
Audit of the Administration of the Purchase of Service System

A Report to the
Governor
and the
Legislature of
the State of
Hawaii

Report No. 96-1
January 1996

THE AUDITOR
STATE OF HAWAII

OVERVIEW

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STATE OF HAWAII

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Summary

In anticipation of the scheduled end of the State's purchase of service system as provided by Chapter 42D, Hawaii Revised Statutes, the 1995 Legislature requested the Office of the Auditor to conduct an audit of the system and to make recommendations, including proposed legislation, to improve or replace the statute. Chapter 42D, Grants, Subsidies, and Purchases of Service, governs the procurement of health and human services in Hawaii. Initially enacted in 1981 as Chapter 42, the statute was amended several times before being repealed and replaced with Chapter 42D in 1991.

Purchase of service (POS) is the expenditure of public funds for services provided by a private organization for a government agency or program to members of the public. Services contracted for under Chapter 42D, include services to children and youth, the economically disadvantaged, the mentally and physically challenged the elderly, and others.

Proper administration of purchase of service contracts has been a long standing problem for a majority of the departments in the State. Our office has pointed out in past audits that the administration of POS contracts is deficient in several areas. Some of these problems include the untimely execution of contracts, late payments to providers, and insufficient monitoring and evaluation of POS contracts. In our current audit, we found the administration of POS contracts under Chapter 42D to be plagued with numerous problems. Chapter 42D fails to designate a central authoritative agency responsible for the administration of POS contracts. We found both the Executive Coordinating Council and the Advisory Council to be ineffective and unnecessary. Confusion also exists over the "drop dead" provisions of the law. The law is also deficient, vague, unclear and promotes inconsistency. In addition, we found the new procurement law, Chapter 103D, Hawaii Revised Statutes, duplicates efforts of Chapter 42D and can be more efficient and effective in handling the administration of POS contracts.

Recommendations and Responses

We recommended that the Legislature amend Chapter 42D so that it applies to grants and subsidies only and clarify the confusing "drop dead" provisions. In addition, we recommended that the Legislature eliminate the provisions for the Executive Coordinating Council and the Advisory Council.



We also recommended that the Legislature amend Chapter 103D, the Hawaii Public Procurement Code, to delete reference to purchases of services in Chapter 42D and include the procurement of all services. The State Procurement Office should assume the leadership role in assisting and instructing departments on the purchase of health and human services under Chapter 103D.

The Department of Budget and Finance generally agrees with the findings and recommendations of our report. The department did offer one point of technical clarification.

The Office of State Planning responded that the findings of our report are similar to those that the Office of State Planning presented to the Legislature in 1994 and 1995. The Office of State Planning agreed with many of the findings of our report but did not agree with some of the assumptions. These assumptions dealt with the activities of the POST team, duplicative POS contracts, and the inability of the State to determine what services it has received for its money.

The Judiciary did not submit any comments on the findings and recommendations of our report. However, it did note that a draft monitoring and evaluation plan for purchases of services has been developed for the Judiciary.

We noted that none of the affected agencies disagreed with our findings that there is no oversight of Chapter 42D and coordination efforts are almost nonexistent. This area is of great concern because without effective leadership, oversight and coordination the possibility for waste and duplication exists. We believe that efforts to improve the coordination of services must be improved as well as efforts to ensure that contracted services are in fact provided. Chapter 103D offers a better alternative for improving the State's purchase of health and human services, for procuring these services should be treated no differently than other state acquisitions.

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Submitted by

THE AUDITOR
STATE OF HAWAII

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Foreword

This report was prepared in response to House Concurrent Resolution No. 240, House Draft 1, Senate Draft 1 of the Regular Session of 1995. House Concurrent Resolution No. 240 requested the State Auditor to conduct an audit of the purchase of service system and to make recommendations, including any proposed legislation, to improve or replace Chapter 42D, Hawaii Revised Statutes.

We wish to express our appreciation for the cooperation and assistance extended to us by various officials and staff of the Department of Budget and Finance, Office of the Governor, Judiciary, Department of Health, Department of Human Services, Department of Labor and Industrial Relations, State Procurement Office, and others whom we contacted during the course of the audit.

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State Auditor

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Chapter 1

Introduction

This audit was prepared in response to House Concurrent Resolution No. 240, House Draft 1, Senate Draft 1 of the Regular Session of 1995. House Concurrent Resolution No. 240 requested the Auditor's Office to conduct an audit of the purchase of service system and to make recommendations, including any proposed legislation, to improve or replace Chapter 42D, Hawaii Revised Statutes. The resolution requested that the Auditor consider the following as a part of this audit:

- 1) the basic principles of a purchase of service system;
- 2) a proposed Office of Purchased Services, in the State Procurement Office of the Department of Accounting and General Services, to improve the efficiency and accountability of the purchasing and contracting process for health and human services;
- 3) flexibility for state agencies to enter into contracts with individual providers, including extended contract terms of up to five years; and
- 4) the appropriate administrative placement of the Executive Coordinating Council and the Advisory Council.

Purchase of service (POS) is the expenditure of public funds for services to members of the public, provided by a private organization for a government agency or program. The services are deemed necessary to meet or fulfill the public purpose of a government agency but cannot be delivered by existing staff of that agency. Services contracted under Chapter 42D, HRS, include services to children and youth, the economically disadvantaged, the mentally and physically challenged, the elderly, and others.

Background

Over the years, the State of Hawaii has used private agencies to meet the health and human service needs of its people. The Legislature has enacted several laws to govern the state's purchase of health and human services. The most recent law, Chapter 42D, HRS, places the responsibility of purchasing services with the purchasing agency and involves several agencies and councils in the overall development and administration of the POS system.

History of purchase of service system

The State has used private agencies to provide health and human services to the public for at least two decades. During this time, the State has

wrestled with the issues involved in channeling public funds to private organizations for the use and benefit of members of the public. The State Constitution restricts the appropriation of public money for public purposes only.

The concept of purchasing services first began in the 1960s. Act 213, Session Laws of Hawaii 1965, authorized the Department of Health to establish community mental health and mental retardation programs. The act appropriated \$60,000 for purchases of private mental retardation services and \$30,000 for grants to private agencies. In addition, it gave the department the authorization to decide which private agencies would receive these funds.

In 1972, the federal Revenue Sharing Act set a ceiling on federal financial participation in certain social service programs. The new ceiling for Hawaii was estimated to be four times what the state had been receiving. Receipt of the federal funds would depend on the raising of the state or local matching share. A governor's task force, established to determine ways to maximize use of increased federal funds, believed that developing a mechanism for purchases of service was necessary. The mechanism would allow the state to generate more federal dollars without spending additional state moneys, since private donations could also serve as the required match. The federal act offered the clients a greater number of services or more specialized services, and developed a more flexible service delivery system.

This new POS program began in 1973 with 45 contracts for \$6.5 million. The program offered such services as child care, services to adults, community-based services to the mentally retarded, foster care for children, and services to drug addicts and alcoholics. This explosion of services contrasted with the pre 1973 period. Then, the majority of services had been delivered directly by the Department of Health; only child care services had been purchased.

Initially, many of the private agencies were able to obtain private donations for the local share of federal matching funds, but some others began to appeal to the Legislature for state funds for the matching requirement. Increasing requests for state support by private organizations created a recurring dilemma for the Legislature as to which requests to support and at what levels. A significant increase in state appropriations to private organizations was of concern. The problem was presented to the 1978 Constitutional Convention. A constitutional amendment subsequently adopted by the convention and ratified by the electorate stated that: "No grant of public money or property shall be made except pursuant to standards provided by law."

Act 207 was enacted in 1981 to implement the new constitutional amendment. Codified as HRS Chapter 42, (Grants, Subsidies, and Purchases of Service), the act set standards and procedures for the

appropriation of funds to private organizations. Chapter 42 prescribed standards for private organizations applying for public funds, and procedures for the application, review and expenditure of funds. Agencies anticipating the need to purchase services were required to identify the services required and then solicit proposals from potential providers. Private organizations would then submit proposals to the director of finance, or the administrative director of the courts, for the executive and judicial branches, respectively, and the appropriate agency would review and analyze the proposal. The agency would then prepare a statement of its findings and recommendations for each proposal. Proposals recommended for approval were included in the agency's budget request to the governor (for the executive branch) or chief justice (for the Judiciary).

A private organization could bypass submitting a proposal to the executive branch or the Judiciary by submitting proposals directly to the Legislature. The appropriate legislative committee would refer the application to the appropriate agency for review which, in turn would submit a statement of its findings and recommendations to the committee within 15 days.

If the Legislature decided to appropriate funds for a service that had not been included in the budget of the executive branch or the Judiciary, it would do so by separate bill after the request had been referred to the appropriate agency for review. Funds could also be appropriated to the agencies without naming the specific providers. Chapter 42, HRS, thus allowed private providers to obtain funding either through the regular application process or through direct requests to the Legislature.

Chapter 42D, Hawaii Revised Statutes, requirements

In 1991, the Legislature repealed Chapter 42, HRS, and replaced it with Chapter 42D. Legislators believed the new provisions would increase efficiency in the POS procurement process by directing agencies to solicit proposals after the appropriations phase. It would professionalize the process and enable the Legislature to control its POS spending. Individual providers were no longer specified in the appropriation budget act as a line-item request. Instead, the department's budget requests and legislative appropriation for POS providers were identified in lump sum categories. Chapter 42D also provided for a planning process at the beginning of the POS budgeting process to identify needs, the cost effectiveness of each service, and the priorities within and among programs.

Chapter 42D also established the Executive Coordinating Council (ECC) and the Advisory Council (AC). These were administratively attached to the Office of State Planning (OSP) to provide input in the development and implementation of the planning system and other POS matters. In addition, a "Request for Reconsideration" process, through the Executive

Coordinating Council, allowed recourse for service providers not funded or satisfied with the recommended level of funding. The new statute also sets forth specific requirements for monitoring and evaluating POS contracts by the departments.

Organization and roles under Chapter 42D

Chapter 42D, HRS, delegates the responsibility of administering the POS system to a number of agencies, councils, and interest groups. Those responsible include the Department of Budget and Finance, Office of State Planning, Executive Coordinating Council, and Advisory Council. Together, these entities have various responsibilities for the overall administration of Chapter 42D. Exhibit 1.1 presents an overview of the POS organization and roles under Chapter 42D, HRS.

Budget and Finance is to prepare rules and budget

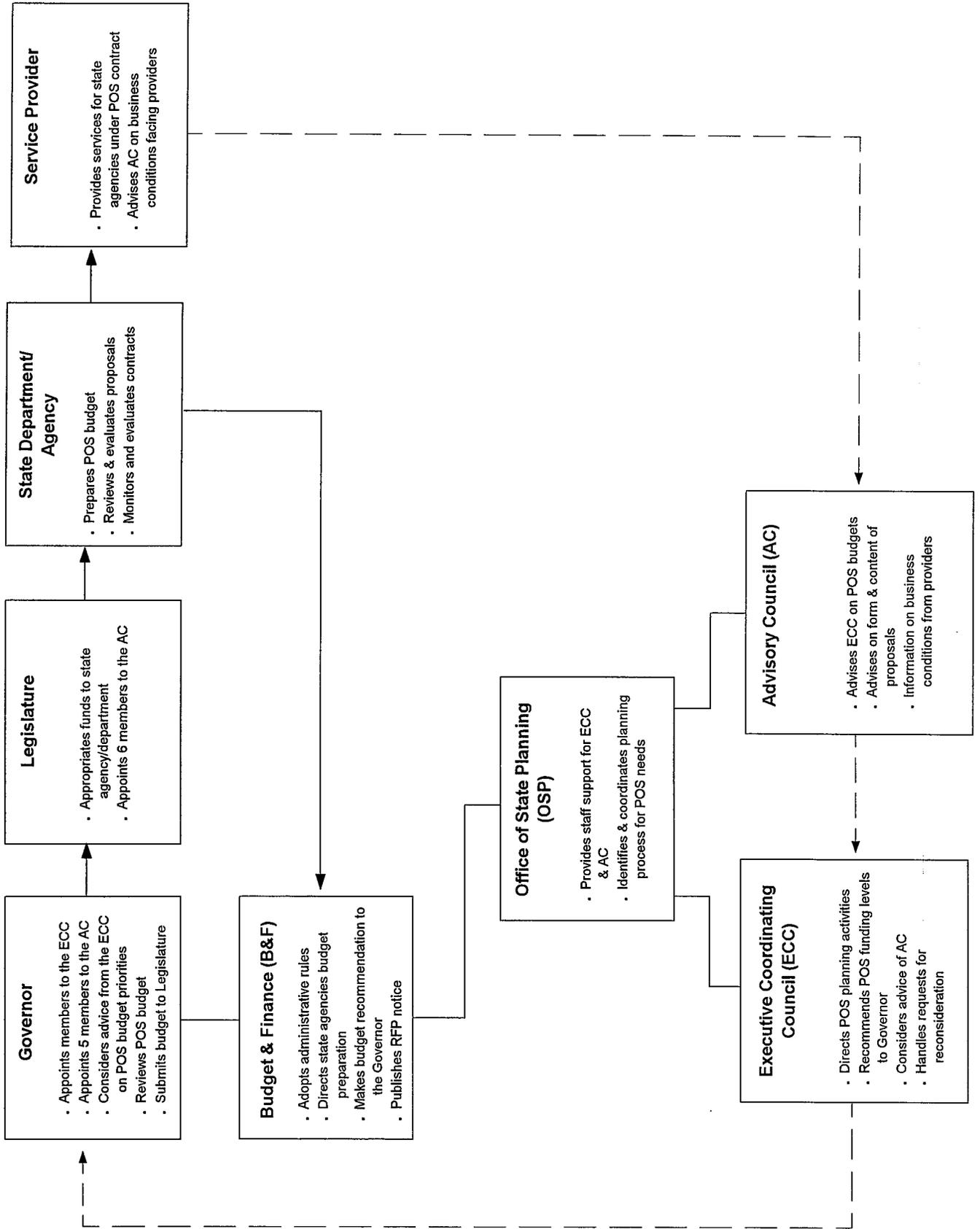
The POS program is administered by the executive branch through administrative rules developed and implemented by the Department of Budget and Finance (B&F). The department is also required to issue forms, instructions, guidelines and a timetable for the requests for proposals from organizations as prescribed by the Director of Budget and Finance. The department prepares and recommends the executive branch POS budget to the governor.

Office of State Planning is to facilitate planning

In 1992, Act 194 assigned the Office of State Planning the responsibility for: 1) coordinating a planning process to ensure that the health and human service needs of the State were addressed; 2) involving the private sector in the development and implementation of the planning process; 3) providing staff support to the Executive Coordinating Council and the Advisory Council; and 4) preparing and submitting a report to the governor and Legislature upon completion of the planning process. In addition, Act 194 appropriated \$100,000 for staff support in the Office of State Planning and for the reimbursement of expenses incurred by the members of the Advisory Council.

In February 1993, a POS Team (POST) was formed as an informal information sharing group to provide line agency staff input into the planning process required by Act 194. Since its inception, POST has worked to standardize the format and necessary forms for the awarding, monitoring and evaluating of POS contracts. The team consisted of departmental line staff primarily involved in the planning, budgeting, and administration of POS contracts.

Exhibit 1.1 POS Organization & Functions - Chapter 42D



Executive Coordinating Council is to make policies and reconsider requests

The Executive Coordinating Council (ECC) is made up of the directors of the various departments involved in purchasing services or providing subsidies. Under Chapter 42D, HRS, the Executive Coordinating Council is directed to make policy recommendations to the governor, coordinate and direct planning activities to ensure that the health and human service needs of the State are addressed, consider the advice of the Advisory Council, and provide the governor with other relevant information. The ECC is also responsible for reviewing the requests for reconsideration of providers not recommended for funding or not satisfied with the recommended level of funding. The ECC is administratively attached to the Office of State Planning.

Advisory Council is to provide broadbased input

The Advisory Council (AC) is comprised of 12 members appointed by the president of the Senate, speaker of the House of Representatives, and the governor. Members represent different business and civic organizations, geographical regions of the State, community groups, consumers of services and purchase of service providers who have an interest or expertise in the design and delivery of health, human services, employment, and education. Chapter 42D provides that the Advisory Council make recommendations to the Executive Coordinating Council on POS budget matters, the format and content of request submittals, market or other business conditions, and provide other relevant information. The AC is also administratively attached to the Office of State Planning.

POS funding levels for state entities

Appropriations to private organizations for purchases of service have increased dramatically. Between FY1985-86 and FY1986-87, appropriations for grants, subsidies, and purchase of service grew 10 percent, from \$32 million to \$35 million. Between FY1987-88 and FY1988-89, appropriations grew 25 percent, from about \$41 million to \$51 million. During this past fiscal year (1995-96) over \$86 million was appropriated in general fund moneys alone. Exhibit 1.2 illustrates the general fund appropriations by the various state entities for POS contracts for the current and past two fiscal years.

Exhibit 1.2 POS General Fund Appropriations (FY1994-1996)

<u>Department</u>	<u>FY1993-94</u>	<u>FY1994-95</u>	<u>FY1995-96</u>
Department of Human Services	\$17,547,396	\$17,452,459	\$16,048,567
Department of Health	42,236,238	44,570,566	46,559,846
Department of Labor and Industrial Relations	6,761,687	6,854,355	7,540,350
Office of the Governor	5,468,770	5,468,770	5,077,967
Department of Public Safety	906,455	906,455	868,610
Department of Education	1,155,708	1,230,708	1,180,708
Judiciary	<u>9,494,478</u>	<u>9,869,478</u>	<u>9,030,033</u>
Total	\$83,570,732	\$86,352,791	\$86,306,081

Objectives of the Audit

Our audit had the following objectives:

1. Evaluate the efficiency and effectiveness of the administration of the purchase of service system under Chapter 42D, Hawaii Revised Statutes.
2. As appropriate, identify and assess alternatives to the existing purchase of service system.
3. Make recommendation as appropriate.

Scope and Methodology

To accomplish the objectives of the audit we reviewed pertinent laws, rules and literature on purchases of service and public contracting. We examined documents and files from the Office of State Planning. We also reviewed purchase of service contract files of the Department of Health, Department of Human Services, Judiciary, Department of Labor and Industrial Relations, Office of Community Services, and the Executive Office on Aging. We focused on state funded contract files from FY1992-93 through FY1994-95.

We interviewed personnel and representatives from the Department of Budget and Finance, Office of State Planning, Executive Coordinating Council, Advisory Council, Department of Health, Department of Human Services, Judiciary, Office of Community Services, Executive Office on Aging, State Procurement Office, Alliance for Health and Human Services, and selected providers of service throughout the community.

Although Chapter 42D, HRS, pertains to the procurement of grants, subsidies, and purchases of service, our work, as directed by the Legislature, focused on the administration of purchases of service only.

Our work was performed from June 1995 through October 1995 in accordance with generally accepted government auditing standards.

Chapter 2

Findings and Recommendations

This chapter presents our findings and recommendations on the administration of Chapter 42D, Parts I and II, Purchases of Service, Hawaii Revised Statutes. In this chapter we examine the existing POS process under Chapter 42D and explore other cost effective alternatives for purchasing health and human services. We found the administration of POS contracts under Chapter 42D to be plagued with numerous problems. We found that the new procurement law, Chapter 103D, Hawaii Revised Statutes, not only incorporates much of Chapter 42D, but can also handle POS contracts more efficiently and effectively.

Summary of Findings

1. Chapter 42D is deficient and plagued with numerous problems. The law is vague and unclear, and promotes inconsistency. In addition, the planning and coordination of POS contracts is ineffective and departments have failed to adequately monitor and evaluate contractors as well as pay them on a timely basis for services.
2. The new procurement law, Chapter 103D, incorporates much of Chapter 42D and can be more effective and efficient in the administration of POS contracts for state agencies and departments.

Chapter 42D is Deficient and Problematic

Proper administration of purchase of service contracts has been a long standing problem for a majority of the departments in state government. In our past audits of POS contracts, we found administrative deficiencies in several areas. Some of these problems include the untimely execution of contracts, late payments to providers, and insufficient monitoring and evaluation of POS contracts. As a part of our current audit, we conducted a review of contract files from five major state entities which administer POS contracts. These entities included the Department of Health, Department of Human Services, Department of Labor and Industrial Relations, Office of the Governor, and the Judiciary.

We found Chapter 42D to be deficient and problematic. The law does not clearly identify a central agency responsible for administering Chapter 42D. The law promotes inconsistency among state entities. We found that monitoring and evaluation efforts of the departments continue to suffer. The Executive Coordinating Council and the Advisory Council have not met statutory expectations. Lack of leadership and coordination result in duplication of services and late contracts and vendor payments.

Chapter 42D is not clear

We found several deficiencies within Chapter 42D which contribute to the problems, confusion, and inconsistent application of the law. Chapter 42D does not clearly identify a central authoritative entity responsible for overall administration. Furthermore, the law is confusing with regard to its drop dead provisions. The law is also unclear on its applicability to the Judiciary which results in inconsistent application of the law among state entities. Finally, the Executive Coordinating Council and the Advisory Council have not fulfilled their statutory expectations.

Central oversight is vague

Chapter 42D fails to clearly identify a central, authoritative agency or organization to be responsible for the administration of POS contracts. It places the various aspects of responsibility for the administration of POS under the Office of State Planning and the Department of Budget and Finance. Departmental personnel are confused as to who should be responsible as the lead agency for the POS program. Some department officials feel that the Office of State Planning should be in charge of Chapter 42D while others feel that the Department of Budget and Finance is responsible for the program's overall administration. Officials from both the Office of State Planning and the Department of Budget and Finance indicated that their organizations were inappropriate to handle this responsibility. Office of State Planning officials stated that statutorily, they provide administrative support to the Executive Coordinating Council and the Advisory Council. The Department of Budget and Finance is responsible for promulgating rules and determining the timetable for the POS process. This divided responsibility leaves both departmental personnel without clear direction and guidance on the administration of POS contracts. This lack of direction coupled with the failure of Chapter 42D to clearly identify a central, authoritative agency responsible for the administration of POS contracts, led to an informal group (Purchase of Service Team-POST) providing support to the departments on the implementation and procedural aspects of the POS system. However, POST has no statutory authority and can only make recommendations to B&F.

Uncoordinated services may result in duplication

Another effect of having unclear administrative oversight of the POS program is the multiple contracting of services and duplication of these services. As a part of good management practices, state departments should ensure that resources are not wasted nor unnecessarily duplicated. This would include coordinating the provision of services with other departments that are providing similar programs.

After reviewing documentation submitted by the Office of State Planning, we noted that in several instances providers had contracts with multiple state departments. For example, we found one provider had

contracts with four separate departments. Another provider had contracts with five different departments. Overall, we noted (for FY1993-94) a total of 35 providers had POS contracts with at least two separate departments.

We realize that because of differing services and target groups, multiple contracts may sometimes be warranted. However, we could find no evidence or documentation of any type of coordination between departments to determine when and where services could be combined or merged. Several department officials report that neither the departments or state administration have tried to coordinate their purchase of service efforts. We find this of particular concern because services may be duplicated in areas where the State could realize savings if such services were merged or combined.

Confusing “drop dead” provision

Chapter 42D also has a confusing “drop dead” provision. Act 335 SLH 1991 repealed Chapter 42 and established the new law, which became Chapter 42D, to take effect on July 1, 1992. Act 194 SLH 1992, then amended or repealed many sections of Chapter 42D, also effective July 1, 1992. Act 194 also specified that on July 1, 1996 the amended or repealed provisions would return to the form in which they existed on June 11, 1992. However, on June 11, 1992 the original provisions, while set forth in Act 335, had not yet taken effect as a part of Chapter 42D. This could create confusion.

The Legislature should consider clarifying the current status of Chapter 42D.

Chapter 42D promotes inconsistency

In addition to its unclear oversight, Chapter 42D is not clear in its statewide application. The statutory compliance is not applicable to the Judiciary which oversees over \$9 million of contracted services. The compliance by state departments is equally weak. Departments do not have department-wide POS policies and procedures on contract administration, which includes the responsibility to monitor and evaluate those contracts. Such procedures can vary even among divisions within the same department, leaving departments with no clear information on the benefits or dollar value of those contracted services.

Applicability to Judiciary unclear

Chapter 42D requires the director of finance to adopt rules pursuant to Chapter 91, HRS, as may be necessary to meet the requirements of Chapter 42D. According to Chapter 91, an agency is defined as “each state or county board or officer authorized by law to make rules or to

adjudicate contested cases, except those in the legislative or judicial branches.” Or, more simply, Chapter 91 does not apply to the Judiciary or the Legislature.

The Judiciary interprets Chapter 91 to mean that the POS rules adopted by the director of finance do not apply to the Judiciary. In addition, Judiciary personnel reported that not all sections of Chapter 42D apply to the Judiciary. For example, the Judiciary does not participate in the activities of the Executive Coordinating Council or the request for reconsideration process. Judiciary personnel reason that because they are not a part of the Executive Coordinating Council, they should not have to follow the requirements of Section 42D-5.5, HRS, which sets forth the responsibilities of the Executive Coordinating Council. The Judiciary also determines its own timeframe, separate from the Department of Budget and Finance, for the release of requests for proposals and statements of findings and recommendations.

As a result, the application of current law for purchasing health and human services is unclear and fragmented and results in inconsistent practices among all agencies on a statewide basis.

Contract administrations are inconsistent

The Judiciary’s independent administration of its POS is not unique. Contract administration varies among executive agencies as well.

According to Section 42D-25, HRS, each agency administering POS contracts must, among other things, develop a comprehensive monitoring and evaluation manual and standardized monitoring forms for the providers. The requirement for each agency to create its own monitoring and evaluation manual as well as monitoring forms promotes inconsistency in this particular function of the statewide POS process.

We found that the departments do not have policies and procedures for the monitoring of contracts. Instead, the departments allow their divisions to develop policies and procedures independently. We found variances in monitoring and evaluation forms, guidelines, and manuals from all of the departments reviewed. The Judiciary, Department of Health and Department of Human Services were unable to furnish our office with uniform, comprehensive guidelines or policies and procedures for monitoring and evaluating contracts. Variations in the monitoring and evaluating of contracts both between and within departments result in state departments being unable to assess whether the State received the best value for the money spent. Some of the departments did not provide sufficient documentation to show whether the providers were in compliance with the contract. In several cases, we could find no documentation which demonstrated a post evaluation of the services performed.

These problems are of great concern considering that in 1995 the Legislature appropriated approximately \$86.3 million of general fund moneys to the POS budget. Without consistent, comparable data, the state lacks sufficient information for determining whether contracted services were adequately provided and what services should be contracted in the future. As a result the State cannot reasonably determine what it has received for its money and what benefit the services have provided to the public.

The departments should work together to develop a single comprehensive manual which outlines the major objectives, procedures, and specifications of the monitoring process. The POS team has attempted to standardize the monitoring and evaluation process and should continue its efforts. Without consistent policies and procedures, departments will continue to administer POS contracts in a haphazard and confused manner. Providers of the services have complained about the varying practices of departments with which they have contracted.

Chapter 42D creates problems

The intent of Chapter 42D was to expedite POS contract administration and increase community participation. Neither of these intentions has been successful. Contract administration has been plagued by further delays. The increased roles of community groups has had a reverse effect—adding bureaucratic layers and conflict of interest issues.

Fragmented contract administration results in costly delays

The Department of Budget and Finance is responsible for establishing the timeline for the POS process. In a typical year, the executive departments' POS budgets are submitted to the Legislature in mid-December. The departments then release their requests for proposals with provider responses due by the end of February. The departments evaluate and determine which vendors will be awarded contracts about the middle of May, issuing their Statements of Findings and Recommendations (SFR) to the vendors who submitted proposals. At the end of this phase, the vendors have 10 days to file an appeal with the Executive Coordinating Council which then evaluates each appeal and makes recommendations within ten days.

According to testimony submitted by both department personnel and providers, this timeline creates many problems for everyone. Requests for proposals are released too late in the process for departments to execute contracts by the July 1 start date. Department staff reported that there is insufficient time to thoroughly review proposals, meet with vendors, and make site visitations. Next, the release of statements of findings and recommendations is followed by approximately 1.5 months to develop and execute a contract (by its July 1 start date) but the time

available is decreased significantly by the vendor reconsideration process. The Executive Coordinating Council has until about the middle of June to make recommendations to the departments, which are then left with approximately two weeks to write and execute their contracts. The process is further delayed if an organization decides to appeal the initial ECC decision.

Problems such as these make timely contract execution (that is, prior to the July 1 start date) difficult for the departments. This results in late payments to the providers. We found several cases in which delays for the execution of a contract ran from one to six months. In this current fiscal year, one division official in the Department of Health reported that as of October 1995, the department has yet to execute over 70 contracts. But services are already being performed by the providers. An official at the Office of Youth Services (DHS) stated that contracts are not usually executed until October, or three months late, while another DHS official also reported that DHS is not able to execute all of its contracts by their effective dates.

The departments place the State at risk when contractors provide services without a valid contract. Contracts establish the nature, scope, and extent of services; the compensation and method of payment; indemnification of the State; and other rights and obligations of the parties. Without a contract, both parties are at legal and financial risk.

Both providers and departmental staff reported that late payments are also a problem. In several instances, we found that payments were not made to providers until two to six months after the contract period began. Department officials report that the providers must sometimes obtain loans to carry them until their checks arrive from the State.

In addition to the problematic timeline, delays have been attributed to the fact that the departments have a limited number of staff dedicated to POS contracts. The Department of Health reports that it has only one contract specialist to review POS contracts for the entire department. Department personnel almost unanimously stated that they do not have the infrastructure to properly administer purchase of service contracts. Department personnel and officials also report that training in the area of POS contracting is insufficient and sorely needed. Training in this area is on-the-job often times with personnel learning as they go along.

Department personnel have stated that the release date for the requests for proposals or the statements of findings and recommendations should come earlier on in the process. This would allow the departments more time to conduct the request for reconsideration process and to execute contracts by their July 1 effective date.

Improvements need to be made at the departmental level. The departments need to ensure that contracts are executed and payments to the providers are made in a timely manner. The departments should give priority to determining the reasons for any delay and for the poor monitoring and evaluation.

Executive Coordinating Council does not meet statutory expectations

According to Section 42D-5.5, HRS, the Executive Coordinating Council (ECC) was established to review and make recommendations to the governor on matters relating to subsidies and purchases of service. The ECC consists of members from the heads of departments involved in purchasing health and human services. This includes heads of the Department of Health, Department of Human Services, Department of Budget and Finance, Office of Community Services, Executive Office on Aging, Office of Youth Services, and Office of Children and Youth. The ECC is to coordinate and direct planning activities to ensure that the health and human service needs of the State are addressed in a coordinated context among state agencies and the private sector. The ECC is also required to provide recommendations to the governor on purchase of service funding level for state agencies; consider the advice of the Advisory Council (comprised of both consumers and providers of service); and provide other information to the governor as appropriate.

We found that the ECC has not been effective in fulfilling its statutory responsibilities. We spoke with all members of the ECC and a majority indicated that this council has not been coordinating or directing any planning activities for purchases of service. In fact, several members indicated that the only time ECC meets is to discuss requests for reconsideration. Our review of the ECC meeting minutes (for the current ECC) found little or no evidence of any discussion on the matter of planning any purchase of service activities. In addition, we found no documentation of any recommendations to the governor regarding the purchase of service budget. It also appears that the ECC does not have the full support of all its members. Some members have mentioned that it is difficult to get all the members together for a meeting and the meetings are a waste of time. One member attended for only one meeting, left early, and never returned for any subsequent meetings. Members of the Advisory Council as well as members of the ECC have also indicated that there is no communication between the two councils.

The ECC procedures for the review of vendor reconsiderations are unclear. We found no guidelines in place to assist the ECC members in their review of these appeals. Only recently has the ECC developed informal procedures for the request for reconsideration process. These procedures have been communicated to both the ECC members and providers of service.

Some ECC members stated that they were unclear as to their role in this procedure and did not know what their specific duties were. In addition, the providers were unclear on what could and could not be appealed. Although Chapter 42D allows organizations to appeal POS funding levels, the ECC determined that it would address only matters of procedure and whether the organization was treated equitably. However, these instructions were not communicated to the organizations at the start of the request for reconsideration hearings this year. Until a clarifying memo was released, the organizations were informed during the ECC hearings that no action could be taken on the issues related to funding because of the state fiscal crisis.

We conclude that the Executive Coordinating Council and the request for reconsideration process which the council administers should be eliminated. When Act 194 sunsets on July 1, 1996, the provision for an Executive Coordinating Council will be repealed. The Legislature should not seek to reinstate the ECC or the request for reconsideration process which it administers. We have found both the ECC and the reconsideration process to be ineffective and problematic, and appeals can be more effectively handled under the existing procurement code, Chapter 103D, HRS.

Advisory Council is ineffective

Chapter 42D established an Advisory Council so that private organizations (vendors) could provide “up front” planning and input into the POS budgets. Fundamental planning helps to guide the State in its purchases of health and human services from private organizations as well as establish priorities for decision making. Vendors believed that the State decided what services the State should provide to ensure a safe and well community and whether these services would be provided directly by state employees or through the private sector.

Vendors also wanted to have input in the Request for Proposals (RFP) process. The RFP contains the description of the service to be purchased by the state agency. Vendors wanted to help develop RFPs, so that RFPs would reflect the current community needs, rather than traditional or outdated needs. We believe that it is inappropriate for potential providers of service to have input into the structuring of RFPs. This could give an unfair advantage to those select vendors over the rest of the vendors in the community.

Vendors believed that Chapter 42D would promote a dialogue between the vendors and consumers and the state agencies. However, the AC has been frustrated because Chapter 42D restricts the AC to only advisory powers, making recommendations to the ECC. The ECC makes recommendations to the governor. As of January 1995, the AC has met only once with the ECC, and no other meetings have been scheduled.

The members, as newly-appointed department directors under the current administration, were not clear about their roles, responsibilities, and authority on the ECC. Some also questioned the usefulness of their place on the ECC. Since the ECC perceived its role as very limited, some of the ECC members believed that input from the AC was not relevant because the ECC could not act upon it anyway. Therefore, some of the ECC members did not see the purpose in meeting with the AC.

Existing Procurement Law Can Handle Administration of POS Contracts

Chapter 42D and Chapter 103D both deal with the purchase of services for government. Although Chapter 103D was enacted after Chapter 42D, we found similarities in both laws and, in some cases, instances where Chapter 103D could correct many of the deficiencies and problems related to Chapter 42D. Moreover, Chapter 103D can be more efficient and cost effective in administering POS contracts for the State.

Chapter 103D sets standards for procurement practices

Act 8 of the 1993 Special Session became the State's comprehensive procurement code. The new code, Chapter 103D, HRS, was enacted to improve and update a procurement code that was old, fragmented and unclear.

In 1989, the State contracted with Lallatin and Associates for a study of the procurement system. Lallatin found minimal vendor competition due to unclear authority and inconsistent policies and procurement practices. The report concluded that the lack of competition would result in the State spending too much for its purposes. Lallatin recommended that the American Bar Association Model Procurement Code (MPC) be adopted.

In our 1992 review of Hawaii's procurement law, we found the State's procurement system to be inefficient and costly, primarily because the law was out of date, incomplete, open to interpretation, and unable to meet the State's purchasing requirements. Like the Lallatin report, we also concluded that the Model Procurement Code of the American Bar Association offered the best approach for the State to follow.

As enacted, Chapter 103D is based primarily on the ABA Model Procurement Code. The Legislature intended that Chapter 103D ensure fair and equitable treatment of all persons and organizations dealing with the procurement system of the state and counties. The Legislature wanted to assure fair and competitive access by all vendors and foster broad-based competition. It also wanted to assure that all goods and services be procured at fair and reasonable prices.

State should seek the best value for its money

The State should use procurement practices that take advantage of the benefits of competition. The State should also seek the highest quality goods and services for the best possible prices. Unlike private industry, state purchases are direct costs to the taxpayer. These procurement practices should guard against favoritism and profiteering as well as provide equal opportunities for vendors and individuals to compete for government business.

Chapter 103D provides for fairness and equity in the competitive procurement process for goods and services. Safeguards, based on the Model Procurement Code, are in place to promote and ensure that government in Hawaii procures goods and services in a fair and open process and at the most advantageous prices.

Procurement of POS no different from other state contract services

The procurement of services under Chapter 42D is no different from other contract services procured by the State under Chapter 103D. The procurement law defines “services” as “the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports that are merely incidental to the required performance.” This definition is based on the Model Procurement Code and includes purchase of client services. While the Model Procurement Code does not define what client services are, government procurement publications, such as the Fourth Edition of State and Local Government Purchasing, define client services as services contracted on behalf of clients, frequently requiring prequalification or licensing by the government for the performance of the services. Client services include day care, halfway houses, vocational rehabilitation, guidance counseling, employment services, and catering. Chapter 42D procures these same types of services.

Budgeting, monitoring and evaluation of POS should be the responsibility of the departments

The procurement law provides the mechanism for purchasing services. However, preparing the purchase of service budget should remain the department’s responsibility. Generally, any department anticipating the need to purchase services must submit its budget request to the director of finance. The Judiciary submits its request first to the administrative director of the courts and then to the chief justice of the Hawaii Supreme Court. Once the budget requests are approved, by either the director of finance or the chief justice, they are then submitted to the Legislature for review and appropriation.

Monitoring and evaluation of contracts should not be prescribed by any purchasing statute. The departments should handle this function through departmental rules, procedures and regulations. However, we found that none of the agencies have developed a monitoring plan as required by Chapter 42D and most did not meet all additional monitoring requirements of Chapter 42D. Some agencies tried to use a 1991 monitoring and evaluation manual developed by SMS Research and Arthur Andersen and Company. Their efforts appeared unsuccessful. The POS Team has standardized the format for the RFP and the statement of findings and recommendations and is currently working on a method to effectively monitor and evaluate contracts. We encourage the team to continue with these efforts.

Chapter 42D duplicates efforts of Chapter 103D and is unnecessary

Chapter 42D duplicates the efforts of Chapter 103D and is unnecessary. Both are laws intended for the procurement of services. Chapter 103D, which was enacted after Chapter 42D, is more comprehensive, complete and corrects many of the deficiencies of Chapter 42D. In addition, Chapter 103D provides for an existing organization structure that can readily handle the current functions of Budget and Finance under Chapter 42D.

No need for two procurement statutes

We found there is no need for two procurement statutes. Chapter 103D addresses the procurement of both goods and services while Chapter 42D addresses the procurement of services only. The only perceived difference is how services are defined and interpreted. However, as described earlier, the services procured under Chapter 42D are the same type of services that can be procured under Chapter 103D. Chapter 42D procures services by the competitive sealed proposal method. Chapter 103D provides for a similar process and more.

Some departments already use Chapter 103D to procure health and human services

Some departments are confused as to which statute is appropriate to use in the procurement of services. We found several agencies using Chapter 103D for procuring health and human services. These agencies report that the competitive bidding process and monitoring and evaluation of contracts under both statutes are very similar. For example, common procedures under the competitive proposal process require the development of bid specifications, public notification, evaluation of the proposals or submittals, selection, and award. The contract process which normally follows the award of a contract is also very similar with the inclusion of provisions for monitoring and evaluation of the contract provisions, requirements, and goals. For example, we found one agency successfully procured dental services for

its clients under Chapter 103D. In another example, an agency used Chapter 103D to procure contract services for the treatment of sex offenders. This agency reported no significant differences and problems in procuring services under Chapter 103D. The Department of Health is also using Chapter 103D to successfully procure services for programs in the treatment of substance abuse.

Role of Budget and Finance can be handled by the State Procurement Office

Statewide procurement functions and policies should be handled by the State Procurement Office and not the Department of Budget and Finance. B&F is primarily responsible for the development of the State's financial plans and budget. B&F also helps to improve management and financial management in state agencies, provides for an integrated state data processing system, and coordinates telecommunication resources and services.

Under Chapter 42D, the Department of Budget and Finance is responsible for drafting the rules and regulations to administer the law. Further, B&F directs the state agencies' budget preparation activities which includes establishing the timeline for the submission of requests and ensuring that the executive agencies follow the RFP format. B&F also prescribes the procedure for tracking the proposals and reviews requests for exceptions.

Chapter 103D established a Procurement Office within the Department of Accounting and General Services headed by an administrator. This office is responsible for adopting rules governing procurement, management, control, and disposal of goods, services, and construction. The office is assisted by a procurement policy board consisting of five members with significant procurement experience. To administer its duties, the Department of Accounting and General Services Purchasing and Supply Division is assigned to the State Procurement Office. The Purchasing and Supply Division provides purchasing services to all state agencies in the purchase of goods, services, and equipment. This existing procurement office, policy board and administrative structure can assume the responsibility for POS just as they are responsible for the procurement of goods and services under Chapter 103D.

Centralized office for POS unnecessary

As proposed in the request for this audit, the Auditor was asked to consider the establishment of an Office of Purchased Services. We believe that the state should not do so. It is not clear what the functions of this office would be and whether its functions would fit the needs of the state. Since much of the administration of POS involves delegated

procurement authority to the department level, it will be unnecessary to create, at additional government expense, another office or layer of bureaucracy.

The role of centralized procurement offices varies across the nation. Fifteen states and the Territory of Guam have adopted the ABA Model Procurement Code and seven of those states are known to have centralized some of their procurement functions. However, the functions of the centralized offices differ considerably. For example, Indiana's procurement division does the central purchasing for its state agencies. The division issues RFPs, receives the proposals, and sends the proposal to the agency for review. Once the vendor is chosen, the proposal is sent back to the division for approval prior to contracting. The State of Utah, in contrast, coordinates the entire RFP process and awards the contracts for the Department of Health. Utah, however, allows the Department of Human Services to handle its own service contracts.

Although Massachusetts did not implement the Model Procurement Code, it also has a centralized system of administering POS contracts. The structure of its system differs from other states. Massachusetts created a Division of Purchased Services to establish some standardization and accountability. Within the Division, there is a program development office, bureau of technical support, bureau of program pricing, bureau of special education pricing, bureau of legal services, and an audit bureau. Massachusetts administers over \$1.5 billion in POS contracts and works with over 1,450 providers. The total staff number is 19. No cost-benefit analysis has yet been done.

While some providers contend that Chapter 42D provides for more input in the planning process, Chapter 103D provides several avenues for input by providers and recipients of services. Section 3-121-26 of the interim procurement rules of Chapter 103D allows for the establishment of advisory groups by departments and agencies for the purpose of providing input into the procurement process. We encourage departments and agencies to establish advisory groups, as necessary, to seek and obtain input into the planning and development process for purchase of services. In addition, providers and vendors can provide valuable input to departments and agencies through the protest process of Chapter 103D.

Chapter 103D has many advantages over Chapter 42D

There are many advantages to procuring services under Chapter 103D instead of Chapter 42D. These include: 1) a more effective competitive sealed proposal process; 2) a protest process more effective than the Request for Reconsideration of Chapter 42D; 3) provisions for multi-year contracts; and 4) alternate source selection methods.

More effective competitive sealed proposal process

As stated earlier, both chapters include a competitive sealed proposals process. Both chapters allow for service contracts to be awarded to the vendor whose offer is most advantageous to the state. In other words, the contract is not necessarily awarded to the lowest bidder. Other factors such as quality and availability of services may be considered.

According to procurement authorities in state and local government, the competitive sealed proposals process fosters more effective competition when it follows Chapter 103D. Chapter 103D requires that Request for Proposals include evaluation factors, public notice, and a procedure to receive proposals. To obtain the best and final offers, Chapter 103D then allows “discussion” with responsible bidders over the evaluation factors listed in the request for proposals prior to the final selection of and award of the contract.

In addition, Chapter 103D is also more effective because it allows for a multi-step sealed proposal process. The multi-step sealed proposal process is used effectively when it is impractical for the State to define the services to be solicited. Unpriced technical offers can be requested from prospective bidders as the first step prior to issuing a formal request for proposals.

Chapter 42D lacks many of the elements offered by Chapter 103D. For example, it does not have procedures for holding discussions or revising proposals for the best and final offers prior to the selection of the vendor and award of a contract. Finally, the administrative rules of Chapter 42D require that the level of funding be listed for the service to be purchased in the RFP. Departmental personnel indicated that this requirement inhibits competition because it allows vendors to see the amount appropriated for the particular service. As a result, bids from vendors generally match the funding level indicated on the RFP.

Effective vendor protest process

Vendors must have confidence in the State’s procurement process. Failure to seriously address a protest can damage the integrity of the government’s bidding process. Prompt, objective, and fair responses to vendor protests are necessary to maintain the integrity of the bidding process. A good protest process adds incentive for the vendors to participate in future contracts.

The protest process under Chapter 103D addresses the complaint of a vendor when there is a dispute regarding the solicitation or award of a contract. The request for reconsideration process under Chapter 42D is similar to the protest process under Chapter 103D. However, we found that Chapter 103D’s protest process is more effective.

Generally, the procedures for the handling of a protest should include: notification of bidder's actions that may adversely affect its status in the award process; when a protest should be filed; the party who will review the protest; the period for filing and response; the form of the protest; the effect a protest may have on the award of the contract; the causes for protest; and other avenues of appeal if the bidder does not agree with the decision of the reviewing government official.

We believe the procedures for the protest process under Chapter 103D should effectively resolve the problems identified under Chapter 42D and more. Under Chapter 103D, the rights and responsibilities of all the relevant parties are clearly identified. The protest procedures and rights of all vendors are clear to all vendors in the administrative rules. Moreover, if vendors disagree with a protest decision of a department, they can appeal the decision to a higher independent body. During the protest period, Chapter 103D permits the department to award the contract to the selected vendor, prior to the resolution of the protest, if the goods or services are necessary to protect the interests of the State. The vendor is also allowed to commence with the provision of services even though the protest has not been resolved. Upon resolution of the protest, Chapter 103D provides a remedy to protesting vendors as appropriate. There are no contract or vendor payment delays under Chapter 103D.

Multi-year contracts can be beneficial

Chapter 103D permits departments to enter into multi-year contracts if it is in the best interest of the State. For example, the State can enter into a multi-year contract if the performance of services involves high start up costs or the changeover of service contractors is very costly. The State is also allowed to terminate the contract after the first year if funds are lacking or a contract clause or provision is violated. Multi-year contracts, subject to annual availability of funds, is an essential element of any statute covering procurement of goods or services. Provisions for multi-year contracts offer flexibility and cost efficiencies to State departments while providing vendors with a commitment for long term contracts.

Representatives from state agencies and the POS community indicate overwhelming support for the use of multi-year contracts for POS. Agency personnel stated that having the flexibility to enter into multiple year contracts would alleviate some of the pressure of preparing RFPs and POS contracts every year. Department personnel did indicate that these types of multi-year contracts would be subject to the availability of funds. Similarly, members from the POS community also indicated support for the idea of multi-year contracts noting that it would take some of the pressure off their organizations to prepare proposals every year.

We believe departments can use multi-year contracts to minimize the workload impact of annual POS contracts and to seek competitively priced bids from vendors. Multi-year contracts also afford the departments the opportunity of additional time to better monitor contracts and conduct performance evaluations of vendors. This will help to ensure that the State receives the best services for the funds expended.

Alternative source selection methods provide greater flexibility

Chapter 103D provides procedures for alternate procurement source selection methods when the use of competitive sealed proposal methods are not possible, practical or advantageous to the State. Chapter 42D does not. For example, Chapter 103D provides procedures for sole source and emergency procurement. Sole source purchases occur when there is only one source available from which a service can be obtained. Emergency purchases occur where there is a threat to public health, welfare, or safety and no other source selection can be reasonably used. Departments can rely on this flexibility when conditions warrant under Chapter 103D.

Conclusion

Over the years, the Auditor has conducted several audits examining the administration of purchase of service contracts. We have found that problems with the departments' ability to effectively administer, monitor, and evaluate contracts continue to exist. The POS system is both inefficient and problematic.

Currently, two statutes apply to the procurement of services: Chapter 42D and Chapter 103D. In many aspects, Chapter 103D is more advantageous. To minimize confusion and to ensure consistent application of the law, the procurement of services should be governed by one statute. This, coupled with the fact that state departments should not differentiate the process by which services are procured, lends a strong argument for the procurement of all goods and services to be under one statute—Chapter 103D. Consequently, the Legislature should amend Chapter 42D so that it applies to grants and subsidies only. The Legislature should also seek to amend Act 194 of the 1992 legislative session so that the Chapter 42D (in its amended form) will sunset on July 1, 1996 and the original Chapter 42D would then take effect. The Legislature should remove the provisions for the Advisory Council under the original Chapter 42D. Provisions for the ECC will be deleted with the repeal of Act 194.

Although the scope of our audit did not include a review of grants and subsidies (which are also covered under Chapter 42D), we recognize that

statutory guidance needs to be left in place for the two. In addition, Chapter 103D should also be amended to include the procurement of all services. It is not necessary to identify “purchases of service” under Chapter 103D because the departments should not differentiate among the type of services being procured. Rather, the departments should view the procurement of any service as a means to accomplish their mission, goals, and objectives for public purposes.

Critics of using Chapter 103D for the procurement of health and human services argue that Chapter 103D does not allow for a planning component in the statute. They claim that planning and collaboration are essential elements to efficient and effective purchases of health and human services. We do not dispute their claims. However, planning has no place in a procurement statute. There is nothing written in statute which prohibits departments from planning for the purchase of services and in fact, it is the departments’ responsibility to ensure that effective planning for the purchase of goods and services takes place at all times.

Recommendations

1. The Legislature should amend Chapter 42D so that it applies to grants and subsidies only. It should further amend Act 194, SLH 1992 so that the original Chapter 42D would take effect once Act 194 is repealed. In addition, the Legislature should amend the original Chapter 42D so that it eliminates the provision for an Advisory Council.
2. The Legislature should amend Chapter 103D to delete reference to purchases of services made under Chapter 42D and include the procurement of all services.
3. The State Procurement Office should assume the leadership role in assisting and instructing departments on the purchase of health and human services under Chapter 103D.

Responses of the Affected Agencies

Comments on Agency Responses

We transmitted a draft of this report to the Department of Budget and Finance, Office of State Planning and Judiciary on December 21, 1995. A copy of the transmittal letter to the Department of Budget and Finance is included as Attachment 1. Similar letters were sent to the Office of State Planning and the Judiciary. The responses of the Department of Budget and Finance, Office of State Planning and the Judiciary are included as Attachments 2, 3, and 4 respectively.

The Department of Budget and Finance responded that it generally agrees with our findings and recommendations. The department offered a technical clarification to our draft which we have incorporated. The department also noted that the administration is considering a proposal for introduction to the 1996 Legislature which contains amendments to Chapter 42D. However, this proposal is not in its final form.

The Office of State Planning (OSP) responded that our findings are similar to those that the OSP presented to the Legislature in 1994 and 1995. OSP agreed with many of our findings but not with some of the assumptions. We have changed some of our language in the interest of clarity and balance. However, we stand by our position that the many inadequacies of Chapter 42D argue for its sunset and a substitution of Chapter 103D.

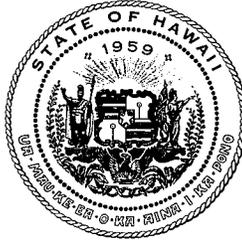
Moreover, with respect to the issue of having multiple contracts with different state agencies, our point is that without proper coordination efforts the State cannot determine when and where services should be merged or combined. Thus, duplication may exist. Finally, with respect to the issue of justifying the need for specific health and human services, our point is that without sufficient monitoring and evaluation it is difficult to determine whether contracted services have been provided or how effectively they have been performed.

The Judiciary submitted a letter that did not comment on the draft itself but did note that, while the audit was being conducted, the Judiciary developed a draft monitoring and evaluation plan.

All three agencies suggested some additional technical clarifications and corrections in our draft. We incorporated some of these in our report.

ATTACHMENT 1

STATE OF HAWAII
OFFICE OF THE AUDITOR
465 S. King Street, Room 500
Honolulu, Hawaii 96813-2917



MARION M. HIGA
State Auditor

(808) 587-0800
FAX: (808) 587-0830

December 21, 1995

COPY

The Honorable Earl Anzai
Director of Finance
Department of Budget and Finance
No. 1 Capitol District Building
250 South Hotel Street
Honolulu, Hawaii 96813

Dear Mr. Anzai:

Enclosed for your information are three copies, numbered 6 to 8 of our draft report, *Audit of the Administration of the Purchase of Service System*. We ask that you telephone us by Tuesday, December 26, 1995, on whether or not you intend to comment on our recommendations. If you wish your comments to be included in the report, please submit them no later than Tuesday, January 2, 1996.

The Office of State Planning, the Judiciary, Governor, and presiding officers of the two houses of the Legislature have also been provided copies of this draft report.

Since this report is not in final form and changes may be made to it, access to the report should be restricted to those assisting you in preparing your response. Public release of the report will be made solely by our office and only after the report is published in its final form.

Sincerely,

Marion M. Higa
State Auditor

Enclosures

BENJAMIN J. CAYETANO
GOVERNOR



EARL I. ANZAI
DIRECTOR

NEAL MIYAHIRA
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF BUDGET AND FINANCE

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EMPLOYEES' RETIREMENT SYSTEM
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HOUSING FINANCE AND DEVELOPMENT
CORPORATION
OFFICE OF THE PUBLIC DEFENDER
PUBLIC UTILITIES COMMISSION
RENTAL HOUSING TRUST FUND COMMISSION

ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET, PROGRAM PLANNING AND
MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION
INFORMATION AND COMMUNICATION
SERVICES DIVISION

January 4, 1996

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OFFICE OF THE AUDITOR
STATE OF HAWAII

Ms. Marion Higa, State Auditor
Office of the Legislative Auditor
465 S. King Street, Room 500
Honolulu, Hawaii 96813-2917

Dear Ms. Higa:

I have received your draft "Audit of the Administration of the Purchase of Service System" report to the Governor and the Legislature and would like to thank you for the opportunity to comment on the recommendations.

There is general agreement with the findings and recommendations contained in the draft report. However, on pages 4 and 10 in the draft report, references are made to the State purchase of service team (POST) being formed to standardize the format and forms relating to the request for proposal (RFP) process and to address the procedural and implementation aspects of the purchase of service (POS) system.

As a point of clarification, POST was formed as a means of providing informal line agency staff input into the planning process as outlined in Section 16 of Act 194, SLH 1992. As POST continued to meet on the planning process, it became apparent that the meetings served as a useful forum to discuss administrative and other procedural concerns which were applicable to the line agencies represented at POST.

Once the planning process was completed, POST continued to meet on matters dealing with the administration of the POS system and resulted in the development of standardized formats for responses to Chapter 42D RFPs across all State agencies, among other accomplishments.

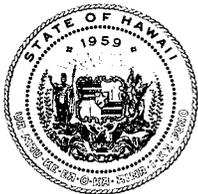
At this time, the administration is considering a proposal for introduction to the 1996 Legislature which contains amendments to Chapter 42D, HRS; however, the proposal is not yet in its final form.

Thank you for the opportunity to comment on the draft report relating to the administration of the POS system.

Aloha,



EARL I. ANZAI
Director of Finance



OFFICE OF STATE PLANNING

Office of the Governor

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JOHN WAIHEE, Governor

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 Planning Division 587-2824

January 5, 1995

The Honorable Marion M. Higa
 State Auditor, State of Hawaii
 Office of the Auditor
 465 S. King Street, Room 500
 Honolulu, Hawaii 96813-2917

RECEIVED

JAN 5 12 52 PM '96

OFFICE OF THE AUDITOR
 STATE OF HAWAII

Dear Ms Higa:

Thank you for offering the Office of State Planning (OSP) the opportunity to comment on your draft Audit of the Administration of the Purchase of Service System received by our office on December 21, 1995.

We welcome this audit because of the trust that the State Legislature places on the Auditor's reports. The findings are similar to those that OSP has presented to the Legislature in 1994 and 1995 in fulfillment of the mandate to OSP to analyze the planning system for health and human services that are purchased from the private sector by state agencies.

We would like to offer the following specific comments in the spirit of positive clarification of an already fine report:

On pages three and four of the Background section, we suggest that the time sequence between Act 335 and Act 194 be clarified. Although Act 335 was passed and signed into law in 1991 the Legislature chose to delay the effective date until July 1, 1992 in order to respond to providers who gave testimony critical of the new purchase of services bill.

The 1992 Legislature's answer to those concerns was embodied in Act 194 which also took effect on July 1, 1992. Your narrative does not distinguish between the provisions of the two acts on the bottom of page three and top of page four. We suggest that the elements introduced into the system by Act 194 be moved into the fourth paragraph of page four.

Another essential element of the Legislature strong desire to be responsive to critics of the new P.O.S. system was the sunset provision which limited OSP's role to four years, 1992 to 1996. We believe it is important to highlight the fact that OSP's role was always a temporary one in which we would staff the two council's and develop recommendations for the purchasing agencies and the Legislature on how to improve the planning component of the Purchase of Services system. As the Administration's recommendations to the 1994 and 1995 Legislature demonstrate OSP did not see a permanent role for itself beyond the incubation period.

In Chapter 2 - Findings and Recommendations, OSP agrees with many of the Auditor's findings and disagrees with some assumptions as follows:

On page ten, paragraph two, the report states that "This lack of direction resulted in the establishment of an informal group to focus on the implementation and procedural aspects of the POS system." The motive for establishing the POSTeam was quite different. Both B&F and OSP felt that those individuals in the purchasing agencies that had responsibility for implementing the POS should have an opportunity to contribute to standardization of forms and input of data for planning purposes. The best analogy would be quality circles not an abdication of responsibility for leadership. As POSTeam members are quick to point out, they make recommendations to their directors, not policy.

At the bottom of page ten and the top of page eleven the report assumes that state agencies are purchasing the duplicative services from the same private provider. In our review of RFP's we have never found duplicative services. We would be interested in knowing what specific instance of duplication led to this concern.

Bravo for pointing out the very confusing statutory provisions regarding the sunset provision.

OSP disagrees with the statement at the top of page thirteen that the state cannot reasonably determine what it has received for its money and what benefit the services have provided to the public. As legislators will attest both the purchasing agencies and the public have presented exhaustive information on these questions -- enough to convince the Legislature to appropriate additional funds each biennium for several decades. To assert otherwise is to suggest the Legislature acts irresponsibly--which we do not feel is true.

The 1996 Executive Coordinating Council has not taken a formal position on recommendations to fix the flaws that this report as has detailed. Therefore OSP will not anticipate its actions by commenting on the analysis of Chapter 103D and the recommendations that follow.

Thank you for allowing OSP to comment.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gregory G.Y. Pai', written in a cursive style.

Gregory G.Y. Pai, Ph.D.
Director



Office of the Administrative Director of the Courts — THE JUDICIARY • STATE OF HAWAII
417 SOUTH KING STREET • ALI'IOLANI HALE • HONOLULU, HAWAII 96813-2912 • TELEPHONE (808) 539-4900 • FAX 539-4855

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JAN 2 11 49 AM '96

OFF. OF THE AUDITOR
STATE OF HAWAII

Sharon Y. Miyashiro
ADMINISTRATIVE DIRECTOR
Clyde W. Namu'o
DEPUTY ADMINISTRATIVE DIRECTOR

December 26, 1995

The Honorable Marion M. Higa
State Auditor
Office of the Auditor
465 S. King Street, Room 500
Honolulu, Hawaii 96813-2917

Dear Ms. Higa:

Thank you very much for providing the Judiciary copies of your draft report, "Audit of the Administration of the Purchase of Service System." We appreciate the work your staff did on the report and the highly professional manner in which they conducted the audit.

We also appreciate the opportunity to comment on your recommendations. The Judiciary does not intend to submit any comments at this time.

We would like to inform you that while the audit was being conducted, the Judiciary was working on its monitoring and evaluation plan for purchase of services (POS). We have just issued a draft of the plan to our POS program administrators for their review and comment.

Please call me at 539-4900 if you have any questions.

Sincerely,

Sharon Y. Miyashiro
Administrative Director of the Courts

SYM/hk