Department refused to provide any information regarding the legal review of the HDR Engineering, Inc. contract.

When a review is not documented there is no assurance that the review was actually performed.

We recommend the legal review of contracts be documented. This can be accomplished by legal counsel signing a checklist or routing sheet for the contract, or by legal counsel drafting correspondence stating the recommended changes to the contract or approval of the contract.

Agency 85 - Public Employees Retirement Systems

Per the Nebraska Accounting System (NAS), the Systems disbursed the amounts in the following three broadly classified categories of purchases for the fiscal year ending June 30, 2002:

- Purchase of Materials, Supplies, and Equipment (\$616,416)
- Purchase of Services (\$512,622)
- Lease/Rent Agreements (\$126,274)

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**PROCEDURES PERFORMED AND
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Agency 85 - Public Employees Retirement Systems (Concluded)

The following procedures were performed:

- Requested the completion of an Internal Control Questionnaire to document the procedures/controls the Systems had over purchases to ensure compliance with all laws and regulations.
- Selected and tested the following transactions, and related purchasing documentation, to determine if key procedures/controls were in place to ensure purchases were in accordance with all laws and regulations:

Materials, Supplies, and Equipment

- Moore Business Forms – Doc # 362603 (\$17,250)

This was a purchase of certified mailers for fund statements, and there was no contract associated with this transaction.

Based on the above-mentioned procedures, we noted no exceptions in our examination of the above transaction and its related supporting documentation.

PURCHASING/CONTRACTING PROCEDURES
AND CONTROLS FOR THE STATE OF NEBRASKA
SCHEDULE OF PURCHASES BY AGENCY BY TYPE OF PURCHASE
FOR THE FISCAL YEAR ENDED JUNE 30, 2002

Agency Name	Agency Number	Construction	Goods	Services	Leases	Other	Agency Totals
Legislative Council	3	271,992	826,004	498,940	105,258		1,702,194
Supreme Court	5		943,682	2,362,430	171,263		3,477,375
Governor	7		124,190	259,701	56,960		440,851
Lieutenant Governor	8		3,709	2,841			6,550
Secretary of State	9		438,446	1,857,697	212,096		2,508,239
Auditor of Public Accounts	10		71,908	762,728	27,626		862,262
Attorney General	11		639,178	249,244	276,098		1,164,520
State Treasurer	12		663,545	1,079,471	356,654		2,099,670
Education	13	60,148	1,971,701	9,996,481	1,259,137		13,287,467
Public Service Commission	14	1,834	111,157	1,255,222	144,533		1,512,746
Pardons	15		29,988	9,138			39,126
Revenue	16		1,352,486	12,238,488	870,831		14,461,805
Aeronautics	17	487,670	252,559	854,774	248,082		1,843,085
Agriculture	18		688,427	2,319,420	370,897		3,378,744
Banking and Finance	19		107,709	110,343	211,140		429,192
HHS Regulation and Licensure	20	7,070	1,547,671	3,833,075	845,751	(407)	6,233,160
Fire Marshal	21		197,144	268,702	87,727		553,573
Insurance	22		117,339	297,501	214,027		628,867
Labor	23		1,745,974	5,249,030	1,374,521		8,369,525
Motor Vehicles	24		5,115,986	1,865,006	743,273		7,724,265
Health and Human Services	25	3,654,568	19,065,719	52,090,506	3,388,884		78,199,677
HHS Finance and Support	26	32,783	4,389,776	50,781,318	1,935,266		57,139,143
Roads	27	320,575,197	43,439,136	45,533,884	2,750,664	11,297,430	423,596,311
Veterans' Affairs	28		13,882	13,709	22,090		49,681
Natural Resources	29		433,032	5,337,279	219,999		5,990,310
Electrical Board	30		28,246	53,075	19,049		100,370
Military Department	31	1,065,793	491,607	3,070,312	68,489		4,696,201
Educational Lands and Funds	32	446,567	212,266	643,610	27,739		1,330,182
Game and Parks Commission	33	7,509,304	9,082,607	11,080,625	413,374	1,932,072	30,017,982
Library Commission	34		223,257	92,305	433,235		748,797
Liquor Control Commission	35		48,564	14,628	26,280		89,472

(Continued)

PURCHASING/CONTRACTING PROCEDURES
AND CONTROLS FOR THE STATE OF NEBRASKA
SCHEDULE OF PURCHASES BY AGENCY BY TYPE OF PURCHASE
FOR THE FISCAL YEAR ENDED JUNE 30, 2002

Agency Name	Agency Number	Construction	Goods	Services	Leases	Other	Agency Totals
Racing Commission	36		17,547	31,345	7,272		56,164
Workers' Compensation Court	37		211,892	228,608	173,095		613,595
Status of Women	38		24,783	7,351	6,658		38,792
Brand Committee	39		70,079	433,134	13,791		517,004
Motor Vehicle Industry Licensing Board	40		12,426	20,062	8,258		40,746
Real Estate Commission	41		29,665	140,559	37,857		208,081
Barber Examiners	45		2,154	4,158	2,779		9,091
Correctional Services	46	5,771,712	24,598,822	15,567,888	423,812		46,362,234
Educational Telecommunications Comm.	47		1,843,873	3,097,694	2,917,063		7,858,630
Postsecondary Education	48		30,403	29,407	36,364		96,174
State Colleges	50	4,496,442	5,342,695	13,023,488	530,645		23,393,270
Agriculture, State Board of	52			42,616			42,616
Real Estate Appraiser Board	53		13,055	15,408	2,589		31,052
Historical Society	54	73,091	300,229	818,568	242,421		1,434,309
Wheat Board Development	56		14,877	746,557	11,976		773,410
Oil and Gas Conservation Commission	57		42,358	136,125	18,089		196,572
Engineers and Architects	58		72,117	46,322	9,554		127,993
Geologists	59		656	3,502			4,158
Ethanol Board	60		75,058	207,455	13,239		295,752
Dairy Industry Development Board	61			1,155,376	45		1,155,421
Land Surveyors	62		832	4,811	2,102		7,745
Public Accountancy	63		16,752	70,683	34,606		122,041
State Patrol	64		6,001,293	3,590,232	1,065,720		10,657,245
Administrative Services	65	16,972,736	24,163,419	74,466,632	19,769,840		135,372,627
Abstracters Board of Examiners	66		2,117	2,441	2,601		7,159
Equal Opportunity Commission	67		97,704	79,395	92,318		269,417
Mexican-Americans	68		7,447	5,496	1,017		13,960
Arts Council	69		54,620	146,970	58,850		260,440
Foster Care Review Board	70		98,075	133,141	49,616		280,832
Economic Development	72		1,658,358	2,370,662	144,977		4,173,997
Landscape Architects	73		30	276			306

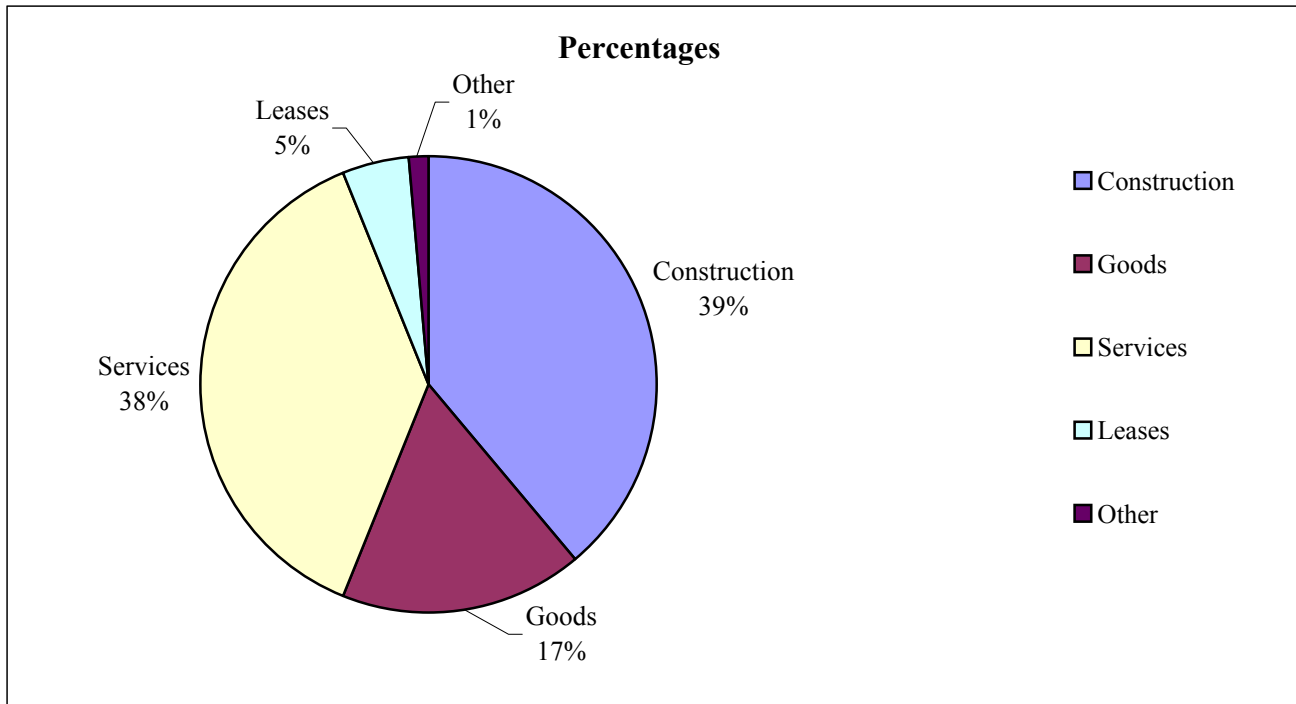
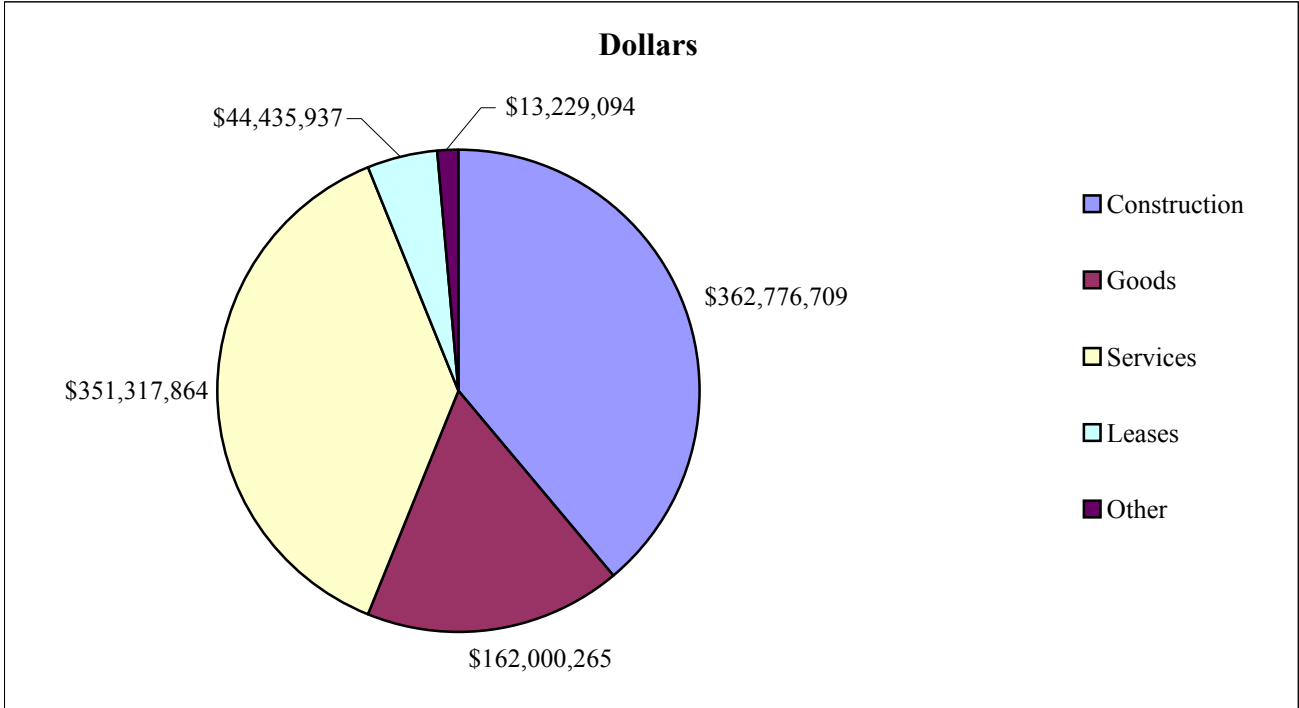
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PURCHASING/CONTRACTING PROCEDURES
AND CONTROLS FOR THE STATE OF NEBRASKA
SCHEDULE OF PURCHASES BY AGENCY BY TYPE OF PURCHASE
FOR THE FISCAL YEAR ENDED JUNE 30, 2002

Agency Name	Agency Number	Construction	Goods	Services	Leases	Other	Agency Totals
Power Review Board	74		12,648	47,042	5,160		64,850
Investment Council	75		32,921	327,848	24,996		385,765
Indian Affairs	76		11,114	27,298			38,412
Industrial Relations	77		4,521	3,202	10,021		17,744
Law Enforcement and Criminal Justice	78	1,349,802	570,954	1,064,417	558,358		3,543,531
Blind and Visually Impaired	81		147,225	244,248	243,760		635,233
Deaf and Hard of Hearing	82		47,725	128,034	43,413		219,172
Environmental Quality	84		864,480	15,407,881	680,801		16,953,162
Public Employees Retirement Board	85		616,417	512,622	126,274		1,255,313
Dry Bean Commission	86		31,363	229,980	1,993		263,336
Accountability and Disclosure Commission	87		12,258	16,835	1,436		30,529
Corn Board	88		52,106	1,960,595	13,475		2,026,176
Railway Council	90			250			250
Grain Sorghum Board	92		9,263	135,563	6,144		150,970
Tax Equalization and Review Commission	93		49,241	19,872	15,732		84,845
Public Advocacy	94		18,203	27,478	33,434		79,115
Rural Development Commission	95		18,054	89,985	23,459		131,498
Property Assessment and Taxation	96		321,537	366,872	89,381		777,790
TOTALS BY CATEGORY		362,776,709	162,000,261	351,317,867	44,435,934	13,229,095	933,759,866

(Concluded)

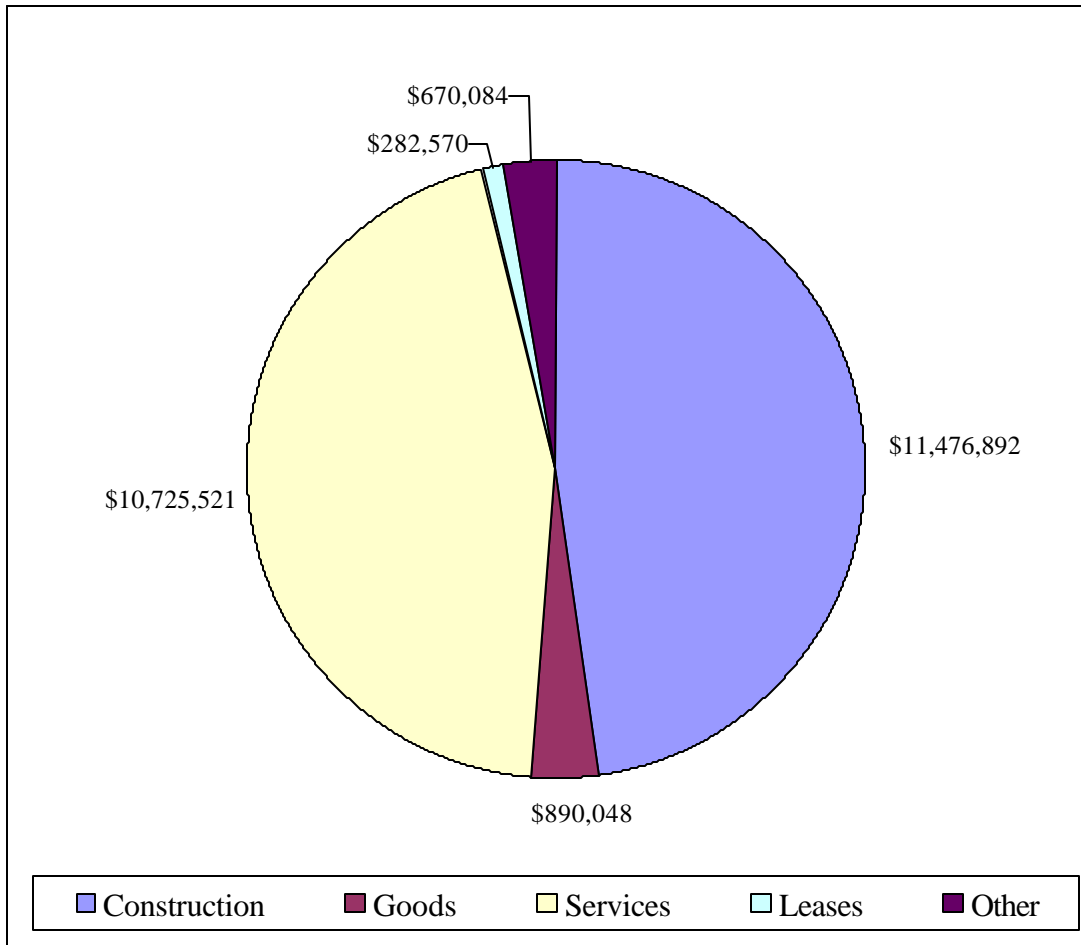
PURCHASING/CONTRACTING PROCEDURES
AND CONTROLS FOR THE STATE OF NEBRASKA
SCHEDULE OF PURCHASES BY TYPE OF PURCHASE
For the Fiscal Year Ended June 30, 2002



PURCHASING/CONTRACTING PROCEDURES
AND CONTROLS FOR THE STATE OF NEBRASKA

SCHEDULE OF PURCHASES TESTED BY TYPE OF PURCHASE

For the Fiscal Year Ended June 30, 2002



A total of 115 transactions with a total dollar amount of \$24,045,117 were tested.

Purchase of Materials, Supplies, Equipment - We selected a total of 44 transactions. The total amount of these purchases was \$890,049.

Purchase of Services - We selected a total of 47 service transactions. The total amount of these purchases was \$10,725,521.

Construction/Repair of Buildings and Roads - We selected a total of 16 construction transactions. The total amount of these transactions was \$11,476,892.

Lease/Rent Agreements - We selected a total of 6 lease/rent transactions. The total amount of these payments was \$282,570.

Other Purchases - We selected a total of 2 other purchases. The total amount of these purchases was \$670,085.

PURCHASING/CONTRACTING PROCEDURES
AND CONTROLS FOR THE STATE OF NEBRASKA

APPENDIX A

AGENCIES WHERE TRANSACTIONS WERE TESTED

<u>Agency</u>	<u>Agency Number</u>
Legislative Council	3
State Court Administrator / Court of Appeals / Nebraska Supreme Court /State Probation Administration	5
Office of the Governor / Governor's Policy Research and Energy Office	7
Office of the Secretary of State	9
Office of the Attorney General	11
Office of the State Treasurer	12
Department of Education / Professional Practice Commission	13
Department of Revenue / State Athletic Commission	16
Department of Aeronautics	17
Department of Agriculture	18
Department of Insurance	22
Department of Labor	23
Department of Motor Vehicles	24
Department of Health and Human Services	25
Department of Health and Human Services Finance and Support	26
Department of Roads	27
Natural Resources Commission	29
Military Department	31
Board of Educational Lands and Funds	32
Game and Parks Commission	33
Workers' Compensation Court	37
Department of Correctional Services	46
Educational Telecommunications Commission	47
State College System; Chadron, Peru, and Wayne State Colleges	50
State Patrol	64
Department of Administrative Services	65
Commission on Law Enforcement and Criminal Justice	78
Department of Environmental Quality	84
Public Employees Retirement Systems	85

PURCHASING/CONTRACTING PROCEDURES
AND CONTROLS FOR THE STATE OF NEBRASKA

APPENDIX B

AGENCIES WHERE TRANSACTIONS WERE NOT TESTED

<u>Agency</u>	<u>Agency Number</u>
Office of the Lieutenant Governor	8
Public Service Commission	14
Pardon Board/Parole Board	15
Department of Banking and Finance	19
Department of Health and Human Services Regulation and Licensure	20
Office of the State Fire Marshal	21
Department of Veterans' Affairs	28
State Electrical Division	30
Library Commission	34
Liquor Control Commission	35
State Racing Commission	36
Women's Commission	38
Brand Committee	39
Motor Vehicle Industry Licensing Board	40
Real Estate Commission	41
Board of Barber Examiners	45
Coordinating Commission for Postsecondary Education	48
State Board of Agriculture	52
Real Estate Appraiser Board	53
Historical Society	54
Wheat Board	56
Oil and Gas Conservation Commission	57
Board of Examiners for Engineers and Architects	58
Board of Geologists	59
Ethanol Board	60
Dairy Industry Development Board	61
Board of Examiners Land Surveyors	62
Board of Public Accountancy	63
Abstracters Board of Examiners	66
Equal Opportunity Commission	67
Mexican American Commission	68
Arts Council	69
Foster Care Review Board	70
Department of Economic Development / Manufacturing Extension Partnership	72
State Board of Landscape Architects	73
Power Review Board	74
Investment Council	75
Commission on Indian Affairs	76
Commission of Industrial Relations	77

PURCHASING/CONTRACTING PROCEDURES
AND CONTROLS FOR THE STATE OF NEBRASKA

APPENDIX B (Concluded)

AGENCIES WHERE TRANSACTIONS WERE NOT TESTED

<u>Agency</u>	<u>Agency Number</u>
Commission for the Blind and Visually Impaired	81
Commission for the Deaf and Hard of Hearing	82
Community College System	83
Dry Bean Commission	86
Accountability and Disclosure Commission	87
Corn Board	88
Grain Sorghum Board	92
Tax Equalization and Review Commission	93
Commission on Public Advocacy	94
Rural Development Commission	95
Property Assessment and Taxation	96

PURCHASING/CONTRACTING PROCEDURES
AND CONTROLS FOR THE STATE OF NEBRASKA

APPENDIX C

LIST OF NEBRASKA ACCOUNTING SYSTEM (NAS) CODES BY TYPE OF PURCHASE

MATERIALS, SUPPLIES, AND EQUIPMENT	
NAS Account Number	Description
4215	Publications and Printing Expense
4311-4319	Office Supplies Expense
4331-4338	Household and Institutional Supplies Expense
4339	Food Expense
4341	Agricultural Supplies Expense
4342	Educational and Recreational Supplies Expense
4343	Engineering, Technical and Communication Supplies Expense
4344	Construction and maintenance Supplies Expense
4345-4349	Miscellaneous Supplies Expense
4351-4369	Medical Supplies
4371-4379	Laboratory Supplies Expense
4381-4389	Vehicle and Equipment Supplies Expense
4841-4845	Office Equipment
4846-4849	Motor Vehicles
4851-4855	Medical Equipment
4856-4859	Computer Hardware and Software
4861-4865	Communications Equipment
4866-4869	Household/Institutional Equipment
4871-4879	Libraries and Museums
4881-4885	Photography/Media Equipment
4886-4889	Other Personal Property
4891	Inventories Stores-Resale

PURCHASING/CONTRACTING PROCEDURES
AND CONTROLS FOR THE STATE OF NEBRASKA

APPENDIX C (Continued)

SERVICES

NAS Account Number	Description
4112	Temporary Salaries and Wages
4212	Communications Expense (Utility)
4231	Fuel Expense - Heating and Cooling services (Utility)
4232	Electricity Expense (Utility)
4233	Water Expense (Utility)
4261-4289	Repair and Maintenance Expenses
4412	Engineering and Architectural Services Expense
4413	Medical and Clinical Services Expense
4414	Education Services Expense
4415	Accounting and Auditing Services Expense
4416	Management Consultant Services Expense
4417	Laboratory Fees Expense
4418	Janitorial and Security Services Expense
4419	Data Processing Contractual Service Expense
4421-4429	Other Contractual Services Expense
4431-4439	Contractual Services/Volunteer Travel Expense
4441	Century Date Change Services
4451	Legal Services Expense
4452	Gross Proceeds Legal Expense
4481	Insurance Expense

CONSTRUCTION / REPAIR OF BUILDINGS AND ROADS

NAS Account Number	Description
4821-4829	Improvements to Buildings
4831-4839	Improvements to Land

PURCHASING/CONTRACTING PROCEDURES
AND CONTROLS FOR THE STATE OF NEBRASKA

APPENDIX C (Concluded)

LEASE / RENT AGREEMENTS

<u>NAS Account Number</u>	<u>Description</u>
4241-4248	Rent Expenses - includes land, buildings, and other real property
4251-4254	Rent Expenses - includes equipment and other personal property
4255-4259	Rent Expense - Other Personal Property

OTHER PURCHASES

<u>NAS Account Number</u>	<u>Description</u>
4811	Land Purchases
4812-4814	Land Purchases - Optional Account
4815-4819	Purchases of Existing Buildings

PURCHASING/CONTRACTING PROCEDURES
AND CONTROLS FOR THE STATE OF NEBRASKA

APPENDIX D

LIST OF LAWS AND REGULATIONS, BY PURCHASE TYPE, THAT WERE IDENTIFIED AND CONSIDERED DURING THIS EXAMINATION.

Purchase of Materials, Supplies, and Equipment

1. Administrative Services (DAS) - Materiel Procurement Manual for Goods, Exhibit 1-Items for which contracts have been established by the DAS – Materiel Division may NOT be purchased from other sources.
2. Department of Administrative Services (DAS) - Materiel Procurement Manual for Goods, Exhibit 11 - Includes the Standard Conditions and Terms of Bid Solicitation and Offer.

Purchase of Services

1. Nebraska Consultants' Competitive Negotiation Act-Neb. Rev. Stat. Sections 81-1701 to 81-1721 R.R.S. 1999 - The purpose of these sections is to provide managerial control over competitive negotiations by the state for acquisition of professional architectural, engineering, landscape architecture, or land surveying services.
2. Governor's Executive Order No. 00-04 - Selection of Contractual Services

Construction/Repair of Buildings and Roads

A. Buildings

1. Neb. Rev. Stat. Section 72-803 R.R.S. 1996 - Public buildings; construction; improvement and repair; contracts; bidding; procedure; exceptions; review by Attorney General
2. Neb. Rev. Stat. Section 81-1108.15 (3) R.S. Supp., 2002 - State building division; functions and responsibilities; construction
3. Neb. Rev. Stat. Section 81-1108.42 R.R.S. 1999 - Contract for construction, reconstruction, remodeling, or repair of capital facility; final payment; conditions.
4. Neb. Rev. Stat. Section 81-1108.43 R.R.S. 1999 - Capital construction project; prohibited acts; ...No state agency or department shall perform for itself any of the services normally performed by a professional engineer or architect in the preparation of plans and specifications for the construction, reconstruction, or alteration of any building or in the administration of the construction documents and final approval of the project when the total project cost is \$400,000 or more . . .

PURCHASING/CONTRACTING PROCEDURES
AND CONTROLS FOR THE STATE OF NEBRASKA

APPENDIX D (Concluded)

5. Neb. Rev. Stat. Section 81-1114 (4) R.R.S. 1999 - Department of Administrative Services; building division; copies of contracts to be filed with the Legislative Fiscal Analyst.
6. Neb. Rev. Stat. Section 81-1712(1) R.R.S. 1999 - Public notice given if project > \$400,000
7. Title 7 NAC 7-011.01C - All certificates of payments for projects whose total project cost exceed one hundred thousand dollars (\$100,000) shall be submitted to the State Building Division for approval.

B. Roads

1. Neb. Rev. Stat. Section 81-1712(1) R.R.S. 1999 - Public notice given if project > \$400,000
2. Department of Roads Construction Manual
3. Department of Roads Right of Way Manual

Lease/Rent Agreements

1. Neb. Rev. Stat. Section 81-1108.16 (2) R.R.S. 1999 - Lease; approval of Department of Administrative Services
2. Neb. Rev. Stat. Section 81-1108.22 R.R.S. 1999 - State building division; responsibility; office space outside the State Capitol; rental; approval; required; lease contract; filed
3. Neb. Rev. Stat. Section 81-1108.55 R.R.S. 1999 - Competitive bids; award to lowest responsible bidder; elements considered

Other Purchases

None.

PURCHASING/CONTRACTING PROCEDURES
AND CONTROLS FOR THE STATE OF NEBRASKA

APPENDIX E

Internal Control Questionnaire

(Requested by APA to be completed by agencies where transactions were tested)

NOTE: Use as much space as is necessary to answer all questions thoroughly.

GENERAL QUESTIONS

Who reviews a contract to ensure it complies with Federal grant requirements?

Who is the authorized signor of contracts for the agency?

Who reviews the contract for the proper language and legality? (Enforceable, specific terms/conditions)

How is the review documented?

Who verifies payments to the terms of the contract? How is this documented?

Are there any standard templates/models/language used when preparing contracts? YES
NO

If yes, are they reviewed on a periodic basis, and by whom?

Are there a minimum of 15 days between the time formal bids are advertised and the time of their opening? YES NO If not, is there written justification for emergency, sole or specialized source, restrictive bidding, or buyer discretion? YES NO N/A

How do you determine the "lowest responsible bidder"? How is this documented?

Does your agency follow Executive Order 00-04 -- Selection of Contractual Services? YES
NO

Does your agency have its own written policies concerning purchasing/contracting other than the policies set forth by DAS? YES NO

Is your agency aware of any specific Statutes related to the agency's contracts? YES
NO

CONTRACTS FOR GOODS

Bidding Process

Who prepares the conditions and terms for bid solicitation?

How do you obtain bids?

PURCHASING/CONTRACTING PROCEDURES
AND CONTROLS FOR THE STATE OF NEBRASKA

APPENDIX E (Continued)

Where purchases are for more than \$10,000, are bids taken on a competitive *formal* sealed bidding process?

How is this documented?

Where purchases are for more than \$5,000 but less than \$10,000, are bids taken on a competitive *informal* bidding process? How is this documented?

What is the process for receiving bids? Who is in charge of the bidding process?

How are Requests for Proposal/Bids evaluated and documented? Who determines the winning bid?

Purchasing

Who is in charge of the purchasing department?

Who initiates the request to the purchasing dept?

Who prepares the purchase requisition?

Who approves the purchase requisition?

How does your agency handle purchases under \$5,000?

Do you have "direct market purchase authority" from DAS? YES NO If yes, are there any restrictions on purchases?

Who is responsible for reporting purchases under direct market purchase authority between \$500 and \$5,000 to DAS monthly? How is the information collected?

Are all direct market purchases on a competitive basis or unrestricted open market purchases? YES NO How is this documented?

Does your agency have any leases or lease/purchase agreements? YES NO
If yes, is there documentation substantiating the reason to lease instead of purchase?

What processes are in place to prevent a "conflict of interest" between the agency and contracted vendors?

PURCHASING/CONTRACTING PROCEDURES
AND CONTROLS FOR THE STATE OF NEBRASKA

APPENDIX E (Continued)

Enforcement of Contracts

Who prepares/approves specifications for contracts?

Who verifies that the goods contracted for were received and meet all requirements of the contract?

Is there a reconciliation of payments made on a contract to the total specified in the contract?
YES NO If yes, how is this documented?

Who is responsible for ensuring the terms of the contract are enforced?

CONTRACTS FOR SERVICES

Who prepares/approves the request for proposal and contract?

What process is in place to select the winner of the contract?
How is this documented?

Who verifies services contracted for were actually received?
How is this documented?

Who monitors the contract to ensure terms and conditions are being met?
How is this documented?

Are all contracts for more than \$25,000 bid on a competitive basis? YES NO

Do all continuing contracts contain a clause against contingent fees? YES NO

What processes are in place to prevent a "conflict of interest" between the agency and contracted vendors?

CONTRACTS FOR CONSTRUCTION

Bidding Process

Are all projects for more than \$40,000 bid on a competitive basis? YES NO

PURCHASING/CONTRACTING PROCEDURES
AND CONTROLS FOR THE STATE OF NEBRASKA

APPENDIX E (Continued)

Is public notice given when the construction is greater than \$400,000? YES NO
How is this documented?

Is public notice given when professional fees are greater than \$40,000? YES NO
How is this documented?

Do all contracts go to the lowest responsible bidder? YES NO
How is this documented?

Does a certified check or a bid bond accompany all proposals or bids? YES NO
How is this documented?

How many contractors are considered on each project regarding qualifications, approach, and ability to provide service?

Are all firms desiring to provide professional services (as defined in Neb. Rev. Stat. Section 81-1704) certified by the agency as qualified pursuant to the law and the regulations of the agency? YES NO

What processes are in place to prevent a "conflict of interest" between the agency and contracted vendors?

Contractual Requirements

Who prepares/reviews the contracts?

Are all changes on formal contracts conducted by formal change order documents prepared by the architect? YES NO

Are copies of all contracts, change orders, pay orders, and vouchers maintained in an up-to-date project file? YES NO

Is all correspondence with the contractor documented? YES NO

Are on-site inspections made by the agency? YES NO If yes, how are the inspections documented?

Are copies of all written contracts for acquisition, construction, repair, or remodeling, including federal contracts, submitted to DAS building division before the contracts are executed? YES NO

PURCHASING/CONTRACTING PROCEDURES
AND CONTROLS FOR THE STATE OF NEBRASKA

APPENDIX E (Continued)

Contractual payments

Who approves the payments?

Are formal pay orders prepared by the architect used as the basis for all payments on contracts?
YES NO

Are current ledgers maintained on all construction contracts? YES NO
If yes, how often are they updated?

Is the architect's fee revised for negative change orders as well as for positive change orders?
YES NO

Is a final inspection performed before the final payment is made? YES NO

OTHER CONTRACTS

Does your agency rent any non state-owned property? YES NO
If yes, provide a general description of the types of rentals.

Does the agency have any contracts that do not fall within the purchasing/construction/services categories mentioned above? YES NO If yes, provide a description of these types of contracts.

PURCHASING/CONTRACTING PROCEDURES
AND CONTROLS FOR THE STATE OF NEBRASKA

APPENDIX F

Internal Control Questionnaire

(Requested by APA to be completed by agencies
where no transactions were tested)

Agency: _____

Contact Person: _____

Phone #: _____

NOTE: Please use as much space as needed in order to clarify your responses.

What types of contracts does your agency engage in?

In what situations does your agency utilize the DAS Purchasing Bureau to facilitate the contract process?

Was your agency granted “direct market purchase authority” by DAS for fiscal year 2002? What, if any, restrictions were imposed?

Does your agency have written policies and procedures in place regarding contracts for goods, services, or construction projects? If “yes”, please provide a copy of the policies and procedures.

Describe your agency’s process for bidding and awarding contracts.

Describe your agency’s process for reviewing contracts before they are signed.

Does the process involve a review by legal counsel? Is the legal counsel employed by your agency, the Attorney General’s office, or “other”? If “other”, please specify.

How does your agency monitor contract progress?

How does your agency ensure the terms and conditions of the contact are complied with?

How does your agency ensure payments for goods, services, or construction projects under contract are proper? What process is in place to determine that goods, services, or construction projects contracted for were actually received?

PURCHASING/CONTRACTING PROCEDURES
AND CONTROLS FOR THE STATE OF NEBRASKA

APPENDIX G

STATE OF NEBRASKA

Lorelee Byrd
State Treasurer

www.treasurer.org



October 18, 2002

The Honorable Kate Witek
State Auditor
State Capitol Building
Lincoln, Nebraska 68509

Dear Auditor Witek:

#1 In response to your letter of October 8, 2002, I am happy to provide the following additional information. As always, if you have any questions or would like to meet and discuss this response please let me know at your earliest convenience.

#2 From the information I have received from the Attorney General's Office, it appears you had requested an informal opinion, withdrew that request and then after the Governor requested an opinion from the Attorney General you asked for some additional clarification from the Attorney General's Office. It is my understanding that this occurred in late June or early July. I have attached copies of these letters for your review.

#3 In a letter sent to you from the Attorney General dated August 7th, he states in part that he would like any additional information from you concerning the issue of performance audits "**within the next few days**" because he "**had reason to believe that one or more state agencies will be asking for an official Attorney General's opinion concerning Mr. Dunlap's letter of early July ...**"

#4 In my conversation with the Attorney General last week he told me you provided him that additional information on September 27, 2002. The Attorney General also stated to me last week that your outside legal council, **Scott Davis**, **requested the Attorney General further delay any opinion** on the issue of performance audits.

#5 On August 23, 2002 you suggested the Attorney General might have a conflict of interest in answering the request for a legal opinion from the Governor's Office. In a letter dated August 30, 2002 the Attorney General refuted your accusation. He also referenced the fact that you are continuing, "at taxpayer expense to gather information and researching the questions asked by DAS". **In that letter**

PURCHASING/CONTRACTING PROCEDURES
AND CONTROLS FOR THE STATE OF NEBRASKA

APPENDIX G (Continued)

the Attorney General again reiterates that your office is requesting that he hold off on releasing his opinion to the Governor.

#6

Please note that the Attorney General states, "It is our view that it would be prudent for other state agencies to await an Attorney General's opinion in response to the DAS questions prior to state agencies spending considerable time and effort in attempting to answer similar questionnaires. Obviously, if the questionnaires and activities are beyond the legal authority of the Auditor, it would be a considerable waste of state time and money for state agencies to be responding to them."

#7

Please note that in each of my letters to you I stated that once we receive the Attorney General's opinion it will be my goal that we ALL work together, based on his legal advice, to conform to whatever the Attorney General believes is the proper protocol in dealing with the issue of performance audits. Little did I know that you had repeatedly asked him to delay his opinion while at the same time continuing to press me to respond to your performance audit. In fact it was not until September 16, 2002 that the Attorney General's Office hand delivered me a copy of his August 30th letter to you referencing the fact that you were the reason he was delaying his opinion.

#8

The Attorney General believes it may not be prudent to answer the (potential) performance audit questions until we have his legal opinion. You are attempting to categorize my repeated requests to wait and receive his opinion as a refusal to cooperate and provide your office with information. **At this time I would request that you please contact the Attorney General and rescind your request that he delay and withhold his legal opinion to the Governor. This would allow all of us to resolve this issue in a speedy and cooperative manner.**

#9

I have attached a copy of an e-mail sent to your office on August 16, 2002. You will note that it requests documentation under the open records law, "that all memos, notes, letters, legal opinions or other written communications from the Attorney General regarding the issue of performance audits." On August 22, 2002 your office responded, "The Attorney General is preparing a formal opinion in response to a DAS request concerning performance auditing. **It has not been released yet.** Enclosed are copies of letters from the Attorney General to the Auditor of Public Accounts." Only the letters dated July 5, 2002 and August 7, 2002 were provided to me.

#10

The first sentence of your October 8, 2002 letter reads in part, "audit staff has performed certain procedures **relating to purchases** for the fiscal year ending June 30, 2002..." In contrast your e-mail request of July 2, 2002, indicates that **you are conducting a contract review.** Your email began, "Dear Ms. Byrd, **We are conducting a review of contracts...**"

PURCHASING/CONTRACTING PROCEDURES
AND CONTROLS FOR THE STATE OF NEBRASKA

APPENDIX G (Continued)

#11 It appears that after the continued delays you are now changing the purpose of your July 2, 2002, questionnaire. The **Attorney General said**, "the Internal Control Questionnaire overall **in my opinion** asks questions that would **effectively constitute a performance audit.**"

#12 In your October 8, 2002 letter you seem to be stating that the purpose of your July 2, 2002 questionnaire is actually a review of agency purchases. You even attached a list of "purchases" for the fiscal year. This list of "purchases" includes in fact such routine items as:

- 1) Our monthly phone bill from the Division of Communications (which we are required to receive through DAS)
- 2) Our monthly payroll
- 3) Our billing for the security system developed by DAS for our Child Support office
- 4) A repair bill from Kissler Cash Register to repair our cash register at the Capitol
- 5) Twelve charges of 12 cents per month—this is a billing from DAS for an IMS surcharge
- 6) A \$15.00 charge to update our Unclaimed Property booth and a \$30.82 charge to repair a torn fabric in our booth
- 7) Auditing fees from our three auditing firms for unclaimed property
- 8) Our monthly billing for armored car service from our office to the banks
- 9) Payments to Kutak Rock for College Savings legal opinions and
- 10) Other miscellaneous charges

#13 Dozens of disbursement documents were utilized to pay our monthly bills for the fiscal year. You did **not** request these documents. You requested two disbursement documents numbered 2125442 and 105451 and I have attached your request. I provided these to you along with all the supporting documentation. Now, not only are you not referring to the contract review, you include dozens of items never before mentioned to me or my staff and somehow are insinuating that I am not cooperating. Further, to include the payments to State Street Bank and NAPPCO and cast a questioning light on these payments seems to be unfair. Unfair because you know you performed a prolonged and extended audit of this office from July of 2000 through October 2000. During that period of time, your three on site and multiple off site auditors looked extensively at each of these unclaimed property auditing contracts and every payment associated with these contracts. This audit went on for months. To the best of my knowledge you did not find any problem with these contracts or the payments to these firms. Therefore to once again be reviewing payments that you spent months looking at just two years ago seems to be—well perhaps a waste of good time and taxpayer dollars. However, I respect your authority to review all of these documents.

PURCHASING/CONTRACTING PROCEDURES
AND CONTROLS FOR THE STATE OF NEBRASKA

APPENDIX G (Continued)

#14 Do you or do you not want copies of the approximate 200 documents you are now referencing? If so, why did you not provide this list when I asked you in my letter of September 16, 2002 if you needed any other documents? In my September 16th letter I stated that I had provided you with all (two) of the documents you requested on July 2, 2002. If you were changing the scope and purpose of your July 2, 2002 performance audit questionnaire why did you not inform me? Why am I seeing for the first time this extensive list of "purchases" in your final exit letter? Does this meet the audit standards you referenced? How is my required DAS phone bill considered a contractual purchase? I respect your authority to review our phone bills but to suggest this is a contractual expenditure is wrong.

#15 In July you stated you were "evaluating agencies internal control processes and procedures for contracts." Contrast that to your October 8th letter that states, "The objectives of our procedures were to:

- 1) Determine the laws and regulations that govern the purchase of materials, supplies, and equipment, services construction/repair of buildings and roads, lease/rent, and other purchases not falling with the above categories.
- 2) Determine the adequacy of procedures/controls the State of Nebraska has centrally, and at the agency level, to ensure all purchases were made in accordance with all applicable laws and regulations.
- 3) Determine if key procedures/controls were actually in place based on a sample testing of purchase transactions."

#16 Then continuing in your October 8th letter you reference \$2.1 million dollars in "purchases" and approximately 200 documents. Then your letter seems to suggest that you performed a list of procedures for these "purchases." However, your July 2nd inquiry only requested copies of two documents, copies of the contracts and invoices related to those contracts.

#17 Your "Internal Control Questionnaire" of July 2nd did not raise any questions about the monthly phone bill "purchases", the monthly payroll "purchases", the twelve monthly 12 cent "purchases" from IMS for surcharges, the DAS security system "purchase" for child support, the \$15 "purchase" to update our unclaimed property booth, the \$30.82 "purchase" to repair a tear in our booth fabric or the fact that I "purchase" armored car service to transport millions of dollars from our office to the bank.

#18 You reviewed our contract with World Technologies (a subsidiary of the Omaha World Herald) and our contract with Centurion. Both companies are excellent, technologically advanced companies that provide excellent service to our agency. You received the documents relating to these two contracts you requested.

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#19 On page two under item "1" you state that "the State Treasurer's office indicated they did not answer our questions based upon their consideration of a directive from the Governor to all code agencies". Auditor Witek, every piece of correspondence I have written asks you to consider delaying the (potential) performance audit inquiry until I receive the legal opinion of our Attorney General. How could you characterize my response in this way? I have not mentioned the Governors' directive. **For you to attempt to present my request to simply wait for legal advice from the Attorney General as a directive from the Governor is simply misleading and inaccurate.** If we cannot provide accurate, factual information on this simple point how can we proceed? Also, for the record, I believe it is important to note that the Treasurer's Office is **not** considered a "code agency."

#20 You continue under item "1", "as of the date the letter was issued, neither the Governor nor the Attorney General has communicated to us the results of the Attorney General's review. Because of this directive we were unable to complete our objectives as originally planned." The objectives in your July 2nd e-mail and your objectives in your October 8th letter are clearly not the same. Your original objectives were to perform a performance audit. You asked the Attorney General to withhold his opinion regarding performance audits and so he stated to me that it would not be prudent for my office to answer your performance audit questionnaire until he issued his opinion. If the Attorney General will not issue his opinion and in the meantime you change your objectives—how is it that I am "not cooperating." I have given you everything you asked for except I have asked to delay answering the questionnaire until I receive legal advice. I have not indicated to you that I would not cooperate. You state that I have significantly diminished the value of your independent review of my procedures. I believe your actions have in fact contributed far more to the diminished value—but you have an opportunity to set the record straight today by immediately requesting the Attorney General provide his legal advice on this issue.

#21 All of the documentation you requested for the Centurion Contract was provided. We requested to wait to answer your performance audit questionnaire regarding this contract until we receive the Attorney General's opinion. That is not a refusal to cooperate.

#22 Regarding World Technologies, your staff came to our office and reviewed the bids, the RFP and other documents included in the bidding process. Everything was made available to your staff and they made a determination which documents should be copied. We even provided workspace and our own copy machine to meet their needs. If they failed to obtain the information and copies you need, please let me know and they can return at your earliest convenience to determine what additional information they need.

Please see the attached e-mails. This is not a refusal to cooperate. In fact, it is quite the opposite. I invited your staff to come to our office, do a review, and take

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#23 whatever copies they needed. If they did not note the date of the bids, get the answer to any questions, find the public notices included in the note books or if they were unable to evaluate the pricing information, we would have been happy to assist them---but they never asked. As I recall my staff said they barely paged through the information and left the office. If they could not work their way through an invoice why didn't they ask? We would have been and continue to be happy to help them out. Please feel free send staff members or come to my office yourself anytime between 6:45 a.m. and 5:30 p.m. and we will be happy to help provide you with all the information you are legally at liberty to collect.

#24 Finally, I do not believe I am in violation of any Nebraska State Statute as you infer in your October 8th letter. Page four of that letter states, "The State Treasurer is in violation of Neb. Rev. Stat. Section 84-305 R.S.Supp., 1998." Without going deeper into your accusation I believe it is my duty as State Treasurer to make you aware of Neb. Rev. Stat. Section 84-605 and how it may pertain to your abilities to audit the Office of the State Treasurer.

Neb. Rev. Stat. Section 84-605 states:

84-605

State Treasurer; records; inspection by Legislature; audit.

#25 All the books, papers, letters and transactions pertaining to the office of State Treasurer shall be open to the inspection of a committee of the Legislature to examine and settle all accounts, and to count all money; and, when the successor of any such treasurer shall be elected and qualified, the Auditor of Public Accounts shall examine and settle all accounts of such treasurer remaining unsettled, and give him a certified statement showing the balance of money, securities and effects for which he is accountable, and which have been delivered to his successor, and report the same to the Legislature.

Source:

R.S.1866, c. 4, § 19, p. 26; R.S.1913, § 5580; C.S.1922, § 4884; C.S.1929, § 84-605.

#26 What Section 84-605 seems to state is that even though the State Auditor has the ability and authority to audit all records of any public entity as stated in Neb. Rev. Stat. 84-305, the Auditor may not have the right to audit the State Treasurer's Office because that duty has been specifically delegated to a committee of the Legislature, a non-partisan body and separate branch of state government. Section 84-305 states that "The Auditor of Public Accounts shall have access to all records of any public entity, in whatever form or mode the records may be, **unless the auditor's access to the records is specifically prohibited or limited by federal or state law.**"

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#27 Section 84-605 seems to state that Auditor has been specifically prohibited or limited from doing audits of the Treasurer's Office because that power has been specifically given to a committee of the Legislature.

#28 Additionally, this statute seems to be in agreement with Article II of the Nebraska Constitution which states, "**The Powers of the government of this state are divided into three distinct departments, the legislative, executive, and judicial, and no person or collection of persons being one of these departments, shall exercise any power properly belonging to either of the others, except as hereinafter expressly directed or permitted.**" This article prevents one or more persons from seizing power or authority that belongs to another. In this instance it may be that the Legislature, a separate branch, has the authority to audit my office.

#29 Article IV section 6 of the Constitution gives the Governor the "supreme executive power" and he is further charged with the duty of making certain the affairs of the state are efficiently and economically administered.

#30 I have also looked at numerous statutes regarding the Auditor of Public Accounts and almost without exception these statutes require you to provide your information directly to the Legislature. This seems to be appropriate because they are responsible for appropriating state funds. It also seems to be consistent with Article II of the Constitution.

#31 The Legislature needs the information to take action because your office has no enforcement powers. If waste, fraud or impropriety is discovered by your auditors, this information is to be provided to the Legislature for appropriate action.

#32 That being said, I believe I have been helpful and cooperative in granting your office access to any information you desire. I bring these statutes to your attention not to start a quarrel between your office and mine but only to make you aware of the constitutional provisions and statutory requirements and their possible implications. I believe it is good public policy to provide information and timely access to records not only to you but to everyone who requests reasonable and legal access to information. However, I also believe it to be good public policy in this case to await the Attorney General's opinion before going forward on this issue. Once that opinion is issued I plan to give you access to the information you request.

#33 It is my goal to supply you and everyone else the most accurate, informative and legal information I possibly can. I believe I have denied your office access to absolutely nothing. Again, your office was invited to review everything you requested in July. However, I believe you are denying me access to the legal opinion of the Attorney General by repeatedly asking him to delay it. This

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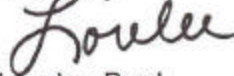
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continued delay of that opinion is what is hindering your access to performance audit information **not** my office's request to wait for the release of that opinion.

#34 I would like the audit staff members that did come to this office to state for the record and in detail that I denied them access to documentation noting which documents and who on my staff denied them access. Please ask your staff member(s) to provide as much detail as possible. This seems only fair considering I do not know who is accusing my office of inhibiting your access and I should have that right for legal considerations.

#35 Again, I fully intend to cooperate. I have only asked to receive legal council. Would it be a wise course of action to schedule a meeting of the Treasurer, Governor, Auditor, Attorney General and the Legislature or their Executive Board members? The Constitutional provisions, the rights, authority and responsibilities of each party could be discussed and a course of action agreed to so that you would receive a clear direction on how to proceed. I am certain the Legislature and Governor need your audit information in order to properly discharge their duties.

Sincerely,



Lorelee Byrd
Nebraska State Treasurer

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APPENDIX H

APA'S RESPONSE TO TREASURER'S RESPONSE

In many instances the Treasurer's letter mentions, or alludes to, an Attorney General (AG) opinion and performance audits. In order to better understand the circumstances involved, we recommend the reader refer to the "*Restriction on the Scope of the Examination*" section of the Advisory Letter, found on page 2.

The Treasurer's response is quite lengthy. However, in discussion with a staff member of the Treasurer's Office, it was communicated to us that the Treasurer wanted her complete letter, as written, to be included as her formal response to our Advisory Letter.

It is our opinion that in several instances the Treasurer either misunderstood the facts or was provided inaccurate information. The Treasurer also made several contradictory statements in her letter. In this response we hope to clear up these issues and provide accurate facts to the reader.

This Auditor of Public Accounts' (APA) response will make reference to the Treasurer's letter by paragraph number. **The copy of the Treasurer's letter on Page 132 through 139 has the paragraphs numbered (added by the APA) to aid the reader in locating the appropriate section.**

Paragraph 2 states the Auditor's Office requested an informal opinion from the AG and then withdrew the request. It also states the Governor requested an opinion from the AG, and after this, the APA asked the AG for clarification. None of these assertions are correct. The APA did not request a legal opinion from the AG. The APA's letter to the AG, dated July 11, 2002, was an auditor-auditee communication. The APA disagreed with the auditee's conclusions, and asked for "further explanation, analysis, or documentation" regarding those conclusions. Letters dated July 18, 2002 and July 26, 2002 between the AG and the APA clarify the APA did not ask for a legal opinion. Also, for the record, the Governor did not request an opinion from the AG either; the request came from the Department of Administrative Services (DAS), dated August 8, 2002. Confusion of important and basic facts is indicative of the balance of the Treasurer's response.

Paragraph 4 states the APA requested the AG delay any opinion. As an independent member of the Executive Branch, the AG has full authority over when requested legal opinions will be issued. Also, as a matter of fact, the AG has requested and the APA has provided information relating to the issue on a number of occasions since the beginning of this process. For example, in a meeting between the AG and the APA on August 6, 2002, the AG asked the APA to provide additional information regarding the Internal Control Questionnaire (ICQ) at issue. The next day, in a letter dated August 7, 2002, the APA provided the requested information. In anticipation of a formal opinion request, the AG invited the APA to submit further information, in the letter to which the Treasurer refers, dated August 7, 2002. Also, after reviewing the August 8, 2002 opinion request, the APA provided extensive information to the AG, including a

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very thorough letter from the Iowa State Auditor. This information was provided to the AG in a letter dated September 26, 2002, through legal counsel retained by the APA. After further discussions with the AG, the APA, through retained counsel, also provided very thorough responses to each of the questions asked by DAS. Finally, in a letter, dated November 1, 2002, the AG requested further information from the APA. The APA, through retained counsel, provided a thorough response to that request on November 8, 2002. The APA has not requested a delay of the issuance of the legal opinion. On the contrary, the APA has provided a great deal of information to the AG to assist in the process.

Paragraph 5 provides a partial quote from a letter from the AG. By writing the sentence in the manner it is written, the Treasurer mischaracterized the AG's letter dated August 30, 2002. The AG's letter states, "We understand that the Auditor and/or the outside counsel retained by the Auditor at taxpayer expense are in the process of gathering information and researching the questions asked by DAS" The AG previously authorized the APA to retain outside legal counsel in a letter dated August 7, 2002.

The last sentence of Paragraph 5 again refers to the APA requesting the AG to not release an opinion. See response to Paragraph 4.

Paragraph 7 references this examination as a performance audit. The APA does not believe any of the procedures performed during our examination constitute a performance audit. The Treasurer has provided us with no basis on which she supports her characterization of the examination as a performance audit.

Paragraph 7 also refers to the APA as the reason the AG has not yet released an opinion. See response to Paragraph 4.

In **Paragraph 8** the Treasurer again refers to the APA as the reason the AG has not yet released an opinion. See response to Paragraph 4.

In the last sentence of **Paragraph 9**, the Treasurer claims the APA did not provide her with all documentation requested. At the time of the request, the two letters referenced (July 5 and August 7) were the only documents, and both were provided to her.

Paragraph 10 points out the change in terminology from "contracts" to "purchases."

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Paragraph 11 states the APA did this to change the purpose of the questionnaire. The Treasurer's assumption is incorrect. During preliminary work the APA staff titled this an examination of contracts. After having selected our scope of work, transactions to be tested, and having begun some testing, but before any advisory letters were written, APA staff felt that by just using the word "contracts," we did not give readers the full context of this examination. Many purchases we tested did not have formal contracts (due to the laws and procedures of the State); therefore it was decided to change the title of this examination to "Advisory Letter of the Purchasing/Contracting Procedures and Controls for the State of Nebraska." The change in terminology was for purposes of clarification, and in no way is a reflection of any changes in the scope of work or a change in the procedures for this examination.

The last sentence of **Paragraph 11** has a quote from an AG's letter dated July 5, 2002 to the APA. The Treasurer added emphasis to certain words in the AG's original letter. In an August 7, 2002 letter from the AG to the APA, the AG stated that his letter of July 5, 2002 was not an official Attorney General's opinion.

In **Paragraphs 12 and 13**, the Treasurer references a list of purchases which was attached to the October 8, 2002 letter. The APA office compiled financial data on total purchases for the fiscal year by the Treasurer's office. This data was included in the October 8, 2002 letter because it was to be included in the Advisory Letter, and for the Treasurer to confirm the totals listed were correct. This "list of purchases" constituted our scope of work for the Treasurer's Office. From this population we selected a sample of two documents. As communicated to the Treasurer, we had no intention, at any time, of testing all purchases of the Treasurer's Office.

Paragraph 13 mentions the last time the APA conducted a financial statement audit of the Treasurer's Office. That audit, for the fiscal year ending June 30, 2000, was the first complete audit of the Treasurer's Office for many years.

For **Paragraph 14**, see explanation for Paragraphs 12 and 13. The scope of this examination did not change. Contrary to the Treasurer's assertion, this aspect of our examination meets the applicable audit standards. The DAS phone bill is a purchase by the Treasurer's Office, therefore, it was included in our scope of work.

Paragraph 15 compares two separate items. The ICQ sent out in July was for the purpose as stated. The ICQ was only one portion of this examination. The objectives stated in the October 8, 2002 letter are for the examination in its entirety.

Paragraph 16 – Our letter does not suggest we performed procedures on any documents other than the two documents selected for our sample and requested from the Treasurer.

For **Paragraph 17**, see explanation for Paragraphs 12 and 13 above.

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Paragraph 19 – Treasurer’s Office staff verbally indicated that they would not respond to the ICQ based on the Governor’s directive. Also, at no point in this comment do we refer to the Treasurer’s Office as a code agency.

Paragraph 20 – See explanation for Paragraph 15. Also, the Treasurer again refers to this examination as a performance audit, while having no basis to do so (see explanation on Paragraph 7). Also, the Treasurer stated she has given the APA all information requested. This is incorrect, please see Comment 2 in the above Advisory Letter to the Treasurer’s Office for information requested but not received by the APA. These questions request specific information and documentation. They are not part of the questionnaire at issue. The AG has stated that agencies should not answer the ICQ, but must still provide documentation requested by the APA.

Paragraphs 21 and 22 – Not all of the requested information was provided. See Comment 2 in the Advisory Letter to the Treasurer’s Office.

Paragraph 23 – The Treasurer states that the APA did not ask for the information listed in Comment 2. These questions were emailed to the Treasurer’s Office on August 14, 2002. Further, APA staff were told by Treasurer’s Office staff that they would provide documentation, but would not answer questions.

Paragraph 24 – It is still the position of the APA that the Treasurer’s Office is not in compliance with Neb. Rev. Stat. Section 84-305 R.R.S. 1998.

Paragraphs 25, 26, and 27 – The Treasurer has provided an inaccurate interpretation of the referenced State Statute. This statute refers only to times when a newly-elected Treasurer takes office. This statute gives the APA authority in addition to the authority established by Neb. Rev. Stat. Sections 84-304 and 84-305; it is not a restriction on this authority as the Treasurer purports it to be.

In the last sentence of **Paragraph 32**, the Treasurer contradicts her previous statements that the APA has not been denied any information.

Paragraph 34 – The APA has this information and will gladly provide it to the Treasurer; however, this is not the proper forum for that communication.