A REPORT
TO THE
MONTANA
LEGISLATURE

PERFORMANCE AUDIT

Administration of Procurement: Statewide and at the Montana Lottery

Department of Administration
Montana State Lottery

AUGUST 2026

LEGISLATIVE AUDIT
DIVISION

26P-01

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Performance audits conducted by the Legislative Audit Division are designed to assess state government operations. From the audit work, a determination is made as to whether agencies and programs are accomplishing their purposes, and whether they can do so with greater efficiency and economy.

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

Performance audits are conducted at the request of the Legislative Audit Committee, which is a bicameral and bipartisan standing committee of the Montana Legislature. The committee consists of six members of the Senate and six members of the House of Representatives.

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August 2026

The Legislative Audit Committee
of the Montana State Legislature:

It is a pleasure to present our performance audit of state procurement and the lottery contract procurement process managed by the Department of Administration's State Procurement Services Division and the Montana State Lottery (Lottery).

This report provides the Legislature information about state procurement practices and the 2024–2025 Lottery operating system procurement process. This report includes recommendations for enhancing program operations at the Department of Administration and the Lottery. Written responses from the audited entities are included at the end of the report.

We wish to express our appreciation to Department of Administration and Lottery personnel for their cooperation and assistance during the audit.

Respectfully submitted,

/s/ Angus Maciver

Angus Maciver
Legislative Auditor

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Appointed and Administrative Officials

Department of Administration

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John Thomas, Enterprise Procurement Manager

Lauren Spatzierath, Procurement Operations Manager

Office of Budget and Program Planning

Ryan Osmundson, Director

Amy Sassano, Deputy Director

Montana State Lottery

Bob Brown, Director

Cory Bailey, Director of Security & Warehouse Services

Philip Charpentier, Director of Information Technology Services

Montana State Lottery and Sports Wagering Commission

Name	City	Term Expires
Leo Prigge, CPA, Chairman	Butte	January 1, 2027
Kimberly Beatty, Attorney	Helena	January 1, 2030
Jon Metropoulos, Attorney	Helena	May 2026
Bryan Costigan, Law Enforcement	Helena	January 2, 2029
Tony Harbaugh, Law Enforcement	Miles City	May 2026
Steve Morris, Public Member	Helena	January 2, 2029
Janna Taylor, Public Member	Superior	January 1, 2030

Montana Legislative Audit Division

Performance Audit

Administration of Procurement: Statewide and Lottery

Department of Administration

Montana State Lottery

A report to the Montana Legislature

Background

The Montana Department of Administration has general procurement authority for the state. The DOA delegates its authority to other state agencies to allow them to conduct some procurements individually. The DOA relies on its State Procurement Services Division to supervise or conduct state procurement actions. The Lottery generates revenue for the STEM Scholarship Program and general fund through provision of lottery products via the administration of its lottery operating system contract with a third party vendor. In 2024–2025, the Lottery undertook a procurement process to renew its operating system contract.

Program: State Procurement Services Division, Lottery

Program PB:
SPSD: 14.25
Lottery: 39

Program Revenue (FY25)
SPSD: N/A
Lottery: $22 million* in transfers to STEM scholarship and general fund

Program Expenses
SPSD (FY26): $2 million
Lottery (FY25): $23 million* administrative expenses
Total Value of Awarded State Contracts (FY26): more than $250 million

*unaudited

During our review of four years of general procurement practices, Montana state government managed at least 1,600 procurement solicitation processes on behalf of its citizenry. The State Procurement Services Division (SPSD) of the Department of Administration (DOA, department) is responsible for supervising each procurement process performed by the state. It fulfills its responsibility through communication with agency partners, reviews of agency procurement actions, and by directly conducting procurements on agencies' behalf. While SPSD generally provides satisfactory oversight of state procurement, our review found several opportunities to strengthen program operations and improve compliance with statute and rule.

From 2024–2025, the Montana Lottery (Lottery) undertook a procurement to renew the operating system contract that allows it to provide lottery products to achieve its mission of maximizing net profit to the Science Technology Engineering and Mathematics (STEM) Scholarship Program and the general fund. The Lottery administered a request for proposal process that met the requirements of the procurement act at the time, and the state obtained terms more favorable than those in its previous contract. Our review found opportunities to improve the quality of information communicated to decision-makers and for better adherence to statutory requirements that pertain to the lottery procurement. Our review of the lottery procurement process was limited by the DOA, the Lottery, and the Governor's Office restricting access to certain information we requested; as a result, some details about the process remain unclear.

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For the full report or more information, contact the Legislative Audit Division.

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KEY FINDINGS:

The electronic Montana procurement system (eMACS) has several flaws. The DOA manages procurements primarily through eMACS. System usability suffers from unreliable and incomplete data, poor organization, and a lack of consistent use by all agencies.

Compliance reviews are effective but not timely. The department supervises other agency procurements through its compliance review process. We found compliance reviews to be effective at identifying procurement shortcomings, but reviews were not conducted at the frequency required by the DOA policy. The method of selecting agencies for review is also outdated, and several large agencies have never been reviewed.

The DOA organizational structure creates conflicts between differing staff duties. The DOA's agency procurement officer is also serving as the SPSD operations manager. This puts SPSD staff in a position where they must review the work of their supervisor in order to maintain the typical controls of the procurement process.

The DOA does not maintain a centralized document of procurement requirements. Other state agencies rely on the DOA to communicate procurement requirements to them. The DOA previously maintained a state procurement manual to aid in this purpose, but that document is no longer available.

The processes for engaging competitive solicitations used by state agencies are generally reliable and appropriately applied. Our review of competitive solicitations found only a small number of minor process violations that we concluded were nonsystematic mistakes. As a result, the public can rely upon standard procurement activities to direct public funds in a fair and transparent manner.

The DOA granted some sole-source procurements despite ambiguous justification. Sole-source procurements bypass competitive processes when only one source is available for a good or service. Because of the potential for abuse of these processes, state administrative rule requires a high standard for approval. We identified multiple cases of the DOA granting approval for sole-source procurements despite the related justifications appearing insufficient.

Many exigent (emergency) procurement declarations did not follow documentation requirements. While all exigent procurements from the past four years were in response to bona fide emergencies, many did not follow documentation requirements, including a lack of justification for vendor selection.

The Lottery did not provide quality information to stakeholders to inform decision-making and review of the procurement process. We identified opportunities to improve information provided to the Lottery Commission, legislature, the Office of Budget and Program Planning, and the DOA; this includes providing statutorily required information to create transparency and inform future procurement processes.

The Lottery and the DOA have not established a process to review the performance bond required by the new lottery operating system contract. Without the review, it is unclear if the terms of performance securities adequately address potential damages the state could incur if a vendor fails to perform. Establishing a formalized review process would help alleviate this issue.

RECOMMENDATIONS:

In this report, we issued the following recommendations:
To the Department of Administration: 6
To the Montana State Lottery: 2
To the legislature: 0

Recommendation #1 (page 9):

System and Information Management

We recommend the Department of Administration address issues with its current electronic procurement data management system as part of its acquisition of a new system and require all agencies to use the new system for contract management.

Department response: Concur

Recommendation #2 (page 12):

State Compliance

We recommend the Department of Administration update its compliance review policies by incorporating a risk-based agency selection method and ensuring adequate staff resources to follow an appropriate schedule of reviews.

Department response: Concur

Recommendation #3 (page 13):

Internal Control

We recommend the Department of Administration remove its agency procurement officer position from the State Procurement Services Division and ensure that adequate staffing resources are provided for the agency procurement officer to independently conduct all necessary duties.

Department response: Partially Concur

Recommendation #4 (page 15):

State Compliance

We recommend the Department of Administration develop and publish a centralized document that guides agencies regarding relevant procurement policies and procedures.

Department response: Partially Concur

Recommendation #5 (page 20):

State Compliance

We recommend the Department of Administration ensure its State Procurement Services Division grants approval for sole-source procurements only when the documentation provided in the request clearly fulfills one of the categories listed in §18-4-306, MCA, in accordance with statute and rule.

Department response: Concur

Recommendation #6 (page 24):

State Compliance

We recommend the Department of Administration update procedures and rule related to exigent procurements and provide a standardized format for exigency declarations to ensure compliance from delegated agencies and report to the legislature on noncompliance.

Department response: Partially Concur

Recommendation #7 (page 38):

Management and Operational Effectiveness

We recommend that the Montana Lottery establish processes to improve quality, timing, and communication of information provided to decision-makers for future operating system procurements, including the submission of all information required by statute and policies.

Lottery response: Concur

Recommendation #8 (page 39):

Procurement, Contracting, and Grants Management

We recommend that the Montana Lottery work with the Department of Administration to develop and implement a process whereby the department evaluates the risk of contract performance failure and maintains documentation that demonstrates that the lottery performance bond and other securities sufficiently cover the risk to the state, adopting administrative rules and policies as necessary.

Lottery response: Concur

Chapter I – Introduction and Background

Introduction

Within Montana state government, procurement takes place when the state needs a good or service to fulfill a program goal that it cannot efficiently supply for itself. The Montana Procurement Act, MCA, Title 18, Chapter 4, outlines requirements for state procurement of supplies and services. The purposes of Montana procurement law as outlined in statute include providing increased public confidence in the procedures of public procurement, ensuring fair treatment of all persons who deal with procurements, maximizing the purchasing value of public funds, and fostering effective competition.

With some exceptions, statute gives the Department of Administration (DOA, department) responsibility for the procurement or supervision of the procurement of all supplies and service items across state government. The department delegates its authority to state agencies via interagency delegation agreements to allow procurements to be managed by staff who better understand specific program goals and also due to the large staffing demand that directly managing all state procurements would place on the department. Procurement requirements in Montana are a combination of explicit statutory requirements and administrative rules established by the DOA in accordance with its responsibility.

In the 2025 session, the Montana State Legislature requested an examination of state procurement practices in House Joint Resolution 42 and the 2024–2025 Montana State Lottery (Lottery) IT procurement process in House Bill 2 to ensure procurements were being performed in accordance with state law. Proper oversight of state procurement is important for ensuring proper use of state resources to help programs operate effectively. We found that competitive procurement processes across the state are generally sound; however, there are opportunities for the DOA to increase compliance and oversight, especially with regard to noncompetitive procurement processes.

We found that the Lottery conducted a request for proposal consistent with the procurement act for its lottery operating system procurement and obtained a more favorable vendor payment schedule than its previous contract. We identified opportunities for the Lottery to develop and communicate better information to inform decision-making related to its procurement, including the need to supply statutorily required information, and we found that there was not a formal process to review the Lottery's contract performance bond to ensure that it covered the risk to the state.

Montana Statute Outlines Five Methods for Soliciting Procurements

When soliciting a new procurement, the procurement act requires agencies to follow a method outlined in statute unless specific permission is received from the DOA to utilize an alternative. The methods enumerated in the procurement act are small purchase, limited solicitation, sole-source, invitation for bids (IFB), and request for proposals (RFP). IFBs and RFPs are known as "formal solicitations" and are the typical processes the state uses for its largest procurement actions. Agencies can use different procurement methods based on the estimated value of the procurement and other specific circumstances.

Statute also creates an exemption for emergency or "exigent" procurements, which are allowed to bypass typical procurement requirements. We define formal and limited solicitations as "competitive" due to the fact that they require agencies to collect bids or proposals from multiple vendors and select the best option, whereas small purchases, sole-source, and exigent procurements are "noncompetitive." Section 18-4-132, MCA, defines further exemptions from the procurement act and includes things like construction contracts and employment of specialized professionals like engineers, surveyors, or real estate appraisers, many of which are regulated by other areas of statute.

Figure 1
Five Methods of Soliciting Procurements

Agencies may use competitive or noncompetitive procurement methods based on expected costs and specific circumstances.

Competitive Procurements

Limited solicitations apply to procurements under $100,000. Agencies must collect and document at least three bids, when available.

Formal solicitations apply to procurements over $100,000. Agencies issue invitations for bids or requests for proposals, post a scope of work and evaluate bidders.

Noncompetitive Procurements

Small purchases apply to procurements under $10,000. Agencies may buy items from the open market.

Sole-source procurements allow agencies to bypass formal solicitation when only one source can provide the needed good.

Exigent procurements allow agencies to bypass formal solicitation when items are needed immediately for a public emergency.

Source: Compiled by the Legislative Audit Division from department records.

The DOA manages procurement activities primarily through its electronic Montana Acquisition and Contracting System (eMACS). Due to incompleteness in eMACS records and the lack of a connection between eMACS and state accounting data, it is difficult to get a complete picture of procurement expenditures in the state. Reported values should be viewed as rough lower bounds, as some solicitations have poorly formatted or missing estimated values, and some, including all small purchases, are not recorded in eMACS.

Table 1

eMACS Data on Competitive and Noncompetitive Procurements from 2022–2025

Procurement Type		Total Procurements (2022–2025)	Total Estimated Value (2022–2025)
Competitive	Formal Solicitation	678	$2B
	Limited Solicitation	346	$15M
Noncompetitive	Sole-source Intents	149	$76M
	Exigent Procurement	18	$9M

Source: Compiled by the Legislative Audit Division from department records.

The DOA State Procurement Services Division Exercises Oversight of State Procurements

Section 18-4-221, MCA, says the DOA shall "procure or supervise the procurement of all supplies and services needed by the state" outside of a small number of specific exceptions. The department conducts procurements and manages its oversight of delegated agencies through its State Procurement Services Division (SPSD). The SPSD maintains delegation agreements with agencies, answers agency questions about procurement requirements, reviews agency compliance, conducts procurements on behalf of agencies that exceed delegated authority levels, and maintains statewide term contracts. The eMACS lists that, between 2022 and 2025, the state engaged in an average of 300 solicitation actions per year, with 18 percent of those conducted directly by the SPSD. The SPSD has 14 staff members, four of whom are contract officers who directly engage in conducting procurements.

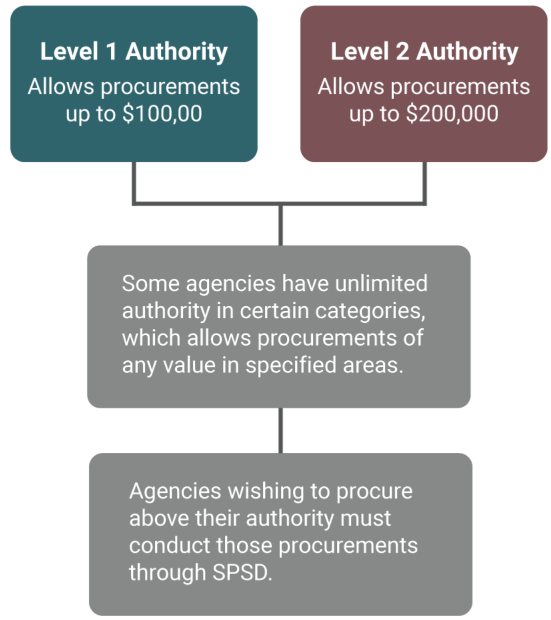
Agencies Sign Delegation Agreements With SPSD To Receive Procurement Authority

The SPSD formalizes its delegation of procurement authority through signed memoranda with agencies. These delegation agreements outline requirements and define the agency's level of delegation authority. Agreements also identify an agency procurement officer (APO) at the relevant delegated agency, who is responsible for maintaining the agency's compliance with procurement requirements and is required to review its procurement actions.

Each state agency has its own agreement. Delegation authority is typically measured at level one or level two, with level one agencies able to conduct procurements up to $100,000 and level two agencies up to $200,000 without involving SPSD staff. Some agencies may also have unlimited authority for certain specific supply or service categories, either due to the technical understanding required to engage in those procurements or to save staff capacity at SPSD for high-volume procurement categories. Each agency's authority determines whether a solicitation can be delegated or nondelegated.

Figure 2

Delegated Procurement Authority



Source: Compiled by the Legislative Audit Division from department records.

Agency Solicitations Can Be Either Delegated or Nondelegated

When a delegated agency wants to engage in a new procurement, it must first estimate the total cost and compare that to the upper limit of its delegation authority. Delegated solicitations are conducted by agency staff who must follow the relevant rules and statutory requirements. Nondelegated solicitations are performed directly by SPSD staff. When engaging in a nondelegated solicitation, the agency prepares scope of work information for SPSD staff who conduct the solicitation in collaboration with procurement staff from the agency.

SPSD Supervises Delegated Procurement Actions Through Compliance Review

The SPSD conducts compliance reviews at delegated agencies to ensure they comply with statute and rule in their delegated procurements. The SPSD policy specifies that compliance reviews should be conducted at each agency at least once every three years. Reviews involve SPSD staff speaking with agency staff about policies, reviewing a sample of delegated solicitations, and issuing a grade and possible recommendations for corrective action. If an agency performs poorly in compliance review, the SPSD can determine that additional oversight of the agency's solicitations is needed or can reduce or revoke the agency's delegated authority.

Legislature Mandated a Performance Audit of the Lottery Procurement Process

In addition to a broad look at procurement, the 2025 legislature in House Bill 2 mandated a performance audit of the Lottery's most recent information technology procurement process. In the interest of efficiency, we opted to combine the legislative directives to review the general state procurement and the lottery-specific procurement processes. Chapter IV discusses our review of the risk areas we identified in the lottery procurement.

Audit Scope

We scoped our review of state procurement practices based on the statutory interest outlined in House Joint Resolution 42 (2025) to focus on procurement processes at agencies across the state from the past four years (2022–2025) and the oversight framework intended to ensure compliance with the procurement act. We reviewed a selective sample of procurement solicitation processes for appropriateness to determine if there is widespread misuse of the procurement process. We also reviewed the DOA's procedures for maintaining oversight and compliance of statewide use of delegated procurement authority.

The scope of our review of the lottery operating system procurement process included a review of information leading up to, during, and following the 2024–2025 procurement. We reviewed changes in procurement law from the 2023 and 2025 sessions that affected the procurement process. Our review for process compliance focused on comparing the results of interviews and data to requirements of the Lottery and the Lottery Commission (Commission), the procurement act, Montana Information Technology Act (MITA), the Montana Code of Ethics, and Montana Operations Manual control policies.

Scope Limitation Impedes Legislative Oversight of the Lottery Procurement Process

Audit standards require us to clearly specify scope limitations within our report. Scope limitations include actions taken by auditees that limit our ability to complete the audit work punctually and to rely on evidence provided. The Legislative Audit Act (§5-13-309, MCA) gives the legislative auditor the authority to "examine at any time the books, accounts, activities, and records, confidential or otherwise, of a state agency." It also provides that "all state agencies shall aid and assist the legislative auditor in the auditing of books, accounts, activities, and records." Throughout the audit, the DOA, the Lottery, and the Governor's Office did not consistently facilitate the provision of and access to information that allowed us to draw independent conclusions and answer questions related to the lottery procurement process. These barriers included not providing us with requested information, especially not allowing us to independently obtain and review emails, limiting access to interviewees, and involving its legal counsel in most interviews. As a result, we cannot provide assurance to the legislature that our review of the lottery procurement process is complete.

Audit Objectives

We developed two audit objectives to evaluate SPSD's oversight of procurement processes in the state and a third objective to review the lottery procurement process:

1. Does the Department of Administration effectively ensure that state agencies are following requirements and best practices in the procurement process for standard competitive procurements?
2. Does the Department of Administration effectively ensure that other state agencies are following requirements and best practices in the procurement process for noncompetitive procurements?

3. Did the 2024–2025 state lottery IT contract procurement process follow all applicable state laws, rules, policies, and procedures and adhere to the principles outlined in the purpose of Montana's Procurement Act?

Methodologies

We completed the following methodologies to answer the audit objectives:

- Reviewed statute, administrative rules, policies and procedures relating to state procurement practices and the lottery operating system procurement.
- Examined data storage and reliability in eMACS for solicitations from 2022–2025.
- Surveyed and interviewed procurement staff at delegated agencies; the survey had a total population of 1,116 with an eligibility-adjusted response rate based on our screening question of 36 percent.
- Reviewed a sample of 24 formal and limited solicitations that were conducted during the past four years.
- Reviewed a sample of 30 sole-source solicitations that were conducted during the past four years.
- Reviewed all 18 exigent procurements that were conducted during the past four years.
- Researched criteria for best practices in procurement, including practices in other states.
- Conducted a review examining potential conflicts of interest of employees involved in procurement across the state.
- Reviewed the SPSD's delegated agency compliance review process, including documentation from all reviews at level two delegated agencies that were conducted from 2022–2025.
- Obtained descriptive statistics related to state procurements and the lottery.
- Conducted interviews with the DOA, the Lottery, the Commission, the Governor's Office, stakeholders, and other state agencies that engage in procurements.
- Reviewed a limited number of emails pertaining to the lottery procurement process from Lottery, the DOA, and the Governor's Office.
- Reviewed the 2024–2025 Commission meetings.
- Reviewed legislative hearings and documents pertaining to the lottery system procurement process.

Issue for Further Study

We identified one area that may warrant further study related to oversight of term contracts. Delegated agency procurement staff we interviewed expressed concerns about the SPSD's failure to renew some commonly used statewide term contracts prior to their expiry, creating difficulties and duplicative work for program staff.

Chapter II - Oversight of State Procurement

Introduction

The Department of Administration has statutory responsibility for conducting or supervising all supplies and services needed by the state that do not fall under a specific exception. As part of its supervision, the DOA's SPSD assists delegated agency procurement staff and conducts periodic compliance reviews of delegated agency practices. The SPSD also conducts procurements for agencies that do not fall within delegated authority and maintains statewide term contracts that many agencies rely on for commonly procured items. The DOA is currently embarking on centralization of procurement oversight, which may present opportunities for improvements in meeting its statutory responsibility. Overall, our work found that the DOA has effective oversight procedures. However, the DOA's oversight ability is hampered by issues with its centralized procurement database and the timeliness of its agency reviews, and it struggles to consistently communicate policy requirements to delegated staff in a timely manner.

Centralization of State Procurement Services Will Change the Supervisory Landscape

The department is currently planning the centralization of many of its functions, including state procurement. Under the current decentralized framework, delegated agencies each have an APO as part of their staff who is in charge of their delegated procurements. Under the new centralized framework, APOs will no longer be employees of the delegated agency and will become a part of SPSD's organizational structure. For several agencies where the current APO is also responsible for other duties, an employee will take over the APO role. The majority of agencies in the state are planned to be included in procurement centralization. However, the DOA plans for some agencies that often deal with very specialized procurements to be left operating under the current organizational structure. The SPSD staff believe centralization will improve its oversight of and communication with delegated agencies regarding procurement practices. With centralization, the SPSD will need to balance the additional supervisory demands of expanding its employee base.

eMACS Creates Difficulties for Program Effectiveness

The SPSD relies on the eMACS to aid in the organization, management, and supervision of procurement processes across the state, including solicitations and active contract management and amendments. The system is organized into distinct modules that relate to differing aspects of procurement management. After recognizing several shortcomings with the eMACS, the SPSD issued an RFP in January 2026 to procure a new solicitation and contract management data system that includes requirements addressing issues with the current system we identified.

eMACS Data Is Not Complete or Reliable in Key Areas

The eMACS has several machine-readable data fields that can be exported to data processing software to aid oversight and high-level analysis. High-quality machine-readable information from the procurement data management system could be used to inform risk-based flagging and review processes. This could help the DOA maintain an overview of operations and prepare reports for stakeholders, such as the legislature, when requested. We found that machine-readable eMACS data on final completed contract costs and vendor bid costs were missing or unreliable, which impacted our ability to provide an overall accounting of procurement activities across state government, and reduced the DOA's ability to implement algorithmic fraud risk detection and report aggregate state procurement expenditures to stakeholders.

The eMACS does not include collected data on final contract costs because it does not have a financial connection with the state accounting database. Additionally, eMACS' data on total bid costs is not reliable because bid costs are stored in differing formats (e.g., some are stored as per-unit costs, some are stored as total costs, or some are stored as percentage rates) with no easy way to determine the actual total cost represented by the bid from the recorded data. As part of the procurement for its new solicitation and contract management data system, the SPSD has the opportunity to improve program effectiveness by ensuring that the system includes a financial connection with the state accounting database, which would automatically connect total contract costs to procurement process records as machine-readable data and ensure the system includes methods to calculate and record the total cost represented by vendor bids.

eMACS Is Difficult To Navigate To Verify Compliance

The eMACS also includes data in the form of attachments such as scope of work files, evaluation documentation, and justifications for sole-source and exigent solicitations. Each module includes a search field and filters to aid the user in navigating to a desired record. However, the system has several organizational issues that hinder user navigation. Connections are lacking between related records across different modules, which makes it difficult to identify all information relevant to a specific procurement process. Files and other information within records are also poorly organized, with common files like scopes of work stored in multiple locations across the solicitation records we reviewed. Poor data-to-organization alignment makes it more difficult for management or oversight to review procurement information stored in eMACS.

SPSD Has the Opportunity To Improve Organization and Ease of Use in Its New Software System

As part of its procurement of a new solicitation and contract management data system, the SPSD can improve program effectiveness by focusing on improving organizational issues present in eMACS. The SPSD should ensure that information related to a specific procurement process is interconnected between different parts of the system to allow for seamless access and review of all pertinent information. The SPSD should also ensure that common files, such as scopes of work or evaluation documentation, have specified storage locations within records for easier accessibility. Based on our review of the scope of work included in SPSD's new software system procurement, it appears the SPSD is taking steps to address these issues.

Some Agency Contracts Are Managed in Agency-Specific Systems Rather Than in eMACS

While all agencies are required to use eMACS for formal, sole-source, and exigent solicitations, delegated agencies are not currently required to use eMACS for active contract management after the solicitation is complete. Department staff stated that roughly 60 percent of the state's contracts are currently managed in eMACS. When agencies do not use eMACS for contract management, it is more difficult for the SPSD staff to review, and impossible for the DOA to report on, those procurement processes. In our previous performance audit of state procurement (2018), we recommended the DOA take steps to mandate delegated agency usage of eMACS. While agency usage of eMACS has increased since 2018, the DOA did not officially mandate its use because of agency pushback against using eMACS due to its poor functionality. Some delegated agency procurement staff we spoke with confirmed that they did not want to use eMACS for contract management because of its performance and organizational issues. During the 2025 legislative session, the DOA worked with the legislature in HB 627 to provide further statutory backing for mandating use of the centralized system. The department can reduce opposition to the use of the centralized system by addressing issues in eMACS and improving its ability to exercise oversight by changing administrative rules to mandate the use of the centralized system for contract management.

Recommendation #1

We recommend the Department of Administration:

A. *Ensure its new contract and solicitation management software system includes functionalities to address deficiencies present in the current system in the following areas:*
    - *Calculating and recording estimated total costs represented by all bids in a standardized format,*
    - *Calculating and recording actual contract expenditures in a standardized format,*
    - *Internal file storage structure, and*

B. *Update administrative rules to require all agencies to use the improved software system for management of all procurement contracts.*

Agency Compliance Reviews Are Effective, but Timeliness and Selection Criteria Can Be Improved

Our 2018 performance audit of the SPSD recommended it introduce compliance reviews to verify delegated agency compliance with procurement requirements. The SPSD implemented a review process in 2019, with policy mandating a review at each delegated agency at least once every three years. During a compliance review, the SPSD staff interviewed delegated agency procurement staff about their policies and practices, and reviewed a judgmental sample of delegated solicitations that the agency has conducted.

Compliance reviews have become the SPSD's primary means of exercising oversight of delegated agency actions, and SPSD staff suggested they are generally unaware of how agencies operate under their delegated authority when a compliance review has not been recently conducted. With centralization, the SPSD may have a more consistent presence at delegated agencies, which could make formalized compliance reviews less critical. However, some form of review and oversight of delegated procurement actions will remain necessary.

Compliance Reviews Are Effective at Identifying Issues at Delegated Agencies

We reviewed each of the SPSD's compliance reviews conducted at level-two delegated agencies, which are the agencies with the highest level of definite delegation authority. These reviews covered the Department of Labor & Industry, the Department of Corrections, the Department of Environmental Quality, and the Department of Military Affairs. The compliance reviews scored the agencies' policies and procedures, the staff's understanding of requirements, and the appropriateness of judgmentally sampled solicitation processes. At the end of the review, the SPSD reviewers issue a final score and recommendations to the delegated agency. If agencies performed poorly in the review, SPSD could either require approval for future delegated procurements or reduce or remove delegated authority entirely. In our review, we found the SPSD's compliance reviews to be effective at identifying compliance issues and potential fraud, waste, or abuse in delegated procurement processes. For example, reviews we evaluated identified limited solicitations that lacked any documentation showing that the solicitation actually occurred, solicitations that were performed as limited when they should have been formal, and issues with delegated procurement staff not having completed required training.

Compliance Reviews Are Not Conducted in a Timely Manner in Accordance With Division Policy

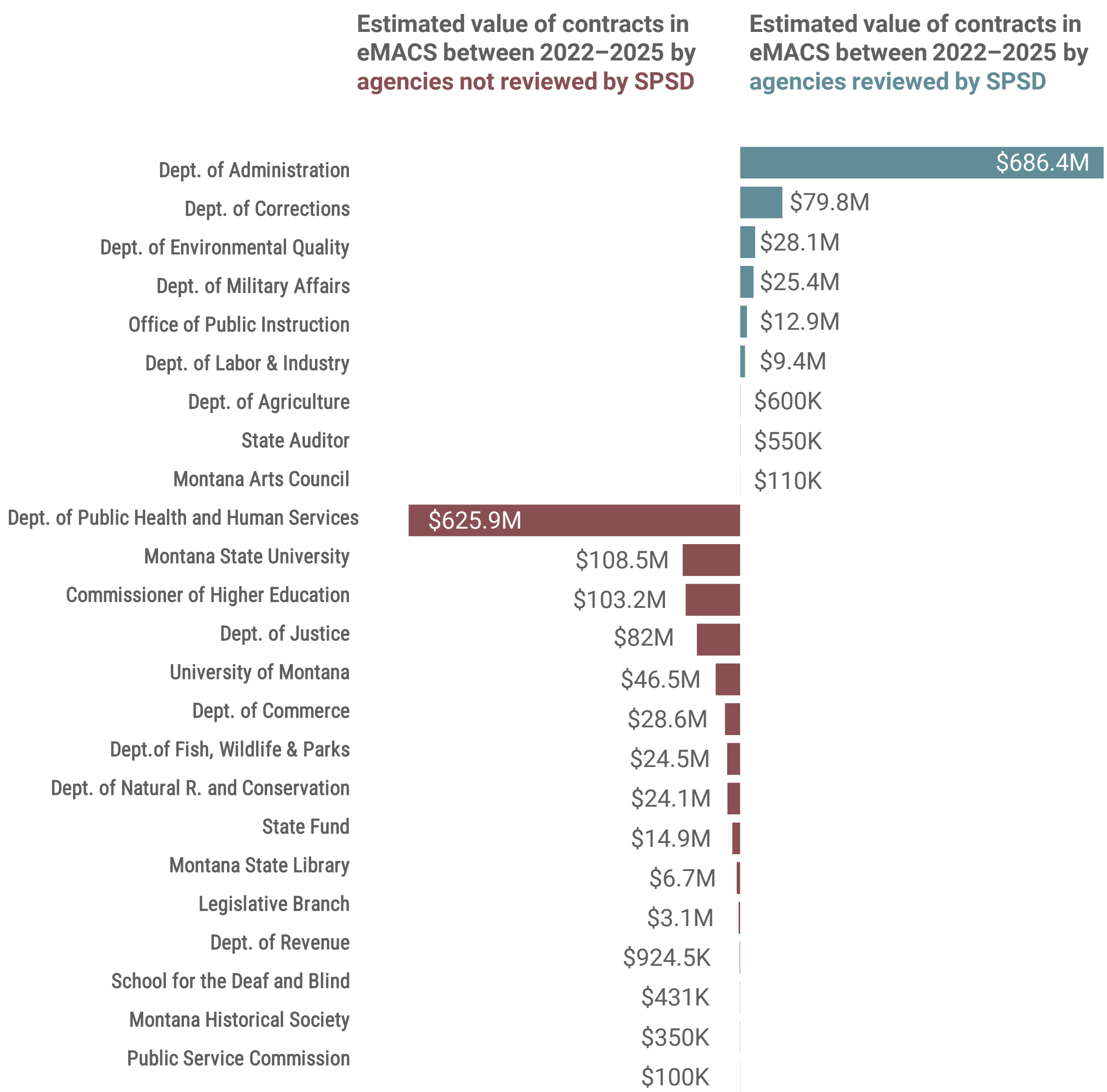
While compliance reviews, when conducted, were effective at identifying issues at the delegated agencies, reviews are currently conducted less often than policy outlines, and many agencies have never experienced a compliance review. The SPSD policy requires a compliance review to be conducted at a given agency at least once every three years. In the seven years since the SPSD implemented its compliance review procedure, at least two compliance reviews should have been completed at each state agency according to policy.

We found that the SPSD has only completed reviews at roughly half of the agencies in the state, and has not completed a second review at any agency. In total, the SPSD has completed just 22.5 percent of the agency reviews it should have completed within the timeframe required by policy. The SPSD staff stated the compliance review procedure was originally handled by two full-time staff members. Compliance reviews are currently conducted by a single staff member, in addition to this individual's other responsibilities.

Figure 3

Estimated eMACS Contract Value for Agencies that Have and Have Not Been Reviewed by SPSD

Since the SPSD began compliance reviews in 2019, many agencies with contracts in eMACS **have never been reviewed**.



Note: Some agencies manage additional contracts beyond those in eMACS illustrated here.

Source: Compiled by the Legislative Audit Division from department records.

The Department of Administration is responsible for procuring or supervising the procurement of all supplies and services needed by the state under §18-4-221, MCA. When long periods of time pass between compliance reviews, the DOA can become unaware of agency noncompliance and therefore incapable of maintaining its statutory responsibility. Concurrent audit division work found a longstanding misunderstanding of policy that led to improper procurement practices in at least one delegated agency that has not yet experienced compliance review.

The SPSD staff stated that they were unsure whether the given agency was in compliance with procurement policy, as a review had not yet been conducted. The SPSD also identified multiple issues across delegated agencies in compliance reviews it had conducted, such as procurements that SPSD staff determined to be partially or entirely inappropriate. It is unclear to what extent other agencies without these reviews may engage in practices that violate procurement requirements.

Once delegated agency staff may be centralized within the direct organizational structure, the SPSD may supervise delegated procurement actions through methods other than this formal compliance review process. However, the SPSD must ensure that a fundamentally similar review of delegated procurement actions is conducted in a timely manner to ensure agency compliance with requirements. The SPSD will also need to maintain timely compliance reviews at delegated agencies that are not included in centralization.

Risk-Based Selection of Agencies for Review Can Improve Efficiency of Staff Time

The SPSD's compliance reviews are currently conducted on a rolling basis at each agency. Risk-based selection of similar review procedures is an emerging auditing best practice that enables reviewers to maximize efficiency by targeting agencies with higher-risk characteristics. For example, the SPSD could target reviews at agencies that have larger total procurement expenditures, have specific solicitations that appear to fail clear requirements like minimum length or numbers of bidders, or have more common overruns of estimated budgets and schedules compared to other agencies. Implementing risk-based review processes would help the SPSD maximize the value of staff time, both in its formal compliance review process and in future review policies for delegated procurements conducted by centralized staff.

RECOMMENDATION #2

We recommend the Department of Administration evaluate and update its compliance review policies, documentation, and procedures in light of pending state procurement centralization by developing and incorporating a risk-based selection process to help inform timely agency review.

DOA's Organizational Structure Creates Conflicts Between Differing Staff Duties

Outside of the SPSD, the DOA comprises of other divisions like the Health Care & Benefits Division, State Financial Services Division, and State Human Resources Division. Regarding procurement, these other divisions of the DOA technically function as delegated agencies under SPSD's supervision, complete with delegation agreements and an APO.

The current APO for the DOA's other divisions is concurrently serving as the SPSD operations manager due to the DOA management not considering proper segregation of duties between supervision and review. The current relationship creates a conflict where the typical oversight relationship between the SPSD and the DOA, as a delegated agency, does not function properly. Specifically, SPSD staff are responsible for performing compliance reviews of procurement actions or approving scope of work proposals for nondelegated procurements administered by their direct supervisor. This arrangement could cause staff to feel unable to properly perform their review and approval duties, thereby weakening controls in the procurement process. The SPSD staff that we spoke with also expressed discomfort with the current organizational structure and indicated that it presented a barrier to independent oversight.

Segregation of Duties Is Important To Prevent Fraud, Waste, and Abuse

The Montana Operations Manual (MOM) outlines segregation of duties as an important principle to maintain the effectiveness of control procedures. The MOM also establishes the Government Accountability Office (GAO) Green Book as a model for agency internal controls, which states that authority, custody, and accounting of operations should be separated when practical. The DOA can improve its internal control operations by moving its APO position to a staff member outside SPSD's operational structure, such as to the Director's Office or the Office of Finance and Budget, thereby ensuring proper segregation of duties in its control environment.

Recommendation #3

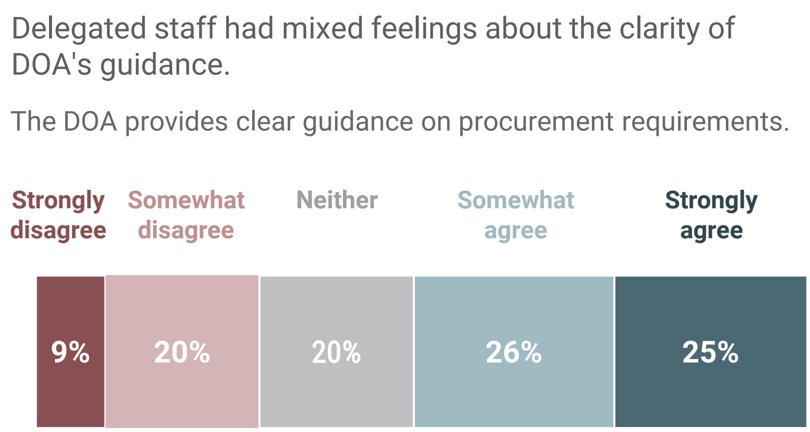
We recommend the Department of Administration remove its internal agency procurement officer responsibilities from the State Procurement Services Division and transfer them to a different organizational area.

Some Delegated Staff Indicated Issues With SPSD Communication

While many agency APOs we interviewed expressed satisfaction with SPSD's communication, others had concerns about SPSD's time to respond to queries about requirements, with some reporting that it could often take up to a month to receive a response from SPSD. Some staff also complained about the consistency of SPSD's directions and expressed frustration with requirements that they perceived as arbitrary because they were not officially documented. Our survey of procurement staff across state government returned similarly mixed responses. Just over half of respondents agreed that the DOA "provides clear guidance on procurement requirements" while just under 30 percent disagreed. When queried, SPSD staff agreed that their response times could be variable and indicated that this was due to the prioritization of limited staff capacity for more critical questions, leaving less critical ones to wait.

Figure 4

Survey Response Related to SPSD Communications



Source: Compiled by the Legislative Audit Division from department records.

The SPSD Stopped Maintaining the State Procurement Manual

Up to 2017, the SPSD maintained a manual of state procurement requirements and best practices that was available to all agencies. This document contained guidance for most procurement functions and answered basic procedural questions arising within agencies. The SPSD no longer maintains the procurement manual, and there is currently no official, centralized document outlining procurement procedures available to delegated agency staff.

The department indicated hesitance with keeping an up-to-date manual because procurement requirements change often, and they believe vendors would obtain the manual and use it to take advantage of the procurement process. Despite these factors, the MOM outlines communication of necessary information as an important control activity.

The GAO Green Book, which serves as a model for agency internal controls, also outlines the importance of documentation and communication of policies and procedures, specifying that "management should establish control activities by documenting in policies what is expected." A recent update to the Code of Federal Regulations followed this principle by creating a requirement for federal award recipients, including state governments, to document internal controls to provide assurance that the recipient is properly managing award funds. Other states also commonly publish operational guidance on their procurement practices.

The SPSD must maintain an internal understanding of procurement requirements as they change to fulfill its statutory responsibility to supervise procurement regardless of whether that supervision includes the publication and maintenance of a centralized manual. Vendors may also gain access to a manual and thereby obtain a better understanding of state procedures.

A Centralized Manual Would Save Time and Improve Delegated Agency Understanding

The lack of a centralized document explaining procurement practices forces delegated agency staff who are unsure of the requirements to reach out to SPSD staff directly for explanations. If there were a manual to refer to, it would reduce some of the demand on SPSD's resources to respond to questions. A manual would also serve as a definitive source for policy requirements, giving SPSD staff something to refer to that would reassure delegated agency staff that the policy requirements being communicated are not arbitrary.

Recommendation #4

We recommend the Department of Administration develop a centralized document that helps guide agencies to relevant procurement policies and procedures, updating it when necessary.

Chapter III - State Agency Procurement Review and Compliance

Introduction

In accordance with the areas of interest outlined in House Joint Resolution 42 (2025), we reviewed a sample of competitive and noncompetitive solicitations from multiple state agencies in eMACS to identify indications of fraud, waste, abuse, or policy noncompliance. Our review found few minor errors and violations in competitive solicitations, whereas the noncompetitive solicitations we reviewed exhibited more systematic issues. We also conducted a search for potential conflict of interest matches between procurement staff across the state and vendors their agencies had contracted with. While our original search uncovered a handful of preliminary relationship matches, no substantiated connections resulted from more detailed follow-up review. Overall, we did not find any indication of major infractions in the state procurement system, but we identified some areas where the DOA could take steps to improve statewide compliance with requirements.

No Evidence of Conflict of Interest Among Procurement Staff Across the State

We searched for possible connections between agency procurement staff and vendors their agency had contracted with using state HR and eMACS data. Our search flagged connections among state employees, their emergency contacts, and vendors and considered last names, phone numbers, and street addresses. We identified 16 initial matches between the last names of state employees or their emergency contacts and vendor agents. These connections were generally between relatively common last names and did not in themselves indicate any impropriety. After identifying these connections, we performed further manual research to determine if a substantiated conflict of interest was present. Our manual research did not find any substantiated connections for any of the employees, often because the employee in question did not have any ability to influence the relevant procurement process. Therefore, we concluded that no substantiated conflicts of interest were apparent in our search. This search was necessarily limited due to the information available, and we were unable to comprehensively investigate relationships like friendships or business associations. The DOA has the capability to perform similar searches for relationships among available state employee and vendor data and may consider incorporating a similar methodology into its oversight of state procurement in the future, especially with regard to address and phone number information.

Competitive Solicitations Are Generally Reliable While Noncompetitive Solicitations Exhibit Systematic Errors

We reviewed a judgmental sample of limited, formal, and sole-source solicitations issued by delegated agencies from 2022–2025. Our selection criteria for this review were based on indicators of potential risk accessible for analysis from eMACS, including solicitation length and estimated cost. We further reviewed all 18 exigent procurements that were listed in eMACS as having occurred during the period. Our reviews focused on identifying any major infractions or indications of fraud, waste, or abuse.

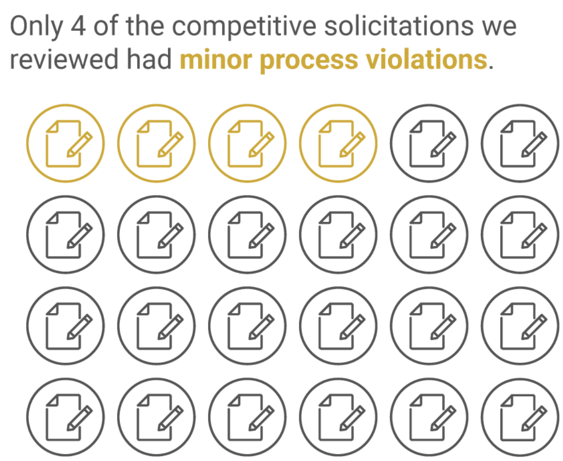
Only Minor Process Violations in Competitive Solicitations

Typical competitive solicitations conducted by the state take the form of limited and formal solicitations. These processes include competition between vendors for contract awards. Formal solicitations can be conducted either as IFBs or RFPs. Our review sample for these types of solicitations consisted of nine IFBs, ten RFPs, and five limited solicitations, for a total of 24 reviewed processes. The total estimated value of these solicitations was just under $153 million.

We selected limited and formal solicitations for review based on a low number of bidders, high estimated value, and short solicitation length. These solicitations covered numerous procurement areas, including plastic food trays for Montana State Prison, a road-painting truck for the Department of Transportation, and septic tank servicing for Fish, Wildlife & Parks. For our review, we read the scope of work and vendor submission information and reviewed evaluation documentation before making a determination about the appropriateness of the solicitation.

Figure 5

Results of Our Review of Limited Solicitations



Source: Compiled by the Legislative Audit Division from department records.

We found that four of 24 solicitations failed some aspect of our review. All four issues consisted of minor process violations, such as intents to award not being posted for the required period and limited solicitations that failed to collect the required minimum of three bids. We did not find any indication of major violations or fraudulent activities in the limited and formal solicitations that we reviewed. We determined that the small number of minor violations found constituted nonsystemic mistakes by procurement staff and do not indicate widespread compliance issues in the procurement process. Our review suggests that competitive solicitation processes used by state agencies are generally reliable.

Conclusion

The processes for engaging competitive solicitations like requests for proposals, invitations for bids, and limited solicitations used by state agencies are generally reliable. As a result, the legislature and the public can be confident that standard procurement activities are conducted appropriately and public funds are expended in a fair and transparent manner when standard procurement processes are followed.

Some Sole-Source Solicitations Were Granted Without Clear Justification

When competition for a needed item is not warranted because only one source for that good or service exists, statute allows agencies to perform a sole-source procurement that avoids the typical requirements and competition of a formal solicitation. Statute and rule allow sole-source solicitations to be performed only in cases where there is no reasonable doubt that there is only a single appropriate source for the supply or service item, or in cases where the solicited item must be compatible with current supplies or services.

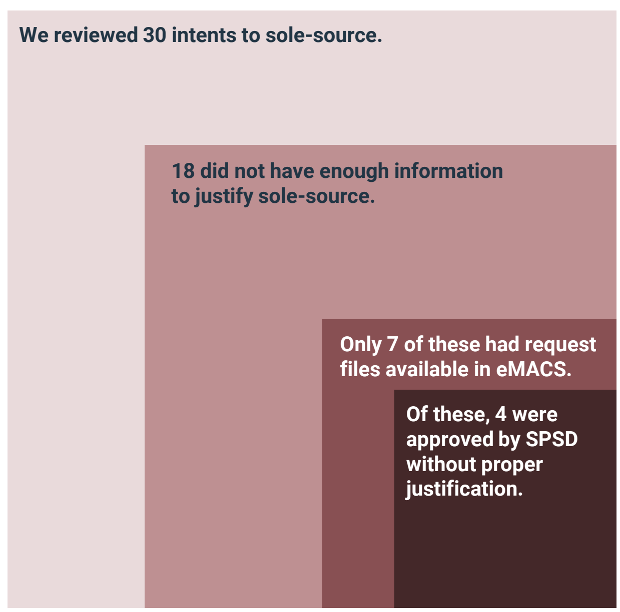
We reviewed a judgmental sample of 30 out of 149 intents to sole-source posted in eMACS during the time period. We selected sole-source intents for review based on estimated contract value and duration and determined during our review whether sufficient documentation was present to justify the sole-source process in the intent. For the intents that were not sufficiently justified, we attempted to review the related sole-source request files, which included additional information, as well as SPSD's determination whether to allow the sole-source to proceed. Sole-source processes that we reviewed covered procurement categories including financial management services for a Department of Environmental Quality revolving loan program, a combine harvester for Montana State University crop breeding research, on-site calibration services for Department of Justice lab equipment, and a digital education platform for the Montana Historical Society.

We reviewed intent to sole-source documentation, including available justifications, supporting rationale, and procurement requirements. Most intents received at least one vendor challenge. When a vendor challenged a sole-source procurement, we expected documentation explaining procurement staff's conclusion about the vendor's ability to meet the requirements. None of the sole-source files we reviewed included this documentation.

In our judgment, 18 of the 30 sole-source intents lacked sufficient documentation to justify the use of a sole-source process. In many cases, the requirements for the goods or services were vague or unclear. In others, a vendor's response appeared to meet the stated requirements, but the file did not explain why it was rejected.

Figure 6

Results of Reviewing 30 Intents to Sole-Source



Source: Compiled by the Legislative Audit Division from department records.

For the 18 intents to sole-source that failed our review, which had a combined estimated value in eMACS of $24 million, we attempted to review the related sole-source request records, including SPSD's final determination on whether to allow the sole-source process to proceed. Due to a lack of clear connection between intent and request files in eMACS and because requests from the university system are not stored on eMACS, we were only able to view request files for seven of the 18 sole-source processes. Of the seven request files we reviewed, two included additional information leading us to determine that a sole-source process was indeed justified, one was appropriately denied by SPSD, and the remaining four were approved by SPSD despite, in our judgment, there being a reasonable doubt that the relevant statutory requirements were fulfilled given the information available. These final four sole-source requests had a total estimated value in eMACS of just under $7 million. We queried SPSD management staff about the four sole-source approvals that we found were granted without sufficient justification, and they did not provide additional information or justification to address our determinations.

The purposes outlined in the procurement act emphasize fair and equitable treatment, fostering competition, and increasing public confidence in public procurement procedures. Sole-source procurements directly threaten these principles by giving an outsized advantage to incumbent vendors, precluding competition, and providing a potential vector for fraud in the procurement process. For that reason, statute and rule hold sole-source procurements to a high standard and require clear justification that a competitive process is not feasible. Improperly granted sole-source processes may also lead to litigation against the state by aggrieved vendors. While we did not find indication of fraud or other major infractions in the sole-source procurements we reviewed, it is important that the SPSD follow the standards outlined in statute and rule when assessing sole-source requests to protect the state's interests and uphold the principles of the procurement act.

RECOMMENDATION #5

We recommend the Department of Administration ensure its State Procurement Services Division only grants approval for sole-source procurements when the documentation provided in the request clearly fulfills one of the categories listed in §18-4-306, MCA, in accordance with statute and rule.

Exigent Procurement Declarations Often Did Not Follow Requirements

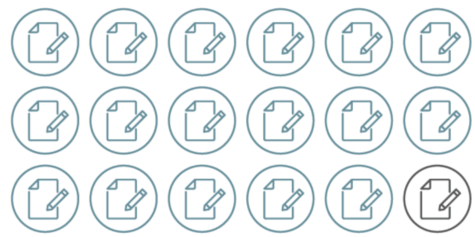
State statute exempts agencies from the requirements of the procurement act when the immediate delivery of goods or performance of services is required by public exigency or emergency, like when a prison sewer system bursts, a roadway culvert is at risk of collapse, or a heating system malfunctions right before a snowstorm. The justification for these exigent procurements must be documented in an exigency declaration in eMACS, along with other information, such as the items procured, the total cost, and the rationale for selecting the specific vendor. Agencies are also directed to obtain as much competition as is practicable given the situation, and rule outlines that an exigency does not exist when agency inaction created the emergency circumstances.

Exigent procurements are rare. Over the four years of our review, only 18 separate exigency declarations were recorded in eMACS by five different agencies. We reviewed all 18 declarations for appropriate documentation, assessed the reasonableness of their justifications, and interviewed procurement staff from agencies that had submitted exigencies.

Figure 7

Many Exigent Procurements Failed ARM Documentation Requirements

Out of the 18 exigent solicitations reviewed, **17 failed** to meet at least one requirement of ARM 2.5.605...



...while **15 failed** to fulfill ARM 2.5.605 (3) regarding obtaining competition.

Source: Compiled by the Legislative Audit Division from department records.

We determined that all of the exigencies we reviewed constituted bona fide emergencies that reasonably required some deviation from the standard requirements of the procurement act, although agency forethought may have prevented the need for an exigent procurement in some cases. Many declarations we reviewed did not meet all documentation requirements, usually because they failed to explain why a particular vendor was selected. Many also lacked evidence that the exigent process obtained as much competition as practicable. The declarations that failed our review totaled $8.7 million.

Delegated Agency Procurement Staff Did Not Appear To Consider the State's Requirement To Pursue Competition When Practicable

ARM 2.5.605 (3) requires agencies pursuing exigent procurements to obtain as much competition as practicable given the circumstances. Competition does not have to be solicited in a formal manner, and rule gives agencies leeway to determine to what extent competition is possible.

For instance, one competitive process that could have worked for many of the exigent solicitations we reviewed would have been calling more than one vendor to gather multiple quotes before deciding which to contract with. The SPSD staff we spoke to agreed that, for typical exigent procurements, it would at least make sense to call multiple vendors for quotes before making a purchasing decision.

Many exigency declarations did not describe a competitive process or explain why competition was infeasible. In interviews, procurement staff at several agencies said they generally selected the first qualified vendor they found without considering other potential vendors.

While genuine emergencies justify the abbreviated procurement process, the rule still asks for a measure of competition when possible, and we believe, for most of the cases we reviewed, the emergency was not so immediate as to preclude any and all forms of competition. For instance, one exigent procurement we reviewed involved a broken heating unit, another involved a road culvert that needed urgent maintenance, and a third involved remediating a gas spill. While each of these situations constituted an emergency that justified an abbreviated procurement process compared to typical requirements, none was of such a level of immediacy that the agency in question could not have at least attempted to contact more than one vendor to compare quotes before proceeding.

SPSD Provides Little Guidance for Exigency Declarations

Delegated agency procurement staff also stated in interviews that the SPSD provides little direction for properly documenting their exigency declarations. Guidance in eMACS consists of a verbatim quote of the relevant administrative rule and two direct questions about the vendor selected and the items procured. Delegated staff are expected to provide the rest of the required context and information pertinent to their exigency in a free file upload with no set template to follow.

Because delegated staff rarely conduct exigent procurements, they are less likely to know the requirements and to remember to include all information required by rule in their declaration unprompted. SPSD staff indicated hesitance to provide a formal template because they did not want to encourage use of the exigency process. However, exigencies are a necessary tool for agency procurement staff to address emergency situations. It is important that staff are aware of the exigency process, and that they submit proper documentation of the processes they engage in to aid later oversight and review.

Other states provide more detailed guidance on equivalent process documentation. The SPSD could improve oversight by creating a declaration template that addresses all requirements. Concerns about overuse should be managed through oversight rather than limited guidance.

SPSD Has Limited Ability To Exercise Oversight of Exigent Processes

Administrative rule requires agencies to submit the required exigency documentation to the SPSD "as soon as practicable." In practice, the SPSD typically directs agencies to submit documentation within 60–90 days of performing the exigent procurement. The SPSD staff indicated that this lag in reporting exigencies makes exigent procurements more difficult to supervise, as the process is often already finished by the time the SPSD is aware of it. Currently, the SPSD reviews exigency declarations as part of agency compliance reviews. Because of the slow pace of compliance reviews, exigency declarations may sit for years after being filed before being seen by an SPSD staff member. Slow turnaround on reviews means that delegated agency staff do not receive timely feedback on issues in their declarations, and that SPSD staff have less opportunity to correct major issues or misuse the exigency process.

The SPSD's typical tool to ensure agency compliance with procurement requirements is to reduce or remove delegated authority from noncompliant agencies. However, this tool is particularly ineffective in the case of noncompliance with exigency requirements because statutory exemptions mean agencies do not have to rely on delegated authority to perform exigent procurements. The SPSD is also often hesitant to remove delegated authority from an agency, as it then becomes responsible for all of that agency's procurements and typically does not have the staff available to handle the additional workload.

The legislature has indicated a desire for increased reporting on state procurement. In the 2025 session, the legislature expanded reporting requirements for high-value procurements. However, there is no requirement in statute regarding reporting on exigent procurements specifically. Due to the uncommon and high-risk nature of exigent procurements, it would be appropriate and improve oversight for the DOA to review exigent procurements as they are received and report on any noncompliance issues to the legislature as part of existing §18-4-128, MCA, reporting requirements.

Exigent Procurements Are Sometimes Made With No Direct Involvement of Agency Procurement Staff

In our interviews, we discovered numerous instances of delegated agency procurement staff indicating a lack of familiarity with particular exigent procurements that were conducted during their tenure because those exigencies were conducted by program staff. For instance, some APOs were unsure why a particular vendor was chosen or if any kind of competitive process was engaged because those activities had been conducted by other agency staff.

APOs are responsible for their agency's procurements. They sign their agency's delegation agreements and receive training on the requirements of the procurement act. When agency program staff directly conduct exigent procurements, requirements are more likely not to be followed, creating a greater risk of fraud, waste, or abuse of the procurement system. While some exceedingly rare exigent circumstances may require immediate action that makes the involvement of the APO impractical, most exigencies we reviewed occurred over multiple days and would have reasonably permitted the direct oversight of the agency APO.

Other states require greater scrutiny and approval of emergency procurements when they do not involve situations that are immediately life-threatening. The DOA can improve compliance with exigency requirements by mandating in an administrative rule that exigent procurements should be performed by the agency procurement officer outside of cases that are immediately life threatening or where the involvement of the APO is otherwise infeasible.

Recommendation #6

We recommend the Department of Administration:

A. *Ensure its new contract and solicitation management software system includes a standard template or set of questions for submitting exigent procurement declarations that prompts users to document adherence to each relevant exigency requirement when filing,*

B. *Update administrative rule to require exigent procurements be performed by the agency procurement officer when practicable and otherwise requiring documentation of justification for infeasibility, and*

C. *Review exigent procurement declarations as they are received and include a report on recent exigent procurements and any related noncompliance with requirements to the Legislative Finance Committee as part of current §18-4-128, MCA, reporting requirements, seeking legislative changes as needed.*

Chapter IV - Review of the Lottery Operating System Procurement Process

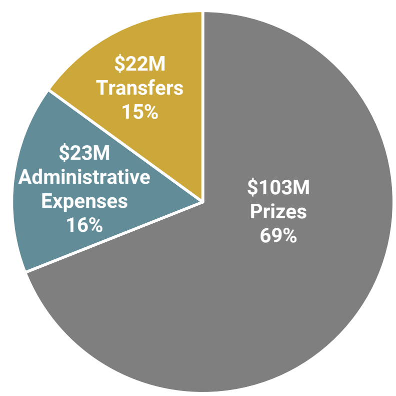
Introduction and Background

The Montana State Lottery, established by referendum in 1986, administers the state lottery. Its mission is to maximize net profit for the Science Technology Engineering and Mathematics (STEM) Scholarship Program and general fund through the sale of lottery products. This includes both traditional lottery products, such as drawing games and scratch tickets, as well as Sports Bet Montana. In FY25, the Lottery transferred approximately $20 million of its revenue to the general fund and $2.25 million to the STEM Scholarship Program.

Figure 8

FY25 Lottery Expenses and Contributions (unaudited)

Lottery **transfers** 15 percent of generated revenue to the general fund and the STEM Scholarship Program.



Source: Compiled by the Legislative Audit Division from unaudited department records.

The Lottery is administratively attached to the Department of Administration, meaning the Lottery is an independent agency to which the DOA provides supporting functions, such as human resources and legal services. The department's legal counsel provided guidance to both the DOA and the Lottery during the procurement. As such, we refer to the Lottery and the DOA's legal counsel as legal counsel. The Commission is responsible for the operation of the Lottery and supervision of the Lottery staff as well as the Lottery director, who is appointed by the governor. The Commission consists of five members appointed by the governor to serve staggered four-year terms.

Lottery Provides Services Through Its Operating System Contract

The Lottery contracts with a vendor to provide lottery operating services. Its previous contract (a seven-year initial contract term with three executed one-year renewals) ran from April 2016 to March 2026 and was valued at $73.5 million. With the anticipated expiration of its contract, the Lottery engaged in a procurement process during 2024–2025.

Review of Lottery's Procurement - Overview

The Lottery conducted an RFP for its 2024–2025 operating system procurement in accordance with the Commission's directive and consistent with the Montana Procurement Act. In addition to the Commission fulfilling its oversight role, publicly recorded Commission meetings provided a measure of transparency that informed legislative oversight.

In the resulting contract, the Lottery obtained a rate applied to sales of traditional lottery products that was lower than the rate of its previous contract and the rate proposed in an earlier unsolicited offer by the incumbent vendor, resulting in higher net profit to transfer to the state general fund.

After reviewing the information made available to us, we assembled a timeline of the lottery procurement events. We identified opportunities for the Lottery to improve its processes to communicate quality information in order to provide transparency and inform decision-making related to the procurement process. In part due to the DOA, the Lottery, and the Governor's Offices' lack of cooperation during the audit, certain details of the procurement process remain unclear.

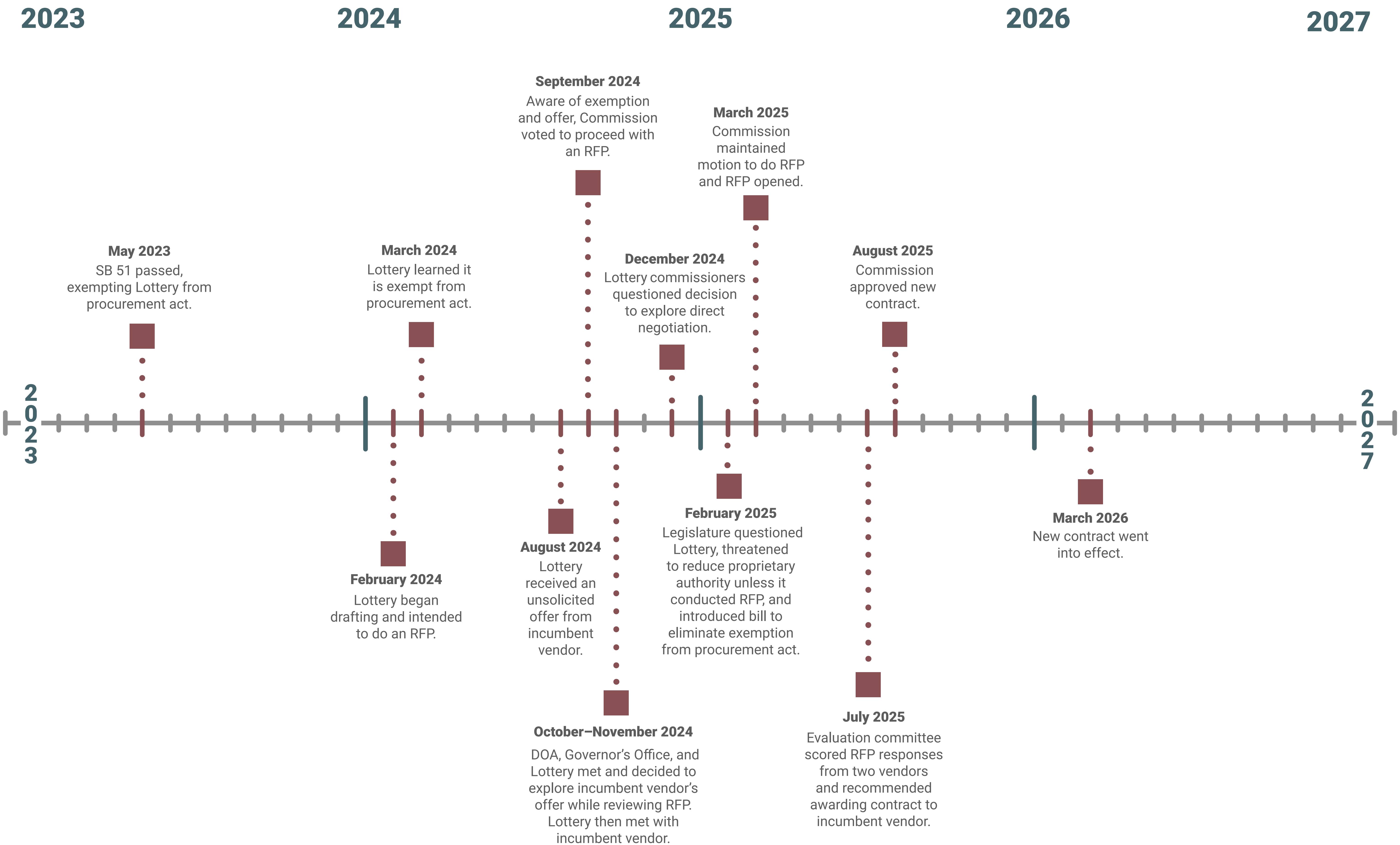
Changes to Procurement Act Temporarily Affected Options Available for Lottery's Procurement

Senate Bill 51 (2023) created an additional exemption from the procurement act applicable to the lottery operating system contract. This exemption gave the Lottery the option to bypass the formal solicitation process, previously required of its contracts exceeding $250,000, and negotiate directly with any vendor of its choosing. The exemption also removed time limits, allowing the Lottery to extend its contract beyond 10 years. However, in 2025, the legislature eliminated this total exemption from the procurement act by reverting language to its previous (pre-SB 51) state. Despite these changes, the lottery procurement followed the requirements of the procurement act.

Key Events in the Lottery Procurement Process

We conducted interviews and reviewed Commission meetings, legislative hearings, and documents to assemble a chronology of key events in the procurement process. Because of limited access to information from the DOA, the Lottery, and the Governor's Office, this description may not include all relevant facts or events.

Figure 9
Chronology of Key Events of Lottery Procurement



Source: Compiled by the Legislative Audit Division from department records.

May 2023: SB 51 Passed, Exempting Lottery From Procurement Act

Senate Bill 51 (2023) was initially intended to protect vendor information from becoming public until a competitive bidding process was complete. However, a late amendment drafted by the DOA replaced the phrase "consultant employed" with "person contracted by" the Lottery. This had the effect of exempting the lottery operating system contract from the procurement act and allowed the Lottery to negotiate an IT contract with any vendor of its choosing without competition.

Department leadership told us that the amendment was suggested to the DOA by a source from outside of the DOA that they could not recall. The DOA stated it made a mistake when drafting the amendment; its legal counsel said that the changes helped clean up statutory language, and it did not realize the amendment would broaden the exemption from the procurement act at the time of drafting.

Legislative committee members publicly asked questions about the effect of the amendment that legislative staff could not answer, and the bill sponsor relayed over text message that "person" was a broader term than "consultant" and included businesses. While it was unclear whether the committee understood the amendment's impact on the lottery procurement process, the amendment was added to the bill, which took effect immediately upon passage.

February 2024: Lottery Began Drafting and Intended To Do an RFP

In February of 2024, the Lottery began RFP development. It conducted a request for information in the spring to collect information about lottery operating services from vendors to inform the RFP. This was consistent with the clear intent to perform an RFP it had communicated to the Commission in November of 2023. Justifications the Lottery provided for the RFP included the need for a transparent process and for updating the technology, including replacing the lottery terminals, which were nearing the end of their useful life. The Lottery noted that requiring new equipment would prevent the incumbent vendor from gaining an advantage in the bidding process. The Lottery repeatedly emphasized the importance of signing the new contract by March of 2025 to allow one year for vendors to replace old technology with new hardware and software before the start of the new contract.

Former Lottery leadership stated that management had told them that the RFP would be opened in May of 2024. Lottery management similarly told the Commission that it hoped to go out for RFP in the spring of 2024. However, at subsequent Commission meetings, the timeline for opening the RFP was delayed. The Lottery sent the RFP to the DOA for its review in October of 2024, and the RFP was posted in March of 2025.

March 2024: Lottery Learned It Is Exempt From Procurement Act

Former Lottery leadership stated that a source they could not recall informed the Lottery in March of 2024 that procurement statute had changed in the previous session and no longer required the Lottery to conduct a competitive procurement (i.e., an RFP). Former Lottery leadership nonetheless advised the new Lottery director, who had recently started, to pursue an RFP process, as it was in the best interest of the state.

In May of 2024, the Lottery met with the Office of Budget and Program Planning (OBPP). OBPP told us that the Lottery conveyed to it an expected reduction of $3–4 million in general fund contributions as a result of an anticipated rate increase from a vendor following the administration of an RFP. OBPP asked for options available to maintain budget certainty and stated that the Lottery's leadership mentioned contract continuation (extension) and determining if the incumbent vendor could provide a certain rate as an option.

In July of 2024, the Lottery requested that legal counsel write a memo explaining the impact of the SB 51 (2023) exemption on the lottery procurement, and the memo was relayed to Commissioners. New Lottery leadership expressed confusion about the options the exemption provided; the DOA leadership and legal counsel provided clarification that the Lottery could extend the contract or it could perform an RFP and offered ways the Lottery could mitigate risks.

August 2024: Lottery Received an Unsolicited Offer From Incumbent Vendor

In mid-August, the incumbent vendor sent an unsolicited proposal to continue the provision of the lottery and sports betting services to the Lottery director. The Lottery could not recall the details of how the offer was received. Information required to be disclosed per §23-7-310, MCA, such as audited financial statements and names, addresses, and relevant criminal convictions against its officers and directors, did not accompany the proposal. Statute requires disclosure of such information to help ensure integrity of the lottery, namely that offerors do not have financial interests in licensed sales agents.

September 2024: Aware of Exemption and Offer, Commission Voted To Proceed With an RFP

At the September Commission meeting, the Lottery stated that the unsolicited proposal had been discussed thoroughly, and it felt the RFP was best. Legal counsel presented on the SB 51 (2023) exemption's implications for procurement, outlining the option of negotiating directly with any vendor or using the RFP process. All Commissioners voted to pursue an RFP.

October 2024: DOA, Governor's Office, and Lottery Met and Decided To Explore Incumbent Vendor's Offer While Reviewing RFP

After the September Commission meeting, the Lottery initiated a meeting with the governor. The Lottery leadership provided little insight into this meeting to us, stating only that the governor's concern was to spend money effectively. The governor subsequently called the DOA leadership asking it to review the RFP and assist the Lottery. In early October, the Lottery sent the DOA leadership, legal counsel, and SPSD procurement staff an RFP draft for review per the DOA's request. The Lottery management indicated that it would meet with the SPSD to go over questions concerning the preparation of the RFP for posting.

Legal counsel told the Lottery it had concerns after reviewing the draft RFP and asked the Lottery leadership to meet with OBPP and DOA leadership. According to interviews, OBPP expressed concern at this meeting about reduced revenue to the general fund as a result of going out to an RFP. A subsequent email from legal counsel indicated that they believed the approach decided on at the meeting was to seek a no-bid extension from the incumbent vendor to allow more time to explore whether a long-term renewal of the contract with revisions or the RFP would better meet the state's objectives.

November 2024: Lottery Met With Incumbent Vendor About Offer

In November, the Lottery met with the incumbent vendor to discuss the incumbent's offer to extend the current contract and continued exchanging documents with the incumbent to refine the offer. This led to drafting a letter of intent (LOI) in January of 2025 that could be used to move toward further negotiation and an agreement if the Commission approved. According to the Lottery management, little progress was made building out the LOI, as the incumbent vendor was reluctant to provide the level of detail the Lottery desired, likely because a direct negotiation and RFP were being simultaneously considered. Nevertheless, legal counsel reported that by the March 2025 Commission meeting, the LOI was finalized and the incumbent had signed it; if the Commission decided to rescind its motion to perform an RFP and motioned to move forward with the LOI, the vendor and the Lottery could have negotiated a scope of work. Meanwhile, work reviewing and refining the RFP continued.

December 2024: Lottery Commissioners Questioned Decision To Explore Direct Negotiation

At the December 2024 Commission meeting, the Lottery leadership told the Commission that, following conversations within state government and with private business, there was no longer a rush to move through the procurement process, and the Lottery should further explore the proposal with the incumbent vendor. Legal counsel told the Commission that the Lottery had not engaged in a serious discussion with the incumbent vendor regarding its proposal. Commissioners stated that the proposal was already fully considered.

The DOA leadership told us that it met with incumbent vendor leadership to ask if the vendor would consider a contract extension to buy the Lottery more time to explore its options and ensure sufficient time for continuity of services. According to the DOA, the incumbent would not extend the contract. While some Lottery leadership alluded to such discussions, other management and leadership told us they were unaware of them.

February 2025: Legislature Questioned Lottery, Threatened To Reduce Proprietary Authority Unless It Conducted RFP, and Introduced Bill To Eliminate Exemption From Procurement Act

Senate Bill 232 (2025), introduced in January of 2025, reversed the language that exempted the lottery contracts from the procurement act. The bill was signed by the governor in June, becoming effective immediately.

In February, the Section A Budget Committee asked the Lottery and the DOA leadership for justification in continuing to explore a direct negotiation instead of posting the RFP as directed by the Commission. Subsequently, language was added to HB 2 (2025) that, if the Lottery did not conduct an RFP to obtain its operations contract, its proprietary authority would be reduced by $500,000 in both fiscal years of the 2027 biennium. At the end of February, after initially requesting an exemption from the information technology procurement request process (ITPR), which the State Information Technology Services Division (SITSD) denied, the Lottery submitted its first ITPR, as required by law and policy, to SITSD for its review in preparation for administering an RFP.

March 2025: Commission Maintained Motion To Do RFP and RFP Opened

At the March Commission meeting, a legislator discussed the legislature's concerns. Legal counsel reviewed a memo outlining risks and benefits of the RFP and the LOI the Lottery developed with the incumbent vendor, the latter of which could lead to negotiating a contract with the incumbent. While two Commissioners appeared to entertain the idea of direct negotiation with the current vendor during the meeting, there was no motion to reconsider the previous motion to proceed with an RFP. At the end of March, the RFP for the Lottery operating system contract opened. It closed June 2, 2025, with two vendors submitting proposals.

July 2025: Evaluation Committee Scored RFP Responses From Two Vendors and Recommended Awarding Contract to Incumbent Vendor

A five-member evaluation committee responsible for scoring the responses to the RFP conducted consensus scoring and decided to award the contract to the incumbent vendor. The incumbent received higher scores in the cost and technical scoring evaluation sections, and the DOA posted a notice of intent to award the contract for public review. At the August Commission meeting, the Commission approved a contract with the incumbent vendor. On August 27, 2025, the contract was signed, and it went into effect on March 31, 2026.

RFP Administration Complied With Montana Procurement Act and No Evidence of Conflict of Interest Found

We reviewed data and interviewed SPSD staff for compliance with requirements pertinent to the RFP process. This included reviewing RFP documents submitted by vendors, the evaluation process, and the award process. We found that the RFP process was completed according to requirements and that documentation was sufficient. From our interviews, the conflict of interest data matching discussed in Chapter III, and review of conflict of interest/nondisclosure agreement forms, we found no evidence of conflict of interest among state employees or Commissioners involved in the procurement process.

The Lottery Can Improve Provision of Timely Information to Decision-Makers

While the procurement was consistent with the Commission's directive and the Lottery achieved an improved rate on traditional lottery products compared to its previous contract, we identified an opportunity for the Lottery to improve controls related to producing and communicating quality information to inform decision-making during the procurement process. This includes ensuring that the Lottery provides statutorily required information.

Lottery Could Not Provide Analysis To Support Projections Provided to OBPP or Reason for Exploring Incumbent Vendor's Offer

The Lottery leadership told decision-makers that the basis of exploring the incumbent vendor's offer was concerns from the Governor's Office. The Governor's Office clarified to us that its concern was that the general fund would lose $3–4 million in lottery contributions if the contract went out to RFP, per the Lottery's projection. While the Lottery management stated that this projection was based on industry knowledge, they were unable to provide any explanation or documented analysis of how they arrived at this figure. The OBPP did not ask the Lottery for any further explanation of the estimate despite typically requesting detailed budget information as part of its statutory role in reviewing large procurements.

While the OBPP was concerned with budget and net profit certainty for the procurement, the Lottery leadership stated that the Governor's Office wanted what was in the best interest of the state. Achieving net profit certainty is not the same as the Lottery's mission to maximize net profit and is not the same as what is in the best interest of the state. Therefore, the Lottery did not clearly communicate to the Commission and legislature the basis for exploring the incumbent vendor's offer.

Lottery leadership and management did not provide much additional explanation to Commissioners regarding why it would pursue the vendor's offer for months instead of immediately performing an RFP as directed by the Commission. Specific justifications the Lottery provided to the legislature included wanting to explore all options to present to the Commission and that negotiation can be less disruptive to the Lottery, players, and sales agents. Legal counsel further communicated to us that replacing equipment and software within a narrow time window is complex, and if another vendor wins an RFP, transitioning equipment carries risk to continuity of services.

Lottery Never Acknowledged a Competitive Procurement Process Could Contribute to Improved Cost Outcomes in Response to Questions

When the legislature asked how a direct negotiation would lead to a better vendor rate and therefore be in the best interest of the state compared to a competitive procurement process, the Lottery officials could not provide an explanation. We asked the Lottery what the primary mechanism driving an anticipated vendor rate increase from an RFP was; it stated that it was an increase in vendor costs over time associated with updating technology.

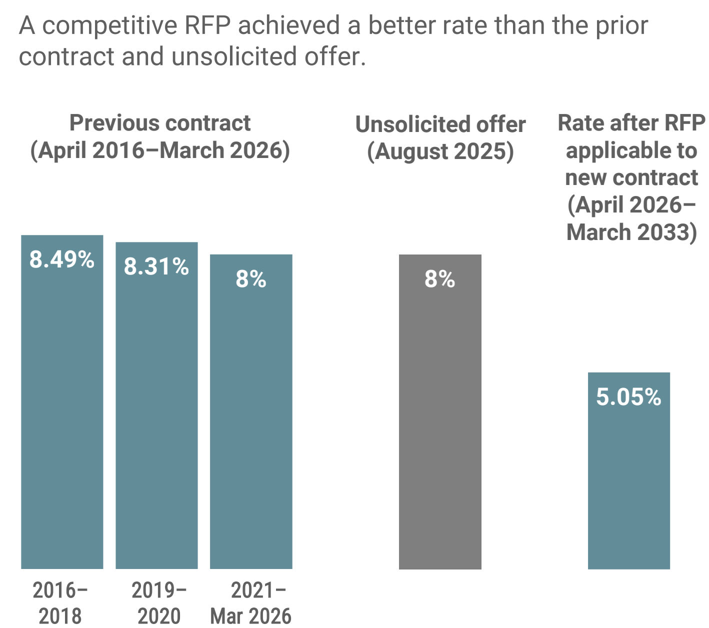
However, the Lottery told the Commission that its software and hardware would need to be replaced in the near future. Therefore, the vendor would experience the same costs that it would pass through to the Lottery irrespective of the procurement method chosen, all else equal. Given the need to replace its equipment, the Lottery did not acknowledge that competition could lead to both the incumbent and other vendors submitting lower rates relative to a direct negotiation.

From our review, it is a standard practice of the lottery vendors to try to renew contracts directly with lotteries so the firm does not have to go through the RFP process and face competition. The incumbent vendor stated the importance of wanting to retain the contract in Montana and that it was reflected in the rate it bid on the RFP, which was almost 37 percent lower than its initial offer, resulting in millions of dollars in cost savings to the state compared to direct negotiation.

Figure 10 shows the rate applied to the net sales of traditional lottery products. The sports bet rate (40 percent) applied to gross gaming revenue was the same across both contracts and the unsolicited offer.

Figure 10

Rates of Contracts and Unsolicited Offer



Source: Compiled by the Legislative Audit Division from department records.

Other Justifications for Contract Extension Were Not Effectively Communicated to Commission

In some cases, it could benefit the state to explore contract extension and potentially not perform an RFP, but, from our review, these reasons were either not clearly and timely communicated to decision-makers or lacked support.

At the December 2024 Commission meeting, legal counsel said a reason to consider the offer was that the procurement act states that, before deciding to do an RFP or renew a contract, the agency has to look at what is in the best interest of the state and its important to be fully informed. Legal counsel later clarified to us (but not the Commission) that the applicable reference to this statement was §18-4-313(3): *Prior to the issuance, extension, or renewal of a contract, it must be determined that: (b) the contract will serve the best interests of the state by encouraging effective competition or otherwise promoting economies in state procurement.*

Legal further told us that it was important to give appropriate consideration to the unsolicited offer because even when there is a procurement exemption, an agency cannot act in a manner that is arbitrary and capricious; this criteria is based on case law and court opinions; if the Lottery had immediately proceeded to an RFP and the offers it received were more costly than the unsolicited offer, the Lottery could have been subject to legal action for acting arbitrarily.

If these legal rationales were the primary reason to explore the unsolicited offer, more could have been done to promptly and clearly explain them, including explicitly referencing the sources of such rationale upfront to Commissioners and the legislature in response to their questions. These reasons offer further criteria for providing prompt, high-quality information to decision-makers supported by documented analysis that we found was lacking throughout the process.

After over six months of the Lottery exploring the incumbent's offer, legal counsel independently decided to provide the Commissioners a memorandum outlining risks and benefits of pursuing either a direct negotiation or an RFP. The memo noted renewing the contract through negotiation could result in litigation against the Lottery for that decision while an RFP also carried the inherent risk of protest and litigation. Several of the statements regarding costs and competitive rates in the memo were not supported by documented analysis. Although the memorandum provided Commissioners with more information about the two options, the general consensus among Commissioners was that it needed to be presented to them sooner to be a useful decision-making tool.

In addition to general, poor communication processes, we observed several areas where the Lottery did not provide statutorily required information used by decision-makers to inform the procurement, including:

Lottery Did Not Include Required Information in IT Plan Used by SITSD for ITPR Review

Because the lottery procurement concerned information technology, it was subject to Montana Information Technology Act (MITA) and ITPR policies and procedures, including review by the SITSD. As part of its ITPR review, the SITSD is required to review the procurement against agencies' IT plans. While the Lottery submitted an information technology plan that SITSD approved, it did not include all required information. Specifically, its IT plan (2024) lacked information to serve as the basis for subsequent performance measures, and an evaluation of the baseline profile that identifies real or potential deficiencies or obsolescence. For example, during Commission meetings in 2024, the Lottery told Commissioners that its hardware and software were reaching the end of their useful life, and there was a need to get new equipment; however, this potential deficiency and its magnitude were not discussed in its IT plan. An incomplete IT plan holds less value for the SITSD in informing its ITPR reviews.

Performance Bond for Contract Was Not Provided to Lottery Commission

Statute requires a performance bond accompany the lottery operating system contract. Performance bonds are financial guarantees by insurance companies that ensure that in the case of nonperformance or vendor failure, including bankruptcy, the state is compensated for financial losses. When the lottery contract is awarded, statute requires the bond be delivered to the Commission and be satisfactory to and in an amount determined by the Commission. The performance bond was not delivered to the Commission, and the Commission had not reviewed the bond to determine whether the amount was satisfactory when the contract was executed.

The Lottery management acknowledged that the Commission had not reviewed the bond and stated that it would provide the signed, active bond for the Commission's review at the June 11, 2026 Commission meeting. As a result of the Commission not reviewing the performance bond, its oversight role to ensure that the bond protects the state from the risk of vendor failure was not fulfilled.

Lottery's FY25 Annual Report Did Not Include Contract Information

Statute requires that the Lottery publish an annual report that informs decision-making. Statute specifies the report's contents, including information about contracts with gaming suppliers. The Lottery's FY25 annual report did not include the required information about contracts with gaming suppliers because that information is typically included in the accounting section of the report, which was unavailable at the time of report publication due to accounting issues. Previous annual reports included contract information, and staff told us the following quarterly report included the required contract information.

Lottery Did Not Submit an Annual Procurement Plan to SPSD

The Lottery did not submit an annual procurement plan by September 15, 2024, ahead of its 2025 procurement. Since the lottery contract was exempt from the procurement act at this point in time, this policy was not a strict requirement. However, SPSD said the intent of the policy is to create transparency, foster competition, and help both the SPSD and the agency think ahead and plan their work. The Lottery did not submit the procurement plan because it was not aware of the new requirement effective as of 2024. The DOA APO acknowledged that it was responsible for reminding the Lottery to submit the plan, which it did not do because it was too busy with other tasks, including its SPSD supervisory role.

Policy Calls for Establishing Controls To Provide Quality Information to Decision-Makers

Montana Operations Manual internal control policy emphasizes that public officials, legislators, and taxpayers are entitled to know whether government funds are handled properly and in compliance with applicable laws and regulations. Part of the Lottery management's responsibility is to establish policies and procedures that allow it to internally and externally communicate quality information to achieve its mission.

The Lottery's failure to transparently communicate quality information about the procurement to decision-makers bred concern about the Lottery's procurement choices, resulting in additional meetings and use of agency and legislative resources. It also contributed to the Lottery not meeting initial timelines provided to the Commission, including the goal of allowing one year for conversion. It is unclear based on our review what the full impact of the reduced equipment conversion timeline was.

Lottery Can Improve Its Processes To Communicate High-Quality Information to Decision-Makers for Future Procurements

While the temporary exemption from the Montana Procurement Act available to the Lottery for this procurement was unique, based on our review, some specific areas of improvement that the Lottery should consider for future procurements include:

- Provide documented analysis to support information conveyed to OBPP regarding anticipated changes in net profit. This could include underlying data sources used in the projection and other considerations such as projected growth in sales over time.
- Clearly communicate the Lottery's needs to all parties. For example, if the Lottery staff have thoroughly and rigorously determined that it is most beneficial (or not beneficial) to its mission to replace all its technology, this should be communicated to decision-makers.
- Conduct rigorous analysis to inform major decisions and document how the considerations tie back to the components of the Lottery's mission and procurement principles, as suggested by the DOA.
- If criteria, such as case law or statute, is primarily guiding decision-making, clearly make reference to such criteria and the weight that it carries.

- Review statutory and policy requirements and provide all required information to inform decision-makers and provide transparency.
- Establish policies and procedures to specify steps to generate and document high-quality information around key decision points that can be readily provided to all users.

Although the Lottery was responsible for developing and communicating reliable information to the decision-makers involved in its system procurement, external decision-makers, particularly the OBPP, could have requested and considered that information earlier as part of their planning and oversight.

The Commission should also continue to request supporting evidence before making major decisions. The Commission's statutory responsibility to conduct formal studies gives the Lottery another opportunity to provide documented analysis in advance of significant decisions.

Recommendation #7

We recommend that the Montana Lottery establish processes to improve quality, timing, and communication of information provided to decision-makers for future operating system procurements, including the submission of all information required by statute and policies.

There Is No Formal Process To Review Lottery Performance Bond As Intended by the Legislature

Section 23-7-211, MCA, mandates that the Lottery Commission ultimately approve the terms of the performance bond for the lottery contract. However, this section also states that the requirements of the bond must be as stringent as those stated in §18-4-312(3), MCA, which references DOA's review of securities to determine that they sufficiently cover the risk to the state. DOA is statutorily responsible for reviewing and determining the sufficiency of securities for agency contracts. In addition, given the Lottery's administrative attachment to DOA, it is appropriate that the Commission could rely on the DOA's expertise in reviewing the bond to help inform its determination that the amount of the performance bond for the Lottery contract is sufficient.

We found that the DOA did not fully or formally analyze the risk to the state for the purpose of establishing a bond amount for the contract to help inform the Commission; neither the Lottery nor the DOA could provide us with documentation associated with review of the performance bond. The SPSD said it confirmed there was a performance the bond before the contract was signed, but it relies on agencies to make the determination that the bond amount is sufficient.

The DOA later told us that its legal counsel told the Lottery that the bond "looked good," but that it did not complete any financial analysis. Legal counsel explained that if the performance bond was for a higher amount, the vendor might pass through costs onto the Lottery and that the performance bond terms were the same as the previous contract. While these may be points to consider, they do not answer the question of whether the state is adequately protected.

At the time of the audit, the Lottery performance bond for its operating system contract was $1 million and covered the year ending March 31, 2027. While the bond terms technically meet the requirement that security remains in effect for the duration of the contract, it may not meet the intent that the entire contract term (7 years) be covered. Bonding in one-year increments creates additional risk to the Lottery, as the contractor may not be able to obtain ongoing security when the bond expires. If the bond expires and the vendor subsequently fails to perform, the state would not be compensated.

The Lottery generates significant revenue each year that it uses to pay for its expenses and from which it contributes annually to the state general fund and STEM Scholarship Program. If there is a substantial performance failure, the state could incur significant damages, including reduced revenue and costs of changing vendors, that could exceed the current amount of the performance bond. Without a thorough review, it is unclear if the terms of securities sufficiently cover damages if a vendor fails to perform.

Administrative rules or other process documents could be updated to help clarify who is responsible for determining the amount of the performance bond and could further provide guidance for how the DOA determines that the bond sufficiently covers risk to the state. That determination could inform a recommendation to the Commission, which makes the ultimate decision on the sufficiency of the lottery performance bond or other security's terms.

Recommendation #8

We recommend that the Montana Lottery work with the Department of Administration to develop and implement a process whereby the department evaluates the risk of contract performance failure and maintains documentation that demonstrates that the lottery performance bond and other securities sufficiently cover the risk to the state, adopting administrative rules and policies as necessary.

Department of Administration

Montana State Lottery

Agency Responses

MONTANA DEPARTMENT OF ADMINISTRATION

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August 19, 2026

Angus Maciver, Legislative Auditor
Legislative Audit Division
PO Box 201705
Helena, MT 59620

RECEIVED
August 19, 2026
LEGISLATIVE AUDIT DIV.

Dear Mr. Maciver,

The Department of Administration (DOA) thanks you for the opportunity to respond to the Performance Audit of Administration of Procurement: Statewide and at the Montana Lottery (26P-01). The Montana Lottery, DOA Director's Office, and DOA State Procurement Services Division (SPSD) thoroughly reviewed the report and would like to thank you and your staff for your work and professionalism during this audit.

Our responses to the findings and recommendations are as follows:

Recommendation #1:

System and Information Management

We recommend the Department of Administration address issues with its current electronic procurement data management system as part of its acquisition of a new system and require all agencies to use the new system for contract management.

> ***Department response: Concur***
>
> *Concur. DOA is actively soliciting a new electronic procurement system which is required to have better integration with the Statewide Accounting, Budgeting, and Human Resources System (SABHRS). All agencies will be required to document contract management activities for procurement contracts in the new system.*

Recommendation #2:

State Compliance

We recommend the Department of Administration update its compliance review policies by incorporating a risk-based agency selection method and ensuring adequate staff resources to follow an appropriate schedule of reviews.

> ***Department response: Concur***
>
> *Concur. DOA is utilizing an internal DOA auditor to conduct routine compliance reviews starting this fiscal year. Procurement centralization should reduce the burden of compliance*

reviews for centralized agencies which will benefit from having centralized procurement at DOA perform most procurement functions. Compliance reviews will be prioritized according to risk scores, the auditor's workload, and the agency's availability/capacity.

Recommendation #3:

Internal Control

We recommend the Department of Administration remove its agency procurement officer position from the State Procurement Services Division and ensure that adequate staffing resources are provided for the agency procurement officer to independently conduct all necessary duties.

Department response: Partially Concur

Partially Concur. "Adequate staffing" is always a challenge for DOA and other state agencies seeking to maintain a fiscally responsible budget. There are no positions available outside of SPSD who can assume DOA's agency procurement officer (APO) duties, and there is no funding available to create such a position. Nonetheless, by carefully managing workloads within SPSD and DOA, DOA can ensure the DOA APO can successfully carry out his or her duties. In the future, DOA's procurement compliance reviews will be performed by an auditor who is not an employee of SPSD and who is not also serving as the DOA APO. This will free up resources within SPSD. Procurement centralization will also create efficiencies. Like other agencies in the centralized model, DOA will have an APO who is an employee of SPSD and who reports to the Enterprise Agency Procurement Manager within SPSD. Allowing this employee to focus on APO duties (without the additional responsibilities of an operations manager) will streamline DOA procurement processes. Like other agency APOs, the DOA APO will review the scopes of work for DOA solicitations to ensure they will foster competition and lead to proposals that match the state's needs. There is no need to have these functions performed by someone outside the division.

Recommendation #4:

State Compliance

We recommend the Department of Administration develop and publish a centralized document that guides agencies regarding relevant procurement policies and procedures.

Department response: Partially Concur

Partially Concur. DOA does not agree to produce a single document containing all relevant policies and procedures. In the past, while intended to be only guidance, the manual was used by vendors to gain a competitive advantage over other vendors and weaponized against purchasing agencies. It did not serve the purpose of making procurement more straightforward for agencies.

Further, given the wide variety in the state's business needs from agency to agency, the constant evolution of procurement laws, rules, policies, and procedures at the state and federal levels, and ever-changing technologies and the pace of updates to the state's own cloud-based systems that the division cannot control, it would be impossible to maintain a *manual in the manner suggested by the audit. Instead, DOA will maintain a centralized website with links to the laws, rules, policies, procedures, and forms that purchasing agencies need to consider when soliciting supplies and services. DOA regularly updates this website as procedures change or new instructions or checklists are developed to benefit agencies and vendors. Further, DOA provides regular training and holds monthly meetings to update both agency procurement officers and agency staff who might not be frequently engaged in procurement activities. DOA believes there is sufficient guidance available; however, DOA is committed to better publicizing and organizing the information to improve access and understanding.*

Recommendation #5:

State Compliance

We recommend the Department of Administration ensure its State Procurement Services Division grants approval for sole-source procurements only when the documentation provided in the request clearly fulfills one of the categories listed in §18-4-306, MCA, in accordance with statute and rule.

Department response: Concur

Concur. The sole source committee now has several new members. DOA will provide training to the sole source committee on applicable statutes, rules and policies. Training will be updated on an annual basis, as policies and procedures are revised, and as new members are added.

Recommendation #6:

State Compliance

We recommend the Department of Administration update procedures and rule related to exigent procurements and provide a standardized format for exigency declarations to ensure compliance from delegated agencies and report to the legislature on noncompliance.

Department response: Partially Concur

Partially Concur. This finding addresses 18 exigent procurements over the course of 4 years. This is 4.5 procurements/year. In the event of an emergency, where human life, or state resources are at risk, time is of the essence to resolve the emergency. Additional paperwork will not save human life or state resources.

DOA will develop and share a standard form for declaring exigencies that prompts agencies to document information required by statute, rule and policy. The information can be gathered and stored in the central procurement system. Agencies will be required to use the form/system when declaring exigencies. DOA is preparing changes to administrative rules to clarify definitions and help agencies distinguish between exigent purchases necessary to protect life and safety and other expedited purchasing methods. This will help streamline processes and improve documentation on these events.

Recommendation #7:

Management and Operational Effectiveness

We recommend that the Montana Lottery establish processes to improve quality, timing, and communication of information provided to decision-makers for future operating system procurements, including the submission of all information required by statute and policies.

> ***Lottery response: Concur***
>
> *Concur. The Lottery will establish procedures to ensure the Lottery Commission and other decision-makers are better informed regarding the status of future operating system procurements.*

Recommendation #8:

State Compliance

We recommend that the Montana Lottery work with the Department of Administration to develop and implement a process whereby the department evaluates the risk of contract performance failure and maintains documentation that demonstrates that the lottery performance bond and other securities sufficiently cover the risk to the state, adopting administrative rules and policies as necessary.

> ***Department response: Concur***
>
> *Concur. DOA agrees to refine its procedures for evaluating risks associated with the Lottery operations contract in accordance with 23-7-211(2)(b), MCA, and 18-4-312(3), MCA. DOA must be mindful of the Commission's charge to "maximize the net revenue paid to the state general fund and to the Montana STEM scholarship program" and "ensure that all policies and rules adopted further revenue maximization" as provided in 23-7-202(3), MCA. To do so, DOA will continue to employ the use of performance security as well as other measures such as contract performance guarantees that strike a balance between the need to protect the state from the possibility of nonperformance while reducing the overall contract costs by allowing the contractor to maintain a smaller bond and incur lower premiums that would be passed on to the state in the form of higher contract costs. Bond premiums typically cost between 1-5% of the face value of the bond.*

Thank you for your staff's work during this audit. We look forward to working collaboratively to ensure the highest standards of procurement services are achieved.

Sincerely

Misty Ann Giles
Chief Operating Officer & Director
Department of Administration

MONTANA LOTTERY

August 10, 2026

Mr. Angus Maciver
Legislative Auditor
Office of the Legislative Auditor
State Capital Building
Helena, MT 59620-1705

RE: Response to the Performance Audit of state procurement and the 2024-2025 Lottery contract procurement process

RECEIVED
August 10, 2026
LEGISLATIVE AUDIT DIV.

Dear Mr. Maciver:

The Montana Lottery has received the results of the Legislative Performance Audit concerning state procurement practices and the 2024-2025 Montana Lottery operating system procurement process. The Lottery appreciates the opportunity to provide input on the recommendations. We value the work of the Legislative Audit Division and view these recommendations as an opportunity to strengthen our procurement processes and enhance communication with stakeholders.

The Montana Lottery concurs with the recommendations. We have identified the process improvements necessary to address the recommendations and will implement them before the next contract procurement.

RECOMMENDATION #7

> **We recommend that the Montana Lottery establish processes to improve quality, timing, and communication of information provided to decision-makers for future operation system procurements, including the submission of all information required by statute and policies.**

The Montana Lottery recognizes the importance of providing decision-makers with timely, accurate, and well-supported information during major procurements. Lottery leadership will update desk manuals and procedural documentation to incorporate applicable statutory and policy requirements, document significant analyses supporting key procurement decisions, and strengthen internal review and communication processes. These updates will further clarify roles and responsibilities while helping ensure required information is consistently developed, documented, and provided to the Lottery Commission and partner state agencies, including the State Information Technology Services Division and the State Procurement Services Division.

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MONTANA LOTTERY

RECOMMENDATION #8

> **We recommend that the Montana Lottery work with the Department of Administration to develop and implement a process whereby the Department of Administration evaluates the risk to the state of contract performance failure and maintains documentation that demonstrates that the lottery performance bond and other securities sufficiently cover the risk to the state, adopting administrative rules and policies as necessary.**

The Montana Lottery concurs with the recommendation. The Lottery recognizes the importance of ensuring that the performance bond and other contract securities are appropriately evaluated and documented to protect the state's interests. We will engage the Lottery Commission early in the procurement process to evaluate the appropriate performance bond amount and ensure the Request for Proposal clearly and transparently identifies the requirements for the bond and other contract securities. The Lottery will also work collaboratively with the Department of Administration to establish a process that supports a documented assessment of contract performance risk and the adequacy of the performance bond and other applicable securities.

The Montana Lottery appreciates the thorough review and constructive feedback provided through this audit. We are committed to incorporating these process improvements into future procurements and anticipate they will be fully implemented before the end of the year. These enhancements will strengthen procurement governance, improve transparency, and provide decision-makers with more consistent and reliable information.

Sincerely,

Bob Brown, Director
Montana Lottery

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