
Secretary of State

State of Oregon

DEPARTMENT OF ADMINISTRATIVE SERVICES

Procurement Practices for Custodial Products



Audits Division

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Auditing for a Better Oregon

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This audit encompasses a review of selected activities of the Transportation, Purchasing and Print Services Division (division) of the Oregon Department of Administrative Services. Specifically, these activities included the procurement of custodial products under price agreement contracts effective during the period of January 1, 1990, through July 2, 1996. Prior to the audit, the Oregon Audits Division received allegations concerning the division's bidding procedures and potential noncompliance by the current vendor.

The objectives of our audit were to (1) investigate the specific allegations provided to us, (2) determine if the related bid files supported the award decisions, and (3) evaluate whether selected procurement activities were conducted in compliance with applicable laws, rules and regulations.

We conducted our audit in accordance with generally accepted government auditing standards. In this regard, we interviewed relevant state employees and industry sales representatives and analyzed pertinent purchasing records of the division and other state agencies. We limited our audit procedures to tests and procedures considered necessary in the circumstances.

This audit reports that certain occurrences in the procurement process contributed to the appearance of inequitable treatment of vendors' bids. We make recommendations to improve the state's processes for procuring custodial products and to help ensure bids are evaluated consistently and objectively. We also make recommendations relating to the state's administration of price agreement contracts and to improve vendor compliance with contract terms.

OREGON AUDITS DIVISION

John N. Lattimer
Director

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SUMMARY

PURPOSE

The Audits Division received allegations that the Transportation, Purchasing and Print Services Division (division) of the Department of Administrative Services was not equitably treating bids submitted for custodial products price agreement contracts. The purpose of this review was to determine the validity of the allegations and evaluate the division's compliance with applicable laws, rules and regulations for awarding custodial products contracts. The findings contained in this report are specific to price agreement contracts for custodial products.

BACKGROUND

We reviewed 16 price agreement contracts for custodial products awarded over a six year period. We focused our review on the state's purchase of custodial products, which includes floor finishes, disinfectants, cleaners, and supplies such as mops, floor pads, brooms and brushes. The state contracts for the purchase of over \$350,000 of custodial products annually.

RESULTS IN BRIEF

The division can improve its procurement processes for custodial products in several areas:

- A March 1996 invitation to bid (ITB) allowed bids to be submitted that were difficult for the division to equitably evaluate because of an undefined term, "bidder's price list." The bids received were not based on the same product pricing information. Therefore, the division could not be assured it obtained the best price for the state.
- The division did not include concentrated chemicals in its March 1996 ITB, resulting in a missed opportunity for cost savings. In addition, the division does not review catalogs from vendors of custodial products to ensure products not on contract are clearly identified. As a result, state agencies may purchase products at higher prices when they believe the products are price-controlled.
- Several award decisions and other occurrences support the appearance that the division did not treat bids consistently and objectively.

- Estimated product usage amounts, provided in ITBs to help potential vendors develop bid responses, were not always accurate and based on timely information. In addition, several products specified in representative bids were not high volume items according to product usage reports.

Other areas of concern were that the division's written procurement policies and procedures need to be updated to reflect current practices and ensure accuracy, consistency and objectivity; the division included a price-reduction clause in its March 1996 contract, but did not clarify its intent or provide guidelines for enforcing the clause; and the division did not include in its March 1996 ITB a requirement for vendors or state agencies to comply with Oregon Health Division standards relating to chemical blending equipment.

RECOMMENDATIONS

To improve its procurement processes, **we recommend** that the division:

- Define unclear terminology in its invitations to bid.
- Improve its contract preparation and review procedures.
- Take steps to ensure consistency and objectivity in preparing and evaluating bids and awarding contracts.
- Improve its process for obtaining and using product usage information.
- Update written policies and procedures, clarify the price-reduction clause in its contracts, and require vendors to comply with Oregon Health Division standards relating to chemical blending equipment.

AGENCY RESPONSE

The division generally agreed with the audit findings and recommendations and has outlined its plan of actions to address the issues. Its response is included at the end of this report.

INTRODUCTION

ORGANIZATION AND FUNCTIONS

The state of Oregon purchases millions of dollars of goods and trade services annually. These purchases are for a variety of goods and services, from pens and pencils for state offices, to food for state institutions, to ammunition used by public safety officers, to repair and maintenance of equipment and structures.

The Department of Administrative Services' (DAS) Transportation, Purchasing and Print Services Division (division) is responsible for overseeing the state's purchasing function. The Purchasing Operations Unit within the division provides these services to state agencies and, through a cooperative purchasing program, to cities, counties, municipalities, and political subdivisions.

The division's stated mission is to "improve government by providing services that are best managed centrally." The division's purchasing unit consists of the chief purchasing officer, two lead buyers, and twelve purchasing analysts.

Oregon Revised Statutes (ORS) Chapter 279 outlines the purchasing policy of the state, which is to encourage public contracting competition that supports openness and impartiality to the maximum extent possible. The statutes also state that contracts shall be made under conditions that foster competition among a sufficient number of potential suppliers.

The state uses invitations to bid (ITB) and requests for proposal (RFP) to purchase goods, trade services and personal services. Generally, the state is required to competitively bid all purchases of goods and trade services except purchases of supplies where the value of the contract is less than \$2,500. Purchases of goods and trade services where the contract amount is less than \$50,000 may be purchased using an informal three-quote solicitation process if certain requirements established by Oregon Administrative Rules are met. For purchases of goods, the purchasing process involves determining goods for which to solicit bids,

preparing the ITB, receiving and evaluating bids, and awarding the price agreement contract. Price agreements are contracts that oblige a vendor to sell certain goods or groups of goods to the state at specified prices or discounts for a specified time period. Oregon law provides that contracts for goods purchased through an ITB process must be awarded to the lowest responsible bidder, i.e. the lowest bidder who has substantially complied with all public bidding procedures and requirements and who has not been disqualified by the public contracting agency.

Oregon Administrative Rules also authorize state agencies to purchase goods directly from vendors, provided the agency follows competitive procurement laws and regulations. These direct purchases by agencies are typically under \$50,000.

BACKGROUND

We focused our review on the state's purchase of custodial products, which include floor finishes, disinfectants, cleaners, and supplies such as mops, floor pads, brooms and brushes. According to an estimate in a March 1996 ITB, the state contracts for the purchase of over \$350,000 of these products each year.

When letting contracts in the past several years, the division divided this wide spectrum of products into groups of similar products, such as floor finishes or disinfectants. The contracts were let for an initial one-year period with annual extensions for three years. The current comprehensive price agreement contract may be extended annually for a five-year period before a new bidding process occurs.

Until recently, the division awarded contracts for distinct product groups to more than one vendor to take advantage of price variations among competing vendors. However, in March 1996, the division solicited bids for most custodial products under one ITB, which included two major categories:

- Category I: chemicals, including but not limited to floor finishes, disinfectants, cleaners and degreasers.

- Category II: supplies such as floor pads, brooms, brushes and other cleaning aids.

The ITB stated the award for each category would be determined separately. Subsequently, the division awarded a contract for both categories to the same vendor.

SCOPE AND METHODOLOGY

The purpose of this audit was to follow up on specific allegations we received regarding inequitable treatment of bids by the division. Generally, the allegations stated that favorable treatment was shown by the division to the state's current custodial products vendor. Furthermore, concerns were stated about whether the current vendor has complied with terms of its state contracts. The current vendor has been the state's primary supplier of custodial products since 1990. We also evaluated compliance with applicable laws, rules and regulations for awarding custodial price agreement contracts.

Concerns were first expressed to DAS in 1993 regarding these issues. We conducted a review of the analysis performed by DAS in response to the initial allegations. DAS personnel considered a price agreement contract awarded in April 1993 for acrylic floor finishes when conducting its review. Based on our review of bid files for custodial products contracts and interviews with division personnel, we expanded the scope of the audit to include 16 contracts awarded since 1990.

The objectives of the audit were to:

- Investigate the specific allegations provided to us.
- Determine if the related bid files support the award decisions made.
- Evaluate whether selected procurement activities were conducted in compliance with applicable laws, rules and regulations.

In performing this review, we considered applicable Oregon laws and rules, including the Attorney General's *Model Public Contract Rules Manual*, and governmental purchasing practices recommended by the National Association of State Purchasing Officials. Through this organization, states' purchasing officials exchange information about best practices to attain more effective procurement and supply functions. We reviewed bid files maintained by the division; interviewed staff members of the division and other state agencies; and reviewed selected purchasing records of state agencies. Furthermore, we reviewed sales information provided to the division by the current vendor; we conducted a survey of several custodial products vendors; and we contacted certain manufacturers of custodial chemicals and supplies about product specifications and manufacturer's prices.

We performed this audit in accordance with generally accepted government auditing standards. We limited our audit procedures to tests and procedures we considered necessary in the circumstances.

AUDIT RESULTS

ENSURING EQUITABLE BIDS

The division used an undefined term, “bidder’s price list,” in its March 1996 invitation to bid (ITB) for custodial supplies. Because this term has no universally understood meaning and because it was also not defined in the ITB, it was difficult for the division to equitably evaluate and compare the two bids. Use of this undefined term allowed the winning bidder to lower the list price for representative products, thus obtaining a more favorable evaluation.

This unbalanced bidding also limited the state’s ability to accurately calculate the actual discount bid. Although the winning bid provided the lowest cost for the representative products, it did not necessarily represent the lowest overall cost to the state. Other products offered by the winning bidder in this contract did not have the same effective discount as those used to evaluate the bid.

The March 1996 ITB asked for bids in two product categories and indicated that the division would evaluate and award separate bids for the two categories. One category in the ITB included supplies such as floor pads, brooms, brushes and other non-chemical cleaning aids. The ITB listed 13 products intended to be representative items in this category. According to division staff, the 13 specific items were selected to represent the types of products the state expected to purchase under the price agreement contract.

A. The ITB asked bidders to offer a discount from “bidder’s price list” for all products to be included in the price agreement contract. Two vendors submitted bids. We obtained the manufacturer’s list prices to evaluate the validity of the stated discounts and representative prices of the two bids. The successful bidder offered its discount from prices that were less than manufacturer’s list prices. The unsuccessful bidder offered its discount directly from manufacturer’s list prices.

The winning bidder offered a discount of 36 percent from “bidder’s list price” for all products to be included in the price agreement contract. Bidder’s list prices were not requested in the bid solicitation, nor submitted by vendors as part of the bid documentation. We computed bidder’s list prices from other information provided in the bid documents. We found that for 10 of the 13 representative items, bidder’s list prices were lower than the manufacturer’s list prices. Therefore, a higher discount was represented than the 36 percent stated in the bid.

For example, the winning bidder offered a bid of \$1.24 for a 19-inch bowl brush. This brush had a manufacturer’s list price of \$2.26. In order for the stated 36 percent discount to result in the bid price, the manufacturer’s list price would need to be lowered by 32 cents to \$1.94. In effect, an actual discount of 45 percent from manufacturer’s list price was offered. A similar pricing methodology was applied to nine other products in the bid, with effective discounts from manufacturer’s list prices ranging from 40 to 72 percent.

Division staff evaluates bids at their face values. The condition described above was not known by staff at the time of bid evaluation. As a result, the staff favorably evaluated the bid as lower on the face of the bid, unaware the bid did not accurately represent the actual discounts being offered to the state.

Oregon Administrative Rules require bids to be evaluated equitably in accordance with criteria set forth in the solicitation documents. Using available criteria that is universally known, such as “manufacturer’s list price,” and avoiding terms that may be subject to interpretation can help ensure comparable product pricing from competing vendors.

- B.** Numerous products not specifically listed in the ITB were included in the price agreement contract and offered at the vendor's 36 percent discount from the manufacturer's list price. This resulted in a higher cost basis than that used for the representative products which the bidder used to secure the contract. The division had little assurance that by evaluating the 13 representative product prices on the winning bidder's list it would also obtain the best price on other products to be included in the price agreement contract.

To illustrate, the ITB requested a bid for a 20-inch stripping floor pad. The winning bidder offered a bid price of \$5.50. Manufacturer's price was \$10.31, resulting in an effective actual discount on this pad of 46.7 percent. A 17-inch pad of the same type was offered in the vendor's catalog at \$5.08, which is 36 percent less than manufacturer's list price. According to the ITB, the discount offered on the 20-inch floor pad should apply to the entire product line referenced, which would include the 17-inch pad.

As previously stated, the use of the undefined term, "bidder's list price" allowed the winning bidder to lower the list price on the 13 representative products before applying the 36 percent discount it bid.

A representative bid provides the division with a useful tool in obtaining a sample of product costs from potential vendors. It provides a means to evaluate bids and award contracts involving hundreds of products. However, a representative bid loses its effectiveness when guidelines for bid prices are not clear. Clarity is essential to ensure that the bid prices truly represent the costs of products expected to be included in the price agreement contract. Use of a universally known term, such as manufacturer's list price, helps to provide clarity.

We recommend that the division terminate the contract at the next practical opportunity under the contract and rebid the contract with revised wording in its ITB. The division should ask for discounts from "manufacturer's list price" instead of "bidders price list" to help ensure:

- Equity for vendors competing for contracts.

- Representative prices are obtained for other products to be included in the price agreement contract.
- The best overall prices for this contract are obtained.

PRODUCTS NOT ON PRICE AGREEMENT CONTRACT

The division needs to better ensure that relevant significant products are included when developing invitations to bid. In the March 1996 custodial products ITB, the division required bidders to be able to provide chemical blending equipment, but not the concentrated chemicals that would be used in the equipment. Subsequently, the contract vendor offered these concentrated chemicals to state agencies and advertised the chemicals as being included in the price agreement contract. However, these chemicals were priced significantly higher than comparable chemicals included in the contract, when compared at equivalent dilution.

The division also needs to improve its contract review process to help ensure accurate information is provided to agencies about products included in price agreement contracts. After being awarded the March 1996 price agreement contract for custodial supplies, the contract vendor prepared a catalog of products available to state agencies. However, the products listed in the catalog were not limited to those included in the price agreement contract, and the additional products were not clearly differentiated. The catalog also advertised cleaning aids that were included in other vendors' contracts. Specific examples are presented below at B and C.

- A.** The current custodial supplies vendor offered a line of 16 concentrated chemicals in its catalog of products available to state agencies. These chemicals are packaged and marketed specifically for use with blending, or dilution control, equipment, which was also advertised in the catalog.

The division's ITB for this price agreement contract required bidders to provide blending equipment to state agencies that purchased products under the contract, but did not require bidders to offer

concentrated chemicals normally used with the equipment.

We reviewed prices for seven of the 16 concentrated chemicals and compared them to seven contract chemicals which, according to descriptions in the vendor’s catalog, would be used for the same purpose. The prices for the concentrated chemicals were significantly higher than the contract chemicals when compared at the same dilution levels. For six of the seven items, prices for the concentrated chemicals ranged from 100 to 314 percent higher than the comparable contract chemicals. Table 1 summarizes the results of our analysis.

**Table 1
Price Comparison of Concentrated Chemicals
to Contract Chemicals**

Product	Concentrated Chemicals			Contract Chemicals			% Difference
	Price Per Gallon	Diluted Gallons	Price Per Diluted Gallon	Price Per Gallon	Diluted Gallons	Price Per Diluted Gallon	
Glass Cleaner	\$21.35	64	\$0.33	\$5.15	64	\$0.08	314.6%
Neutral Cleaner	\$26.90	320	\$0.08	\$2.48	64	\$0.04	116.9%
Cleaner and Restorer	\$24.10	32	\$0.75	\$4.70	5	\$0.94	-19.9%
Deodorizer	\$32.45	32	\$1.01	\$4.50	16	\$0.28	260.6%
Carpet Extraction Cleaner	\$12.40	128	\$0.10	\$4.70	128	\$0.04	163.8%
Pine Disinfectant Cleaner	\$ 7.75	64	\$0.12	\$3.50	64	\$0.05	121.4%
Wax Stripper	\$43.20	20	\$2.16	\$5.40	5	\$1.08	100.0%

For example, we compared the chemical components and dilution ratios for the concentrated pine disinfectant cleaner with a comparable disinfectant cleaner included in the contract. According to descriptive literature for each chemical, the active ingredients and dilution ratios of the two products were identical; yet, the chemical to be used with blending equipment was priced 121 percent higher than the contract chemical.

According to the current vendor's sales reports, the state's purchase of concentrated chemicals appears to be significant enough to include them in a price agreement contract. The sales reports indicated concentrated chemicals in excess of \$75,000 were sold to the state during fiscal year 1995. As previously stated in this report, ORS Chapter 279 requires competitive bids for purchases which are expected to cost over \$50,000.

The state may also be missing an opportunity for cost savings by not contracting for these chemicals. State agencies purchasing the concentrated chemicals could potentially pay, on an annual basis, approximately \$44,000 more than contract price, based on estimated usage in the ITB.

B. The March 1996 price agreement contract included 27 chemicals such as disinfectants, general purpose cleaners, floor finishes, waxes, sealers, strippers, carpet treatment products and other miscellaneous chemicals. However, 69 separate chemicals, including the 16 concentrated chemicals previously mentioned, appeared in the contract vendor's catalog. The catalog was titled *State of Oregon Price Agreement — Custodial Supplies* and made no distinction between products included in the price agreement contract and other products listed in the catalog.

Wording in the price agreement contract limited the category for chemicals to the products specified in the ITB. The contract stated, "This contract covers only those items listed," referring to a list of chemicals identical to the list presented in the ITB.

The division does not routinely review the catalogs of custodial products vendors to ensure that only awarded products are represented as being included in a price agreement contract. As a result, state agencies may be purchasing additional chemicals from the current vendor's catalog while believing the prices are controlled by price agreement.

C. The March 1996 price agreement contract also included a category of custodial supplies such as brooms, brushes, squeegees, mats, and other miscellaneous cleaning aids. Several of these

products were represented in the vendor’s catalog as being included in its price agreement contract but were actually awarded by contract to other vendors. For example, latex gloves were advertised in the current vendor’s catalog. However, the state awarded four contracts to other vendors for 21 types of gloves, including latex gloves similar to those advertised by the current custodial supplies vendor. In addition, wastebaskets described in the current vendor’s catalog were identical to those awarded by contract to an office supply vendor.

We compared the current vendors’ advertised prices with the contract prices for the six products included in other vendors’ price agreements contracts. As shown in Table 2, the contract prices of the other vendors were lower for five of the six products.

Table 2
Comparison of Advertised Prices for Products
on Other Vendors’ Contracts

Product	Other Vendors’ Contract Price	Custodial Supplies Vendor’s Price	% Difference
Latex Gloves	\$ 3.55	\$ 6.05	70.4%
Lined Gloves	\$ 4.25	\$ 9.48	123.1%
Wastebasket, Medium	\$ 2.36	\$ 3.37	42.8%
Wastebasket, Large	\$ 5.06	\$ 6.52	28.9%
Wastebasket, Fire Resistant	\$19.27	\$18.97	-1.6%
Waste Container, 32-Gallon	\$17.86	\$20.28	13.5%

As previously stated, the division does not review catalogs of custodial products vendors to ensure that only awarded products are advertised as being included in a price agreement contract. In order to make informed purchasing decisions, state agencies need accurate information about products on price agreements. Otherwise, products may be purchased at higher prices from the current custodial supplies vendor instead of from the vendor with the contract award. Regardless of the price variances between vendors, state agencies are required to purchase from the vendor with the contract award when purchasing items included in a price agreement contract.

We recommend that the division:

- Review the state's need for chemicals used with blending equipment and either
 - (1) issue a separate invitation to bid for concentrated chemicals, or
 - (2) as recommended earlier, terminate the contract at the next practical opportunity under the contract and rebid it to include concentrated chemicals.
- Require the current vendor of custodial supplies to revise its catalog to accurately and clearly specify which products are included in the price agreement contract. The division should also remind state agencies' purchasing personnel of their responsibility to select products from the appropriate vendors.
- Review vendors' catalogs as part of the contract review process and require revisions as needed.

**CONSISTENCY AND
OBJECTIVITY IN
EVALUATING BIDS AND
AWARDING CONTRACTS**

Our review noted several occurrences where the division did not appear to treat bids consistently, specifically when rejecting bids. Furthermore, the division can improve its process for awarding contracts to help ensure objectivity in its award decisions.

- A.** We reviewed 11 price agreement contracts awarded to the current vendor of custodial products since January 1990. For three of these awards, at least one product in the vendor's bids did not meet bid specifications. While failure to meet bid specifications was cited as a reason for rejecting a competing vendor's bid for one contract, it was not used to reject bids of the current vendor.

A January 1990 contract illustrates the division's rejection of a competing vendor's low bid because products did not meet bid specifications. The specifications for two general purpose cleaners

called for pH levels (levels of acidity and alkalinity) ranging from 6.5 to 7.5 and 9.0 to 11.5, respectively. According to documentation in the bid file, product tests revealed the low bidder's products had pH levels of 11.2 and 13.2. The bid was rejected because it did not meet the bid specifications.

However, the following are illustrations when a vendor's products did not meet bid specifications, yet the bids were not rejected:

- A 1991 ITB for floor wax and finish stripper requested two types of product: a regular strength stripper and a heavy duty stripper. Specifications stated that the products "shall not exhibit a flash point below 200 degrees Fahrenheit." (Flash point is the lowest temperature at which vapors above a substance ignite when exposed to flame.) While the vendor's product for the regular strength stripper appeared to meet the specification, the flash point for its heavy duty stripper was described as "**above 190°F**" in its technical data sheet. Because product tests were not documented in the bid file, it is not known whether a test of the flash point was conducted. Documentation was not available to show the division ensured the product met the flash point specifications.
- A contract was awarded to the current vendor in July 1991 for miscellaneous custodial chemicals and supplies. The ITB specified that liquid toilet bowl cleaner contain a hydrochloric acid level ranging from 15 to 20 percent. Although the vendor offered a product with a hydrochloric acid level of 23 percent, nothing in the bid files indicated this difference was considered by the bid evaluators. The bid was not rejected for failure to meet specifications.
- A contract for general purpose cleaners awarded in December 1992 requested a heavy duty cleaner with no less than 28 percent active ingredients. The vendor offered a product that contained only 11 to 25 percent active ingredients according to the technical data sheet describing the chemical. However, this vendor was awarded the contract.

The Oregon Attorney General's *Model Public Contract Rules Manual* provides guidelines for processing bids and awarding contracts using ITBs. Generally, a contract is to be awarded to the lowest responsive, responsible bidder. A responsible bidder is defined as one who has the capability to perform the contract requirements, the integrity and reliability to assure good faith performance, and has not been disqualified by the division. The rules, however, allow the division to reject, in whole or in part, any bid not in compliance with all prescribed bidding procedures and requirements, even if it is the lowest bid. One specific reason for rejecting a bid is failure of an item to meet the requirements, or specifications, set forth in the bid documents.

For the three contracts awarded in 1991 and 1992, the division was not consistent in rejecting bids that did not meet bid specifications. It is the division's responsibility to ensure equity among bidders, including consistently applying the state's bidding rules.

- B.** On another occasion, the division rejected a competing vendor's low bid, but did not substantiate the reason for rejection.

Three bids were considered for a July 1991 contract for miscellaneous custodial supplies. The two lowest bids were rejected because product information was insufficient and descriptive literature was not enclosed with the bid. It was evident from the bid files why one bidder was rejected; it did not offer products for one entire section of the bid. The other low bidder, however, bid on the same items as the winning bidder. Neither the low bidder nor the winning bidder stated the brand name for one product nor provided the requested descriptive literature. These bids appeared equivalent except for pricing. However, the contract was awarded to the current vendor and not to the low bidder.

- C.** For certain of the 11 contracts awarded to the current vendor, the division relied on the advice and recommendations of a person who had a professional relationship with the current custodial products vendor.

A building maintenance instructor at the Department of Corrections assisted the division with four contracts awarded to the current vendor from January 1990 through November 1991. Although the division had a janitorial committee of which the instructor was a member, the division primarily relied on the advice of this individual. He reviewed bid offers, performed product tests, and made recommendations for awarding price agreement contracts. As discussed in section A, certain products offered by the winning bidder did not appear to meet bid specifications for two contracts awarded during this period.

The instructor worked with a trade advisory committee, which was chaired by an employee of the current custodial supplies vendor. This committee provided oversight for the building maintenance vocational training program at the Department of Corrections. The committee offered advice on the training curriculum, reviewed classes, and provided the latest developments on equipment, material and supplies.

The Department of Corrections' instructor appeared to have been influential in the division's decisions to award the contracts to the vendor. The instructor's relationship with the vendor through the trade advisory committee could create questions regarding his independence in recommending contract award decisions.

Oregon's public purchasing policy set by *Oregon Revised Statutes* Chapter 279 states that Oregon will encourage public contracting competition that supports openness and impartiality to the maximum extent possible. This openness and impartiality extends to evaluating bids and awarding contracts. The division may not have known of the instructor's relationship with the vendor because it does not require individuals assisting with procurement to disclose relationships with responding bidders. Such disclosure can help the division reduce the potential for questions arising from presumed conflicts of interest.

When we discussed this issue with the division's purchasing personnel, they stated this individual has not been on the janitorial committee for several years. Also, they will not seek future assistance from him in evaluating products and bid responses.

- D.** It is a common practice for a purchasing agency to obtain information from a vendor when it has questions about the vendor's products or when preparing a new invitation to bid. However, the division may have relied too heavily on the advice of the current vendor in preparing bid specifications for two of the contracts we reviewed and, as a result, did not promote the appearance of objectivity.
- During the bid preparation phase of a custodial supplies contract awarded in April 1993, a competing vendor approached the division with concerns about the specifications for acrylic floor finishes. The division contacted the current vendor and requested comment on the concerns presented by the competing vendor. The finalized specifications apparently were not satisfactory to the competing vendor, who subsequently submitted a letter of protest to the division. The division's response, in rejecting the protest, contained wording that exactly matched phrasing in the letter to the division from the current vendor. The current vendor's letter refuted the concerns and assertions of the competing vendor. The bid files did not indicate whether the division consulted any other source for information to resolve the conflicting viewpoints.

The National Association of State Purchasing Officials' handbook, *State and Local Government Purchasing*, recommends communications with vendors "be structured in such a way so as not to give the appearance of there being too close a relationship between the vendor and the procurement officer." By using the current vendor's wording verbatim in its response to the protesting vendor and by not consulting with other sources, the division created a situation where its impartiality could be criticized.

- The bid file for a 1994 contract for mopping and dusting supplies contained correspondence from the incumbent vendor relating to bid specifications. It did not appear that the division contacted other sources for assistance in developing the bid specifications; however, when a competing vendor protested certain bid specifications, an amendment was added to the ITB to accept the recommended changes. Although the division's purchasing analyst assured us he asked state agencies for comments prior to developing the specifications, these contacts were not documented in the bid file.

The division's operating procedures allow purchasing analysts to contact potential vendors to review specifications drafts, but the procedures do not specify how many sources should be consulted. In addition, the procedures do not require communications with vendors to be documented. Contact with vendors, especially when only one vendor is consulted, may raise questions about the division's objectivity if the reason, extent and result of communications with potential vendors are not documented. Contact with more than one potential vendor would further ensure objectivity, in fact and in appearance.

We recommend that the division:

- Consistently follow public contracting rules in rejecting bids to help ensure bids are evaluated equitably and objectively. Reasons for rejection should be adequately documented. When product tests are performed, the tests and results should be described in the bid files.
- Require individuals who assist in testing products, evaluating bids and/or recommending awards for custodial product contracts to complete a disclosure statement revealing relationships with responding bidders that might impair objectivity or create the appearance thereof. Individuals with possible conflicts of interest should be prohibited from assisting in the evaluation and award process.

- Obtain product and industry information from multiple sources to promote consistency and objectivity. Retain in the bid files evidence of contacts with vendors, state agencies and other information sources.

PRODUCT VOLUME USAGE

The division needs to improve its process for obtaining and using information on product volume usage to help ensure:

- Estimated usage reported in its custodial supplies ITBs is based on accurate and timely information.
- Products specified in representative bids reflect the items most frequently used by state agencies.

When the division prepares an ITB it includes annual, estimated usage amounts for particular products. This provides potential vendors with an approximate quantity of the product, which the state may purchase and helps potential vendors determine bid prices. For the ITBs we reviewed, the division relied primarily on the contract vendor's sales reports as the basis for estimating usage amounts.

- A.** We reviewed estimated usage reported in five custodial products ITBs released from July 1991 through March 1996. For four of the five ITBs (80 percent), the estimated usage amounts did not agree with the source documents the division stated it used in developing the ITBs. Neither were there other documents in the bid files to support the estimated usage amounts or explain how the estimates were prepared.

Division personnel indicated that the usage amounts in the earliest of the five ITBs may have been taken from contract release orders, the documents which authorize purchases from existing price agreements. State agencies were required to submit to the division a copy of their contract release orders to track usage. The division found that agencies did not always comply with this requirement, thereby causing the usage amounts to be unrealistically low. For this

reason, the division began using vendor sales reports for a more accurate measure of usage.

The estimated usage amounts for the March 1996 ITB were generally accurate for products previously included in the vendor's sales reports. However, some products in the ITB were not in these reports and the bid file did not document how the division determined usage amounts for these products.

The current price agreement contract for custodial supplies requires the vendor to furnish quarterly sales summaries, as did previous contracts. The division, however, did not enforce compliance with this requirement, and quarterly sales reports usually were not obtained. When sales reports were received, the division did not verify the reasonableness of the reported usage data with appropriate state agencies. The division's operating procedures do not require vendors' sales reports to be checked for accuracy before using the data.

By obtaining the required quarterly sales reports and verifying the usage data with state agencies, the division could accumulate history upon which to base estimated usage amounts when contracts are rebid. Although state agencies may not have detailed records for each product purchased, they should be able to evaluate the reasonableness of amounts reported on the vendor sales reports. This independent review would provide the division with more assurance about the accuracy of estimated usage amounts.

Furthermore, contract vendors have an advantage over competing vendors because they have the sales history of the state's usage of specific and similar products. Therefore, estimated usage amounts in the ITBs need to be timely and reasonably accurate to help ensure an equitable bidding opportunity for all vendors.

- B.** For bids we reviewed, it was not clear why certain products were chosen as representative of the types of custodial supplies expected to be purchased through a price agreement contract. Several products included as representative in the ITBs had low

reported usage, while similar products not included had higher usage. Higher usage presumably would have greater utility in a representative bid process.

Division management reported that agencies sometimes request specific items to be included in a price agreement ITB. These items may not be high volume products, but the division will accommodate the agencies in the interest of providing its services.

A survey of user agencies to determine demand for additional products would assist the division in preparing and developing ITBs and support the choices of representative products included therein.

We recommend that the division:

- Require the current vendor of custodial supplies to timely submit quarterly sales reports, as specified in the contract.
- Require applicable state agencies to review the sales reports and determine whether the vendor sales data are reasonably accurate.
- Document in the bid files its method of computing an estimate when the division does not use information directly from vendors' sales reports.
- Survey agencies to determine the need for products to be included in future price agreement contracts.

OTHER MATTERS

During our audit, we found additional areas of concern relating to the division's procurement activities.

- A.** The division's written policies and procedures for developing ITBs, evaluating bids, and awarding and finalizing price agreement contracts need to be updated to reflect current processes and to help ensure accuracy, consistency and objectivity. While Oregon statutes and administrative rules set forth public purchasing policy, operations manuals establish and describe internal procedures to assist staff in conducting day-to-day operations.

As previously discussed in this report, the division did not have procedures to review catalogs of custodial products vendors, to require a disclosure statement for potential conflicts of interest, or to have purchasing analysts verify vendors' sales reports.

Furthermore, certain existing procedures have not been updated to reflect current practice. For example, the division's procedure for specification development, effective since 1989, provides a general outline for formulating and processing new or revised specifications. However, this procedure does not address brand-name-or-equal specifications used extensively in the March 1996 ITB.

Other procedures can be supplemented to improve consistency in evaluating bids and increase effectiveness of awarding contracts. The National Association of State Purchasing Officials recommends several topics for inclusion in procurement policy and operations manuals, some of which the division addresses in its operations manual. Some additional suggested topics for the division's operations manual include:

- Review of invitations to bid, specifically, after preparation and prior to issuance.
- Responsiveness in bids, including mistakes in bids.
- Requesting, handling and returning samples.
- Review of final price agreement contracts, including a spot check of commodity prices and product names. This should include a review of associated product descriptions and price information in vendors' catalogs.

Division management reported that procedures in place for the procurement of some commodities are not applied to all commodities. In allocating limited resources, high dollar and high volume contracts receive more time and attention from staff than smaller contracts.

We recommend that the division review its written policies and procedures for developing ITBs, evaluating bids, and awarding and finalizing price agreement contracts. The division should update and expand its policies and procedures to reflect current practices and to provide more comprehensive guidance for its purchasing analysts.

- B.** The division included a “most-favored-nation” price reduction clause in the March 1996 price agreement contract for custodial products. However, it is not clear under what circumstances this clause would be invoked.

The most-favored-nation clause requires the vendor (Contractor) to represent that “all prices, terms and benefits offered by Contractor in this agreement are equal to or better than the equivalent prices, terms and benefits being offered by Contractor to any other state or local government unit or commercial customer.”

The contract further states, “Should Contractor, during the term of this agreement, enter into any contract, agreement or arrangement that provides lower prices, more favorable terms or greater benefits to any other such government unit or commercial customer, this agreement shall thereupon be deemed amended to provide the same price or prices, terms and benefits to the State. This provision applies to comparable products, supplies and services, and to purchasing volumes by the State that are not less than the purchase volumes of the government unit or commercial customer that has received the lower prices, greater benefits or more favorable terms.”

The contract does not specifically describe under what circumstances this clause is to be enforced. As a result, parties involved with the contract may be confused as to the division’s intent for vendor compliance.

For example, we reviewed four floor-finishing pads offered by the current vendor to the state and to a school district. We compared the January 1996 prices offered to each entity and the estimated usage

amounts. For all four pads, the state's cost was more than the school district's. In three instances, however, the state's estimated usage was less than the school district's. Therefore, it would appear the vendor is exempted from the most-favored-nation clause for these products.

For the fourth floor pad, the state's estimated usage was ten times that of the school district. In this case, it would appear the lower price offered to the school district should also be offered to the state.

Division management stated they would not likely enforce the most-favored-nation clause for this sale because contract conditions would differ significantly between the state and the school district. For example, product delivery terms may not be the same for the state and a school district. A school district ordering in bulk quantities once a year may be able to store products in a central warehouse versus state purchases which may be smaller individual purchases throughout the contract period. Therefore, the purchases would not be comparable.

Without knowledge of the underlying circumstances, a person could be led to believe that the most-favored-nation clause applies in situations for which it was not intended. The division can reduce the risk of misunderstandings by clarifying in the contract the circumstances under which the most-favored-nation clause would be enforced.

We recommend that the division:

- Clarify circumstances that will invoke the most-favored-nation clause in its contracts.
- Seek legal advice about the wording of this clause to help ensure complete understanding by parties encountering the price agreement contract.

C. As previously reported, the March 1996 ITB required bidders to provide chemical blending equipment to state agencies that purchased products under the contract. In addition, the ITB stipulated the blending equipment be manufactured to prevent backflow of chemicals into the water supply to which it is

connected. The ITB, however, did not make reference to standards for a backflow device and for testing the safety of this equipment. Neither did the ITB require the agency or bidder to adhere to applicable standards.

The Oregon Health Division maintains a list of approved backflow prevention devices and requires backflow devices to be tested by an individual who has been approved by the Health Division. These requirements are in place to help ensure the safety of the state's water supplies. If a state agency inappropriately uses this equipment which results in contamination of the water supply, the state could be potentially liable for resulting damages.

We recommend that the division require vendors providing blending equipment to ensure that the equipment meets applicable health safety standards.

REPORT DISTRIBUTION

This report is public record and is intended for the information of the Department of Administrative Services management, the governor of the state of Oregon, the Oregon Legislative Assembly, and all other interested parties.

COMMENDATION

The courtesies and cooperation extended by the officials and employees of the Department of Administrative Services, other state agencies we visited, and industry personnel we interviewed during the course of our audit were very commendable and sincerely appreciated.

AUDIT TEAM

Sharron E. Walker, CPA, CFE
Joel Leming, CPA
Dale Bond, CPA, CFE
Brooks Hogle, CPA
Nancy Pasternack, CPA

AGENCY'S RESPONSE TO THE AUDIT REPORT

October 20, 1997

Sharron E. Walker, CPA, CFE
Deputy Director
Secretary of State Audits Division
255 Capitol Street NE, Suite 500
Salem, OR 97310

Dear Ms. Walker:

The Department of Administrative Services is pleased to respond to recommendations contained within the Procurement Practices For Custodial Products audit.

(1) We recommend that the division terminate the contract at the next practical opportunity under the contract and rebid the contract with revised wording in its invitation to bid. The division should ask for discounts from "manufacturer's list price" instead of "bidders price list" to help ensure:

- *Equity for vendors competing for contracts.*
- *Representative prices are obtained for other products to be included in the price agreement contract.*
- *The best overall prices for this contract are obtained.*

Although the potential term of this contract is through April 30, 2001, the division intends to cancel it as soon as practicable. When rebid, the division will provide equitable bidding opportunities to all bidders. The invitation to bid documents will specifically explain the method of award, as well as the role any price lists will play in such an award.

(2) We recommend that the division:

- *Review the state's needs for chemicals used with blending equipment and either:
 - *Issue a separate invitation to bid for concentrated chemicals; or*
 - *As recommended earlier, terminate the contract at the next practical opportunity under the contract and rebid it to include concentrated chemicals.**
- *Require the current vendor of custodial supplies to revise its catalog to accurately and clearly specify which products are included in the price agreement contract. The division should also remind state agencies' purchasing personnel of their responsibility to select products from the appropriate vendors.*
- *Review vendors' catalogs as part of the contract review process and require revisions, as needed.*



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The blending equipment was added at the request of a state agency customer. The division is aware that this equipment has unique areas to address within the bid document and subsequent contract. When the custodial supplies contract is rebid, the blending equipment and supplies used with that equipment will be procured under separate invitations to bid.

As new contracts are implemented and custodial supplies catalogs are generated, the contract administrators will review those catalogs to assure that overlap of products covered by other contracts do not create conflict between the contracts or provide a vendor an opportunity to provide products which are not identified within the contracts. The contract administrators will attempt to assure that a balance is maintained in providing "user-friendly," convenient and practical contracts that treat all contract vendors equitably.

(3) *We recommend that the division:*

- *Consistently follow public contracting rules in rejecting bids to help ensure bids are evaluated equitably and objectively. Reasons for rejection should be adequately documented. When product tests are performed, the tests and results should be described in the bid files.*
- *Require individuals who assist in testing products, evaluating bids and/or recommending awards for custodial product contracts to complete a disclosure statement revealing relationships with responding bidders that might impair objectivity or create the appearance thereof. Individuals with possible conflicts of interest should be prohibited from assisting in the evaluation and award process.*
- *Obtain product and industry information from multiple sources to promote consistency and objectivity. Retain in the bid files evidence of contacts with vendors, state agencies and other information sources.*

The division concurs that consistent observation of contracting rules is essential. As those rules are applied, file documentation must be maintained so that procedures may be reviewed and understood. Test results should also be a part of each bid file. The procedures relating to these functions will be updated and the purchasing analysts will be informed of the changes.

Evaluation team members currently review and sign "conflict of interest" statements when participating in bid evaluation processes. The circumstances cited in the audit findings occurred in 1991, almost six years ago. Shortly after the evaluations mentioned in the audit findings, the division became aware of this potential conflict of interest. The person with the potential conflict was not allowed to participate in any other product evaluations. This corrective action was implemented over five years ago.

Product information will be solicited from multiple sources on future bids.

(4) We recommend that the division:

- Require the current vendor of custodial supplies to timely submit quarterly sales reports, as specified in the contract.*
- Require applicable state agencies to review the sales reports and determine whether the vendor sales data are reasonably accurate.*
- Document in the bid files its method of computing an estimate when the division does not use information directly from vendors' sales reports.*
- Survey agencies to determine the need for products to be included in future price agreement contracts.*

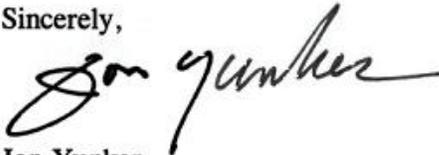
As the rebid for custodial supplies is being prepared, the volume sales reports provided by the current contractor, will be evaluated by the purchasing analyst and representatives from the agencies using the contract to determine their accuracy. A user committee of the various agency users of the contract will be formed to assure that the products in the bid represent products which will be required by these agencies. The findings of the user committee will become a part of the invitation to bid file. The role of sales volume reports will be identified in the invitation to bid.

(5) We recommend that the division:

- Review its written policies and procedures for developing invitations to bid, evaluating bids, and awarding and finalizing price agreement contracts. The division should update and expand its policies and procedures to reflect current practices and to provide more comprehensive guidance for its purchasing analysts.*
- Clarify circumstances that will invoke the most-favored-nation clause in its contracts.*
- Seek legal advice about the wording of this clause to help ensure complete understanding by parties encountering the price agreement contract.*

The division is currently reviewing and updating its written policies and procedures for all bidding, documenting, awarding, and contracting practices. The use of the most-favored-nation clause will be reviewed and clarified. Legal counsel will be included in this review.

Sincerely,



Jon Yunker
Director

c: Cam Birnie
Rob Rickard

FACTS ABOUT THE SECRETARY OF STATE AUDITS DIVISION

The mission of the Audits Division is to “Protect the Public Interest and Improve Oregon Government.” The Oregon Constitution provides that the Secretary of State shall be, by virtue of his office, Auditor of Public Accounts. The Audits Division exists to carry out this duty. The division reports to the elected Secretary of State and is independent of the Executive, Legislative, and Judicial branches of Oregon government. The division audits all state officers, agencies, boards, and commissions and oversees audits and financial reporting for local governments.

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This report is intended to promote
the best possible management of public resources.



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