



OFFICE OF AUDITOR OF STATE  
STATE OF IOWA

David A. Vaudt, CPA  
Auditor of State

State Capitol Building  
Des Moines, Iowa 50319-0004  
Telephone (515) 281-5834 Facsimile (515) 242-6134

NEWS RELEASE

Contact: David A. Vaudt  
515/281-5835  
or Tami Kusian  
515/281-5834

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Auditor of State David A. Vaudt today released a report on a Review of Statewide Procurement. The review included contracts established between July 1, 2007 and December 31, 2008 and more recent activity for certain contracts. The review was conducted in accordance with Chapter 11 of the *Code of Iowa* to determine the effectiveness of contracting controls and procedures associated with providers which have contracts with the Department of Administrative Services (DAS) to provide goods and services to multiple state agencies. In addition, the review included evaluation of the effectiveness of the statewide contracts, referred to as master agreements, and the oversight performed by DAS.

According to the DAS website, DAS has approximately 530 active master agreements and provides procurement services for 17,000 state employees representing 41 state agencies. Master agreements are defined in the Iowa Administrative Code as contracts competitively awarded which establish prices, terms and conditions for the purchase of goods and services of general use. Master agreements were designed to expedite procurement by allowing state agencies to utilize them instead of conducting competitive bidding activities individually. State agencies paid over \$15 million in fiscal year 2008 to the 10 providers included in the review.

In accordance with the *Code of Iowa*, DAS is required to procure goods and services of general use for all state agencies in the Executive Branch not exempted by law. Contrary to these requirements, DAS operated under the premise state agencies have authority to procure services independently. Therefore, DAS delegated oversight responsibilities for service procurements to state agencies. Due to the lack of centralized oversight by DAS for service contracts, service contracts were the primary focus of the review.

Vaudt recommended several improvements regarding the administration of master agreements and oversight activities related to statewide procurement at DAS and the participating agencies to ensure the proper use of master agreements and compliance with state guidelines. Among the findings identified during the review were:

- DAS did not have adequate internal controls over master agreements and did not adequately monitor activity against master agreements. DAS established master agreements for services but delegated oversight of related procurements to state

agencies, resulting in improper use. In addition, state agencies utilized master agreement providers without verifying the terms of the payments were in accordance with the master agreements.

- Some master agreements did not establish pricing. In addition, some were not based on competitive pricing or negotiations. As a result, state agencies using the master agreements purchase goods and services without competitive bidding procedures being performed.
- Master agreements for certain goods and services were awarded to multiple providers at varying prices. Some master agreements were awarded to all providers which submitted bids, regardless of pricing. In these cases, master agreements often function as pre-approved provider listings instead of competitively awarded contracts. Current rules do not require competitive bidding procedures when using master agreements, which puts state agencies at risk they are not obtaining competitive prices when they utilize master agreements.
- State agencies often operated under the assumption any purchases from the provider were covered by the terms of the master agreement if the provider had a master agreement. As a result, improper sole source orders were processed because they were not competitively awarded and were not in compliance with the terms of the master agreement.
- Specific misuse of master agreements identified during testing included:
  - DAS misused a master agreement to procure software and associated services from a subcontractor to the master agreement provider at a cost of \$253,677.00 instead of conducting competitive bidding procedures.
  - The Alcoholic Beverages Division of the Department of Commerce misused emergency procurement authority and master agreements to procure significant construction services from 2 providers instead of conducting competitive bidding procedures. Payments to the 2 providers totaled \$2,118,788.10 and \$398,007.83.
  - The Department of Corrections improperly referenced a master agreement to procure IT services and did not establish a contract with the provider. From fiscal year 2000 through fiscal year 2010, the Department paid the provider more than \$22 million without the benefit of a valid contractual relationship. In addition, the Department was initially entitled to receive 50% of all licensing fees the provider generated by selling certain software to other correctional institutions which the provider originally developed for the Department. However, the Department only received a few payments from the provider. After

multiple requests for an explanation, the Department produced a copy of an amendment canceling the Department's rights to the licensing fees. There was no accompanying support for the amendment and the amendment was not signed by the Director. Instead, it was signed by the Assistant Director with the title "Director" shown below his signature. The Assistant Director is now the Director of the Department. The Department did not consult the Attorney General's Office regarding the amendment as it did with the initial agreement. The cancellation of the initial agreement resulted in the loss of millions in potential revenues to the Department. The current Director of the Department stated outdated programming language was the reason the Department was no longer entitled to half of all licensing fees. However, programming language variances typically do not nullify copyright contracts. Documentation was not sufficient to substantiate the Director's explanation and he could not identify individuals with the State who could verify the explanation.

- Several state agencies misused master agreements with targeted small businesses, which were limited to \$10,000.00 per transaction. The agencies split procurements to targeted small businesses in order to process payments in excess of the limitation.
- Specific misuse of non-master agreement contracts identified during testing included:
  - The Department of Human Services misused emergency procurement authority to procure significant psychiatric services from 2 providers for an extended period of time.
  - The Human Resources Enterprise of DAS established statewide contracts for temporary staffing services. However, the contracts established were not master agreements subject to DAS oversight.
- Certain state agencies are exempt from centralized purchasing requirements even though the Iowa Administrative Code includes specific language which would permit exceptions to use of master agreements in certain circumstances.
- Not all state agencies utilizing master agreements are required to pay fees to DAS. In addition, the DAS fees are currently based on total payments to providers with master agreements, regardless of whether master agreements were actually utilized.
- DAS currently retains a majority of provider rebate monies earned by state agencies when the state agencies procure goods and services from certain providers.

On March 10, 2010, Governor Culver signed Senate File 2088. The Senate File included new requirements for DAS regarding purchasing. Although the outcomes of the new legislation were not included in our review, the results of the review lead to concerns

regarding the potential implications of implementation of the Senate File. Specifically, mandatory and/or increased usage of master agreements, as directed in the Senate File, is only effective if the master agreements have been established to ensure competitive pricing has been achieved. As demonstrated in this report, master agreements need significant improvement in order for such requirements to be cost beneficial.

The recommendations included in this report will improve the effectiveness of master agreements and statewide procurement controls and enhance the on-going efforts to identify potential cost savings in procurement and will help ensure state procurements result in competitive prices.

A copy of the report is available for review in the Office of Auditor of State and on the Auditor of State's web site at <http://auditor.iowa.gov/specials/0960-8990-B0P3.pdf>.

# # #

**A REVIEW OF STATEWIDE PROCUREMENT  
FOR THE PERIOD  
JULY 1, 2007 THROUGH DECEMBER 31, 2008**

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## **A Review of Statewide Procurement**



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David A. Vaudt, CPA  
Auditor of State

State Capitol Building  
Des Moines, Iowa 50319-0004  
Telephone (515) 281-5834 Facsimile (515) 242-6134

To the Governor, Members of the General Assembly  
and the Director of the Department of Administrative Services:

In conjunction with our audit of the financial statements of the State of Iowa and in accordance with Chapter 11 of the *Code of Iowa*, we have conducted a review of the statewide procurement system, including master agreements established and administered by the Iowa Department of Administrative Services (DAS) and purchases made by state agencies.

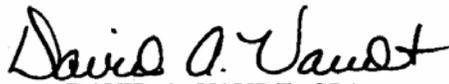
We reviewed selected purchases made by state agencies utilizing master agreements or providers used on a statewide basis for the period July 1, 2007 through December 31, 2008. The purchases reviewed were made during fiscal years 2007 through 2010. We also reviewed policies and procedures followed by DAS at the time of our fieldwork and tested compliance with state procurement regulations as defined in the *Code of Iowa*, the Iowa Administrative Code and the Department of Administrative Services – General Services Enterprise Procurement Manual (DAS Procurement Manual). In addition, we reviewed additional controls established in the *Code of Iowa* by Senate File 2088, a state government reorganization bill signed by Governor Culver on March 10, 2010. In conducting our review, we performed the following procedures:

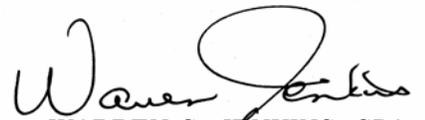
- (1) Interviewed personnel from DAS and selected agencies to obtain an understanding of procedures and internal controls over the use of master agreements for goods and services and evaluated the adequacy of the procedures and controls.
- (2) Reviewed master agreements between DAS and selected providers conducting business with multiple state agencies or providers with master agreements, including targeted small businesses, service providers and goods providers.
- (3) Reviewed the DAS-General Services Enterprise (GSE) Procurement Manual to determine the statewide policies established for procurement of goods and services, including, but not limited to, centralized procurement of goods and services, agency direct procurement of goods and services and required procedures for exemption from normal procurement procedures.
- (4) Reviewed statewide procurement regulations included in Iowa Administrative Code [11] Chapters 105, 106 and 107 and any other applicable laws, rules and guidelines related to procurement to obtain an understanding of applicable requirements.
- (5) Reviewed the DAS fee structure to determine how the oversight function of DAS is funded and to evaluate the fees and rebates utilized to fund DAS operations.
- (6) Evaluated multiple award and targeted small business master agreements to determine if competitive bidding procedures were properly completed.

- (7) Examined selected transactions for agencies which process payments through Government Accounting Expenditure (GAX) forms only and transactions in I/3 utilizing multiple provider codes based on risks discussed with DAS officials to determine whether the processing system allows for unapproved payments to be processed.
- (8) Evaluated selected contracts or provider relationships with state agencies to determine compliance with procurement requirements.
- (9) Evaluated new initiatives enacted in the *Code of Iowa* through Senate File 2088, the state government reorganization bill signed into law by Governor Culver in March 2010, to determine how the new initiatives would impact statewide procurement procedures.
- (10) Examined supporting documentation for selected purchases to determine compliance with state procurement regulations as defined in the DAS-GSE Procurement Manual and the Iowa Administrative Code.

Based on these procedures, we developed certain recommendations and other relevant information we believe should be considered by the Department of Administrative Services, all participating state agencies, the Governor and the General Assembly.

We extend our appreciation to the personnel of the state agencies reviewed for the courtesy, cooperation and assistance provided to us during our review.

  
DAVID A. VAUDT, CPA  
Auditor of State

  
WARREN G. JENKINS, CPA  
Chief Deputy Auditor of State

May 2, 2011

## Executive Summary

State agencies spend millions of dollars each year procuring goods and services to operate and administer programs. Especially during a time of economic strain, review of state procurement activities to identify potential cost savings is of particular value. Therefore, we conducted a review to assess statewide procurement activities and determine whether the State's procurements are conducted as efficiently and effectively as possible.

We conducted our review to determine the effectiveness of contracting controls and procedures associated with certain providers which deliver goods and services to multiple state agencies through contracts with the Department of Administrative Services (DAS). The contracts DAS establishes for use by state agencies are called master agreements. Our review also included evaluation of the effectiveness of DAS in its oversight role and the effectiveness of the master agreements DAS has established.

DAS provides procurement services, including establishing and managing master agreements for goods and services of general use by state agencies, through the Procurement Services Division of the General Services Enterprise (GSE). According to the DAS website, DAS provides procurement services for 17,000 state employees representing 41 state agencies. In accordance with the *Code of Iowa*, DAS is required to procure goods and services of general use for all state agencies in the Executive Branch not exempted by law. General use goods and services are those which meet the needs of multiple state agencies.

According to the DAS website, DAS has approximately 530 active master agreements covering a wide range of goods and services of common use. A master agreement is defined as "a contract arrived at competitively which establishes prices, terms, and conditions for the purchase of goods and services in common use." The primary purpose of master agreements is to provide pre-established contracts for state agencies to utilize which DAS has established in a competitive manner. State agencies may purchase from a master agreement without conducting further competitive procedures and have unlimited authority to procure goods and services through utilization of master agreements.

In accordance with the *Code* and the corresponding Iowa Administrative Code (IAC), DAS is required to procure goods and services of general use for all Executive Branch agencies which are not exempted by law. Contrary to these requirements, DAS operates under the premise state agencies have authority to procure services independently. According to DAS officials we spoke with, services, by nature, are specific to each state agency's specific needs. As such, DAS has delegated oversight responsibilities for service procurements to state agencies.

A DAS official we spoke with stated service procurements are to be established by each state agency in accordance with Executive Order 50, which has been in effect since January 12, 1983. Therefore, DAS has not monitored the procurement activity of state agencies for services. However, Executive Order 50 specifically names DAS as the agency responsible for adopting rules for procurement of services. Therefore, DAS is responsible for providing oversight of procurements of services made by state agencies.

In the event state agencies require goods or services specific to the agency which are not covered by a master agreement, the state agencies are permitted to procure goods and services valued up to \$5,000.00 per transaction independently. However, specific rules for procurement apply. Purchasing agents not using master agreements are required to conduct competitive procurement procedures to purchase:

- All goods, regardless of value and
- All services which are equal to or greater than \$5,000.00 (\$15,000.00 for multiyear service agreements).

During the process of selecting providers and state agencies to include in the review of procurements, we reviewed the state payment database and current master agreement listing. Based on that review and our evaluation of current controls and processes, we determined service contracts would be the primary subject of our review. Testing procedures included review of master agreements and/or payments associated with:

- A selection of 10 service providers and a total of 24 state agencies which utilized the service providers,
- A limited selection of goods providers,
- A limited selection of master agreements awarded to multiple providers,
- A limited selection of master agreements awarded to targeted small businesses and
- A judgmental selection of payments brought to our attention due to specific issues identified during our review.

### **Findings Highlights**

As a result of our review, we identified several concerns regarding current procurement practices and believe improvements to address those concerns could significantly improve the effectiveness of statewide procurement. Due to the number of findings identified, we have summarized the most significant below. Additional findings and details regarding the review are contained in the body of this report.

The findings, as shown below, are listed by category. More detail regarding each of the findings is included in the Findings and Recommendations section of this report.

### **Establishment of Master Agreements**

- Master agreements included in testing did not always establish pricing upon which orders were based. Therefore, providers were not always held to specific pricing established by the master agreement. There is significant risk in utilizing these master agreements because state agencies believe the prices have already been competitively established and the providers have sole discretion over the pricing they offer. In fiscal year 2008, we identified millions in payments to providers from state agencies using master agreements which did not establish pricing.
- Master agreements entered into by DAS were not based on competitive pricing or negotiations. For example, many master agreements in our review were awarded to most or all participating bidders, regardless of pricing. We found little evidence DAS conducted negotiations on the master agreements we reviewed. In addition, DAS sometimes awarded master agreements after attempting to get competitive bids rather than actually receiving competitive bids.
- Master agreements for the same goods or services were awarded to multiple providers at varying prices. Some master agreements were awarded to all providers which submitted bids, regardless of pricing. For example, DAS solicited bids and received 7 responses from providers to provide building and automation products and services. All 7 providers were awarded a master agreement despite the varying price structures each provider quoted. State agencies could then utilize any of the 7 providers, even though pricing varied significantly among the providers. The provider's master agreement most state agencies used to procure these goods and services did not provide the most competitive rates.

- Master agreements established with targeted small businesses did not establish competitive prices. DAS officials stated master agreements with targeted small businesses are used to give the businesses visibility and state agencies are responsible for determining price reasonableness. This practice is inconsistent with the purpose of master agreements.
- DAS does not have buying leverage in negotiating master agreements because use of the master agreements is not mandatory for state agencies. DAS officials stated providers are not motivated to provide deep discounts because sales volumes are not guaranteed.
- Master agreements often function as pre-approved provider listings instead of competitively awarded contracts. DAS recommends state agencies conduct competitive bidding procedures among certain master agreement providers. In addition, DAS has established internal policies to conduct competitive bidding among architect and engineering providers who have already been awarded master agreements. This illustrates DAS recognizes the master agreements may not provide the best pricing state agencies may be able to obtain.
- Based on these findings, master agreements do not necessarily provide the most competitive pricing available and often do not meet the definition in the IAC, which defines master agreements as contracts “arrived at competitively.”

#### **Use of Master Agreements**

- State agencies misused master agreements by using them for orders not of general use or by using them to justify procurements from providers which were not in compliance with the terms of the master agreement. These orders are improper sole source orders because they are not competitively awarded and are not in accordance with the terms of the master agreement. For example, we identified a significant number of orders processed for a lump sum cost which was not itemized to detail the specific goods and services ordered. Therefore, the goods and services ordered could not be verified to be priced in accordance with the master agreement.
- State agencies used master agreements for services to procure goods not addressed in the master agreement. Many master agreements for services also contain language to allow for goods at cost plus mark-up. However, the provider’s cost and the mark-up rate is not readily available. Agencies purchasing goods through master agreements for services do not have adequate information to confirm prices are in accordance with the terms of the master agreement. Further, since the goods are not the primary item covered by the master agreement, it is not clear prices are competitive.
- DAS misused a master agreement to process an order for software with a master agreement provider’s subcontractor instead of conducting competitive bidding procedures. The software and associated services cost \$253,677.00 in the first year.
- The Alcoholic Beverages Division of the Department of Commerce misused emergency procurement authority and improperly referenced master agreements to procure significant construction services from 2 providers instead of conducting competitive bidding procedures. Total related payments were \$2,118,788.10 and \$398,007.83, respectively.
- The Department of Human Services - Mount Pleasant Mental Health Institute misused emergency procurement authority to procure significant psychiatric services from 2 providers for an extended period of time instead of conducting competitive bidding procedures.

- The Department of Corrections improperly relied upon a master agreement to procure IT services and did not establish a contract with the provider. From fiscal year 2000 through fiscal year 2010, the Department paid the provider more than \$22 million to create and maintain the IT system. The Department has since entered into a contract with the provider.

In addition, the Department had a contract with the provider to share half of the fees generated by selling certain software to other correctional facilities beginning in 2000 since the Department was instrumental in creating the software. However, the Department did not receive its portion of the fees generated. Upon request for an explanation, the Department produced a copy of an amendment canceling the Department's rights to the licensing fees effective July 27, 2003. There was no accompanying support for the amendment and it was not signed by the Director. Instead, it was signed by the Assistant Director at that time, but the title shown below his signature is listed as "Director." The Assistant Director who signed the amendment is now the Director. In addition, according to a representative of the Attorney General's Office, the Department did not consult the Attorney General's Office prior to signing the amendment as it did with the initial agreement.

The cancelation of the initial agreement resulted in the loss of millions of potential revenue to the Department. The current Director of the Department stated outdated programming language was the reason the Department was no longer entitled to half of all licensing fees. However, programming language variances typically do not nullify copyright contracts. Documentation was not sufficient to substantiate the Director's explanation and the Director could not identify individuals from the State who could verify his explanation.

- Several state agencies split procurements from targeted small businesses into multiple orders to avoid the \$10,000.00 single purchase limitation. For example, the Department of Revenue made 3 purchases on the same day for chairs. The payments totaled \$26,332.00 and 2 of the orders processed were for \$9,950.00, just under the single order limit. The limitations are established to ensure larger purchases are made utilizing the benefit of competitive bidding procedures. Splitting procurements to avoid competitive bidding is improper.
- Several agencies procured temporary staffing services improperly. For example, 5 agencies spent nearly \$260,000.00 with Robert Half after making payments based on Robert Half's pre-approved provider status, which only qualified Robert Half to be eligible for the opportunity to bid. In addition, the DAS-Human Resource Enterprise (DAS-HRE) entered into a contract for temporary staffing for state agencies to use. However, since DAS-HRE is not the DAS-General Services Enterprise, it should not have entered into the statewide contract. No oversight was conducted over usage of the contract, resulting in multiple abuses of the contract.

### **Procurement Oversight Responsibilities**

- DAS did not have adequate internal controls over master agreements and did not adequately monitor utilization of its master agreements.
- DAS established master agreements for services but delegated oversight of procurements related to the master agreements to state agencies, resulting in significant misuse by state agencies.
- Several state agencies were unnecessarily exempted from certain centralized purchasing requirements through DAS. For example, the Department of Transportation, the Department for the Blind and the Iowa Communications Network were not required to pay the fees collected by DAS from all other state agencies for their use of DAS master agreements.

- State agencies utilized master agreements with providers without verifying the terms of the pricing were in accordance with the terms of the master agreements. If state agencies had performed due diligence to verify pricing was in accordance with master agreement terms and conditions, a majority of the concerns identified during testing could have been avoided.
- Some exempt state agencies did not develop their own agency procurement rules to establish adequate internal controls and accountability.

### **DAS Operational Funding**

- As previously stated, certain state agencies are arbitrarily not required to pay DAS master agreement fees, even though they utilize DAS master agreements. For example, DAS officials stated certain non-exempt agencies are not required to pay the DAS fee because DAS can't distinguish between procurements made by agency staff or through DAS master agreements and certain exempt agencies are required to pay DAS fees because they were required to under the prior billing structure. DAS did not utilize consistent rules when determining whether state agencies were required to pay DAS fees.
- DAS master agreement fees are based on total payments made to providers by fee-paying state agencies, regardless of whether the purchases are made under the master agreements.
- DAS retains a majority of provider rebate monies earned by state agencies when the state agencies use certain providers. Also, the rebates allocated to state agencies are not based on rebates each state agency earned through its master agreement purchases.

### **New Legislation**

On March 10, 2010, Governor Culver signed Senate File 2088 (SF 2088), which addressed state government reorganization and efficiency. SF 2088 included new purchasing requirements for DAS. Although the outcomes of the new legislation were not included in our review, observations about the new legislation in conjunction with the findings of our review led to the following concerns:

- Mandatory and/or increased use of master agreements is only effective if the master agreements established ensure competitive pricing has been achieved. As demonstrated in this report, we identified significant concerns regarding master agreements which must be addressed before determining master agreement pricing is truly competitive.
- SF 2088 gives DAS authority over procurement activities. However, DAS currently does not have access to documentation to adequately oversee contract administration of service contracts because state agencies procure services and maintain documentation independently from DAS. DAS should have the ability to monitor state agency procurements in order for this authority to be effective. Controls should be in place which would preclude state agencies from purchasing services directly from providers unless they have DAS approval. Without adequate ability to oversee state agency service procurement activity, the authority granted to DAS is useless.

## **Recommendations**

Based on the findings identified during the testing performed, we developed recommendations to improve controls as well as efficiency and effectiveness of statewide procurement processes. Recommendations regarding specific findings are contained in the Findings and Recommendations section of this report. A summary of recommendations is as follows:

- DAS should evaluate current master agreements and ensure all active master agreements are consistent with the definition of master agreements outlined in the IAC. Master agreements which should not be continued include master agreements:
  - Awarded to multiple providers at varying prices,
  - Awarded without establishing competitive prices in the terms of the agreement,
  - Awarded to providers when competitive bids were not received and negotiations were not conducted,
  - Awarded to targeted small businesses without establishing competitive prices, and
  - Awarded to allow pricing to be developed on a case-by-case basis.
- DAS should implement adequate controls to monitor service contracting activities of state agencies utilizing master agreements and ensure its master agreements are utilized appropriately. Delegated purchasing authority should not be authorized unless state agencies have demonstrated accurate understanding and compliance with procurement rules and regulations.
- State agencies currently exempt from centralized procurement procedures should be required to follow centralized procurement procedures established by DAS when procuring general use goods and services.
- DAS should assess its fees to all state agencies and ensure fees are based on each agency's usage of the master agreements.
- DAS should evaluate the current use of rebates with consideration of the impact of its use of rebates on individual state agencies to ensure use of rebates is equitable and efficient. A possible option would be to consider using rebates for services which benefit all state agencies, such as for funding oversight activities. Another possible option would be to return all rebates to the state agencies which earned the rebates. However, if DAS returned all the rebates, service fees for all state agencies would need to be adjusted.
- DAS should clearly list the specific goods and services covered by the master agreements and the associated pricing for those goods and services. For example, all provider price lists used as the basis of a cost plus mark-up pricing structure should be readily available for state agencies to verify provider billings are in accordance with the terms of the master agreements.
- State agencies should be required to reconcile orders against master agreement terms and conditions prior to approval to verify the orders are in accordance with the master agreement.
- Providers with master agreements should be held accountable for conducting business in accordance with the terms of the master agreements they have signed with DAS.
- DAS-GSE should oversee master agreements with temporary staffing services providers, not DAS-HRE.
- DOC should consult with the Attorney General's Office to determine whether its current administration of the IT services contract is in accordance with contracting requirements and take any necessary action.

# Background

## Department of Administrative Services – General Services Enterprise

The Department of Administrative Services (DAS) operates the Procurement Services Division through its General Services Enterprise. According to the DAS website, the mission for the division is “to facilitate a process that provides timely, cost-effective, high quality goods and services through cooperative and proactive procurement practices.” The procurement services include procuring specific goods and services on behalf of state agencies upon request and contracting for general use goods and services for multiple state agencies. This is consistent with Chapter 105 of the Iowa Administrative Code (IAC), which states DAS shall procure goods and services of general use for all state agencies in the Executive Branch except those exempted by law. General use goods and services are those goods and services which meet the needs of multiple state agencies.

Section 8A.302 of the *Code of Iowa (Code)* requires DAS to provide a system of uniform standards and specifications for purchasing physical resources. The physical resources are specified as items of general use. When Chapter 105 of the IAC was developed to establish rules related to Section 8A.302 of the *Code*, the IAC referred to the physical resources discussed in the *Code* as both goods and services. Since all state agencies rely on the authority of the IAC, for the purposes of this report, DAS authority to procure for general use needs of state agencies includes both goods and services.

The contracts established by DAS for goods and services of general use and procurements from providers providing the general use goods and services to multiple state agencies were the primary focus of our statewide procurement review.

Agencies within the Judicial and Legislative Branches are not subject to general use contracting requirements established in Chapter 105 of the IAC. In addition, **Table 1** lists the agencies within the Executive Branch which are exempt from the purchasing requirements established by DAS. The **Table** also includes the specific *Code* sections in which the exemptions are provided. Agencies designated as “charter agencies” were also exempted from contract requirements during the period of our testing. Exemptions from general use contracting requirements are discussed later in this report.

**Table 1**

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### Agencies Exempt from General Use Contracting Requirements

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Elected Official offices (8A.101)	Iowa Lottery Authority (899G.21)
General Assembly (8A.101)	Community Based Corrections (905.4(5))
Department for the Blind (8A.302)	Iowa Prison Industries (*)
Institutions under the Board of Regents (8A.302)	National Guard (*)
Department of Transportation (8A.302)	Charter Agencies^
State Fair Authority (173.14A)	

\* - DAS could not provide support for the authority granting the exemption from DAS general use contracting requirements. DAS stated the agencies are no longer exempt in accordance with SF 2088, enacted by the 2010 Legislature.

^ - Includes Alcoholic Beverages Division of the Department of Commerce, Department of Corrections, Department of Human Services, Department of Natural Resources, Iowa Veterans Home and Iowa Department of Revenue. Charter agency authority was effective for fiscal years 2004 through 2008.

According to the DAS General Services Enterprise Procurement Manual (DAS Procurement Manual), the Iowa Communications Network (ICN) is exempt from DAS purchasing requirements. However, ICN’s purchasing authority per the *Code* was limited to purchases directly related to telecommunications goods and services. Therefore, ICN should not have exempt status for goods and services not related to telecommunications.

An ICN representative we spoke with concurred ICN is not exempt from central purchasing requirements for general use items.

### **Master Agreement Procurement**

According to the DAS Procurement Manual, DAS purchases goods on behalf of 41 state agencies and approximately 16,000 state employees. In addition, political subdivisions (including cities, counties and school districts) may use many of the DAS contracts. The contracts DAS maintains for general use goods and services are known as master agreements.

In January 2009, DAS reported it managed approximately 429 active master agreements covering a wide range of products and services used by state government. A master agreement, as defined in Chapter 105 of the IAC, is:

A contract awarded competitively which establishes prices, terms, and conditions for the purchase of goods and services in common use. Agencies may purchase from a master agreement without further competition. These contracts may involve the needs of one or more state agencies. Master agreements for a particular item or class of items may be awarded to a single provider or multiple providers.

All units of the Executive Branch, including a commission, board, institution, bureau, office, agency or department (except the agencies listed in **Table 1**), are required to purchase goods and services of general use as provided in Chapter 105 of the IAC. Chapter 105 of the IAC requires competitive procurement unless a permissible exemption is justified. Specific product guidelines and solicitation requirements are also described in the IAC. Participating state agencies utilize the centralized procurement efforts of DAS through master agreements to ensure their purchasing activities are in compliance with IAC requirements. Exempt agencies may also use master agreements for purchasing. However, exempt agencies are not limited to master agreements and DAS has no oversight authority over exempt agency procurement practices. However, exempt agencies are required to comply with procurement standards for services as established in Chapters 106 and 107 of the IAC, which establish Purchasing Standards for Service Contracts and Uniform Terms and Conditions for Service Contracts, respectively.

### **Non-Master Agreement Procurement**

Agencies subject to centralized purchasing requirements may receive delegated authority to procure goods or services independent of DAS to acquire goods not available through master agreements or services unique to specific agency needs. However, in accordance with IAC Chapter 105, DAS is required to establish guidance for those agencies consistent with centralized purchasing policy and procedures. In order to make purchases independent of DAS, Chapter 105.14(5) of the IAC requires agencies to have internal controls in place to ensure procedures to initiate purchases, complete solicitations, make awards, approve purchases and receive goods are conducted in accordance with procurement laws. In addition, in accordance with Chapter 105.15(5) of the IAC, “purchasing authority delegated to agencies shall not be used to avoid the use of master agreements. Because it is cost-effective to purchase a good or service of general use from a master agreement, the agency shall do so.” DAS has authority to rescind delegated purchasing authority if an agency is found to be misusing its delegated authority.

Delegated procurement authority is also limited according to type of procurement. Direct purchases of non-master agreement goods by agencies are limited to \$5,000.00 per transaction unless the agency has been designated a “procurement center of excellence.” For these agencies, the limitation is extended to \$50,000.00 per transaction.

In order to become a “procurement center of excellence,” a purchasing agent of the agency must complete training coursework from DAS to certify an understanding of procurement requirements. Upon completion of at least 2 courses, they are given advanced purchasing authority and the agent must complete 4 courses in a 2-year period to maintain the designation. When a purchasing agent receives advanced purchasing authority, the agency (or segment of an agency) which the purchasing agent represents becomes a “procurement center of excellence.” This allows the agency (or segment of an agency) to make purchases up to \$50,000.00 without DAS assistance. In January 2009, 43 purchasing agents outside of DAS were certified with advanced purchasing authority. By April 2010, the advanced purchasing authority was increased to 50 purchasing agents outside DAS.

All non-master agreement procurements of goods, regardless of cost, must be conducted in a competitive manner in accordance with Chapter 105 of the IAC. In addition, DAS must conduct all bids for non-master agreement goods valued over the agency’s purchasing authority on behalf of the agency because the agency does not have authority to make purchases in excess of the purchasing limitations.

Agency direct purchases of non-master agreement services equal to or greater than \$5,000.00 (or \$15,000.00 for multiyear service contracts) must be conducted in a competitive manner unless there is adequate justification for a sole source or emergency procurement. Procurements of non-master agreement services valued below \$5,000.00 do not require competition. When utilizing sole source or emergency procurement authority, Chapter 106 of the IAC specifically states agencies are not relieved from requirements to negotiate fair and reasonable prices and thoroughly document the procurement actions taken. Service contracts exceeding \$50,000.00 (or \$150,000.00 for multiyear contracts) require completion of formal competition procedures. In addition, Chapter 107 of the IAC specifies terms and conditions service contracts must include.

After completing our review of selected master agreement and non-master agreement contracts and procurement controls performed at DAS and other state agencies included in our review, we analyzed the agencies’ compliance with these requirements and have included our results in the Findings and Recommendations section of this report.

### **Oversight of Statewide Procurement**

DAS establishes and maintains the state’s master agreements in accordance with Chapter 105 of the IAC. As the contract holder, DAS is responsible for competitive pricing and compliance with procurement standards established by the IAC. Further, DAS is responsible for ensuring contract terms and conditions are honored by the provider when utilizing DAS master agreements. According to DAS purchasing agents we spoke with, DAS relies on state agency feedback to ensure providers are operating in compliance with master agreement contract requirements.

DAS also has access to I/3, the State’s online payment processing system, which permits DAS representatives to view procurement details if the procuring agency processes the payments with a specific type of payment form, which is discussed in detail later in this report. Purchases of goods exceeding \$5,000.00, the purchasing authority threshold for non-master agreement goods purchases, are routed through a DAS purchasing agent, who verifies the procuring agency properly solicited competitive bids prior to processing the payment. DAS has the authority to reject a payment in I/3 if it determines competitive measures were not taken. However, a DAS representative stated agencies currently have the ability to bypass DAS approval by processing the payment in a different manner. If the agency has not completed the order when DAS receives the system notification, DAS may assist with the procurement in order to ensure it is properly completed. DAS representatives we spoke with stated a common problem they encounter

is agencies attempting to make purchases above purchasing limitations because the agencies were not aware of their spending limitations.

DAS officials we spoke with stated service contracting is performed primarily by state agencies and DAS does not have knowledge of the specific procurement processes conducted by the state agencies. In accordance with the IAC, DAS is responsible for purchases of services of general use except as exempted by law. However, DAS most commonly delegates service contracting authority to the procuring agencies and, at the time of our review, did not have internal controls established to oversee service contracting activities conducted by other state agencies.

DAS officials we spoke with stated Executive Order 50, which was issued on January 12, 1983, gives state agencies the authority to conduct service contracting activities. Therefore, DAS officials stated they do not have authority to oversee service contracting. However, the Executive Order specifically names DAS, formerly operating as the State Comptroller, as the agency responsible for adopting rules for procurement of services. In addition, as previously stated, the IAC requires DAS to manage master agreements for service contracts of general use. Therefore, DAS does have responsibility for oversight of procurements of services of general use made by state agencies operating under centralized purchasing authority.

State agencies subject to centralized purchasing requirements are also required to establish internal controls and procedures when contracting for services to initiate purchases, complete solicitations, make awards, approve purchases and receive goods in accordance with Chapter 105 of the IAC. In addition, Chapter 106 of the IAC requires state agencies to maintain a contract file for each service contract signed by the state agency, including competitive bids solicited and received. Therefore, all procurements made by state agencies independent of DAS are still bound by procurement rules and state agencies are still required to conduct competitive bidding procedures and maintain adequate records to verify compliance with procurement requirements. We observed a number of state agencies' procurement controls through evaluation of select procurements and address state agency controls in detail later in this report.

## **Objectives, Scope and Methodology**

### **Objectives**

Our review was conducted to determine the effectiveness of contracting controls and procedures associated with providers utilized by multiple state agencies which have master agreements to provide goods and/or services through DAS.

In addition, our review included evaluation of the effectiveness of DAS in providing master agreements, which cover a range of products and services used by state agencies. To make this determination, our objective is broken into the following sub-objectives:

- To determine whether state agencies are utilizing the master agreements and providers are honoring DAS master agreement prices with state agencies.
- To determine the effectiveness of DAS oversight of larger provider contracts and to determine if master agreement pricing is reflective of the statewide buying power established through consolidating the purchasing function for the State.
- To determine whether the pricing of products and services awarded through multiple award master agreements are competitive and are adequately utilizing statewide buying leverage.
- To evaluate DAS contract management of targeted small business contracts to ensure statewide buying power is leveraged.
- To evaluate select sole source and emergency procurements conducted by state agencies and determine whether they were properly administered.
- To evaluate procurement processes currently in place and provide recommendations to enhance current procedures, if warranted.

### **Scope and Methodology**

To meet our objectives, we focused testing primarily on purchases from master agreements during the period July 1, 2007 through December 31, 2008. However, we extended testing where necessary to ensure adequate coverage of issues identified regarding statewide procurement practices. Our procedures included completion of the following:

- Interviewed representatives of DAS and selected state agencies to obtain an understanding of procedures and internal controls over the use of master agreements for goods and services and evaluated the adequacy of these procedures and controls.
- Reviewed selected goods and services master agreements between DAS and providers conducting business with multiple state agencies, including targeted small businesses.
- Reviewed the DAS Procurement Manual to determine the statewide policies established for procurement of goods and services, including, but not limited to, centralized procurement of goods and services, agency direct procurement of goods and services and required procedures for exemption from standard procurement procedures.
- Reviewed statewide procurement regulations included in IAC [11] Chapters 105, 106 and 107 and other relevant procurement requirements.
- Reviewed the DAS fee structure to determine how DAS funds its oversight duties.
- Reviewed multiple award and targeted small business master agreements to evaluate competitive bidding procedures completed.
- Reviewed selected transactions completed by agencies which process payments through Government Accounting Expenditure (GAX) forms only and transactions in

I/3 utilizing multiple provider codes based on risks discussed with DAS officials to determine whether the processing system allows for unapproved payments to be processed.

- Reviewed judgmentally selected contracts or provider relationships with state agencies based on concerns identified while conducting our review.
- Reviewed new initiatives enacted in the *Code* through Senate File 2088 (SF 2088), the state government reorganization bill signed by Governor Culver in March 2010, which was effective July 1, 2010.
- Examined supporting documentation for select purchases to determine compliance with state procurement regulations defined in the DAS Procurement Manual and the IAC.

We met or corresponded on a regular basis with the DAS Procurement Services Division Director and other DAS officials and conducted interviews of purchasing agents at DAS responsible for procuring and managing master agreements. In addition, we interviewed and corresponded with state agency representatives, as necessary, to gain an understanding of internal control procedures associated with specific procurements included in our testing.

To review master agreements, we focused primarily on master agreements which corresponded with testing of procurements with certain service providers included in our testing. In addition, we tested master agreement procurement procedures for select targeted small business master agreements and multiple award master agreements.

Our review of laws and regulations was conducted in conjunction with testing of specific procurements included in our testing of providers holding master agreements with DAS. For each procurement tested, we compared procurement support to the laws and regulations related to the specific type of procurement made to determine compliance with procurement requirements.

To review the DAS fee structure, we obtained documentation from DAS regarding fees charged to state agencies for the use of master agreements and provider rebates DAS receives under master agreements. We utilized the information obtained to evaluate whether the services and fee structure at DAS is reasonable.

To address concerns brought to our attention in regard to control limitations over GAX-processed payments and specific service contracts, we reviewed selected procurements to determine whether required procedures were appropriately completed.

### **Testing Selection**

In determining where to focus our review of statewide procurement, we looked at current operations to determine which areas would encompass the most state agencies and would cover the largest areas of potential risk in statewide procurement. We analyzed current operations, spend data and procurement rules and discussed program operations with DAS officials.

Service contracting requires more oversight than contracting for goods. However, we determined DAS oversight of service contracts was limited. As a result, we focused our review on service contracting practices. In addition, we conducted limited testing of contracting practices for goods.

### **Service Contracting Selection**

To identify a representative selection of service providers, state agencies and contracts to include in our testing procedures, we compiled a list of the 25 largest service providers reported in I/3 for fiscal year 2008 utilizing service-specific class codes within the I/3

system. In order to develop the list of 25 service providers, we judgmentally removed service providers which were government organizations, such as universities and government agencies. In addition, we removed service providers which were large due to the nature of managing funds, such as the provider providing fiscal manager services for the State's Medicaid program. Lastly, we removed all providers serving only 1 state agency in order to ensure our population was representative of providers serving multiple agencies within the State.

Initially, we judgmentally selected 9 providers to include in our procurement testing procedures. However, during fieldwork, we added another provider for a total of 10 providers. **Table 2** summarizes the providers selected as the basis of our service contracting testing procedures with the associated total expenditures recorded in I/3 in fiscal year 2008 based on specific class codes. Payments to providers of less than \$100.00 were not included in the summary of amounts paid to the providers.

**Table 2**

<b>Provider</b>	<b>Amount</b>
Advanced Technology Group, Inc.	\$ 3,162,466.12
Howard R. Green Company	2,395,677.69
The Waldinger Corporation	2,391,392.49
American Computer Services	1,735,720.75
Quality Consulting, Inc.	1,650,799.90
Robert Half International	1,030,483.24
Adecco Employment Services	956,562.67
Labor World of Iowa^	921,300.20
Baker Group	821,181.47
Siemens Building Technology, Inc.	814,922.49
Total	<u>\$ 15,880,507.02</u>

^ - Labor World was not in the initial selection, but was added due to questions we identified while testing other service contracts for temporary services.

The selection of providers included in our testing procedures for service contracting represents approximately 27% of the total amount paid to the 25 top service providers utilizing the criteria previously described. However, when we began testing, we adjusted the testing population due to factors such as the following:

- Service contracts totaling less than \$5,000.00 are not subject to competitive procurement requirements. Therefore, we did not test payments totaling less than \$5,000.00 if the payment was not a partial payment associated with a contract valued at \$5,000.00 or greater.
- If a payment included in our testing was an incremental payment attached to a larger contract, testing may have been expanded to include the contract as a whole.
- Due to the volume of payments made to service providers in our selection, we judgmentally selected a limited number of payments from the state agencies included in our testing population to include in our testing procedures.

Therefore, while the **Table** states payments totaling \$15,880,507.02 were the basis of our testing procedures, the volume of procurements, number of state agencies involved and size of the specific payments required us to adjust our testing procedures to include judgmentally selected payments from totals included in the **Table** as the basis of our review.

As a result of selecting the 10 service providers for testing, we in turn selected a total of 24 state agencies to include in our testing. The agencies selected were the recipients of services provided by the providers listed in **Table 2**.

**Table 3** summarizes the testing selection by state agency and lists the 24 agencies we included in service contracting testing analyses. There were an additional 15 entities, listed in the **Table** as “other agencies,” which we did not include in service contracting testing. The largest agency excluded from service contract testing was DAS. We elected not to test specific service contracts DAS administered since DAS master agreements were central to our review and coverage of DAS contracting procedures and controls was, therefore, already included in our review. Other agencies were excluded due to the minimal nature of their expenditures or the nature of the agency. For example, the Executive Council made significant payments to service providers on behalf of other agencies. Therefore, the agency was not the initiator or the administrator of the procurements.

**Table 3**

<b>Agency</b>	<b>Amount</b>
Department of Corrections^	\$ 3,323,924.25
Alcoholic Beverages Division*	2,542,220.49
Department of Transportation	2,420,349.08
Department of Human Services^	2,172,760.88
Department of Natural Resources	614,242.39
Department of Public Health	449,245.66
Department of Public Safety	293,623.41
Department of Public Defense	243,338.81
Legislative Services Agency	216,216.00
Judicial Department	154,262.40
Department of Education - Vocational Rehabilitation	151,789.28
Iowa Workforce Development	137,055.39
Department for the Blind	96,267.26
Department of Economic Development	90,725.50
Department of Inspections and Appeals	89,839.11
Treasurer of State	53,642.76
Department of Cultural Affairs	53,087.92
Iowa Communications Network	46,319.54
Iowa Insurance Division*	40,318.13
Department of Agriculture and Land Stewardship	34,666.12
Ethics and Campaign Disclosure Board	31,135.00
Veterans Affairs	16,416.61
IPERS	14,969.20
Department of Education - IPTV	5,297.00
Other agencies~	2,588,794.83
Total	<u>\$ 15,880,507.02</u>

^ - The total includes payments from multiple divisions of the agency.

\* - Alcoholic Beverages Division and Iowa Insurance Division are divisions of the Department of Commerce.

~ - Other agencies were agencies not included in service contracting testing.

## Additional Testing

In addition to procedures to test payments made to specific service providers on behalf of the state agencies summarized in the **Table**, we also performed limited procedures to assess controls on procurement of goods, targeted small businesses and multiple award master agreements. Testing procedures over these areas were more limited in scope. In addition, due to concerns identified during review of payment processing procedures, we expanded testing to include limited procedures to ensure payments to providers which were either consistently made with GAX payment forms or identified under multiple provider numbers in the payment processing system were consistent with master agreement terms and conditions.

## **Procurement Process**

### **Procurement of Goods**

State agencies may purchase goods of general use through master agreements DAS has pre-established with providers to enable agencies to make purchases without following traditional competitive bidding procedures each time the agency needs supplies or equipment. The purpose of the master agreements is to establish competitive pricing for goods of general use in advance of a state agency's specific needs in order to simplify and expedite procurement of goods. There are no purchasing limitations or maximum purchasing amounts for purchases made against master agreements. DAS has established hundreds of master agreements for the procurement of goods which state agencies may utilize when procuring goods.

According to a DAS representative we spoke with, providers are required to honor master agreement pricing when conducting business with state agencies unless a specific contract between the state agency and the provider has been completed. However, the DAS representative stated it is the state agency's responsibility to verify the provider's invoice is in accordance with the prices established under the master agreement. Not all master agreements have established specific pricing in advance or have price lists readily accessible for state agencies to reference. For example, many contracts with targeted small businesses (TSB's), which are small businesses owned and operated by women, minorities or disabled individuals which receive contracts for use by state agencies for goods or services costing less than \$10,000.00, do not specify unit pricing. In those instances, state agencies have a responsibility to review pricing on invoices and independently evaluate the pricing to ensure it is reasonable. In addition, providers providing a large number of products may not include specific product pricing in the master agreement. In those instances, product pricing isn't readily accessible. However, state agencies should take steps to at least verify a selection of units purchased is priced in accordance with the master agreement.

In addition, master agreements may not include all the goods the master agreement provider has available. Pricing for goods not included in the master agreement must be purchased in a competitive manner. For example, if an agency needs a total of 10 items and only 7 items are included in the master agreement, the agency is required to procure the non-master agreement items on a competitive basis. In accordance with Chapter 105 of the IAC, agencies may procure non-master agreement goods up to \$5,000.00 per transaction in a competitive manner unless, as previously discussed, the agency has been designated as a "procurement center of excellence," which increases the transaction maximum to \$50,000.00. Therefore, purchases from \$1.00 to \$5,000.00 are required to be purchased in a competitive manner. Most agencies use informal competitive bids to meet this requirement. Informal competition consists of acquiring 3 or more informal quotes. In the event 3 quotes were not obtained, state agencies are required to maintain records of the competitive process completed and attach the documentation to the purchase order documentation.

In accordance with Chapter 105 of the IAC, when state agencies need to make non-master agreement purchases of goods greater than \$5,000.00, DAS will conduct the procurement on behalf of the agency unless the agency is designated a “procurement center of excellence.” DAS will also conduct the procurement when a non-master agreement order greater than \$50,000.00 is necessary for “procurement center of excellence” agencies.

There are also specific permissible exemptions from competitive bidding requirements when purchasing goods and services of general use. For each exception, state agencies must clearly document the reason for the exemption and maintain appropriate justification documentation demonstrating the exempt nature of the procurement. The exemptions include:

- Emergency procurements – Limited in scope and duration to meet the need of the emergency. In the event an emergency procurement is necessary, state agencies must attempt to acquire goods of general use with as much competition as practicable under the circumstances, in accordance with the IAC.
- Targeted small business procurements – Limited to purchases up to \$10,000. State agencies must confirm the TSB is certified through the Department of Inspections and Appeals.
- Iowa Prison Industries (IPI) procurements – Agencies are required to purchase products from IPI which are included in IPI’s catalog or obtain a written waiver from IPI. However, state agencies may procure goods in IPI’s catalog from TSB’s without obtaining a written waiver, according to DAS.
- Procurements based on competition managed by others – In accordance with Chapter 105.4(4) of the IAC, DAS may opt to join purchasing consortiums by establishing master agreements based on contracts, agreements or purchase orders issued by other government entities when it believes the other government entity established the relationship in a fair and competitive manner.
- Sole source procurements – DAS or a state agency may exempt a purchase from competitive selection processes if it qualifies as a sole source procurement. State agencies should avoid sole source procurements unless clearly necessary and justifiable and must submit justification to the DAS Director or designee for general use purchases. Use of sole source authority does not relieve the state agency from negotiating a fair and reasonable price, performing adequate review prior to award and thoroughly documenting the action taken. The justification, response and order shall be available for public inspection in accordance with the IAC.

Purchases of goods of general use are subject to centralized purchasing requirements unless the purchases are made by exempt agencies. However, exempt agencies are still subject to the competitive requirements and must have adequate internal controls in order to ensure procurements are conducted in a fair and reasonable manner. For example, when Charter Agencies were formed, the agencies were permitted to purchase goods outside of DAS authority. However, they were required to maintain documentation of the cost benefit of purchasing outside of DAS. In addition, Charter Agencies were required to maintain audit-worthy documentation when using sole source contracts. Exempt agency documentation findings are addressed in the Findings and Recommendations section of this report.

### **Procurement of Services**

In accordance with Chapter 105 of the IAC, state agencies may purchase services of general use through master agreements DAS has pre-established with service providers to enable agencies to obtain services of general use without following traditional competitive

bidding procedures. By utilizing master agreements for services, agencies rely on the unit pricing DAS has established in the master agreement to meet competitive pricing requirements. There are no purchasing limitations or maximums for procurement of services under master agreements.

Service contracting for general use services through master agreements is not centralized through DAS to the extent goods purchasing has been. Chapter 105 of the IAC states DAS shall procure goods and services of general use for all state agencies, with the exception of those exempt agencies previously listed in **Table 1**. However, state agencies may independently procure services unique to the agency's programs or used primarily by the agency in accordance with Chapter 106.2(2) of the IAC. In addition, as previously discussed, there are specific permissible exemptions from use of master agreements, such as emergency or sole source procurements.

Purchasing authority delegated to state agencies can not be used to avoid the use of master agreements, in accordance with Chapter 105 of the IAC. DAS officials stated DAS has delegated service contracting responsibilities to state agencies because service contracting needs are more specific to the individual needs of each agency. However, during our review, we identified service contracts for general use services which state agencies entered into independent of DAS when the services were available in a master agreement. This issue is addressed in the Findings and Recommendations section of this report.

The IAC states delegation of procurement authority for services should be limited to services unique to the procuring agency and general use services, such as general maintenance and temporary staffing services, should be procured through pre-established master agreements. State agencies contracting for services are required to establish internal controls and procedures to initiate purchases, complete solicitations, make awards, approve purchases and receive services in accordance with Chapter 105 of the IAC. In addition, Chapter 106 of the IAC requires state agencies to maintain a contract file for each service contract signed by the state agency, including competitive bids solicited and received. Therefore, any and all procurements made by state agencies outside of DAS are still bound by procurement rules and state agencies are still required to conduct competitive bidding procedures and maintain adequate records to verify compliance with procurement requirements. For all services procured, DAS and state agencies are required to comply with the provisions of Chapters 106 and 107 of the IAC.

Chapter 106 of the IAC includes the following requirements:

- State agencies shall use competitive selection to acquire services equal to or greater than \$5,000.00 or when the estimated value of the multiyear service contract in the aggregate is \$15,000.00 or higher.
- State agencies shall use formal competitive selection procedures to procure the services if service contracts are equal to or greater than \$50,000.00 or when the estimated value of the multiyear service contract exceeds \$150,000.00.
- Sole source procurements shall be avoided unless clearly necessary and justifiable. When utilized, the head of the state agency or designee shall sign the sole source contract. Use of sole source procurements does not relieve a state agency from negotiating a fair and reasonable price and thoroughly documenting the procurement action.
- Emergency procurements shall be limited in scope and duration to meet the emergency. When utilized, the head of the state agency or designee shall sign the emergency contract. Use of emergency procurements does not relieve a state agency from negotiating a fair

and reasonable price and thoroughly documenting the procurement action.

Chapter 107 of the IAC applies to all state agencies and details the specific terms and conditions required to be included in service contracts. The terms and conditions generally require state agencies to include performance criteria when executing service contracts. Examples of specific clauses required to be included in service contracts include:

- Payment clause – Describes the amount of or basis for payment.
- Monitoring clause – Describes the methods to effectively oversee the provider’s compliance with the service contract.
- Review clause – Describes the methods to effectively review performance under the service contract.

Due to delegating service contracting responsibilities to state agencies, DAS stated there is no central database of service contracts and DAS doesn’t receive information regarding service contracts established by the state agencies. Therefore, DAS does not provide oversight controls over state agencies procuring services outside centralized purchasing procedures and internal control responsibilities are delegated to the state agencies making the procurements.

### **Use of Master Agreements**

As previously discussed, master agreements may be utilized in lieu of performing competitive procedures each time a procurement of goods or services is warranted.

In order to utilize the master agreements, state agencies submit orders to the master agreement providers and the providers extend pricing to agencies in accordance with the terms of the master agreement. According to a DAS official we spoke with, providers should extend master agreement pricing to state agencies whether the agencies specify they are utilizing the master agreement or not. Therefore, unless state agencies perform independent competition for an agency-specific procurement, providers should extend master agreement pricing to all state agencies.

When utilizing master agreements, state agencies should verify the pricing extended by the providers is in accordance with the master agreement. When utilizing service contract master agreements, for example, state agencies should be able to trace specific hourly rate pricing in the master agreement to the pricing in the quote provided by the provider. If pricing to complete a service project is submitted to a state agency as a lump sum price, the service contract is a firm fixed price contract. This means the provider has agreed to provide services to complete a specific task for a total pre-set price, regardless of the amount of resources provided by the provider. As a result, the documentation for most firm fixed price contracts does not include detailed pricing which would indicate the hourly rate of specific services the state agency is to receive.

Because most firm fixed price contracts include only the lump sum cost rather than unit pricing for labor, materials and equipment, it is not possible to ensure firm fixed price contracts comply with terms of the established master agreement with the provider. For example, if a provider provides a quote of \$30,000.00 to upgrade an agency’s security system, the quote is not written in accordance with the master agreement because the master agreement establishes the hourly rate of the security technician to be \$49.00 per hour. There is no way to verify the \$30,000.00 quote provided by the provider was written utilizing an hourly billing rate for the security technician of \$49.00 per hour.

## Findings and Recommendations

As stated previously, our testing was primarily limited to contracts between 10 of the top 25 judgmentally selected service providers and a selection of state agencies utilizing those providers. In addition, our testing included review of a limited number of goods contracts. We also reviewed procurement documentation for a selection of large master agreements and specific types of master agreements, such as TSB and multiple award master agreements. In addition, we identified specific procurements with potential weaknesses and performed limited testing of those specific procurements. Due to the magnitude of procurements performed on a daily basis and the risks identified with specific types of procurements, we determined judgmentally selected contract testing would be more beneficial than statistical sampling. Therefore, we judgmentally selected procurements to include in our review.

As part of our review of statewide procurement, we reviewed internal controls and reported findings and recommendations for each of the following topics. **Table 4** summarizes each topic discussed in detail in this section of the report:

<b>Table 4</b>	
<b>Topic</b>	<b>Page Number</b>
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**A. DAS Internal Controls –**

The *Code* requires DAS to procure goods and services of general use for all Executive Branch agencies, with the exception of selected exempt agencies previously listed in **Table 1**. According to DAS officials, agencies are responsible for their own service contracts and DAS does not have authority to monitor such contracts. This is inconsistent with the IAC. The IAC states only procurement of agency-specific service needs not of general use should be delegated to state agencies for procurement. DAS has not monitored agency procurement activity to ensure general use services are being properly purchased through master agreements because it is not aware of contracting practices for services at other agencies.

In accordance with Chapter 105 of the IAC, DAS is required to establish guidelines for implementation of procurement authority delegated to state agencies and is required to assist state agencies in developing purchasing procedures consistent with centralized purchasing policies and procedures at DAS. State agencies utilizing delegated purchasing authority must establish adequate internal controls and cannot utilize delegated purchasing authority to avoid use of master agreements established by DAS. DAS has authority, as stated in Chapter 105 of the IAC, to rescind the delegated authority of an agency if it misuses its authority.

**Findings –**

- According to a DAS official we spoke with, not all purchasing agents at state agencies are aware of specific procurement limitations. For instance, they are not aware they are not authorized to make purchases of goods over \$5,000.00 if the goods are not purchased through a master agreement. In addition, as discussed throughout this report, we identified many orders state agencies made based on master agreements which were not in accordance with the terms of the master agreements. As such, those purchasing agents misused master agreements. Such misuse resulted in improper sole source orders.
- DAS currently does not conduct sufficient oversight to ensure procurements of services of general use have been made in accordance with master agreement requirements because it delegates all service contracting authority to state agencies unless state agencies specifically request procurement assistance. In accordance with Chapter 105 of the IAC, DAS is responsible for procurement of general use services for state agencies. This responsibility includes oversight of the service contracts procured. According to a DAS official we spoke with, DAS has delegated all service contracting responsibilities to state agencies, whether they are general use services or agency-specific services. As demonstrated later in this report, state agencies have not demonstrated sufficient knowledge of or compliance with procurement requirements, which has led to significant risks in the procurements they have conducted.
- State agencies place reliance on the providers to extend master agreement pricing to them and do not complete necessary steps to confirm the prices quoted are master agreement prices. Although DAS stated providers which do not provide state agencies with master agreement rates get 3 chances to correct billing practices before losing their master agreements, this control is ineffective if DAS does not have adequate access and authority over service contracts established utilizing master agreement pricing. We did not receive evidence master agreement providers have ever lost their contracts as a result of the 3-strikes rule. When we asked for additional information from DAS, DAS provided information on suspension and debarment, which is unrelated to the issue of providers quoting prices not consistent with master agreements.

- As discussed in greater detail later in this report, state agencies improperly procure general use goods and services by referencing master agreements as the basis of their procurements even though the procurements are not in compliance with the pricing and terms of the master agreements. As a result of procuring goods and services without proper utilization of the master agreements, state agencies are essentially awarding improper sole source contracts without DAS assistance and without establishing or utilizing sufficient internal controls at the agency level.
- Agencies reference DAS master agreements when making large scale procurements of services which are agency specific in nature. For example, a state agency may reference a master agreement with an electrical service provider to procure electrical services valued over \$25,000.00. A DAS official we spoke with stated master agreements were not meant to provide competitive prices for large scale service projects which would be more competitively priced through normal competitive bidding procedures. Rather, master agreements were established to provide state agencies competitive pricing on smaller scale, more routine projects or product-specific orders. However, as detailed later in this report, state agencies often assume they are authorized to go directly to a provider and accept the bid presented by the provider simply because the provider has a master agreement. DAS currently does not have adequate oversight capability to identify and correct such assumptions.

During fieldwork, a DAS official stated DAS has internal procedures in which purchasing agents are required to solicit bids among master agreement providers eligible to perform the work when procuring services on larger projects. In addition, DAS planned to establish limitations on master agreements, such as electrician services master agreements, to limit procurements using the master agreement to \$25,000.00, which would result in all orders in excess of \$25,000.00 being competitively bid. However, the *Code* does not require such limitations, so this is a suggestion rather than a requirement.

- During discussions with DAS officials, we determined the emphasis on serving state agency needs appeared to be a potential weakness in administration of oversight responsibilities. Specifically,
  - The Procurement Services Division Director at DAS stated the strategy at DAS is not to tell state agencies they can't or won't work with an agency to get the agency's desired outcome. Rather, DAS tries to find ways to meet the agency's specific requests. The Division Director stated making state agency customers happy was a primary goal of DAS, particularly since DAS is not a required resource for contracting.
  - When discussing DAS authority to rescind authority delegated to purchasing agents in the event of misuse of the authority, the Division Director stated DAS doesn't want to utilize this authority because the focus at DAS is on customer service and removing purchasing authority would not be a practice consistent with this philosophy. However, as detailed in a subsequent finding of this report, we identified instances in which purchasing authority was not used properly. As a result, procurements made by the agencies may not have been in the State's best interest.
  - When discussing the common practice of providers to submit firm fixed price proposals to state agencies instead of providing detailed proposals which reconcile to master agreement pricing, the Division Director stated the practice has been to contact the provider and require resubmission of the bid with the necessary detail. However, if the initial bid was developed on a firm fixed price basis, putting the initial bid total into a format which reconciles to the master agreement could incent providers to falsify the specific services to be provided,

as the detailed rates and hours could be plugged into the bid in order to justify the initial price even if the amounts were not representative of the services the provider would ultimately provide.

According to the Division Director, DAS warns providers there is a 3 strikes policy which can result in removal of the provider's contract or disbarment in the event providers misguide state agency customers or don't conduct business properly. However, when we asked for additional information on this policy, DAS only provided the rules for disbarment, which did not address a 3 strikes policy. Rather, it addressed noncompliance with terms of contracts entered into instead of the method by which contracts are developed. In addition, the Division Director stated she didn't recall disbarring any providers recently.

As stated on the DAS website, the primary objective of DAS is to provide "timely, cost-effective, high quality goods and services through cooperative and proactive procurement practices." In order to meet this objective, DAS must provide appropriate oversight of the procurement process. If DAS focuses primarily on customer service goals, goods and services may not be procured in the most cost effective manner. As determined during this review, state agencies often emphasize preference for specific providers over obtaining the best value. In addition, due to the findings identified in this report, the procurement authority of DAS and the use of master agreements must be addressed in a manner which will prevent further concerns.

### **Recommendations –**

DAS should:

- Determine state agencies have adequate internal controls established before delegating procurement authority to them. In addition, DAS should establish oversight procedures which give DAS the ability to verify compliance with procurement requirements at the agencies.
- Implement procedures to ensure general use services are procured through master agreements or with DAS assistance in accordance with Chapter 105 of the IAC. In addition, DAS should ensure agencies comply with Chapters 106 and 107 of the IAC when procuring services unique to state agencies and the agencies do not refer to master agreements if the service cannot be matched to the master agreement. The existence of a master agreement between DAS and a provider is not an adequate basis to automatically award a service contract to a provider.

Provide oversight of statewide procurements of general use goods and services and have adequate oversight controls over its master agreements in accordance with Chapter 105 of the IAC. State agencies are responsible for ensuring their own procurements of services are conducted in accordance with the IAC and proper documentation is maintained. However, as demonstrated by the findings of this report, state agencies are not conducting necessary procedures to adhere to purchasing requirements which has resulted in a lack of assurance prices paid are competitive. DAS oversight would ensure consistency of procurement, proper use of master agreements and best use of state funds.

- Assert its authority over service contracting for items of general use. This includes developing oversight procedures to identify procurements using master agreements to ensure they are conducted properly. In addition, DAS should exercise its authority to rescind delegated purchasing authority when improper contracting actions are taken. These consequences were included in the IAC to protect state agencies from

uncompetitive prices and to protect the State from poor use of State funding. Possible oversight activities could include periodic review of procurements made by state agencies or purchasing agents which have made purchasing errors in the past, reviewing large-scale purchases, reviewing a selection of purchases made from providers which have previously billed state agencies incorrectly, etc.

- Enforce its delegated authority to oversee contract administration and initiate consequences, such as rescinding purchasing authority when purchasing agents misuse their delegated authority. Misuse of purchasing authority puts state agencies at unnecessary risk because purchasing agents award providers potentially uncompetitive contracts.
- Develop and administer formal procedures addressing consequences for providers which fail to submit bids to state agencies in compliance with their master agreements. The master agreements awarded to providers provide providers with significant business opportunities with state agencies and providers must fulfill their responsibilities and contractual obligations as master agreement holders.
- Focus customer service goals on the needs of state agencies with consideration of the impact the customer service goals have on the cost to taxpayers. As determined during this review, state agencies often prefer to conduct business with familiar providers rather than best value providers. In order to fulfill its responsibilities as administrator of master agreements, DAS should ensure its customer service goals are consistent with its mission to provide timely, cost-effective and high quality goods and services through its master agreements.

## **B. Contract Administration – Master Agreements**

### **1. General**

As previously discussed, a master agreement is defined in Chapter 105 of the IAC as a “contract arrived at competitively which establishes prices, terms, and conditions for the purchase of goods and services in common use. Agencies may purchase from a master agreement without further competition.” Competitive master agreements are to be utilized by Executive Branch state agencies to acquire goods and services unless agencies receive delegated authority to procure goods and services outside of DAS or unless the agencies have been exempted by law. When state agencies receive delegated purchasing authority, DAS is to assist those agencies to ensure the agencies establish procurement procedures consistent with purchasing policies at DAS. Agencies are not to utilize delegated purchasing authority to avoid use of master agreements. In addition to assisting agencies utilizing master agreements and delegated purchasing authority, DAS may also procure goods or services more complex in nature on behalf of state agencies upon request.

### **Findings –**

During discussion with DAS officials and purchasing agents, we identified weaknesses in the administration and effectiveness of master agreements which appear to be inconsistent with the intent of master agreements as defined in the IAC.

- Although master agreements are defined as contracts which have been awarded competitively, we determined competition may not always occur. The definition of a “competitive bidding procedure” in the IAC allows for “the advertisement for” and “solicitation of” bids in order to establish a master contract. As a result, a master agreement may be established after only an advertisement or solicitation of bids and actual receipt of only 1 bid.

A DAS official stated there are some situations in which only 1 bid is received. However, the official stated competition has still been achieved as a result of the due diligence of the purchasing agent. Examples of steps DAS procurement agents take to attempt to get competition include advertising for bids on the Bid Opportunities website, specifically contacting qualified providers with a request for a bid, following up with potential bidders which do not submit bids and benchmarking bid prices against market prices. The DAS official stated after completion of steps such as these, the purchasing agent makes a decision whether the 1 bid received is in the best interest of the State. However, she stated decisions are made on a case by case basis which would not be reflected in the contract file documentation. We concur there are times DAS may not be able to obtain multiple bids. However, in those situations, DAS should conduct and document additional procedures to achieve and confirm competitive pricing has been achieved. Although the DAS official we spoke with stated additional procedures are performed when only 1 bid is received, documentation of procedures, such as market research and benchmarking, was not observed in the contract files we reviewed. Contract files should clearly summarize the steps taken when soliciting and awarding contracts to justify the contracts were awarded competitively.

If competitive bids are not actually received when soliciting bids to develop a master agreement, the quality of the pricing is questionable because pricing could not be evaluated in a competitive environment.

- DAS does not have leverage to negotiate deep discounts for master agreements because master agreements are not mandatory sources of goods and services for state agencies. Although the IAC states delegated purchasing authority may not be used to avoid use of master agreements, controls are not adequate to ensure delegated authority is being properly utilized. Because DAS cannot guarantee specific spending levels to master agreement providers, DAS officials have stated DAS is not in a position to obtain deeper discounts from providers. As discussed later in the report, SF 2088 gives DAS authority to designate certain master agreements as mandatory contracts. However, mandatory contracts are only good in the event the mandatory contract provides competitive prices. As discussed in other findings in this section of the report, the current language in the IAC and current practices of DAS to award master agreements when true competitive bids have not been received could result in mandatory use of contracts for which competitive prices have not been obtained.
- DAS purchasing agents do not monitor activity against the master agreements they administer to verify providers are providing pricing as required by the master agreement. Purchasing agents stated they rely on state agency assessments of providers and complaints reported by state agencies to determine whether the master agreements they administer are effective. Because customer agencies do not monitor provider compliance with master agreements administered by DAS, reliance on state agency feedback is not sufficient to adequately oversee master agreements.
- Although a few purchasing agents stated they conduct negotiations, the majority stated they typically do not conduct negotiations when awarding master agreements. We did not observe documentation supporting negotiations were conducted in the contract files we reviewed. Although verbal negotiations could have occurred, results of negotiations should be maintained in the contract files to document due diligence by the DAS purchasing agent in pursuing competitive pricing.

As discussed in **Section B(3)**, many master agreements are awarded to multiple providers providing the same good or service. If negotiations are not conducted and providers do not have to provide the lowest competitive price to obtain a master agreement, the master agreements cannot be relied on as contracts “arrived at competitively” as defined in the IAC. For the contracts identified in **Section B(3)**, we

did not identify any documented evidence of negotiations in the contract files we reviewed.

- Many of the DAS master agreements we reviewed are functioning more as pre-approved provider listings than competitively awarded master contracts which, when utilized, would result in competitively awarded pricing. This is due to the lack of evidence the pricing arrived at for the master agreements is representative of the lowest price available for state agencies. For example, during a procurement conducted by a state agency, staff researched pricing for a digital voice recorder and determined the price of an Olympus Digital Voice Recorder through OfficeMax's website was \$59.99. However, the price of the same Olympus Digital Voice Recorder through the DAS master contract with OfficeMax was \$90.89, an additional \$30.90.

OfficeMax stated the difference was because the state contract is based on the 2010 OfficeMax Solutions catalog items and the catalog runs for an entire year. Conversely, the OfficeMax retail website runs promotions regularly and routinely offers discounts on certain items. Even if the item was not among the core items for which DAS negotiates deeper discounts, OfficeMax charging state agencies 34% more than a customer not guaranteeing volume sales is an example of the risk which exists with current master agreements.

- As discussed in **Section C** and **Section F** of the Findings and Recommendations, we also identified certain master agreements DAS awarded which contained no specific pricing. **Section C** includes examples of goods contracts established without specific pricing and **Section F** includes examples of service contracts established without specific pricing. Master agreements awarded in which no specific pricing terms have been established are improper as they have not been awarded in a manner which "establishes prices, terms, and conditions" in accordance with the definition of master agreements included in the IAC.

There are no assurances state agencies using the master agreements discussed in the findings above are obtaining competitive prices. While the master agreements selected for testing usually complied with the specific provisions of Chapter 105 of the IAC, the findings identified above illustrate not all master agreements are established after completion of a bidding process which is truly competitive. Further, we identified specific master agreements which fail to establish any pricing in accordance with the definition of master agreements.

### **Recommendations –**

- Exempt state agencies or other entities of the state, such as the Board of Regents and the Department of Transportation (DOT), should not be exempt from centralized purchasing authority for certain goods and services. If all state agencies and entities used the same master agreements, deeper discounts could be achieved.
- DAS should evaluate its usage of master agreements and ensure all active master agreements are consistent with the definition of master agreements in the IAC. If master agreements are awarded to eliminate the need for state agencies to independently solicit bids for goods or services but are not awarded in a manner sufficient to ensure the pricing is competitive, then utilizing the master agreements may not result in savings to state agencies and the master agreements are not beneficial to the state agencies in regard to price.

Any master agreements awarded without price discounts do not meet the intended purpose and should be canceled and rebid. Master agreements without specified prices or prices which are not discounted merely identify a qualified provider and

result in agencies procuring from providers without following a competitive bid process.

As a result, master agreements may be more effective as pre-certified contractor listings rather than contracts guaranteeing competitive procurement. A pre-certified contractor listing would verify the contractor could provide the goods or services in accordance with State rules and regulations, but it would not serve to provide pricing guaranteed to be arrived at “competitively.”

- As discussed later in this report, DAS received authority through SF 2088 to designate certain master agreements as mandatory use contracts after the time of our review. In order to ensure mandatory contracts are the most cost effective option for state agency purchasing, DAS should implement controls to ensure master agreements are awarded based on true competitive procedures, meaning the master agreements are not awarded unless the provider has demonstrated through competitive pricing it is providing the lowest possible price. In addition, as with other master agreements, state agencies should have the option to receive a waiver from master agreements when more competitive pricing may be achieved.

DAS should ensure master agreement terms and pricing are actively negotiated. Advertising or soliciting for bids without subsequent receipt of multiple bids is not sufficient to ensure the master agreement awarded is truly competitive.

- DAS should implement proactive controls over its master agreements versus waiting to hear of problems from state agencies. Possible controls could include periodically sampling invoices submitted to state agencies by master agreement providers to ensure the providers are honoring the specific terms of the master agreement.
- DAS should evaluate the effectiveness of current master agreements and determine whether changes need to be implemented in order to ensure established master agreements are competitive and purchasing agents are effective in managing the master agreements.
- DAS should regularly conduct negotiations when awarding master agreements, particularly in instances in which the negotiated prices are a percentage off list price or when the master agreement discounts are not awarded for all goods and services available from the provider. DAS should require providers which benefit from DAS contracts to offer state agencies pricing at the lesser of the DAS contract price or the market price the provider is currently charging.

State agencies utilize master agreements, such as the OfficeMax master agreement, with the understanding the prices in the agreements have been awarded on a competitive basis. However, the presence of a master agreement does not necessarily mean DAS has negotiated competitive discounted prices for all goods and services available from the provider. As demonstrated by the finding related to the digital voice recorder pricing, negotiating pricing at the lesser of contract prices or current market prices could result in significant savings.

## **2. Master Agreement Contract Testing**

Master agreements are contracts “arrived at competitively,” as defined in Chapter 105 of the IAC. Master agreements are designed to satisfy competitive bidding requirements prior to an agency’s need so the agency can quickly procure the goods or services it needs in accordance with the pricing already competitively established through a master agreement. DAS satisfies competitive requirements, as previously discussed, through solicitation of competitive bids, not necessarily through receipt of competitive bids, in accordance with the IAC’s definition of competitive bidding procedures. Further, master

agreements may be entered into with multiple providers providing the same good or service. Multiple award master agreements are discussed in **Section B(3)**.

Using fiscal year 2008 payment information, we judgmentally selected 17 of the largest master agreements to evaluate the level of competition completed during the solicitation process. In addition, we performed limited procedures to research whether pricing independent of the master agreement could be found at lower prices. **Table 5** summarizes the providers included in the testing and the related payments recorded in the I/3 system for each provider in fiscal year 2008.

**Table 5**

<b>Provider</b>	<b>Fiscal Year 2008 Payments</b>
Iowa Foundation For Medical Care*	\$ 10,939,225.96
Hewlett-Packard Company^	5,497,742.05
Neumann Brothers, Inc.*	5,034,358.48
Diamond Pharmacy Service*	4,676,530.75
IBM Corporation^	3,543,765.64
OfficeMax Contract Inc*	2,473,447.45
Electronics Research, Inc.*	2,126,599.75
Karl Chevrolet, Inc.*	1,583,650.35
Midland Systems Integ^	1,493,237.26
Ikon Office Solutions*	1,358,426.92
EmbarkIT Inc^	636,893.77
Mail Services LC IA*	532,211.87
Amec E&C Services Inc*	462,949.10
Primary Source, Inc.~	393,701.58
Terracon Consultants, Inc.*	346,418.27
Business Furnishings~	327,227.02
Allied Construction Services*	293,504.88
Total	\$ 41,719,891.10

\* - Multiple bids received during solicitation.

^ - Contracts through multi-state contracting.

~ - Targeted Small Business provider.

Of the 17 providers included in our testing, 11 received master agreements after bids were received by DAS. In most cases, more than 1 qualifying bid was received and DAS performed bid analysis procedures to select the bidder to award a master agreement. However, Allied Construction Services was 1 of 3 bidders and all 3 bidders received awards. This is discussed in **Section B(3)** as a multiple award master agreement. Electronics Research, Inc. was 1 of 3 bidders, but it was the only bidder with a qualifying bid. In these 2 instances, when bid pricing received is not a determining factor in the award because all providers are approved or only 1 bidder is qualified, alternative fair pricing procedures, such as conducting negotiations, are particularly important.

Master agreements were awarded to the other 4 providers included in testing through multi-state contracts established by others. All 4 contracts were Western States Contracting Alliance (WSCA) contracts, which are purchasing agreements WSCA establishes for use by multiple participating states. In accordance with Chapter 105 of the IAC, procurements based on competition managed by other governmental entities are a permissible exemption from normal competitive bidding requirements.

Of the 17 providers included in testing, 2 were targeted small businesses (TSB's). As discussed in **Section B(4)**, DAS awards TSB's master agreements without conducting competitive bidding procedures. Our findings on this practice are discussed later in this section.

#### **Findings –**

- Of the 17 master agreements included in our testing, 5 (29%) did not have specific product and pricing detailed in the agreement. If pricing is not included in the master agreement, state agencies using the master agreement cannot verify pricing on specific orders is in accordance with the competitively established pricing DAS agreed to.

For example, Diamond Pharmacy Service's master agreement bases product pricing on discounts applied to the average wholesale price, as updated by First Data Bank. In order for a state agency to verify pricing billed by Diamond Pharmacy Service is accurate, the state agency would need to find the drug in the First Data Bank listing and apply the master agreement discount to that price. Such procedures make it difficult and less likely a state agency will exhibit due diligence in verifying the accuracy of the pricing obtained.

- Electronics Research, Inc. was the only qualified bidder when DAS solicited bids to provide broadcast antennas. Even though 2 unqualified bids were also received, receipt of those bids alone does not ensure the pricing of Electronics Research, Inc.'s bid was competitive and represented a fair and reasonable price. Negotiations should have been conducted in order to ensure the pricing was fair and reasonable. However, according to the purchasing agent at DAS, the only thing negotiated was the terms and conditions, so DAS accepted the pricing quoted even though no competitive pricing was received.
- As discussed in **Section B(3)**, master agreements awarded to most or all participating bidders which allow for multiple providers to have master agreements need further controls in order to adequately establish the pricing is fair and reasonable and to determine the pricing impact when volume discounts are compromised.
- As discussed later in **Section B(4)**, TSB master agreements are not established consistently with the definition of "master agreement."

#### **Recommendation –**

Master agreements should not be established if competitive bids are not received or if DAS intends to award contracts to multiple providers submitting bids. If competitive bids are not received and DAS does not conduct alternate pricing activities to ensure the pricing is reasonable, the master agreement has not been awarded competitively. In addition, when DAS awards multiple master agreements to providers providing the same goods or services, the prices awarded can vary significantly depending on the provider. However, by having a master agreement, providers may receive orders without having to grant price concessions to state agencies because they don't have to be the lowest bidder to receive a master agreement.

Master agreements are established to save agencies time and effort by pre-establishing fair and reasonable prices. If DAS is unable to establish pricing based on the results of competitive bids, DAS should not enter into a master agreement. The purpose of the master agreement fails if fair pricing is not the end result. Instead, agencies should independently obtain competitive bids as needed.

By establishing master agreements with no set unit pricing or by establishing multiple master agreements for the same goods or services, DAS is essentially authorizing sole source procurements. A provider may receive orders from a procuring agency even though the provider has not provided competitive pricing. In addition, DAS loses its ability to negotiate volume discounts when multiple options are available.

### 3. **Multiple Award Master Agreement Contract Testing**

Multiple award master agreements are master agreements for a specific good or service which are awarded to multiple providers which provide the same good or service but at different pricing. According to a DAS official we spoke with, there are reasons for awarding to multiple providers, such as geographical limitations of service providers, service needs in excess of availability of 1 provider or state agency needs for multiple brands of goods which are provided by multiple providers. For example, 1 service provider may not be able to provide services across the state and 1 product provider may not carry all the brands necessary to meet the needs of multiple state agencies. A DAS representative stated DAS “must have contracts for agencies that use various types of equipment” and 1 contract does not fit all the needs of the agencies.

In the event multiple master agreements are awarded to provide the same goods or services, pricing may not be consistent between providers. Therefore, state agencies have the option to select providers charging higher prices and are not required to obtain competitive pricing.

We judgmentally selected 6 classifications for which multiple master agreements were awarded. **Table 6** summarizes the classifications, the number of providers which received master agreements and which were utilized by state agencies to provide the goods or services and the fiscal year 2008 payments associated with each classification included in our testing procedures.

**Table 6**

<b>Classification of Goods or Services</b>	<b>Master Agreements</b>	<b>Fiscal Year 2008 Payments<sup>^</sup></b>
Architectural and engineering (AE) services*~	10	\$ 7,212,328.26
Building automation products and services	7	6,526,787.01
Electrician services	6	5,779,710.71
Geospatial technology services, software or hardware	4	1,825,668.30
Radio communications	5	1,778,652.78
Roofing consulting~	4	3,999,183.94
Total		<u>\$27,122,331.00</u>

<sup>^</sup> - Based on payments limited to certain service codes and limited to payments in excess of \$5,000.00.

\* - Total payments are all payments to the 10 providers holding master agreements. Some providers provided other services in addition to AE services under separate master agreements.

~ - Total includes overlap of payments of \$3,847,465.46 to 3 providers which had master agreements under each category.

## Findings –

We evaluated the competitive solicitation and evaluation procedures DAS completed prior to awarding master agreements to multiple providers within each classification. As a result of our procedures, we determined:

- For 3 of the 6 classifications tested (building automation products and services, electrician services and roofing consulting), all providers submitting bids received master agreements. The purchasing agent for the master agreements stated negotiations for hourly billing rates are not performed because providers won't know the labor mix which will be required until the specifics of an order are known.

He stated he assumed providers are giving DAS discounted rates, but he had not verified providers are doing so. Total payments to the providers in these service classifications recorded in I/3 in fiscal year 2008 were \$16,305,681.66.

According to a DAS representative, the reason for awarding multiple master agreements varies based on the type of goods or services procured. For instance, multiple radio communications master agreements are established because the type of equipment and level of technology required varies between procuring agencies. In addition, construction related contracts, such as roofing consulting, may have multiple master agreements which are based primarily on geographical location within the State.

A master agreement is an award arrived at on a competitive basis. When the awards are not competitively bid, they do not meet the intent of Chapter 105 of the IAC. As a result, multiple master agreements for a single classification of goods or services do not provide assurance the best pricing is obtained.

For the same 3 classifications, the providers receiving the greatest payments were not the providers with the lowest hourly billing rates. There are no controls in place to give preferential treatment to providers with the lowest prices. Therefore, state agencies utilizing master agreements are not necessarily getting the most competitive pricing available through master agreements in the specific classifications tested.

**Table 7** provides an example comparison of specific contract hourly billing rates among the 4 providers in the building automation products and services classification with the greatest payments. The providers include Control Installations (CI), Siemens Building Tech (Siemens), Simplexgrinnell LLP (Simplex) and Baker Group (Baker).

<b>Category</b>	<b>CI</b>	<b>Siemens</b>	<b>Simplex</b>	<b>Baker</b>
Project Manager	\$ 99.05	77.00	75.00	104.00
Design Engineer	99.05	70.00	72.00	93.50
CADD Operator	74.67	70.00	45.00	75.00
Service Technician	110.21	70.00	79.00	87.50

As summarized in the **Table**, hourly billing rates for the same job classification varied significantly between some of the master agreement providers. Since each provider holds a master agreement, state agencies have the option to order directly from any of the master agreement providers regardless of the significant hourly rate variances. State agencies are not required to conduct competitive bidding procedures since the providers hold master agreements.

**Table 8** summarizes the fiscal year 2008 payments to the providers listed in **Table 7**. The amounts listed in the **Table** may include projects which were independently competitively bid rather than based on terms of the master agreements. Based on information which is readily available, we are unable to determine what amount, if any, was spent for projects which were independently competitively bid.

<b>Provider</b>	<b>Fiscal Year 2008 Payments</b>
Siemens	\$ 1,700,214.95
CI	1,674,111.61
Simplex	1,408,519.54
Baker	1,098,257.76

As demonstrated by the **Table**, state agencies did not consistently use the providers with the lowest hourly rates during fiscal year 2008. A total of 8 providers were awarded master agreements for building automation products and services. However, state agencies had the ability to go directly to higher cost providers without receiving competitive bids because DAS had established master agreements with the providers.

- For the geospatial technology services master agreements, DAS recommends on its website:

“...buyers shop among the contractors for the best price on the configuration or service they are looking for and negotiate prices for large volume buys. The use of these contracts does not necessarily guarantee the lowest price available on any particular need. Organizations purchasing from these contracts should exercise prudent business judgment.”

Competition and negotiation should not be required when using master agreements, but DAS is recommending such practices. If the contracts awarded do not obtain the lowest prices available, the contracts do not appear to meet the intended purpose of master agreements, which is to provide competitively awarded contracts for state agency use.

- For radio communications, the purchasing agent stated contracts were awarded to all providers submitting bids to DAS. In addition, the purchasing agent did not perform negotiations to ensure pricing was fair and reasonable. He stated awards to multiple providers were necessary due to different brands needed for state agencies throughout the State.

No pricing evaluation and no competitive pricing comparisons were utilized in awarding the contracts, which resulted in approximately \$1.78 million in statewide procurements from 3 providers, with 2 providing a majority of the products purchased. As shown in **Table 6**, DAS awarded radio communications master agreements to 5 providers. State agencies utilized only 3 of the 5 providers and 99.5% of the total products purchased in the classification were from only 2 providers. The necessity of the other 3 master agreements is not evident. Further, DAS did not conduct negotiations and permitted all bidders to obtain a master agreement, regardless of pricing. Therefore, the master agreements were not “arrived at competitively” consistent with the definition of master agreements in the IAC.

- For architectural and engineering (AE) services, awards are not to be based solely on the lowest price, in accordance with Chapter 105 of the IAC. Qualifications and professional capabilities and past performance must also be considered. Findings associated with AE services are discussed in greater detail in **Section F** of the

Findings and Recommendations. However, the primary finding when evaluating the master agreements for this service classification is the absence of pricing in the master agreements. In addition, 10 of 11 bidders received master agreements.

An example master agreement for AE services through Howard R. Green (HRG) is included in **Appendix A**. According to the master agreement for HRG, state agencies utilizing the master agreement are supposed to negotiate fees on a project basis. As discussed above in regard to the geospatial master agreements, if the master agreement does not provide assurance competitive pricing has been established, the master agreement is not meeting its intended purpose and is essentially permitting sole source awards to providers which are not bound by contractual pricing to provide competitive prices to state agencies.

- **Table 9** summarizes fiscal year 2008 payments to providers for roofing consulting. All 4 providers submitting bids received master agreements. Of the 4 providers listed in the **Table**, the first 3 were also awarded master agreements for AE services.

<b>Provider</b>	<b>Fiscal Year 2008 Payments</b>
Howard R. Green Company	\$ 3,124,014.07
Shive-Hattery, Inc.	380,073.48
Genesis Architectural	343,377.91
Keffer/Overton Associates, Inc.	151,718.48

As with other multiple award master agreements, roofing consulting costs vary according to provider and state agencies are not required to seek competition between the providers or give preferential treatment to providers with lower costs. Pricing is not established in the master agreements. Therefore, roofing consultants are not bound by master agreement prices when developing bids for services to state agencies.

In fiscal year 2005, DAS hired a consulting firm to complete a Strategic Sourcing Initiative to develop savings for the state. One of those initiatives was in the area of roofing consulting. According to the consulting firm, Genesis Architectural and Keffer/Overton Associates, Inc. were to be the primary providers and Howard R. Green Company and Shive-Hattery Inc. were to be the emergency providers. According to the consultant, using the primary providers would result in significant savings. Although the total payments to the providers summarized above include all consulting services, state agencies spent significantly more with the emergency providers than the providers determined to be most cost efficient.

The master agreements for roofing consulting do not meet the IAC definition of master agreements “arrived at competitively.” Utilization of the master agreements as currently operating does not ensure pricing is competitive. Instead, use of the master agreements results in bypassing competitive pricing requirements without holding providers to pre-established competitive prices. If the nature of the services does not permit DAS to pre-establish competitive rates, the services are not suitable for procurement through master agreements.

- In addition to testing the master agreements for the goods and services classifications summarized in **Table 6**, our testing selection of other master agreements, which are discussed later in this section of the report, included testing of a flooring installation contract awarded to Allied Construction Services. When reviewing the contract file documentation, we determined 4 providers responded to the solicitation from DAS and all 4 providers submitting flooring installation bids received master agreements.

The purchasing agent stated multiple providers received awards due to geographic locations and the need to provide adequate coverage across the state. However, we determined 2 of the providers, Allied Construction Services and Gilcrest/Jewett Lumber, serve the same general geographic area but prices vary between the providers.

The purchasing agent stated since 1 provider was in Des Moines and the other was in Waukee, they represent different towns even though they are located in the same metropolitan area. In fiscal year 2008, Allied Construction Services received payments of \$109,341.78 which appeared to be related to flooring installation while Gilcrest/Jewett Lumber did not receive any payments which appeared to be related to flooring installation. As a result, we disagree with the purchasing agent's explanation and question the need for multiple flooring contracts.

In summary, we determined the master agreements included in our testing awarded to multiple providers for the same goods or services did not represent "master agreements" as defined in Chapter 105 of the IAC because they are not contracts "arrived at competitively." Competitive bidding procedures should not be defined as attempts to obtain competitive bids. Attempts without success give no assurance the prices submitted are fair and reasonable.

In the case of multiple awards, many of the contracts tested were awarded to all the providers submitting bids for the subject classification and negotiations were not conducted. As a result, each provider, regardless of bid price, was allowed to offer state agencies goods or services even though no price concessions were necessary to receive the contract.

#### **Recommendations –**

- DAS should not award multiple master agreements for the same goods or services unless multiple contracts are necessary to have 1 provider per geographic region. Only 1 provider per geographic area should be awarded a master agreement after competitive bidding procedures have established a provider as the best value. If the master agreement provider is unable to meet the specific time requirements of a project or brand requirements for a commodity, the requesting state agency should solicit bids from other providers. The IAC already has procedures outlined for deviating from the master agreement if a more favorable price can be achieved. As a result, there is no need for multiple master agreements for the same goods or services. Multiple award master agreements are a risk to state agencies because they fail to provide assurance of competitive pricing.
- DAS should consider removal of multiple award master agreements unless the rates established have been negotiated or are based on pricing as a result of receipt of multiple bids, not as a result of requests for multiple bids. Negotiating rebates or discounts upon reaching certain spending thresholds would also be a way to ensure providers will provide deeper discounts based on usage of the master agreements. Such rebates and discounts should be returned to state agencies as an incentive to utilize the master agreements.
- Master agreements should be developed with pre-established pricing included in the master agreement. If the master agreement, which by definition is a contract arrived at competitively requiring no additional competitive procedures by a state agency, has no pricing providers are bound to, providers may submit any pricing and state agencies may accept any pricing regardless of whether the pricing is reasonable.

- Master agreements which do not include specific pricing or are not based on pricing established as a result of negotiations or competitive bids should be reevaluated and renegotiated or canceled when the current contract ends.
- Master agreements not being utilized by multiple state agencies should be evaluated for necessity. Consideration should be given to the resources necessary to maintain master agreements and the actual savings which could be derived from purchase volume discounts generated by utilizing the master agreements.

#### **4. Targeted Small Business Master Agreement Contract Testing**

Targeted small businesses (TSB's) are defined by the Iowa Department of Inspections and Appeals' (DIA's) website as businesses owned, operated and actively managed by women, minority group members or persons with disabilities. In order to be certified as a TSB through DIA's targeted small business certification program, the business must meet the following minimum qualifications:

- Be located in the State of Iowa,
- Be operated for a profit,
- Have a gross income of less than \$4.0 million computed as an average of the preceding three fiscal years and
- Be owned, operated and actively managed by a female, a minority group member or a person with a disability.

In accordance with Chapter 105 of the IAC, state agencies may purchase from a TSB without competition for purchases up to \$10,000.00 after confirming the TSB is registered with DIA. TSB providers are not required to have a master agreement to provide goods and services valued up to \$10,000.00 to state agencies without competition. TSB's are required to receive 48 hours advance notice of state agency solicitations for bids or proposals through posting the solicitations on the TSB website.

DAS awards master agreements to TSB's in order to allow TSB's the opportunity to provide goods and services to state agencies and receive exposure to state agencies utilizing master agreements. Many state agencies have spending goals with TSB's to encourage agencies to utilize TSB providers.

We judgmentally selected 8 master agreements with TSB's to evaluate. We selected the 5 largest TSB's and 3 TSB's which were not on the DAS website to determine whether the contracts awarded represented best value for state agencies or were competitively awarded.

In addition, we conducted a separate test of payments made to a judgmental selection of payments to 5 TSB's to determine whether pricing appeared to be reasonable. The selection of TSB's tested included the 3 providers which received the most payments from the State in fiscal year 2008 and 2 judgmentally selected providers which received payments from the State after June 30, 2008. A number of state agencies procured goods and services from the TSB's selected for testing. For selected payments, we contacted the procuring agency to request the related documentation. However, the Department of Natural Resources and the Department of Public Safety did not provide the documentation requested. As a result, the purchases these agencies made from the TSB's were not tested.

## Findings –

- Master agreements with TSB providers are not negotiated and are established to give TSB’s visibility. DAS officials we spoke with stated they often don’t establish contract rates with TSB’s. Master agreements with TSB providers are not established based on competitive processes. Therefore, master agreements entered into with TSB providers do not meet the definition of master agreements established in Chapter 105 of the IAC, which states master agreements are contracts “arrived at competitively.”

Instead, master agreements with TSB’s are described on the face of the master agreement as contracts “to provide targeted small business purchases which total \$10,000.00 or less per project, pursuant to targeted small business Legislation and TSB Certification.” Purchases which total more than \$10,000.00 are required to be competitively bid. **Appendix B** includes an example of a master agreement with a TSB.

- DAS officials stated procuring agencies are responsible for reviewing pricing to ensure they obtain acceptable prices from the TSB’s since DAS does not conduct pricing evaluations on TSB master agreements.

Of the 8 TSB master agreements reviewed, 7 were awarded contracts without any evidence of competitive bidding or negotiations documented in the contract files. By awarding master agreements to TSB’s without determining fair and reasonable pricing, DAS is allowing TSB’s to charge state agencies prices the agencies believe have been competitively established. State agencies are not required to perform additional competitive procedures for purchases totaling less than \$10,000.00 because the TSB’s have master agreements, which are established in order to provide assurance pricing has been arrived at “competitively.”

Although giving TSB’s visibility to increase business is a commendable goal, awarding contracts to TSB’s without assuring the pricing awarded is reasonable is not a good fiscal practice. By signing the master agreement, DAS is responsible for the competitive procedures which are required for those procurements. Although a DAS official we spoke with stated agencies should look at pricing before purchasing, the IAC specifically states master agreements have been established so state agencies don’t have to seek competitive bids.

- According to a purchasing agent we spoke with, negotiations were not conducted with TSBs because DAS wanted to ensure TSBs would continue to do business with the State and wanted to ensure TSBs would not contract for pricing which would be so low a TSB would not be able to maintain operations. We determined proper negotiations of pricing for the master agreements did not occur in 5 of the 8 TSB master agreements reviewed because pricing was not included in the master agreement.
- State agencies are not required to perform competitive bidding procedures for purchases less than \$10,000.00 from TSBs. During our testing, we identified instances in which 3 state agencies purchased similar products in a relatively short time period. While each purchase totaled less than the \$10,000.00 limit, if the purchases by each agency had been combined, they would have exceeded the \$10,000.00 limit. As a result, the purchases appear to have been purposely split. Split procurements are made on or around the same date with the same provider in order to appear to be below the spending limitation of the contract. The purchases identified are listed in **Table 10** and discussed in detail in the paragraphs following the **Table**.

**Table 10**

<b>Invoice Date</b>	<b>Invoice Number</b>	<b>Description</b>	<b>Amount</b>
<b><u>Iowa Department on Aging^</u></b>			
12/26/07	15639	262 key tags and set-up	\$ 454.90
01/02/08	15640	5,000 magnets	1,250.00
01/02/08	15641	10 wheeled duffels	403.80
01/02/08	15643	10,500 dispensers	4,668.80
01/02/08	15644	500 highlighters	668.80
12/26/07	15645	300 calculators/leather folders	4,740.30
12/26/07	15646	5,069 ballpoint pens	4,910.04
01/02/08	15647	530 key tags	763.70
01/02/08	15648	260 mouse pads	1,897.30
12/20/07	15651	288 Travel mugs	2,174.24
			<u>\$ 21,931.08</u>
06/30/08	16229	5,000 magnets	\$ 1,250.00
06/30/08	16271	1,000 cell phone holders	2,276.30
06/30/08	16276	500 keynote business totes	3,188.80
06/30/08	16304	5,000 ballpoint pens	4,815.00
			<u>\$ 11,530.10</u>
<b><u>Department of Human Services – Juvenile Home^</u></b>			
06/26/08	2224	25 48” tables	\$ 9,200.00
06/26/08	2224	1 60” table	549.00
06/26/08	2225	Oak desk	1,299.00
			<u>\$ 11,048.00</u>
<b><u>Department of Revenue^</u></b>			
06/20/08	2215	16 chairs, plum color	\$ 6,432.00
06/20/08	2216	25 chairs, navy color	9,950.00
06/20/08	2217	25 chairs, navy color	9,950.00
			<u>\$ 26,332.00</u>

^ - We excluded shipping charges from the total invoice amounts for the purposes of determining the total amount purchased.

The purchases identified were made from 2 TSB's, Primary Source and Business Furnishings. Primary Source and Business Furnishings received total payments of \$393,701.58 and \$327,227.02, respectively, in fiscal year 2008 from state agencies.

- o The Iowa Department on Aging purchased goods 2 different times and utilized split procurements in order to make the orders appear to be within the spending limitation of \$10,000.00 per transaction. The agency received 10 separate invoices from Primary Source dated December 20, 2007 through January 2, 2008. Most of the invoice numbers were consecutive and the total spent was \$21,931.08. In addition, 4 invoices totaling \$11,530.10 from Primary Source were dated June 30, 2008. The Department split the total purchase into multiple orders which made each order appear to be within the

maximum spending limitation of \$10,000.00 per transaction. In both cases, when processing payments to the provider, the agency consolidated the separate invoices into a single payment.

A representative of the Department responded they do not dispute the findings but have benefited from a DAS representative who met with the Department to summarize procurement requirements for the Department's staff to follow in the future.

- The Department of Human Services – Juvenile Home purchased goods for \$11,048.00 using the TSB sole-source authority, which is limited to \$10,000.00. The agency split the total purchase into multiple orders which made each order appear to be within the maximum spending limitation of \$10,000.00 per transaction.

The Juvenile Home representative we spoke with stated there were no split orders. Rather, there were 3 separate orders which she filled on the same day. She stated she did not request the first 2 orders be placed on the same invoice. Rather, the provider chose to do so. She said she immediately submitted orders to the provider as they came in throughout the day due to the limited time for processing as the agency was utilizing year-end funds and had to receive the ordered items by June 30, 2008. She stated she consolidated payment of the invoices to the same payment document to expedite the orders. Regardless of the explanation, all items purchased from the provider were ordered on the same day and approved by the same manager. As a result, the purchases should be considered to be a single order.

- The Department of Revenue made 3 purchases on the same day for a combined total of \$26,332.00. A Department representative stated 1 of the 3 purchases was ordered earlier in the year but coincidentally was processed on the same day since the space the chairs were needed for was not complete until the date the other 2 purchases were made. The representative stated the internal purchase order numbers at the Department were not consecutive and maintained the orders were not split. Despite this explanation, the internal purchase order numbers appear too close (2252, 2259 and 2262) to support the explanation of the coincidental nature of the transactions.

All 3 purchases were for the same type of chair and were shipped and invoiced on the same day. Further, the Department consolidated the invoices to make a single payment of \$26,332.00 to the provider. By splitting the total purchase into multiple orders, the Department made the purchases appear to be within the maximum spending limitation of \$10,000.00 per transaction when, in fact, the purchases should have been processed as a single order subject to competitive bidding requirements.

#### **Recommendations –**

- All master agreements entered into by DAS should meet the definition of master agreements stated in the IAC, which defines master agreements as contracts “arrived at competitively.” If DAS does not complete competitive steps consistent with the definition of the master agreement, a master agreement should not be established.

Because master agreements established with TSBs have not been competitively awarded, they should not be classified as master agreements. Instead, they should be classified as Invitations to Qualify (ITQ), which prequalify providers to participate in State bidding opportunities. Establishing the providers with ITQ designations would be an acceptable way to give the TSBs visibility without providing false assurance DAS

has assessed the pricing of the TSBs. Without a master agreement as the basis for price reasonableness, state agencies using TSB providers will be responsible for ensuring price reasonableness.

- DAS should evaluate all master agreements with TSB providers and cancel master agreements with TSBs which currently fail to meet the IAC definition of master agreements.
- If DAS continues to utilize master agreements for TSB purchases up to \$10,000.00, DAS should verify state agencies are not abusing the purchasing limitations through use of split procurements.

### **C. Goods Contract Testing**

As previously explained, the purchase of goods of general use must be completed through use of DAS master agreements unless specific allowable exceptions exist and are documented. All orders for goods must be competitively bid and state agencies not utilizing master agreements are limited to purchases of \$5,000.00 or less per transaction unless they have received advanced purchasing authority through completion of coursework to obtain “center of procurement excellence” status, which increases spending authority to \$50,000.00.

Because we determined purchases of services had more associated compliance risks, we conducted limited testing of a selection of goods purchases to identify concerns regarding goods procured through master agreements or state agency contracts. We judgmentally selected 3 providers and 3 state agencies and tested 2 orders for each contract or master agreement. We did not identify any significant concerns regarding goods procured through master agreements or state agency contracts.

However, in addition to testing specific goods contracts and invoices, we identified several payments included in our service contract testing selection which included purchases of goods. The providers, Siemens Building Technology, Inc. (Siemens) and Baker Group, have master agreements which provide for both goods and services. The Siemens master agreement specifically states goods are included in the contract and are to be offered to state agencies at discounted prices off list prices. The Baker Group master agreement describes the contract as a services agreement but allows for related equipment provided by the provider at cost plus mark-up.

#### **Findings -**

During testing, we determined the master agreements for Baker Group and Siemens did not include specific prices for goods. As a result, it was not possible to ensure prices included in invoices were in accordance with the master agreement.

The purchasing agent for the Siemens master agreement stated contract users needed to contact Siemens to get master agreement pricing. In accordance with the Baker Group master agreement, goods are provided at the provider’s cost plus 15% mark-up. Neither of these pricing structures allow for confirmation of correct pricing without additional research. If master agreement pricing is not clearly documented, it cannot be independently verified and is susceptible to unnecessary risk.

Specific concerns identified with the use of the master agreements established with Baker Group and Siemens are discussed in the following paragraphs.

Baker Group - The master agreement with Baker Group states it is for “mechanical construction services.” The master agreement also specifies plumbing equipment, fixtures and supplies may be purchased through Baker Group at the provider’s cost plus a 15% mark-up. In addition, DAS publishes a discount spreadsheet summarizing specific brand discounts offered by Baker Group, which range from 6% to 38% off list prices, which, according to a DAS official, may be adjusted once annually by the provider with sufficient justification. It is apparent the equipment purchases referred to in the master agreement are intended to be incidental to the services offered by Baker Group. However, we identified an instance in which the Department of Public Defense (Public Defense) purchased only goods from Baker Group. When questioned about the purchases, a representative of Public Defense stated each purchase from Baker Group was under \$5,000.00 and agency policies do not require solicitation of bids if the purchasing agent feels the bid is reasonable. Instead, Public Defense just relies on the master agreement.

This is an improper use of the master agreement. In accordance with Chapter 105 of the IAC, all goods purchased are required to be purchased through solicitation of bids or use of a master agreement. Although Public Defense referred to the master agreement, the purpose of the master agreement was to provide services.

It was not possible to confirm the equipment prices paid by Public Defense were in accordance with the master agreement because the master agreement’s terms only provided for the provider’s cost plus 15% mark-up. However, no provider costs were included in the contract documents. References to the initial list pricing and discount spreadsheet maintained by DAS were not included in the master agreement at the time of review. Since then, DAS has added a reference to brand name discount information to the master contract. The Brand Name Award Grid summarizing contracted discounts by brand for specific providers is included in **Appendix C**. Although providing specific mark-up or discount percentages is helpful, without list prices or provider costs, state agencies do not have adequate information to verify the discount percentages have been properly applied.

Siemens – We identified concerns with 5 projects for which equipment was purchased from Siemens using the master agreement for goods and services. For 4 of the 5 projects, the limited information contained on the invoices and the vague wording in the master agreement with Siemens did not allow for comparison of invoiced prices to the master agreement. As with Baker Group, the Brand Name Award Grid shown in **Appendix C** summarizes brand discounts Siemens has agreed to extend to state agencies. However, the base prices the discounts are applied to are not readily available. Therefore, we were unable to determine whether the invoiced prices for goods were in accordance with the master agreement pricing. If prices cannot be easily tied to the master agreement, there is no assurance the orders were in accordance with the master agreement. If orders are not in accordance with the master agreement, the orders are improperly sole sourced without solicitation of bids or justification for sole source procurement. The procuring agency for each of these 4 projects did not adequately determine the prices paid were fair and reasonable.

The remaining project used a master agreement in lieu of completing the appropriate sole source justification documentation because, according to the procuring official, she had been directed to limit the use of sole source procurements. The 5 projects are described in the following paragraphs.

- The Department of Human Services (DHS) Eldora State Training School (ESTS) purchased \$50,867.20 of cameras and related equipment from Siemens during 2007. A DHS representative we spoke with stated an updated camera security system was needed in a residential unit at the agency. The purchase involved 5 invoices which are summarized in **Table 11**. Payments were made after receipt and installation of

the equipment occurred. As illustrated by the **Table**, the project was paid for over 2 fiscal years.

**Table 11**

<b>Invoice Date</b>	<b>Description</b>	<b>Amount</b>
01/29/07	11 new cameras, 2 16-Channel digital recorders, plus 30 hours labor, installation and warranty^	\$ 24,619.00
04/23/07	Pelco Audio Interface and other interface equipment plus labor for programming, training and testing.*^	2,796.00
08/27/07	18 new cameras plus installation and 1 year warranty*^	11,310.00
11/02/07	16 Channel 750GB DVD DVR plus installation plus 1 year warranty	8,152.20
11/27/07	6 new day night mini-dome cameras plus installation and 1 year warranty.	3,990.00
<b>Total</b>		<b>\$ 50,867.20</b>

^ - Quote references Siemens master agreement contract as basis for pricing.

\* - These item descriptions were specific to allow reconciliation to item description on provider's price list.

According to the DHS representative, ESTS sought informal quotes and product demonstrations from several providers and determined the products Siemens offered were the best value. In addition, the DHS representative stated ESTS believed the master agreement with Siemens permitted purchases of goods and ESTS believed it had properly and prudently utilized the master agreement.

Of the 5 invoices from Siemens, 3 referenced the State of Iowa Contract CT2301 master agreement and 2 did not reference the master agreement. In addition, the ESTS representative we spoke with stated he recalled Siemens provided the goods at 37% off the list price. However, we were unable to verify ESTS received the appropriate discount.

Only 2 of the 5 invoices were detailed enough to be traceable to a specific price list. However, because the master agreement did not include a price list and DAS does not maintain a copy of the provider list prices, we were unable to determine if the prices included in the invoices were the appropriate amounts. The remaining 3 invoices did not include enough information regarding the products purchased. For example, the November 27, 2007 invoice included 6 mini-dome cameras. The specifics of the cameras, including product numbers or features, were not included on the invoice. Therefore, it would be difficult to confirm the pricing paid was appropriate.

In addition to the goods valued at \$50,867.20 initially ordered, ESTS added 4 new day night mini-dome cameras to the order on February 28, 2008 at a total cost of \$2,600.00. This amount was not included in the initial order and product information was not specific enough to allow for reconciliation to the master agreement.

In accordance with the Siemens master agreement, brand name system/product pricing were to be offered with a discount off list price and generic products on the core list were also to be discounted. Although the brand discount percentages are provided as an attachment to the master agreement, list prices are not provided. According to the purchasing agent for the Siemens master agreement, contract users can request provider price lists in order to verify the prices quoted are in accordance with the master agreement.

When asked about the process of ensuring pricing is competitive, the purchasing agent provided a copy of the request for proposal (RFP), which contained language requesting a price list with specific pricing which would be included in the evaluation process. However, Siemens was awarded a master agreement, as were all the providers which submitted bids for building automation. Therefore, we concluded:

- The purchasing agent did not conduct specific procedures beyond issuing the standard RFP to ensure the products Siemens included in its bid were fair and reasonable.
  - The current practice to require state agencies to contact providers to obtain current price lists is not an adequate way to administer the contract because it puts the provider in the position of maintaining the contract prices and makes price lists inconvenient to obtain and impossible to independently verify.
  - Since all the providers which submitted bids for building automation goods and services received master agreements, the product prices awarded under master agreements were not based on competitive procedures and all providers submitting product price lists, regardless of prices submitted, were awarded master agreements.
- On June 23, 2008, the DHS Iowa Juvenile Home (Juvenile Home) entered into a contract with Siemens to provide \$37,635.00 of camera equipment using a statement of work. Statement of work documents are typically for work orders, not purchases of equipment with incidental labor.

On the same day, the Juvenile Home added \$17,986.00 to the contract for additional equipment, which increased the total cost to \$55,621.00. According to a Juvenile Home official we spoke with, there were 2 separate orders because the \$37,635.00 was for cameras for 1 building while the \$17,986.00 was for software for another building. However, the \$17,986.00 order was defined as an addition to the initial contract of \$37,635.00 on a contract document in the Juvenile Home contract file. In addition, both orders were issued on the same day by the same person.

According to the representative we spoke with, the agency solicited bids from 2 other providers, but neither provider was able to deliver the products to the Juvenile Home before the end of the fiscal year on June 30, 2008. We did not receive documentation to verify the competitive bidding process was completed. It appears time constraints to obtain the equipment by June 30, 2008 resulted in an unfavorable competitive environment.

The Juvenile Home official stated the pricing was in accordance with the master agreement. However, product descriptions were vague and would not be reconcilable to specific product numbers in a price list. For example, the statement of work listed 15 cameras, 11 audio recording, 1 encoder and 1 power supply without specific product numbers. Further, as stated previously, the Siemens master agreement did not readily detail the specific discounts awarded to state agencies utilizing the master agreement.

- The DHS Glenwood Resource Center purchased \$16,939.60 of equipment from Siemens in 2 separate invoices for \$12,449.60 and \$4,490.00. The invoices provide enough product information, such as quantity and product number, to allow for reconciliation, but the list prices used as the basis of relevant product discounts were not available to allow for independent reconciliation of pricing.

- The Department of Corrections (DOC) Iowa Medical and Classification Center (IMCC) paid Siemens \$6,862.55 for purchases of equipment associated with repair work at the DOC North Central Corrections Facility (NCCF). According to a representative we spoke with, the IMCC only processed the payment due to the availability of year-end funds. Pricing detail was specific to allow for reconciliation to a price list. However, we were unable to easily identify the master agreement pricing for Siemens and, therefore, could not reconcile the prices paid to the master agreement.
- IMCC also purchased \$2,156.25 of equipment from Siemens. The DOC official we spoke with stated the procurement was required to be conducted through Siemens because Siemens owns the system for which the equipment was needed. DOC provided documentation it had solicited TSB bids and informal bids. However, a justification for a sole source purchase was not prepared.

The DOC official we spoke with stated she had been directed to limit the use of sole source procurements, which is in accordance with the IAC. Therefore, she elected to obtain informal bids to avoid a sole source award since the dollar amount was minimal. While sole source procurements are to be limited, soliciting bids in a virtual sole source situation is improper. When DOC has a qualified sole source procurement need, it should not conduct bidding procedures as they serve no purpose. Instead, DOC must complete a sole source justification.

In addition, in accordance with Chapter 105 of the IAC, “use of sole source procurement does not relieve the department or an agency from negotiating a fair and reasonable price.” For Siemens, DAS stated agencies must go to the provider to request pricing information if they want to determine whether the prices extended to them are in accordance with the master agreement. Although this process is not ideal for the state agency, agencies have a responsibility to confirm, when basing purchases on a master agreement, the prices extended are consistent with the master agreement.

### **Recommendations –**

- All master agreement pricing should be verifiable through DAS. In addition, state agencies should have access to current pricing in order to verify pricing on their orders is in accordance with the master agreement. A DAS official we spoke with stated DAS recently decided to require an electronic link, or catalog, detailing the master agreement pricing. In contracts with extensive product lists, such information should be required on all similar contracts in order to ensure pricing is in accordance with the master agreement.
- DAS should consider requiring use of I/3 to process orders for all goods purchased through master agreements. If goods purchased do not reconcile to the I/3 pre-set pricing, agencies should verify the prices are in accordance with the master agreement or conduct competitive procedures to ensure the goods are purchased as required.
- DAS should incorporate controls, such as an online payment authorization control, which would not allow purchasing agents to exceed purchasing limitations when making purchases.
- Agencies should be required to maintain specific documentation to verify competitive procedures were completed when the agency does not utilize a master agreement. Such documentation should be included, for instance, in the documentation submitted when processing payments in I/3.
- Master agreements established for services should not be relied on to provide competitive pricing for goods and vice-versa. Incidental materials are not

inappropriate, but master agreements for services are not competitively awarded based on goods pricing.

#### **D. Services Contract Testing**

As previously explained, the purchase of services of general use must be completed through use of DAS master agreements unless allowable exceptions exist and are documented. All orders for services of general use equal to or greater than \$5,000.00 (\$15,000.00 for multi-year services) not completed through the use of DAS master agreements must be procured through competitive procedures.

According to section 8A.302 of the *Code*, DAS is required to provide a system of uniform standards and specifications for purchasing physical resources and state agencies are required to procure all items of general use through DAS. Chapter 105 of the IAC describes physical resources as both goods and services of general use. Chapter 105 of the IAC requires DAS to procure goods and services of general use for all state agencies, with the exception of exempt agencies.

Although the IAC names DAS as the procuring agency for goods and services of general use and DAS establishes master agreements for services, DAS has delegated procurement responsibilities as they relate to services to state agencies. A DAS official we spoke with stated service needs are unique to each agency, so those agencies need to conduct their procurements independently of DAS. According to the DAS-GSE Procurement Manual, “all agencies are allowed to conduct their own solicitation and contracting for services.” A DAS official we spoke with stated this delegation of authority was mandated in Executive Order 50 which was signed on January 12, 1983. However, as previously discussed, the Executive Order specifically names DAS as the agency responsible for adopting rules for procurement of services. DAS, as the agency responsible for developing rules over procurement, is also responsible for oversight and ensuring state agency compliance with those rules.

Chapter 105 of the IAC states services of general use may be purchased outside applicable master agreements if, for example, the quantity required or an emergency or immediate need makes it cost effective to purchase from a non-master agreement provider. However, the IAC specifically states purchasing authority delegated to state agencies shall not be used to avoid the use of master agreements. It further states, “Because it is cost-effective to purchase a good or service of general use from a master agreement, the agency shall do so.” DAS has the authority to rescind delegated purchasing authority from state agencies misusing delegated authority, as specified in Chapter 105.15(5) of the IAC.

Because DAS has delegated service contracting to state agencies, except in cases where state agencies specifically request DAS assistance, DAS has very limited oversight capabilities on service contracts entered into by state agencies. Due to the potential risks and the lack of centralized controls, we conducted testing of a selection of payments to providers which do business with multiple state agencies. We previously listed the providers and state agencies included in our testing in **Tables 2** and **3**.

Specific service contract testing included review of sole source procurements, professional services contracts, services procured by agencies exempt from DAS procurement rules and procurements through providers with ITQ designations.

##### **1. Sole Source Procurement**

Sole source procurements are defined in Chapter 106 of the IAC as purchases of services in which the state agency selects a service provider without engaging in a competitive selection process. As discussed in detail in the Procurement Process section of the report,

sole source procurements require specific steps in order to ensure they are in the best interest of the State. For example, sole source procurements require completion of a sole source justification form, which is signed by the Director of the state agency. In addition, state agencies utilizing sole source authority must thoroughly document how they negotiated a fair and reasonable price in lieu of conducting competitive bidding procedures.

### **Findings -**

As a result of testing a selection of procurements, we identified several types of sole sources during testing we determined to be improper.

- Master agreement pass-through to procure specific services without competition,
- Misuse of emergency purchasing authority,
- Sole source award without support of authorization, and
- Referencing master agreement for non-master agreement services.

## **2. Misuse of Master Agreement to Award a Sole Source Procurement to a Subcontractor Provider**

DAS has a master agreement with Insight Public Sector (Insight) which allows agencies to purchase commercial off the shelf software (COTS) at discounted prices. COTS, according to the online business dictionary, [www.BusinessDictionary.com](http://www.BusinessDictionary.com), is software commercially available, leased, licensed or sold to the general public and requires no special modification or maintenance over its life cycle. Examples of COTS include Adobe® and Microsoft® software packages which have been pre-designed to be used by businesses rather than requiring the businesses to develop their own software.

During a meeting with DAS officials, we learned of a software application DAS procured from Insight in December 2008, known as Ariba Spend Management Software® (Ariba software). The Ariba software is licensed by Ariba, Inc. Insight contracted with Ariba, Inc. to obtain the Ariba software for DAS. It was during discussion of the capabilities of the Ariba software we became concerned with the procurement procedures used for the initial purchase totaling \$253,677.00.

The Ariba software is an online data analysis program which consolidates and manipulates spend data and financial information from data warehouses to develop meaningful spend reports for customers to utilize in decision-making. For example, if DAS had a contract with a cellular phone service provider, the Ariba software might be used to determine whether state agencies were utilizing the correct service provider.

In order to utilize the Ariba software, customers must provide their data to Ariba, Inc. for system set-up and data processing in preparation for utilization of the software. Ariba, Inc. scrubs the data and loads it into the Ariba software in a manner that allows for meaningful comparisons and report generation. As such, Ariba software is not a product similar to Adobe® or Microsoft® software packages which can be loaded onto customer computers for immediate use. Instead, considerable costs are associated with services necessary to prepare the customer's data for use through the Ariba software.

According to a DAS representative we spoke with, a DAS purchasing agent attended a demonstration on the Ariba software and DAS determined it was a product DAS wanted to obtain. Ariba, Inc. did not have a contract with DAS at the time. Rather than completing typical procurement steps to solicit quotes or conduct a sole source procurement, DAS requested Insight add Ariba, Inc. as a COTS provider under its master agreement and requested a quote for the Ariba software through the Insight master

agreement. An Insight representative we spoke with concurred the Ariba software is not typical of Insight’s other products.

The purchasing agent stated he informally compared the amount quoted to pricing found on a multi-state contract DAS could have procured the software through. However, Ariba software is customized to each customer’s specific needs. According to the multi-state contract DAS reviewed, state agencies “may request changes to the size, scope, and model of this proposed solution; however, those requests may have a material impact on the price.” Therefore, the quote DAS received for the Ariba software was unique to the specific needs of DAS. Another customer purchasing the same software would not necessarily receive the same pricing. The informal price comparison performed by DAS is not sufficient for a purchase exceeding \$250,000.00.

The purchasing agent stated DAS procured the Ariba software through Insight in order to expedite the procurement. The purchasing agent also stated DAS subsequently received a 1% rebate from Insight for the purchase and Insight’s license management services. After completing the informal comparisons, DAS elected to procure the Ariba software through the Insight master agreement for \$253,677.00. The DAS purchasing agent stated DAS believed procurement of the Ariba software through Insight was an appropriate use of the Insight master agreement.

**Table 12** summarizes the specific items purchased by DAS from Ariba Inc. through the Insight master agreement. Each line item on the supporting documentation included “product related services including training, configuration, etc.” The breakdown of costs was listed on the delivery order.

<b>Description</b>	<b>Quantity</b>	<b>Total</b>
Software set-up	1	\$ 38,500.00
Baseline one year spend	1	80,042.00
Annual software subscription with quarterly refreshes	1	135,135.00
Total		\$ 253,677.00

As stated previously, Ariba software is owned and maintained by Ariba, Inc. and is used to analyze the spend data of its customers. Customers, such as DAS, pay a yearly software subscription fee which includes Ariba, Inc. services to maintain data provided by the customer. The annual fee incurred by DAS after the initial year will be \$135,135.00, as illustrated by the **Table**.

**Findings -**

- DAS procured the Ariba software through the Insight master agreement even though the Ariba software is not a COTS product consistent with the other products offered through the Insight master agreement. In addition to concerns regarding the Ariba software’s relevance as a COTS product, the Ariba software does not appear to be general use software, as no other state agencies had procured Ariba software through the Insight master agreement at the time of review.

As discussed throughout this report, master agreements, by definition, are designed to establish contracts for goods and services of common use. The Ariba software was added to the Insight master agreement specifically for 1 agency’s specific purposes, which is not consistent with the intent of master agreements.

- Because DAS purchased the Ariba software through Insight’s master agreement, DAS effectively awarded a sole source contract without negotiations or sole source justification. Use of the master agreement eliminated the opportunity to obtain competitively bid prices. When asked how the price reasonableness was determined, a DAS representative stated a separate price reasonableness evaluation was not required since the software was procured through a master agreement.

Although a DAS official stated DAS conducted informal price comparisons and discussed the pricing informally with Ariba, Inc., the size and the nature of the procurement should have warranted additional steps. Because the purchase exceeded \$250,000.00 and the software is not a general use product or service competitively bid through the master agreement process, DAS should have followed bid procedures required by Chapter 105 of the IAC.

- DAS processed the Ariba software procurement as a goods purchase, even though significant services were associated with the software. A DAS official we spoke with stated DAS doesn’t see the services associated with the software as true services. Rather, those services are an element of the software.

Prior to customer use of the Ariba software, Ariba, Inc. processes the customer’s data to integrate it into the software to allow for meaningful data analyses using the software. A DAS representative stated it took significantly longer than anticipated for Ariba, Inc. to complete this process. However, since the Ariba software was procured as a commodity, specific service deliverables, such as completion of installation dates, were not included in the terms of the procurement.

- Ariba, Inc. provides services, including software set-up and product related services such as training and configuration, in order to utilize the Ariba software. Ariba’s first year quote included significant services which are not typical to normal COTS packages. The costs incurred to purchase the Ariba software are dependent on the specific needs of the customer. Therefore, each customer will have a different pricing structure. This is not consistent with typical goods master agreement pricing structures, which have been pre-established to ensure all customers utilizing the master agreement receive the price previously determined to be fair and reasonable by the DAS purchasing agent who solicited and awarded the master agreement. Specific component pricing which could be reconciled to master agreement price lists was not included on the delivery order.

### **3. Misuse of Emergency Procurement**

Agencies are not required to procure services in a competitive manner in the event of an emergency need. In accordance with Chapter 105 of the IAC:

“An emergency procurement shall be limited in scope and duration to meet the emergency. When considering the scope and duration of an emergency procurement, the department or agency should consider price and availability of the good or service procured so that the department or agency obtains the best value for the funds spent under the circumstances. The department and agencies shall attempt to acquire goods and services of general use with as much competition as practicable under the circumstances.

Justification for the emergency purchases shall be documented and submitted to the director or designee for approval. The justification shall include the good or service that is to be or was purchased, the cost, and the reasons the purchase should be or was considered an emergency.”

## Findings -

We identified several sole source procurements state agencies described as emergency procurements during our testing procedures of service contracts for which we identified concerns. The instances are described in the following paragraphs.

- The Alcoholic Beverages Division (ABD), a division of the Department of Commerce, entered into an emergency procurement with Waldinger on November 12, 2007 for \$1,897,795.00. According to an ABD official we spoke with, ABD had emergency needs due to a failing heating system which needed repair prior to winter. The ABD official stated ABD did not bid the contract due to the limited time to make the repairs. ABD did not provide any documentation indicating the procurement was an emergency. However, ABD made payments related to the contract from November 14, 2007 through November 10, 2008 and included goods and services not related to the heating system.

The ABD official we spoke with stated DAS told ABD it could select any of the master agreement providers who could provide the needed services since it was an emergency procurement situation. The DAS purchasing agent for the Waldinger master agreement stated he didn't recall discussing the project with ABD and could not locate any documentation related to the project.

Although a DAS employee worked as the project manager for ABD, DAS stated ABD was ultimately responsible for the procurement. ABD selected Waldinger because, according to the official we spoke with, Waldinger was the only provider capable of completing all the tasks necessary for the project.

During our review of the contract file, we determined change orders were made to the contract between February 15, 2008 and November 10, 2008. The change orders included parking lot lighting and fire and security alarm equipment. As previously stated, these changes are not related to the heating system repair which ABD stated was the reason for the emergency procurement.

Including change orders and additional payments, ABD paid Waldinger a total of \$2,148,249.57, which is approximately 13% more than the original contract amount. This contract was discussed in greater detail in the Report of Recommendations to the Iowa Department of Commerce issued by the Office of Auditor of State on July 2, 2010.

Because the contract included services beyond the heating system repair and the duration of the contract was approximately 1 year, it does not appear it was an emergency procurement.

In addition, ABD did not provide any documentation to confirm ABD evaluated master agreement pricing in lieu of competitive bids to ensure it received the best value. In addition, costs were not submitted to ABD in a manner which would allow reconciliation to master agreement pricing.

**Table 13** summarizes a few of the master agreement cost categories in comparison to the pricing included on an invoice from Waldinger.

<b>Waldinger Master Agreement</b>	<b>Amount</b>	<b>Invoice Description</b>	<b>Amount</b>
Plumber-Apprentice hourly rate	\$ 49.60	Mechanical/Electrical Systems	\$ 115,000.00
Pipe-fitter hourly rate	64.48	Warehouse Lighting	125,000.00
Construction materials costs	Cost + 15%	Add: Patch Work	8,592.00

As demonstrated by the **Table**, Waldinger did not submit invoices to ABD in a manner consistent with the master agreement. As a result, if ABD attempted to determine if the contract prices were in accordance with the master agreement, it would not have been possible.

In addition, a DAS representative we spoke with stated the mechanical services master agreements, such as Waldinger’s electrician services master agreement, were not intended to be utilized for large scale projects. DAS established these master agreements to allow state agencies to order more routine services without the requirement of obtaining bids. DAS has since limited usage of master agreements for mechanical services to \$25,000.00 or less. If state agencies need services in excess of \$25,000.00, the Waldinger contract now states, “projects with an estimated value of \$25,000.00 or more must be competitively bid.”

The DAS representative we spoke with stated the usage limitation cannot be enforced for construction procurements because different competitive bidding thresholds exist for construction. According to Chapter 26 of the *Code*, state entities may procure construction services up to \$36,000.00 without obtaining competitive bids or quotes. As a result, the DAS official stated DAS can only strongly suggest competitive bidding procedures but cannot require them because it would conflict with construction procurement rules. This is only true for construction procurements up to \$36,000.00 which are subject to construction rules, in which case use of master agreements would not be required at all. However, state agencies procuring construction services of more than \$36,000.00 should not be permitted to satisfy competitive bidding requirements by utilizing master agreements DAS has determined are not designed to ensure price reasonableness for larger projects.

Although it is true construction projects have different competitive thresholds, as the administrator of master agreements DAS established for smaller projects, DAS has authority and responsibility to control master agreement usage. State agencies are not required to utilize master agreements for services which are not of general use. Construction projects specific to a state agency are not general use service projects.

In summary, we determined:

- o ABD improperly sole-sourced the procurement without completing emergency procurement documentation, ensuring the price represented the best value or limiting the emergency procurement exclusively to emergency needs.
- o Even though ABD selected a provider with a master agreement to provide the goods and services, the contract approved was not in accordance with the master agreement. Therefore, the fact Waldinger holds a master agreement through DAS provides no assurance the pricing of the contract was in accordance with master agreement pricing.

An ABD official we spoke with stated ABD has improved controls since these orders were completed and believes such procurement weaknesses have been addressed and rectified. In addition, in ABD's response to the Report of Recommendations to the Iowa Department of Commerce issued by the Office of Auditor of State on July 2, 2010, it stated internal controls have been implemented by the new Division administrator to ensure strict adherence to all procurement policies and ABD will follow the policies outlined in the IAC. We will review internal controls at ABD to confirm implementation and effectiveness of new internal controls when we conduct the fiscal year 2011 financial audit.

- The Department of Human Services - Mt. Pleasant Mental Health Institute (Mt. Pleasant MHI) entered into 2 emergency procurements for psychiatric consultation. Both emergency procurement justifications stated the agency was actively pursuing permanent recruitment but needed coverage during the interim.
  - Unnachi Psychiatric Services, PC signed a contract with Mt. Pleasant MHI on January 14, 2008 for up to \$157,000.00 annually. The contract was for 1 year plus 3 contract renewal options. Payments in fiscal years 2008 and 2009 totaled \$104,708.25. The emergency procurement justification was signed by the head of the agency or a designee.
  - Mt. Pleasant MHI entered into a contract with Meadowlark Psychiatric Services, PC on February 4, 2008, which was extended through June 30, 2009. The initial contract was for \$199,500.00 for the first 5 months with an extension for fiscal year 2009 in the amount of \$475,000.00. These amounts were later amended to \$145,500.00 and \$304,250.00, respectively. Payments in fiscal years 2008 and 2009 totaled \$375,400.00. The emergency procurement justification was not signed.

After multiple attempts to obtain supporting documentation, Mt. Pleasant MHI did not provide any documentation to verify pricing was evaluated and determined to represent the best value for Mt. Pleasant MHI. In addition, the contracts were extended with optional renewals. The IAC requires emergency procurements to be limited in scope and duration to meet the immediate emergency needs. Signing a contract with 3 option years is not consistent with the requirement to limit the duration of the awards based on the emergency. Mt. Pleasant MHI had adequate time to conduct competitive bids prior to extending the contracts.

- The DOC Newton Correctional Facility paid Baker Group \$22,796.71 on June 11, 2008 to conduct emergency repairs on a hot water line. The representative we spoke with stated the only documentation on hand was an email from the warden at the facility stating an emergency shutdown of the hot water lines was required. No emergency justification or other documentation was provided. In accordance with the IAC, justification for the emergency purchases must be documented and include the item purchased, the cost and the reason the purchase is classified as an emergency.

Since Baker Group has a master agreement with DAS, we compared the pricing of the invoice from Baker Group to the master agreement and could not reconcile billing units between the master agreement and the invoice. Therefore, the existence of a master agreement between DAS and Baker Group provided no assurance pricing was in accordance with a pre-established master agreement.

#### **4. Referencing Master Agreement on Non-Master Agreement Purchases**

Use of master agreements to procure goods and services results in an improper sole source if the procurement is not conducted in accordance with the specific pricing and terms of the master agreement. Sole source procurement, as stated in Chapter 105 of the

IAC, shall be avoided unless clearly necessary and justifiable. However, certain purchases may be exempted from competitive selection processes if they qualify based on any of the following circumstances:

- Only 1 provider is qualified, eligible or is obviously the most qualified or eligible to provide the good or service,
- The procurement is of a specialized nature or is in a specific geographic location which limits the procurement to a single source,
- Applicable law requires, provides for or permits use of a sole source procurement,
- The federal government or other provider of funds for the goods and services being purchased has imposed clear and specific restrictions on the use of the funds, or
- The procurement involves information technology specific to certain software or compatibility issues make it necessary to go with a specific provider.

When state agencies improperly reference master agreements to order goods and services which are not consistent with the terms of the master agreements, the agencies do not verify any of the above circumstances existed to allow the sole source procurement.

As previously discussed, master agreements should establish prices, terms and conditions for the purchase of goods and services commonly purchased by state agencies. The master agreements are required to be arrived at competitively. By using master agreements, state agencies should be assured they are receiving competitive prices on the goods and services of general use they have procured. Master agreements do have limitations in their effectiveness, however. Assuming the master agreements were awarded in a truly competitive manner and established specific unit pricing, they still offer no assurance of price reasonableness when:

- Goods or services purchased are not covered by the master agreement,
- The provider submits a quote on a firm fixed price basis in which no specific unit pricing is provided, and
- The goods or services needed have a significant cost in which specific competition would result in deeper discounts.

### **Findings -**

We identified misuse of master agreements during our review of service contracts. During testing of master agreement procurements, we identified state agencies commonly operating under the assumption if a provider had a master agreement, the state agency was authorized to order any goods or services directly from the provider without seeking competitive bids. While this is the intent of master agreements, agencies should not be able to utilize a master agreement to purchase goods and services which are not specified in the master agreement.

We identified providers which provided firm fixed price quotes to state agencies to complete specific service projects. Firm fixed price quotes are quotes without line item pricing. Rather, the quotes are single dollar amounts encompassing all goods and services needed to complete a specific project. Master agreements, in contrast, have established unit rates. It is not possible to reconcile a firm fixed price quote to master agreement unit pricing because the firm fixed price quote is not broken down by unit.

Firm fixed price quotes approved on the basis of the provider holding a master agreement result in improper sole source contracts to providers without:

- Competition,
- Verification pricing is fair and reasonable, or

- Posting solicitation to the TSB website, which is required by the IAC.

As previously discussed, a DAS official we spoke with stated master agreements were not designed to ensure price reasonableness on large projects. As such, competition should be utilized when procuring goods or services of a significant value.

**Table 14** summarizes contracts we identified which state agencies established without obtaining competitive bids. Instead, they awarded the contracts to providers because the provider had master agreements with DAS. The contracts were not written in a manner to allow for comparison to the master agreements. Therefore, the contracts were improperly sole sourced with no verification prices were fair and reasonable and failed to comply with TSB posting requirements.

**Table 14**

<b>Agency</b>	<b>Provider</b>	<b>Amount</b>
Alcoholic Beverages Division <sup>^</sup>	Waldinger	\$ 2,148,249.57
Alcoholic Beverages Division	Siemens	398,007.83
Iowa State Penitentiary	Siemens	60,023.25
Newton Correctional Facility	Siemens	14,040.00
Glenwood Resource Center	Siemens	42,897.00
Woodward Resource Center	Siemens	35,712.00
Woodward Resource Center	Waldinger	26,820.95
Iowa Veterans Home	Baker Group	7,400.00
IPTV	Siemens	11,358.00
Secretary of State	Quality Consulting	7,420.00
Vocational Rehabilitation	Siemens	7,548.00

<sup>^</sup> - Previously discussed as unsupported emergency procurement on pages 53-55.

We identified a number of contracts with Siemens and Waldinger, 1 project with Baker Group and 1 project with Quality Consulting which could not be reconciled to a master agreement. In addition, many of the procurements were large enough to have been best procured in a project-specific competitive environment. As such, the master agreements were improperly used in the procurements summarized in the **Table**.

The Siemens master agreement was for building automation products and services. The master agreement included specific hourly rates for labor disciplines and states product pricing is provided at a discount as well. However, the contracts included in the **Table** did not include line item detail to allow for verification labor rates and product prices were in accordance with the master agreement.

Waldinger also received significant contracts without competition with the master agreement as the basis for the contracts. As with Siemens, the Waldinger contracts identified during testing were written in a manner in which pricing in the contract could not be compared to pricing in the master agreement.

Of the 11 contracts listed in **Table 14**, 4 are discussed in detail in the following paragraphs. Of the 4 contracts, none were awarded competitively, 2 were for work performed at the Alcoholic Beverages Division (ABD), 1 was for a project at the Iowa State Penitentiary and 1 was for a project at the Glenwood Resource Center.

- As discussed previously, ABD entered into an emergency procurement with Waldinger in November 2007 for \$1,897,795.00. An ABD official we spoke with stated the master agreement with Waldinger was the basis of the contract. According to the ABD official, it was an emergency procurement due to a failing heating system which needed repair prior to winter. However, the ABD official's explanation for the emergency was inconsistent with the services rendered and the duration of the project. After considering change orders and additional payments for which change orders were not prepared, the total cost of the contract was \$2,148,249.57.

According to the ABD official, since DAS provided project management services, all procurement documentation for the projects were maintained by DAS. However, the Waldinger contract with the initial contract price of \$1,875,795.00, eventually growing to \$2,148,249.57, was signed by the ABD administrator. We previously discussed the Waldinger contract as an unsupported emergency procurement. Additional information regarding the contract is discussed on pages 53-55.

Use of master agreements for projects of this size is not in the best interest of the state. ABD should have conducted formal competitive bidding procedures. In the event the project had been a legitimate emergency, price reasonableness evaluations should have been conducted and documented.

- **Table 14** also includes a contract ABD established with Siemens. As illustrated by the **Table**, the contract plus change orders totaled \$398,007.83. With additions and deductions to the work order, the final project amount was nearly 75% greater than the initial contract amount of \$230,649.10. This contract was also discussed in detail in the Report of Recommendations to the Iowa Department of Commerce issued by the Office of Auditor of State on July 2, 2010.

Due to the size and specific nature of the procurement, ABD should have conducted formal bidding procedures and entered into a contract after completion of competitive bidding procedures. Instead, ABD entered into a large contract with Siemens and continued to add work to the initial project. The pricing of the contract was firm fixed price and, therefore, was not in accordance with the master agreement terms and conditions. As such, the total value of the project was improperly sole sourced.

Records provided for our review were limited to payment documentation and invoices for change orders and were not sufficient to demonstrate due diligence by ABD in procuring the services for a fair and reasonable price. Documentation of price evaluation or competitive bidding procedures was not provided.

ABD utilized a DAS employee to perform project management duties on the project. DAS stated ABD was responsible for the procurement and DAS only provided project management after the procurement was conducted. However, an ABD official we spoke with stated the only document signed by ABD was the initial contract and documentation of subsequent invoices shows the DAS project manager routinely signed change orders on behalf of ABD on the Siemens project. DAS should not have provided support services on a procurement improperly awarded with no basis for price reasonableness unless part of the involvement included assisting in corrective actions to ensure fair and reasonable pricing was achieved or risks associated with the procurement were mitigated.

- For the Iowa State Penitentiary in Fort Madison, we identified 3 orders for goods and services through Siemens totaling \$60,023.25 which were awarded on a firm fixed price basis and were not consistent with the unit pricing in the master agreement. Purchases identified included:
  - \$18,028.25 for 2 quarters' service for a building automation service agreement,

- \$39,400.00 for a construction project related to the Iowa State Penitentiary Infirmary and Visitors Center, and
- \$2,595.00 for 1 quarter of service for a building automation service agreement.

The DOC official we spoke with provided all the documentation he had on file. None of the payments could be reconciled to the master agreement and evidence of competitive bidding procedures was not provided.

- DHS ordered goods and services totaling \$58,854.51 for its Woodward Resource Center from Waldinger for a steam safety valve and line replacement project. Of that amount, \$32,033.56 was for labor billed at an hourly rate in accordance with the master agreement. The remaining \$26,820.95 was billed as follows:
  - Equipment - \$8,518.21,
  - Materials used - \$15,915.43,
  - 15% markup on materials and subs - \$2,387.31.

There was no breakdown detailing the equipment or materials purchased. The Waldinger master agreement allows for materials and equipment rental for cost plus 15%. However, without documentation detailing the equipment and materials included in the invoice and support for the base costs, the amount billed cannot be reconciled to the master agreement.

The examples identified illustrate state agencies are not consistently complying with the sole source and emergency procurement requirements established by Chapter 105 of the IAC. As a result, we determined state agencies are either intentionally or unintentionally misinterpreting the purpose of master agreements, resulting in improperly sole sourced orders which have not been determined to be fairly and reasonably priced. Providers are benefiting from state agencies' failure to procure from master agreements or, in emergency or sole source situations, to perform due diligence to ensure procurements are in the best interest of the agency and, in turn, the taxpayer.

Without adequate training to ensure all purchasing agents are aware of their responsibilities when making procurements, even when utilizing master agreements, and without oversight of DAS because service contract responsibilities have been delegated to state agencies, the State is put at undue risk of procuring goods and services in an uncompetitive manner.

**Recommendations –**

- In order for state agencies to be able to utilize master agreements as the basis for contract awards, DAS should consider implementing controls which require state agencies to reconcile the contents of the order to the unit pricing in the master agreements. In instances where the goods and/or services purchased are not in the master agreement, agencies must make the award based on competitive solicitation and should consider performing negotiations with the provider which submits the best offer.

The presence of a master agreement does not permit procurement of any goods or services from the provider. Rather, the master agreement is limited to the specific goods and services DAS has negotiated as part of the master agreement.

- Sole source justifications should be avoided whenever possible because pricing of sole source awards is not based on competitive procedures. However, if a sole source is necessary, it should be pre-approved by DAS, whether for goods or services. Under SF 2088, state agencies previously exempt from centralized purchasing requirements

are no longer exempt. Therefore, DAS is responsible for procurements of goods and services of general use. DAS should implement controls to evaluate use of sole source authority and follow through on procedures put in place to discourage misuse of purchasing authority, such as suspension of purchasing license.

- On March 10, 2010, Governor Culver signed SF 2088. The legislation requires DAS to provide training to certain purchasing agents on a periodic basis. DAS should provide education to purchasing agents regarding sole source authority, how to properly use master agreements, how to establish fair and reasonable pricing, how to perform negotiations and what documentation to include to maintain adequate contract documentation.
- Providers which have master agreements with DAS have contractually agreed to specific terms and conditions for providing services to state agencies. The providers should be held accountable for conducting business with state agencies in a manner consistent with their master agreements. DAS should consider adopting rules for master agreement providers which include repercussions for providers who conduct business with state agencies which is not consistent with the terms and conditions agreed to in the master agreement. For example, providers who do not honor master agreement pricing should not receive master agreement renewals. In addition, providers should be required to refund any overbillings as a result of failure to comply with the terms and conditions of the master agreement. The providers receive substantial business from state agencies as a result of the master agreements they have entered into and should conduct business within the parameters of the master agreements.

All master agreement providers should honor master agreement pricing by bidding on projects in a manner consistent with the basis on which the master agreement was awarded. For example, if an electrical services provider receives a master agreement establishing specific hourly billing rates for services, the provider should not bill agencies for orders placed against the master agreement with a firm fixed price bid which is not based on the hourly billing rates established in the master agreement. The bill should clearly establish pricing on an hourly billing rate basis consistent with the terms of the master agreement.

- State agencies should also only utilize master agreements for services if they can reasonably estimate the cost of obtaining services. If the agency can not estimate the cost of services needed, competitive bidding is necessary. If the approximate cost of a project is unknown, the state agency is at risk.

#### **E. Temporary Staffing Services and Consulting Contracting Testing**

During our fieldwork, we identified a number of providers which provided temporary staffing or consulting services to various state agencies. We included payments to 5 of the providers in our service contract testing.

We determined a master agreement had been established for only 1 of the 5 providers. Of the 4 remaining providers, 2 had Invitation to Qualify (ITQ) designations and 1 had a contract established by DAS - Human Resource Enterprise (DAS-HRE). The remaining provider did not have a current contract, but had previously held a contract established by DAS-HRE. However, the contract expired in June 2004.

The 5 providers included in our testing are listed below and described in more detail in the following paragraphs. The providers are categorized by the type of procurement document available for their services.

### Master Agreements/Multi-agency contracts

- Quality Consulting, Inc. (QCI) provides geospatial technology consulting services. DAS established a master agreement with this provider.
- Labor World of Iowa, Inc. (Labor World) provides temporary staffing services. DAS-HRE established a contract with this provider, but the contract is not identified as a master agreement. However, because it was established for state agencies to procure temporary staffing services, it shares the primary characteristics of a master agreement and was reviewed as a master agreement during our fieldwork.

### ITQ Designations

- American Computer Services (ACS) provides IT consulting and staff augmentation. While a master agreement had not been established, the provider had ITQ designation.
- Robert Half International (Robert Half) provides IT consulting and staff augmentation. While a master agreement had not been established, the provider had ITQ designation.

### Contract established by DAS-HRE

- Adecco Employment Services (Adecco) provides temporary staffing services. DAS-HRE established a contract with this provider which expired in June 2004. Records available for our review indicated Adecco did not have a currently valid contract with DAS and DAS representatives were unable to locate a current contract with Adecco.

Invitation to Qualify (ITQ) designations may not be utilized to procure directly from the provider. Rather, ITQ designations only serve to establish terms and conditions. State agencies must then conduct solicitations among the ITQ providers prior to award of a contract.

We identified consistent concerns with procurements of consulting services and temporary staffing services. Procuring agencies did not properly complete a competitive process for temporary staffing services, misused master agreements or DAS-HRE contracts or did not ensure invoices were in compliance with the master agreements or base contracts.

## **1. Master Agreements for Professional Services**

As stated above, QCI was the only professional services provider with a master agreement included in our review of service contracts related to personal services. During testing of procurements from QCI, we identified concerns with state agency payments to QCI by the Division of Vocational Rehabilitation of the Iowa Department of Education, also known as Iowa Vocational Rehabilitation Services (VRS) and the Insurance Division of the Iowa Department of Commerce.

### **Findings –**

- In March 2007, VRS sought proposals for system development support to complete the Iowa Rehabilitation Services System (IRSS), which is to help VRS operate more efficiently to serve clients quickly and effectively. A representative we spoke with stated VRS informally solicited bids from 3 providers. VRS also posted the solicitation on the TSB website. However, in the TSB solicitation, VRS specifically stated the bid could not exceed \$50,000.00. As a result, potential bidders were aware bids up to \$50,000.00 would be considered, regardless of the true value of the services to be provided.

QCI was the only provider to submit a proposal. Its proposal included a project manager VRS had worked with previously on another project. The \$49,980.00 proposal was based on an hourly rate of \$105.00. According to a VRS representative, this was the hourly rate QCI charged for Project Management services at the time the proposal was prepared. However, the master agreement in place with QCI at the time of the proposal included Project Management services for \$100.00 per hour.

When conducting competitive bidding procedures, pricing is not required to be in compliance with master agreement pricing because the result of competitive bids is the basis of price reasonableness on competitively bid projects. However, since QCI was the only responding bidder, VRS should have used alternative methods to determine the price was reasonable. The hourly rate quoted by QCI exceeded the hourly rate VRS could have received if it had utilized master agreement pricing. Therefore, it was not in the State's best interest to accept the single proposal obtained as a result of the solicitation for competitive bids. If VRS had compared the bid to master agreement pricing, VRS could have obtained the services for a lower price.

VRS accepted the proposal for system development support from QCI and subsequently paid QCI a total of \$49,547.50 under the contract.

Because the only bid received was just \$20.00 less than the \$50,000.00 maximum VRS specified in its solicitation, the reasonableness of the price cannot be independently verified. It is not good business practice to specify the maximum amount the state agency is willing to spend.

The VRS representative we spoke with stated he limited the price to \$50,000.00 in order to avoid specific bidding requirements. The VRS representative later stated the agency put the \$50,000.00 limitation in the solicitation because it estimated it would not need more services than those it could acquire with \$50,000.00 and planned to use internal staff for any work needed beyond that threshold. However, the goal of the state agency should be to procure services at the most economical prices possible. It should not be to avoid formal bidding requirements. The requirements have been established to ensure state agencies conduct adequate competitive bidding procedures when making substantial procurements.

- In November 2006, the Insurance Division (Division) of the Department of Commerce sought proposals for professional consulting services to help with system development on the Surplus Lines software program. A representative we spoke with stated the Division rejected all the bids initially received for the project because the bids were too costly. After receipt of the initial bids, Division officials determined they did not have the expertise needed to properly develop a Request for Proposals (RFP) for the project with adequate detail. As a result, the Division hired QCI to assist with the development of the RFP. According to the representative, QCI was familiar with the Division's computer system and had prior experience with the Division.

After issuing the RFP prepared by QCI, the Division received 3 proposals, 1 of which was from QCI. **Table 15** lists the total amounts of the proposals. As illustrated by the **Table**, the amount of the proposal submitted by QCI was significantly less than the other providers. It appears the proposals received from other providers may be significantly greater than QCI's proposal because they had a different understanding of the requirements.

**Table 15**

<b>Provider</b>	<b>Amount</b>
QCI	\$ 22,400.00
Provider 2*	150,000.00
Provider 3*	313,000.00

\* - Redacted because certain information in proposals is considered proprietary.

The Division awarded the contract to QCI after completing the competitive bidding procedures. A month after QCI received the contract, the Division approved a change order for \$4,995.00, extending the total cost of the project to \$27,395.00. The Division representative we spoke with stated it was possible QCI's familiarity with the Division's computer systems may have helped QCI submit a more accurate proposal, but the representative did not believe it gave QCI an unfair advantage.

However, due to the significant proposal discrepancies, it appears QCI received an unfair advantage as the author of the contract specifications which allowed it to submit a proposal significantly less than the other bids. Further, the Division should have recognized the obvious proposal variances and should have taken further steps to ensure the proposals received were based on the same understanding of the solicitation. Provider 3's proposal was nearly 14 times larger than QCI's proposal and Proposal 2's proposal was nearly 7 times larger than QCI's proposal.

## **2. Invitation to Qualify (ITQ) Designations**

In accordance with Chapter 105 of the IAC, DAS prequalifies certain providers and makes a list of the providers capable of providing certain services available to the state agencies. The classes of providers for which DAS performs prequalifications include:

- Information technology consulting,
- Architectural services and
- Engineering services.

Providers which successfully complete the ITQ process are designated as providers who have been vetted in a manner which provides assurance they are eligible to provide services to state agencies. However, the ITQ designation is not a contract agencies may utilize to procure directly from the provider. State agencies wishing to procure services from a provider with an ITQ designation are required to complete a competitive process prior to awarding a contract. However, the IAC also allows agencies to select, in a competitive manner, a prequalified provider without public notice. The solicitation may be restricted only to the prequalified providers, in addition to the TSB notification required by IAC.

According to the IAC, DAS is to use the ITQ process to facilitate subsequent solicitations which use a procurement method allowed by the IAC (competitive, sole-source or emergency). The purpose of the ITQ process is to:

1. Standardize terms and conditions relating to all services provided by providers, thereby avoiding repetition and duplication.
2. Accomplish specific service assignments in a manner consistent with State standards.

3. Implement a pay for performance model directly linking payments to providers and defined results as required by section 8.47 of the *Code*, (*the Accountable Government Act*.)
4. Consolidate records, including performance assessments, in one location for reference and review.
5. Reduce time required for solicitation of proposals from providers for individual projects.

ITQs are not to be used as typical master agreements which can be used without seeking competitive bids. They are pre-qualifications to allow ease in soliciting proposals, not contracts, according to DAS. However, at the time of review, the ITQ designations were maintained on the same forms as master agreements which are titled, "State of Iowa Master Agreement" at the top of the form. **Appendix D** is a copy of the Robert Half ITQ and demonstrates the ITQ designation appears to be a master agreement. As a result, it would not be difficult for a state agency to confuse an ITQ with a master agreement.

Because ITQs have not been established through competitive bidding procedures necessary to ascertain competitive prices, purchases made by agencies from ITQ providers without a competitive process are improperly sole sourced.

We reviewed payments made to 2 providers, Robert Half and ACS, which had completed the ITQ process for information technology consulting services. Procurements from ACS identified during our review were based on competitive bidding procedures, as required. However, we identified multiple concerns with procurements from Robert Half.

**Findings -**

As previously stated, **Appendix D** is a copy of the Robert Half ITQ and demonstrates pricing was not established in the ITQ. As demonstrated in the **Appendix**, the ITQ clearly states, "For Complete Instructions On How To Use This Contract Contact The Department Of Administrative Services, GSE Purchasing Division..." Although it does not specifically state on the document competition must be obtained, it does indicate the ITQ cannot be used to directly purchase goods or services and further guidance should be obtained from DAS.

**Table 16** summarizes a selection of payments to Robert Half made during fiscal year 2008 and included in our testing procedures which were processed without state agencies conducting competitive bidding procedures between Robert Half and other ITQ providers.

<b>Agency</b>	<b>Amount</b>
Department of Public Safety	\$ 92,258.54
Department of Education - Vocational Rehabilitation	87,983.84
Department of Economic Development	45,848.50
Department of Natural Resources	18,741.00
Department of Public Defense	12,750.00
Total	\$ 257,581.88

We contacted a representative of each agency listed in **Table 16** to determine why a competitive process had not been completed prior to procuring services from Robert Half. The responses we received from the agencies' representatives are summarized as follows:

- A Department of Public Safety representative reported the procurement official involved in the purchases had retired but the agency operated under the assumption an ITQ was a legitimate contract.
- A VRS representative replied VRS checked with DAS and understood it didn't have to go through a DAS master agreement exclusively and thought it could enter into a contract with Robert Half because it had used Robert Half before. According to the VRS representative, VRS has since changed its process to a competitive bidding process.
- A representative of the Department of Economic Development responded it didn't bid out services at the time of the procurement from Robert Half but DAS has since explained how to correctly bid out services. The agency has changed its procedures to comply with guidance from DAS.
- A Department of Natural Resources representative stated the agency was not subject to DAS rules because of its designation as a charter agency. However, a representative initially responded it was acceptable to use the ITQ to procure services. Regardless, charter agencies were still required to maintain auditable documentation of procurement actions, including documentation to support the cost benefit of purchasing outside master agreements.
- A representative of the Department of Public Defense responded the agency had no additional information to provide.

State agencies should not have procured temporary services from Robert Half without conducting competitive bidding procedures since Robert Half only had an ITQ designation and not an actual contract. Because the ITQs were not based on competitive pricing, the rates billed to the agency could not be confirmed to be fair and reasonable prices.

We also determined the Robert Half invoices submitted to the Department of Public Safety (DPS) included significantly different hourly rates for the same employee. **Table 17** includes examples of the various billing rates identified in the invoices for one employee.

**Table 17**

<b>Week ending</b>	<b>Number of Hours</b>	<b>Hourly Rate</b>	<b>Total Charge</b>
10/26/07	10	\$ 92.50	925.00
11/02/07	33	185.00	6,105.00
11/09/07	32	200.00	6,400.00
11/16/07	40	200.00	8,000.00
11/23/07	21	200.00	4,200.00

As summarized in the **Table**, the hourly rate of the Robert Half employee varied by over \$100.00 per hour during the 1-month period summarized.

We also identified contracts between Robert Half and DPS for the same employee covering different time periods. According to a DPS representative, the employee was a consultant working for significantly different hourly rates depending on the job order. **Table 18** is a summary of the hourly rates in the contracts between Robert Half and DPS by job order and date.

**Table 18**

<b>Job Order</b>	<b>Start Date</b>	<b>Hourly Rate</b>
A	03/05/07	\$ 200.00
B	03/19/07	100.00
C	09/07/07	100.00
D	09/07/07	200.00

Due to the inconsistent hourly rates contracted through Robert Half for the same employee in the same time period, the improper use of the Robert Half ITQ designation and the lack of support for the rates established in the contracts, it appears the Department of Public Safety improperly procured the services of the Robert Half employee and did not employ adequate procedures to ensure pricing paid was reasonable.

When we discussed these findings with a DPS official, the official stated DPS operated under the understanding Robert Half had a master agreement with DAS. The official stated the purchasing agent for DPS who processed the payments to Robert Half was no longer with the agency and, therefore, DPS presumed the improper use of the ITQ was a misunderstanding on behalf of the purchasing agent. DPS should have had internal controls in place to recognize there were no established contract rates for Robert Half through DAS and the hourly rates paid for the services of the individual varied significantly from job to job without justification.

**3. DAS-HRE Contracts**

According to a DAS-GSE official, temporary staffing service contracts are not managed through GSE, which is responsible for procuring master agreement goods and services for general use. Rather, these contracts are administered by a different division of DAS, the DAS Human Resources Enterprise (DAS-HRE), and DAS-GSE does not issue master agreements to these providers. However, since HRE is part of DAS and the contracts specify multiple state agencies may utilize the contracts, we concluded the temporary staffing service contracts through DAS-HRE are functioning as master agreements.

The DAS-HRE contract with Labor World states its purpose is “providing temporary staffing services to State of Iowa agencies.” Although this contract was not developed as a master agreement through DAS-GSE, it was written to allow multiple agencies to utilize the contract. We also located an expired contract with Olsten Staffing Services, which merged with Adecco in 2000. The contract was from July 1, 2002 through June 30, 2004 and included an attachment listing 36 state agencies covered by the contract. DAS-HRE was unable to locate a current contract with Olsten/Adecco which was in place during the review period. We did not observe oversight activities in which DAS-HRE reviews activity against its contracts to ensure the provider is following contract requirements and agencies are properly utilizing the contracts. This function is under DAS-GSE’s role as the master agreement issuing entity, yet DAS-GSE has no first-hand knowledge of the contracts entered into by DAS-HRE.

**Findings -**

As a result of our review of Labor World and Adecco purchases included in our testing, we determined:

## General

- All purchases greater than \$5,000.00 from Adecco which were not based on competitive solicitation were improperly sole sourced to Adecco since there was no current DAS-HRE contract with Adecco during the time period under review.

## Department of Inspections and Appeals

- The Department of Inspections and Appeals (DIA) had an arrangement with Adecco in which Adecco agreed to match DAS-HRE's current contract rates with Labor World so DIA could continue to utilize Adecco to provide its temporary staffing service needs. In fiscal year 2008, DIA made payments to Adecco of \$89,839.11 without a valid contract.

In accordance with Chapter 105 of the IAC, state agencies may not use their delegated purchasing authority to avoid use of a master agreement. Whether or not the Labor World contract was a master agreement, DIA still improperly procured significant services without a valid contract.

- During review of a selection of invoices to DIA included in our review, we identified multiple labor rates Adecco billed to DIA which were higher than those in the Labor World contract. For example, Adecco billed for the labor category called Clerk at \$14.08 per hour, yet the Labor World contract hourly rate maximum was only \$9.71 per hour. As previously stated, DIA had an informal arrangement with Adecco to purchase temporary staffing services through Adecco at rates matching those of Labor World. Although this informal arrangement was violated, DIA has no legal basis to claim an overbilling because DIA improperly entered into an informal agreement for the services.
- In addition to billing DIA for hourly rates in excess of the Labor World contract rates, Adecco also billed for labor disciplines not covered by the Labor World contract. For example, Adecco billed for the labor category called Support at a rate of \$17.92 per hour. However, Support is not a labor category in the Labor World Contract and the highest hourly rate in Labor World's contract is \$15.87. Further, we identified an invoice in which multiple temporary staff members were listed and included on the billing, but no labor discipline was assigned to the staff.

Although the Labor World contract allowed for other labor categories not specifically included in the contract listing, we were unable to obtain documentation to confirm the rates billed were in accordance with the contract. Further, allowing for labor rates not pre-established in the contract puts the purchasing agency at undue risk because the provider can develop labor categories and billing rates at its discretion.

DIA responded to these findings by stating Adecco had a contract with DAS at the time DIA entered its agreement with Adecco. Further, DIA stated Adecco staff was experienced in the services DIA required and Adecco was providing outside reviewer services as required by federal law. We are not questioning the quality of services or the necessity of the services. The informal agreement with Adecco to match Labor World contract rates not only put DIA at risk due to the lack of a written contract, but it also negates the purpose of establishing statewide contracts awarded to the providers DAS procurement officials have determined are the best value for the State.

DIA stated it would review current temporary staffing services agreements to ensure the agreements meet necessary requirements.

### Department of Natural Resources

- DNR made several payments to Labor World for services in fiscal year 2008. We identified multiple invoices in our testing which were billed at a significantly higher hourly rate than any labor rates included in the Labor World contract. DNR classified the temporary staff member as “all other job titles” and paid \$29.12 per hour for the services. The highest hourly rate in the Labor World contract through HRE was \$15.87. While the Labor World contract allows for negotiated rates for job titles not contained in the contract, a rate nearly double the highest hourly rate contained in the contract indicates the temporary staff member may have been placed with Labor World in order to process the order when a specific contract with the temporary staff member may have been more appropriate.

DNR stated its authority as a charter agency provided DNR with flexibility in matters of human resources, information technology and procurement pursuant to Section 7J.1 of the *Code of Iowa*. While this is correct, DNR’s Charter Agency Agreement states, in part, it “may purchase goods and services outside General Services Enterprise (GSE) contracts provided the charter agency can document the cost benefit.” DNR did not provide support to demonstrate the cost benefit of the arrangement. As such, documentation was not sufficient to justify the payments made to Labor World.

### Iowa Veterans Home

- The Iowa Veterans Home (Vets Home) made a series of payments to Adecco during our testing period at a total cost of \$5,227.45. As previously stated, Adecco had no master agreement or contract through DAS-HRE at the time. When asked for the basis of the hourly rate of \$18.77 per hour billed for Clerk services, which was significantly higher than the Clerk hourly rate in the expired contract between DAS-HRE and Adecco which ended in fiscal year 2004, the Vets Home official we spoke with stated she had heard Adecco charges a mark-up of 40%.

Since there was no valid contract with Adecco and the purchase was in excess of \$5,000.00, the purchase of Clerk services was an improper sole source purchase. A Vets Home representative stated the Vets Home was operating with the understanding Adecco was under State contract with DAS. However, state agencies have a responsibility to confirm rates paid to contractors are consistent with current contracts. Had the Vets Home taken steps to confirm the order was in compliance with the contract, it would have determined Adecco did not have a contract with DAS.

- No Vets Home purchasing agents had advanced purchasing authority through designation as a center of excellence. Therefore, the purchasing agent improperly exceeded the \$5,000.00 purchasing limitation established in the IAC for purchases made without utilizing a master agreement.

### Iowa Vocational Rehabilitation Services

- Iowa Vocational Rehabilitation Services (VRS) made payments of \$42,427.70 to Adecco in fiscal year 2008 for temporary staffing services. However, we were unable to identify a contract between Adecco and VRS. In addition, Adecco did not have a contract with DAS. Therefore, all orders over \$5,000.00 VRS placed with Adecco in fiscal year 2008 were improperly sole sourced.

A VRS representative responded VRS checked with DAS-HRE on this matter and understood there was flexibility to employ temporary staff from providers other than those under contract with DAS-HRE as that contract was not required to be the

exclusive contract. As previously discussed, the VRS representative stated VRS has changed its processes and most recently solicited bids prior to hiring temporary staff. The representative stated VRS's previous misunderstanding has now been corrected.

#### Department of Cultural Affairs

- The Department of Cultural Affairs made payments of \$6,744.80 to Adecco for services provided in a 5 week period in fiscal year 2008 without the use of a contract and there was no valid master agreement through DAS with Adecco. A Department representative we spoke with stated the Department is currently working with DAS on its temporary staffing needs to ensure it procures the services in accordance with applicable requirements.

#### Iowa Workforce Development

- Iowa Workforce Development (IWD) made payments of \$1,677.60 to Labor World for services of a Utility Office Worker at a rate of \$20.97 per hour. However, the highest hourly rate approved in the DAS-HRE Labor World contract for a Utility Office Worker was \$9.81. Although the DAS-HRE contract isn't a typical master agreement because it was not managed by DAS-GSE, it was functioning as such. Therefore, Labor World should have complied with its contract terms, even if the total amount paid was under the \$5,000.00 competitive bidding requirement threshold.

In summary, we identified significant weaknesses during our testing of professional services procurements. Weaknesses identified included:

- Multiple work agreements directed to providers with ITQ designation without evidence of competitive bidding or price evaluations and without consistent pricing structures,
- Multiple orders for services without valid contracts or master agreements in place,
- Procurements beyond purchasing agent authority,
- Payments to providers for labor disciplines not covered by a master agreement with no evidence of due diligence of the state agency to ensure pricing was fair and reasonable and
- Accepting a bid from the provider which developed the specifications when the other provider bids were clearly not based on the same understanding of the requirements.

State agencies misused ITQ designations and did not have sufficient internal controls in place to control invoices submitted by providers. In addition, it is unclear which responsibilities should have been handled by DAS-HRE and DAS-GSE on the temporary staffing services contracts entered into by DAS-HRE. As a result, oversight of the contracts was not conducted and agencies improperly awarded professional services contracts.

#### **Recommendations –**

- DAS should implement controls over ITQs in which DAS can oversee ITQ activity to ensure agencies are using ITQs as required and should offer training and education regarding the contracts. Further, DAS should clarify on the face of the ITQs the limitations of the ITQs and state they may not be utilized without first conducting competitive bidding procedures. In addition, DAS should remove the "Master Agreement" designation from ITQ designations to clarify the ITQs are not master agreements. During a discussion with DAS officials to review preliminary findings, they stated they removed ITQs from the DAS website to eliminate confusion. However, they stated misuse was still a concern.

- When state agencies solicit bids and do not receive more than 1 bid, additional price analysis or negotiations should be conducted. When the single bidder holds a master agreement with DAS, the master agreement should be compared to the bid for reasonableness. Bids using rates higher than the master agreement rates should not be accepted.
- If multiple state agencies would like to utilize Adecco for their temporary staffing needs, DAS should conduct competitive bids and complete a master agreement with Adecco in which specific prices are established. If Adecco is not awarded a master agreement, state agencies should not procure temporary staffing services through Adecco over \$5,000.00 unless they do so through the competitive bidding process required by the IAC.
- DAS-HRE and DAS-GSE need to discuss roles and responsibilities regarding temporary service contracts. Each division of DAS must clearly understand its oversight responsibilities and conduct oversight procedures to ensure state agencies and providers are properly utilizing the DAS contracts. All master agreements for utilization by multiple state agencies should be conducted through DAS-HRE and should be made in accordance with IAC requirements.
- DAS should implement control procedures to identify when state agencies violate authorized spending limitations or improperly procure services through ITQ contracts. When violations occur, DAS should have procedures in place to educate the purchasing agents and implement purchasing authority suspensions in the event of repeat violations.
- In accordance with the IAC, DAS is responsible for establishing guidelines for implementation of procurement authority delegated to agencies and should assist agencies in developing purchasing procedures consistent with centralized purchasing policy and procedures and recommended procurement standards. Therefore, DAS should ensure state agencies have adequate internal controls in place to oversee procurement activity prior to DAS delegating procurement responsibilities to state agencies.
- General use service contracts for services such as temporary staffing or professional services should be administered by DAS and state agencies should utilize those contracts in order to:
  - Leverage buying power,
  - Confirm competitive pricing exists and
  - Ensure consistency in services provided by the providers.

## **F. Architectural and Engineering Contract Testing**

DAS had 10 active master agreements with providers to provide architectural and engineering (AE) services during the review period. All 10 providers received payments from the State for their services. However, a majority of payments specified as AE service payments were made to a few providers. In fiscal year 2007, HRG received 70% of total AE service payments. In fiscal year 2008, HRG received 43% while 2 other providers received 11% each of total AE service payments.

As previously discussed in **Section B** of the Findings and Recommendations, AE master agreements were awarded to multiple providers providing the same service. Although the 10 providers provided different AE services based on 5 different types of services, there were multiple options for each type of AE service. Master agreements were designed so they could be used without conducting additional competitive bidding procedures.

Therefore, state agencies in need of AE services may utilize any of the AE master agreements DAS has entered and do not have to conduct further competitive procedures. However, the master agreements DAS entered into with AE providers were not awarded on a competitive basis and did not establish contract pricing. As a result, state agencies awarding contracts to AE firms through use of master agreements have no assurance the prices paid are competitive because the master agreements have no pre-negotiated hourly rates by which AE firms are bound and, therefore, the contracts are ineffective in assuring price reasonableness. Further, as previously discussed, DAS determined state agencies were responsible for oversight of procurements made for services. Therefore, even though DAS entered into the master agreements with the AE providers, DAS did not conduct oversight activities related to use of the master agreements.

As previously stated, **Appendix A** includes a copy of the HRG AE master agreement which was in place during the period under review. As shown in the **Appendix**, the 2 services offered are architectural services and engineering services. The master agreement states, “Owner will negotiate projects on a case-by-case basis with consultant” and “Consultant will negotiate fees specific to each Delivery Order based on the available information and the Master Agreement.”

Although no specific pricing was established in the master agreements with the AE providers, a DAS official we spoke with stated any contracts awarded to AE providers through use of the master agreements could be considered fair and reasonable because DAS received pricing information when the AE providers responded to its solicitation for bids for master agreements. The DAS official reasoned since the master agreement was awarded after bids were received and evaluated, subsequent orders placed against the master agreements were fair and reasonable and no further pricing evaluations by state agencies was required. As discussed in the Findings below, there are significant risks with such rationale. Specifically,

- No pricing is established in the master agreements binding the providers to rates previously determined to be fair and reasonable, so there is no basis for pricing future orders against the master agreements.
- The master agreements were not established as a result of competitive bidding. All the providers which provided bids to DAS received master agreements to provide AE services. Therefore, it was not necessary to provide competitive prices in order to receive a master agreement.
- Since AE providers have master agreements, state agencies are not required to conduct additional procedures to ensure prices are fair and reasonable. The state agencies operate under the assumption DAS has already completed the necessary steps to ensure purchases using the master agreements are fair and reasonable.

#### **Findings –**

- The final AE master agreements do not establish and bind the AE provider to specific pricing quoted in the bidding process to obtain the master agreement. However, DAS officials we spoke with stated AE prices are fair and reasonable because the AE providers participated in competitive bidding procedures in order to obtain master agreements. Based on the contents of the AE master agreements, it is unclear why DAS has concluded the AE prices charged by providers are fair and reasonable. For example, if HRG submitted a proposal during the master agreement solicitation process quoting a specific billing rate for a Senior Engineer, HRG would not be bound by the quoted pricing and could propose any rate it deems appropriate when proposing a specific price for a project to be completed under the master agreement.

According to a DAS official we spoke with, DAS concurs there is a potential weakness in relying on master agreements without further pricing analysis. As a result, DAS has in-house procedures for purchasing agents to obtain multiple quotes from master

agreement AE providers in order to establish competitive pricing on all orders administered by DAS. However, soliciting competitive bids among master agreement AE providers is not a requirement for use of the master agreements and the internal practices at DAS do not extend to other state agencies. State agencies may select any AE provider with a master agreement with no further competition required. In contrast, DAS is treating its own master agreements as ITQ designations by having in-house requirements to solicit bids among the master agreement providers. If AE master agreements which DAS has entered into do not give DAS adequate assurance of price reasonableness, they are also not sufficient for other state agencies to verify price reasonableness and should not exist as currently structured.

- State agencies may select any of the AE providers with a master agreement to procure services from, regardless of whether the AE provider can provide the most competitive price. Even though the master agreement for HRG states the pricing is to be established on a project by project basis, the existence of a master agreement is used for justification of price reasonableness.

A DAS representative we spoke with stated it is difficult to consider price for AE master agreements due to *Code* requirements for AE contracts. Per the *Code of Iowa (section 8A.311.b)*, AE services are professional services to be awarded on the basis of competence, qualification for the type of services required and (emphasis added) a fair and reasonable price. If specific pricing cannot be established for AE master agreements, the master agreements should not be established. After collecting information on AE services, including the specific IAC rules, project specific nature of the services, and the multiple providers necessary to meet the needs of state agencies, it is apparent AE providers should not be awarded master agreements. Rather, as established in the ITQ rules, AE providers should be pre-qualified but additional price reasonableness procedures, such as competition, should be required on a project by project basis.

- Documentation provided by DHS Glenwood Resource Center to support fiscal year 2008 payments to HRG indicated DHS submitted a delivery order to HRG to provide services totaling \$120,200.00 for 6 miscellaneous projects, ranging in cost from \$10,000.00 to \$25,000.00. Documentation provided indicated the pricing quoted by HRG was firm fixed price, lacking a breakdown of unit costs which were the basis of each project estimate. In addition, there was no documentation to confirm price reasonableness procedures, competitive bidding or negotiation activities had been conducted. Because the master agreement contains specific hourly rates for services by job category, it is unlikely proper use of the master agreement would result in pricing in even increments, such as \$10,000.00 or \$25,000.00.

When we asked DHS for additional information regarding the projects, the DHS official we spoke with stated the projects were complete and payments related to the projects totaled only \$87,072.00. We were unable to identify the reason additional payments were not made. In addition, it was not clear which projects were completed or how much each project cost compared to the amounts submitted on the delivery order. However, according to the DHS official, the projects were complete and no additional payments would be necessary.

- ABD, with DAS assistance, awarded a Roof Replacement Project for \$30,450.00 and a Window Replacement Project for \$7,000.00 to HRG. We did not identify any evidence of fair and reasonable price evaluation procedures conducted when selecting HRG as the AE provider. Although competition isn't specifically required when purchasing AE services using master agreements, state agencies are required to determine the pricing received is fair and reasonable. The DAS official who selected HRG was no longer with DAS at the time of our review and DAS could not determine the basis of HRG's selection to complete the project. A DAS official we spoke with stated the

contract was appropriate and considered fair and reasonable because the master agreement was based on competitive procedures. However, we identified the following concerns with this conclusion:

- As previously discussed, multiple AE firms with varying pricing structures received master agreements. Thus, AE firms didn't have to provide the best pricing to receive a master agreement. As such, master agreements have not been established in a manner to ensure fair and reasonable prices are achieved.
- AE master agreements do not establish any pricing as a result of the competitive procedures completed. Therefore, the presence of a master agreement between HRG and DAS does not affect the prices HRG quotes to state agencies against the master agreement.
- Even if the AE master agreements had established pricing, the bid accepted was firm fixed price and was specific to the project bid. Therefore, the pricing could not have been verified against a master agreement.

As illustrated by these concerns, AE master agreements do not ensure competitive pricing has been achieved.

- According to DAS officials we spoke with, DAS plans to limit construction and AE master agreements to services under \$25,000.00. DAS also plans to "strongly suggest" anything over \$25,000.00 be competitively bid. Although we observed language specifying the \$25,000.00 limitation on a construction master agreement, we have not identified such language in an AE master agreement.

#### **Recommendations -**

- All master agreements which were not awarded on a truly competitive basis or do not establish binding master agreement pricing should be reevaluated. Master agreements which permit pricing subsequent orders on a case-by-case basis should be canceled. In addition, if competitive bids were not obtained and additional competitive pricing procedures were not conducted, master agreements should be renegotiated or canceled. Further, any master agreements which do not include pricing which providers must honor should be cancelled or reclassified as ITQ designations only, which require users to conduct competitive pricing procedures prior to awarding a project to a provider.

Master agreements should not be established simply to allow agencies to avoid competitive procurement requirements which have been established to ensure state agencies obtain the most competitive prices possible.

- DAS should negotiate hourly labor rates which are pre-established in the master agreements. In addition, providers should be required to submit billings consistent with the master agreement if agencies intend to utilize the master agreement. Any invoices which are submitted in a manner inconsistent with the master agreement should be rejected by the state agencies unless those invoices were derived from competitive bidding.
- As previously stated, master agreements for services should only be utilized if the state agency can estimate the value of the services prior to requesting a quote. If the agency can not estimate the value of the services needed, competitive bids are necessary to protect the state agency from providers inflating their quotes.
- Firm fixed price quotes or bids and subsequent invoices which only include a single price for the project as a whole should not be accepted if the basis of price reasonableness is a master agreement. When pricing is fixed price, there is no way to

verify the price is in compliance with a master agreement. As such, firm fixed price quotes or bids should not reference master agreements unless itemized pricing detail is also provided and determined to be in accordance with master agreement pricing.

### G. Exempt Agency Contract Testing

During review of purchases of goods and services, we selected certain providers to include in our testing procedures and evaluated purchases by state agencies from each selected provider. Several state agencies included in our testing procedures were exempt from DAS centralized purchasing requirements in accordance with Chapter 105 of the IAC, which states DAS shall procure goods and services of general use for all state agencies with a few exceptions, as previously listed in **Table 1**.

Based on statutes related to the exemptions and discussion with DAS officials, the rationale for giving certain state agencies exempt status was because of the agencies' need to make unique purchases. We were unable to determine why it was necessary for certain state agencies to be exempt from centralized purchasing requirements when procuring goods and services of general use. In accordance with Chapter 105 of the IAC, goods and services unique to state agencies may be procured independently of DAS.

In addition, Senate File 2088, which was enacted into law after completion of our fieldwork, permits bypassing requirements to purchase from master agreements when more favorable pricing is obtainable. With these allowances available, exempt status from centralized procurement standards is unnecessary. In addition, exempt status of state agencies reduces accountability and removes the oversight DAS can provide to ensure state agencies utilize proper procurement standards.

Although we did not conduct substantial testing procedures of specific contracts of exempt agencies, we did test contracts held by some of the exempt state agencies for general use items. In addition, we determined many of the exempt state agencies relied on DAS master agreements to meet agency needs.

#### Findings –

- As stated previously, exempt status of state agencies reduces accountability and eliminates oversight controls of DAS, thus causing unnecessary risk to procure general use goods and services. Further, we did not identify adequate justification of the necessity of procuring general use goods or services independent of centralized purchasing authority.
- During our testing, we identified 3 exempt agencies which cited DAS master agreements as the basis of their procurements. **Table 19** summarizes the details of the specific procurements identified.

**Table 19**

Agency	Provider	Amount
(a) Department of Transportation*	Siemens	\$ 177,746.69
(b) Iowa Communications Network	Waldinger	63,213.00
(c) Department for the Blind	Baker Group	6,815.69

\* - The amount paid to Siemens is the total of 4 separate contracts.

Each agency listed in the **Table** is exempt from centralized purchasing requirements. However, each agency stated master agreements were the basis of price reasonableness when procuring the goods and services needed. Consistent with state agencies with centralized purchasing requirements which improperly referenced the master agreements, these state agencies signed contracts with the providers based on

a firm fixed price which could not be verified against the master agreements. Additional information for the purchases is included in the following paragraphs.

- (a) The Department of Transportation (DOT) placed 4 separate orders with Siemens and stated the master agreement was the basis of the contracts. However, each of the 4 orders was also firm fixed price in nature and could not be reconciled to the Siemens master agreement.

A DOT representative we spoke with stated 2 of the 4 orders went through DOT internal purchasing procedures, which include evaluation of the bids for reasonableness through comparison of the bids to in-house cost estimates completed prior to the request for bids. The other 2 orders were not processed through DOT's internal purchasing procedures. Due to the firm fixed price nature of the bids, price reasonableness of the 2 orders not reviewed by DOT's internal purchasing department could not be verified.

In addition, the largest of the 4 projects totaled \$75,861.69. DOT has its own procurement requirements established in the IAC. Specifically, DOT's procurement requirements state a "limited solicitation method of procurement may be used if formal advertising is not feasible or practicable, or the estimate, aggregate amount of purchase is less than \$50,000.00." According to the IAC, the "limited solicitation" method is to obtain a sufficient number of quotations or bids from qualified sources. Since the master agreement was improperly referenced, DOT failed to conduct formal advertising procedures as required. A DOT representative stated DOT has addressed this issue and the order should have been processed through DOT's internal purchasing department in accordance with IAC requirements.

- (b) ICN signed a contract with Waldinger for a firm fixed price of \$63,213.00. Although the contract referenced the master agreement and a request for bids, ICN did not provide any documentation to show it solicited bids from providers other than Waldinger. In addition, when questioned regarding the basis of the pricing, an ICN official we spoke with stated ICN used the master agreement and was not required to obtain bids. As previously explained, firm fixed price contracts are not verifiable against master agreements and, therefore, are not in accordance with master agreements.

- (c) The invoice the Department for the Blind received from Baker Group was billed as follows:

8 hours labor used at \$89.00 per hour	\$ 712.00
12 hours labor used at \$99.00 per hour	1,188.00
Material used	4,915.69
Total	<u>\$ 6,815.69</u>

The invoice did not define the labor discipline provided or the specific materials provided. The master agreement with Baker Group does not include labor rates of \$89.00 or \$99.00 per hour. In addition, materials are to be billed at the contractor's cost plus 15% or in accordance with the award grid summarized in **Appendix C**. The information provided on the invoice was not sufficient to ensure the materials were properly billed to the Department for the Blind.

As a result of our review, we determined the 3 state agencies improperly used DAS master agreements as the basis of the contracts they entered into with master agreement providers. As a result, master agreement providers received improperly sole sourced contracts awarded without competitive bidding procedures and without master agreement pricing.

- We determined 2 exempt state agencies we spoke with do not have their own procurement policies. Although we did not have specific concerns with the procurements we reviewed, exempt agencies should either adopt centralized procurement policies or develop their own policies if the agencies continue to be exempt.
- We tested 4 invoices with Adecco, a temporary staffing services agency. As previously discussed, Adecco did not have a valid contract through DAS at the time of our review. Although DOT is not subject to DAS procurement standards, we were unable to identify:
  - Signed contracts with Adecco,
  - Evidence of competitive bids or
  - Price evaluations or negotiations on terms of payment.

DOT purchasing procedures require auditable documentation be maintained to show it was not possible to competitively bid or negotiate the terms of certain contracts. However, documentation was not available for the services procured from Adecco. As a result, DOT should have conducted competitive bidding procedures prior to selecting Adecco to provide services.

In addition, we identified hourly billing rate variances for the same labor discipline. Adecco billed for a Clerk at rates ranging from \$11.85 per hour to \$18.89 per hour, indicating a lack of controls or oversight to ensure consistent billings were received. In fiscal year 2008, DOT paid Adecco \$76,135.71 for “miscellaneous” services, as documented in DOT’s voucher payment system.

In addition, in accordance with DOT procurement requirements, competition should be used to the maximum extent possible and negotiations or limited solicitations should be used to the maximum extent possible.

- We compared DAS and DOT procurement requirements as summarized in sections 105 and 20, respectively, of the IAC. As a result of the comparison, we determined DOT procurement requirements are more general in nature and give purchasing agents more discretion on whether to conduct competitive bidding procedures and to what extent.

According to Chapter 20 of the IAC, procurement of equipment, materials, supplies and services is to be done in the “most efficient and economical manner possible” and “procurement shall be competitive to the maximum practicable extent.” In contrast, Chapter 105 of the IAC definitively states procurement of goods and services must be competitive for all goods purchases and services purchases over \$5,000.00. By operating under DOT procurement rules, DOT purchasing agents are permitted to use their discretion to decide how to procure goods and services and whether it is “practicable” to seek competitive bids for the procurements.

In addition to the example provided in the previous paragraph, DOT also permits purchasing agents to define the “sufficient number of prospective bidders” to include in formal bidding opportunities and allows purchasing agents to utilize formal bidding procedures when “feasible and practicable under the existing conditions and circumstances.” In contrast, DAS procurement rules require public bid openings and do not provide procuring officials the option to opt out of formal bidding procedures.

DAS procurement rules were developed to protect state agencies from uncompetitive pricing and to ensure taxpayer funds benefit the public to the maximum extent possible. By permitting exempt state agencies to utilize procurement standards which do not protect taxpayer funds to the same extent, the state is exposed to unnecessary risk.

## **Recommendations -**

- There is no independent benefit for state agencies to be exempt from centralized procurement procedures established by DAS for general use goods and services. SF 2088, which was enacted after completion of our testing, has eliminated exempt status for most of the previously exempt agencies. The Legislature should evaluate whether allowing any state agencies to be exempt from centralized purchasing requirements is collectively in the best interest of the state when considering leveraged buying power.

As previously listed in **Table 1**, several state agencies were exempt from centralized purchasing requirements prior to SF 2088. Under SF 2088, however, only the Board of Regents and institutions under the control of the Board of Regents are exempt. In accordance with the new legislation, DAS may authorize the Department of Transportation, Department for the Blind and any other agencies otherwise exempted by law from centralized purchasing to directly purchase items used by those agencies without going through DAS if DAS determines such purchasing is in the best interest of the state. However, with the provisions of the IAC and SF 2088, which allow for alternative procurement processes in the event better pricing can be achieved or in the event a good or service is specific to the needs of the agency, authorizing state agencies to be exempt from centralized purchasing requirements is unnecessary.

- Whether exempt from DAS authority or not, state agencies should be required to confirm pricing of orders placed against master agreements are, in fact, in accordance with the master agreement pricing. If pricing is not consistent, state agencies cannot rely on master agreements to verify price reasonableness and need to ensure through other methods the pricing they have obtained is fair and reasonable.
- All purchasing agents, whether serving exempt agencies or not, should be required to receive specific training each year regarding procurement requirements and best practices. This training should include specific limitations of master agreements so agencies utilizing the master agreements understand their responsibilities when utilizing master agreements. SF 2088, which was enacted after completion of our testing, now requires procuring officers for state agencies which procure services to receive annual training on procurement rules and regulations and procurement best practices.
- All state agencies, whether exempt or not, should have specific standards of procurement in their written policies which will guide procurement decisions of purchasing agents representing the agencies. In addition, a centralized entity should be designated to provide oversight to ensure the standards established are appropriate and complied with. Based on the procurement expertise at DAS, consideration should be given to charging DAS with this responsibility.

## **H. Non-Contract Procurement Testing**

We determined the Department of Corrections (DOC) made significant payments to Advanced Technology Group (ATG) without valid, current contracts or contract documentation on file. Because of the significant payments made, we conducted additional procedures to determine the circumstances of the procurement.

From fiscal year 2000 through fiscal year 2010, DOC paid ATG \$22,384,821.00. **Table 20** summarizes the yearly payments DOC made to ATG.

**Table 20**

<b>Fiscal Year</b>	<b>Amount</b>
2000	\$ 1,483,126.00
2001	1,388,716.00
2002	2,780,855.00
2003	2,787,070.00
2004	2,043,439.00
2005	1,313,900.00
2006	1,315,894.00
2007	1,990,126.00
2008	3,128,400.00
2009	2,334,530.00
2010	1,818,765.00
Total	<u>\$ 22,384,821.00</u>

In fiscal year 2008, the time period under review for service contracts, DOC paid ATG \$3,128,400.00. Payments to ATG are for hosting the ICON system, developing updates to the system and making system modifications to provide better information as DOC's needs change.

Due to concerns raised by DAS in regard to the significant payments to ATG by DOC and insufficient documentation identified in the files requested, we requested a meeting with the DOC Director and corresponded with him and other DOC officials in order to understand the relationship between DOC and ATG.

**Appendix F** is a letter provided by the DOC Director in March 2009 regarding the history of the ATG working relationship. According to the DOC Director, ATG has been providing technology services to DOC for over 10 years. When DOC originally contracted with ATG to develop DOC's initial unified banking program, ATG was a TSB providing IT services through what was then the Department of General Services (now DAS-GSE).

The DOC Director stated ATG was the only provider interested in working with DOC. Since the initial work began 10 years ago, ATG has worked with DOC to create, according to the DOC Director, "the nation's premier offender management system," Iowa Corrections Offender Network (ICON). According to the Director, DOC has always used the DAS master agreements for IT services. His letter stated,

"Over the years a virtual sole source relationship has developed between ATG and the DOC. While never the goal or intent of the DOC to become so closely tied to a single IT provider, the unique public/private partnership has been beneficial to this State. Every project has been on-time, well-received by end-users and met project goals."

Throughout the review, we requested contract documentation beyond the DAS master agreement to support the relationship between ATG and DOC. DOC did not provide any documentation indicating a contract existed. However, we obtained documentation which referred to a contract between ATG and DOC and requested a copy of that contract from the Attorney General's Office.

The contract identified was signed on March 23, 2000 and established ownership of the ICON banking system and ICON offender management system with ATG in exchange for ATG splitting all profits with DOC from marketing the system to other correctional institutions. **Appendix G** is a copy of the contract between DOC and ATG detailing the

agreement to share the profits of marketing the software. When we requested documentation, such as modifications or cancelation of the contract from DOC, DOC did not respond. The contract established did not include specific terms and conditions relating to ATG's services to DOC or the costs of providing such services.

### **Findings –**

Based on information obtained from DOC and DAS officials and a review of related documentation, we identified several concerns regarding the relationship DOC developed with ATG.

- Prior to September 23, 2010, DOC utilized ATG services without a formal contract. As previously stated, according to the DOC Director, DOC initially secured ATG's services when ATG was a TSB provider under contract with the Department of General Services over 10 years ago. However, ATG is no longer designated as a TSB because the provider no longer meets TSB qualifications. Later, DOC officials and ATG stated the basis of the relationship was ATG's ITQ designation through DAS. Neither the TSB contract nor the ITQ designation referenced is relevant to ATG's specific services to DOC and relying on such contracts as a basis for price reasonableness is improper. The reasons they are not relevant include:
  - ATG has not been a TSB provider for many years. As such, relying on a TSB contract as the basis of any current pricing would be improper. DOC could not provide original documentation of the initial contract DOC established with ATG for services when ATG was a TSB provider.
  - As discussed previously in this report, the ITQ designation is merely a pre-certification to allow providers to participate in competitive bidding opportunities when they become available. ITQs have not been awarded to providers in a competitive manner and utilization of ITQs as a basis of pricing does not meet the procurement requirements of the State. **Appendix H** is a copy of ATG's ITQ designation. As shown in the **Appendix**, no pricing is included in the ITQ.

In April 2009, we requested a copy of the original contract between DOC and ATG but DOC did not provide the contract. DOC also did not provide any statements of work. As a result, we were unable to determine if DOC followed adequate procedures to ensure payments to ATG were based on pre-established requirements. We again requested the contract in June 2010. DOC again did not provide a contract. Instead, DOC provided documentation to demonstrate it is now tracking approval of expenditures with ATG, as discussed later in this section. Because a contract was not provided, we determined DOC had been making payments to ATG for an extended period with no established contract in place. Although DOC officials have stated DOC had a contract with ATG when the relationship began, such documentation has not been provided. In addition, service contracts are limited to 6 years. Since there was no contract, DOC had no assurance the prices paid were appropriate for the services received.

- DOC has not provided adequate documentation to support the \$3,128,400.00 DOC paid ATG during fiscal year 2008. Appropriate documentation should include items such as statements of work, signed agreements listing the goods and services provided and the terms of the projects ATG completed in exchange for the payments made. We found no evidence of price evaluation, sole source justification, statements of work or evidence of DOC oversight to ensure services ordered were provided in accordance with pre-established terms and conditions prior to payment for services.

Further, even if the TSB contract or the ITQ designation were relevant, DOC still must maintain documentation of the specific deliverables ATG is providing in the form of statements of work and other appropriate contract documentation.

- According to the DOC Director, DOC is completely dependent on ATG for IT services as they relate to ICON because DOC does not have an IT department. The Director stated ATG is essentially DOC's IT department. As a result, a majority of IT services DOC needs are provided by ATG. A DOC representative we spoke with stated when DOC ICON system users identify a need within the system, DOC and ATG meet to discuss the system needs and ATG proposes a firm fixed price proposal to meet the needs identified. DOC officials then determine whether or not to approve the funds to meet the need. We were unable to ensure DOC performs price negotiations or independent verification the price proposed is fair and reasonable. In addition, due to the customized nature of the software and services needed by each customer, it would be very difficult to determine price reasonableness in a non-competitive environment.
- ATG provides hosting services to DOC for the ICON system for \$9,000.00 per month. Upon request, ATG provided a summary of daily management tasks for the ICON system as well as specific listings of work performed during specific months included in our testing. Based on the documentation, ATG averages 3 hours per day on hosting activities, or 60 hours per month, which is billed at an hourly rate of \$150.00.

The explanation and the summary of daily management tasks are not included in a contract between ATG and DOC. In addition, since a contract for hosting services was never established and competitive bids for hosting services were never received, we could not determine if the hosting fee of \$9,000.00 per month is reasonable for the services provided.

In addition to paying monthly hosting fees, DOC paid ATG \$3,029,400.00 for other services during fiscal year 2008. **Appendix I** includes an example of an invoice from ATG for a project. As illustrated by the **Appendix**, ATG billed \$150.00 per hour for services. This hourly rate is consistent with the other ATG invoices we reviewed. However, it is not consistent with payments made when work is conducted on a firm fixed price basis, which is the type of proposal ATG stated it typically provides. According to ATG, it does not bill DOC until each project is completed.

As illustrated by **Appendix I**, the invoice does not reference a contract or statement of work which provides the detail necessary to ensure the services received by DOC are for a fair and reasonable price. The specific services to be received by DOC for the project payments were not documented in a written agreement with ATG. In addition, an agreement was not developed which specified the number of hours to be incurred on the project.

Although ATG stated it utilizes firm fixed price contracts, contracts documenting the prices agreed to were not provided by DOC or ATG. In addition, the ATG representative stated ATG does not provide progress reports or deliverable reports due to the additional administrative costs they would require. Instead, ATG proposes a date of completion and total project cost and then delivers the product in accordance with those terms.

- As previously stated, DOC initially procured services from ATG to create the ICON system over 10 years ago. During discussion with DOC officials, we learned DOC received credits from ATG in the past as a result of releasing the ICON program to the Federal government for use. However, the DOC Director stated the receipts DOC received in past years are no longer received. According to a representative of ATG we spoke with, ATG gave DOC approximately \$400,000.00 in credits to its billings in 2001 and 2002 to share some of the benefit of selling the products DOC assisted in

developing. During our discussions with representatives of ATG and DOC, neither party referenced a formal agreement or contract established between ATG and DOC associated with the credits ATG extended to DOC. However, when reviewing contract file documentation, we identified a reference to a contract and requested a copy of the contract from the Attorney General's Office, which was provided. **Appendix G** is a copy of the contract provided by the Attorney General's Office.

According to the contract signed on March 23, 2000, DOC agreed to transfer its rights to the ICON-Banking system and ICON-Offender Management system to ATG in exchange for 50% of any licensing fees (less 50% of marketing expenses) ATG received as a result of selling the systems to other correctional institutions. The representative of the Attorney General's office we spoke with did not have any record of amendments to the contract which would indicate the contract was no longer valid. However, when we asked the DOC Director, John Baldwin, about the contract, he stated he would get back to us on the issue.

Nearly a month later, Director Baldwin provided a copy of an amendment to the initial contract which canceled DOC's rights to 50% of the licensing fees. Director Baldwin did not provide any supporting documentation to justify why DOC would agree to forfeit its rights to those fees and did not provide the contract file for our review, even though we requested the file. **Appendix J** is a copy of the amendment to the initial contract which cancels DOC's rights to 50% of the licensing fees established in the March 23, 2000 contract included in **Appendix G**.

Upon receipt of the amendment canceling DOC's rights to half of all licensing fees generated for ICON-Banking and ICON-Offender Management systems, we requested additional information regarding the circumstances of the amendment. Additional information gathered includes the following:

- The amendment does not have a date the amendment was signed, as is typically included on contracts and amendments. Instead, it only has an effective date. When we asked Director Baldwin when the contract was signed, he stated it was signed at the same time as the effective date. As shown on **Appendix J**, the effective date is July 23, 2003. At that time, John Baldwin was an Assistant Director and Gary Maynard was the Director of DOC. Current Director Baldwin and former Director Maynard did not provide an explanation for why the Assistant Director signed an amendment on behalf of DOC as the Director. In addition, former Director Maynard could not recall the circumstances of the amendment. He stated he recalled the arrangement with ATG changing, but he could not recall participating in establishing the amendment.
- During discussion with former Director Maynard, he stated he recalled DOC was not happy about the arrangement with ATG changing. Director Baldwin made no mention of being dissatisfied the amendment was signed.
- Director Baldwin could not recall who specifically was involved in developing the amendment. According to a representative of the Attorney General's office, the Attorney General was not aware of the amendment. In addition, Director Baldwin initially could not recall who located the amendment. Later, after multiple requests, he stated ATG provided the copy of the amendment.
- We worked exclusively with a liaison at DOC on this review. However, when asked about the amendment, the liaison stated she was not involved in locating the amendment and must have been on vacation when the request came in. However, as previously stated, Director Baldwin did not respond for nearly 1 month.

- Director Baldwin stated DOC had to amend the contract because the programming language, Visual Basic, was outdated and no longer attractive to other correctional institutions. Since the initial contract wasn't going to make any money, DOC decided to amend the contract. However, Visual Basic is still a valid programming language today. In addition, updating programming language typically does not result in cancelation of copyright laws. The initial contract stated, "This license also includes any enhancements, updates, and improvements to the software program or programs covered by this Agreement." In addition, prior to discussions regarding the amendment, representatives of DOC and ATG never discussed issues with programming language. Further, there would be no reason to amend the arrangement just because the specific software wasn't purchased by other correctional institutions. Rather, DOC simply would not be paid.
- At this time, there is no documentation to demonstrate signing the amendment canceling DOC's rights to licensing fees was beneficial to DOC. In addition, no parties other than Director Baldwin and ATG have been identified with which to discuss the circumstances of the amendment.

After obtaining the information regarding the contract and subsequent amendment to cancel rights to licensing fees, certain questions remain unanswered, as follows:

- 1) Why would an Assistant Director sign a significant contract amendment as the Director?
  - 2) Why didn't DOC consult the Attorney General's Office before forfeiting its rights to licensing fees granted to DOC in an original contract reviewed by the Attorney General's Office?
  - 3) Why would an amendment to cancel all rights to licensing fees be necessary if the software covered by the original contract was no longer being sold?
  - 4) Why would DOC willingly give up its rights to licensing fees with no comparable compensation in return?
  - 5) Why are the only people able to recall the events of the amendment the Director of DOC and ATG, the parties who signed the amendment?
  - 6) Are there unknown conflicts of interest which would cause DOC to forfeit its rights to licensing fees and fail to require contracts for all services for over 10 years?
- In regard to specific services provided to DOC by ATG related to software usage, DOC did not have, and had not previously had, a valid contract established with ATG in regard to the specific services it received from ATG on an annual basis. In addition, the documentation for payments made to ATG was not sufficient to ensure the cost of services provided is fair and reasonable.

In April 2009, the DOC Director stated he concurred DOC needs to have better documentation of payments made to ATG. As a result, the DOC Director stated DOC will utilize a form referred to as a change order form to support future change orders. **Appendix K** includes a copy of the change order form the DOC Director provided. However, a change order is not valid if it is not a change order referencing an original contract. We discussed this concern with the Director at the time and recommended DOC must award a base contract before beginning a change order process. However, DOC continued to use its change order forms and did not establish a base contract until September 23, 2010.

According to a DOC representative we spoke with, the only change DOC has made to its processes and procedures in the last several years has been to track and sign the change order documents. When asked if additional documentation was maintained for each project, the DOC representative provided copies of project scope reports developed by ATG, but these documents did not include completion dates, costs or proof DOC conducted appropriate processes to ensure the prices paid were fair and reasonable. In addition, no sole source justifications have been identified. The DOC representative stated she could provide copies of email correspondence to document communications regarding each project. However, she stated the correspondence would not support the costs. In addition, she stated minutes of meetings DOC holds with ATG officials when developing project scopes are not prepared.

- DOC provided a summary of change orders it has processed since it implemented procedures to track change orders. However, DOC has not provided documentation supporting the costs of each change order, such as documentation to confirm specific deliverables were provided for the cost agreed upon prior to completion of the project or documentation DOC evaluated the cost proposal and verified it was reasonable. Change orders not based on a current, valid contract are invalid.

The change order listing did not include project dates or summaries of the dates agreed to and the dates the projects were completed. According to the DOC Director, implementation of change order tracking began on May 1, 2009. The change order summary included 1 change order listed for fiscal year 2009 and 74 change orders listed for fiscal year 2010. The total change orders listed as “signed” since change orders were initiated is \$722,110.00. **Appendix L** includes a copy of the change order summary DOC provided.

- IMCC processed payments to ATG on behalf of DOC’s Central Office, which typically pays a majority of the ATG billings. According to payment records, the DOC utilized funding from multiple DOC facilities from fiscal year 2000 through 2009 to pay ATG. Based on documents we reviewed, IMCC paid ATG \$2,009,250.00 for services ordered through DOC’s Central Office in fiscal year 2008. IMCC did not request or maintain documentation to support the payments made to ATG on behalf of Central Office.
- In accordance with Chapter 105 of the IAC,
  - State agencies may procure services unique to the agency’s specific needs and procurement of services by a state agency shall comply with Chapters 106 and 107 of the IAC.
  - Agencies shall establish internal controls and procedures to initiate purchases, complete solicitations, make awards, approve purchases and receive goods.
  - Purchasing authority delegated to state agencies shall not be used to avoid use of master agreements.

In addition, Chapter 106 of the IAC requires state agencies to use competitive selection to acquire services equal to or greater than \$5,000.00 unless there is adequate justification for a sole source or emergency procurement and use of a sole source procurement does not relieve a state agency from negotiating a fair and reasonable price and thoroughly documenting the procurement action. Chapter 107 of the IAC requires specific contract clauses for service contracts.

DOC misused its delegated purchasing authority. As discussed previously, DOC processed payments of nearly \$22 million over an 11 year period without a valid contract in place to cover the services received in exchange for the payments made. In addition, DOC could not provide documentation to indicate internal controls and

contract management activities were conducted in accordance with state procurement requirements.

- After discussing our findings with DOC officials and expressing our concern regarding the lack of a valid contractual agreement with ATG on a number of occasions, DOC developed a contract with ATG which became effective on September 23, 2010. The contract provides for software maintenance and server administration and hosting services for monthly fees of \$76,400.00 and \$9,000.000, respectively. This arrangement equates to an annual cost of \$1,024,800.00 with an annual fee increase limitation of 6%. Any additional enhancements to the ICON system are not included in the contract. Instead, the contract allows for change orders. DOC did not complete a sole source justification when it signed the contract with ATG. After we requested a copy of the sole source justification, DOC drafted a justification and provided a copy to us on January 10, 2011. However, completing a sole source justification after the contract has been awarded is not sufficient.

When asked how DOC determined the amounts specified in the contract, DOC officials responded we should observe the ICON system to understand its functionality and we should understand it's not something that can be transferred to another provider. In addition, DOC provided information to show another state paid considerably more than DOC for its inmate management system. However, given the significant differences in capabilities and the significantly larger inmate population of the other state, we were unable to make a comparative analysis.

A DOC official we spoke with also stated DOC does not operate with specific deliverables required. DOC receives a specific budget for ICON each year and does not spend more than the amount budgeted. The official explained if DOC doesn't have the money in the budget to complete a desired upgrade, the upgrade is not implemented until the following fiscal year. Although DOC is spending within the parameters of its budget, the budget amount does not relieve DOC from the responsibility to obtain the best price for the services received.

- As previously discussed, we discussed our concerns with DOC regarding its lack of contract with ATG in April 2009 and recommended DOC take action to develop a contractual relationship with ATG. In July 2010, we again advised DOC it was at risk given its lack of contractual relationship with ATG and recommended DOC establish a contract with ATG. As a result of these recommendations, DOC signed a contract with ATG on September 23, 2010.

According to a DOC official, due to the sole source nature of the relationship with ATG, DOC could not solicit competitive bids. In addition, in a conversation with an ATG official, the official stated DOC is a small customer and ATG would not be significantly impacted if DOC was no longer a customer. As such, DOC's ability to negotiate may be minimal. However, DOC did not provide sufficient documentation to demonstrate it conducted negotiations and price reasonableness procedures to ensure the contract signed was determined to be fair and reasonable. In addition, we did not receive documentation DOC developed a sole source justification for the procurement prior to signing the contract.

#### **Recommendations –**

- DOC should consult the Attorney General's Office to determine whether further review of the procurement activities between DOC and ATG is necessary to ensure DOC is properly administering its contracts and taking corrective action to ensure its procurement activities are conducted in accordance with centralized procurement procedures.

- DOC should take action to ensure all future payments to ATG are based on pre-established deliverables and pricing based on negotiations and DOC’s verification prices are fair and reasonable.
- DOC should evaluate costs associated with ATG services and determine if hiring permanent staff to handle routine IT tasks would be financially beneficial. The DOC IT staff hired should also have an understanding of the ICON system which would allow the staff to provide expertise to assist DOC in ensuring the proposals submitted by ATG for specific future projects are fair and reasonable.
- DAS should implement control procedures over service contracting activities at all state agencies and utilize its authority over procurements to ensure agencies are in compliance with purchasing requirements.
- DAS should perform additional review procedures of DOC procurement activities with a selection of other providers to determine if DOC is properly administering its contracts in other areas. If DOC does not have adequate controls in other procurement areas, DAS should suspend DOC’s delegated authority to procure goods and services without DAS assistance. In addition, DAS should train DOC procurement officials and work with DOC to implement contracts with other providers, if any, currently operating without the benefit of valid contracts. Further, DAS should work with DOC to initiate adequate internal controls so improper payments to providers without valid contracts will be identified and immediately stopped in the future.
- DOC procurement staff should continue to receive training and instruction from DAS on the documentation required prior to processing payments. In addition, DOC purchasing agents should not process payments for goods or services unless they have and approve of the supporting documentation associated with the purchase.

**I. Contract Clauses**

Chapters 106 and 107 of the IAC include specific contract requirements which are to be included in all contracts. We included compliance with these requirements in our review of service contract documentation. Specifically, we reviewed the contract requirements listed in **Table 21**. We also determined whether the contract file reviewed included documented approval of renewal options for the next period.

**Table 21**

<b>Requirement</b>	<b>IAC Reference</b>
Bid was advertised or a sole source procurement was adequately justified	105
Contract has a specific start and end date and is not self-renewing	106.11
Contract duration does not exceed 6 years	106.16(8a)
Payment clause was included in the contract	107.4(1)
Contract is signed by both parties	106.12(3-4)
Contract was marketed to small businesses	106.12(1)
Contract file includes appropriate monitoring and review clause	107.4(2-3)

**Findings -**

We identified several service contracts which were awarded without contract clauses required in the IAC. The contracts identified are discussed in more detail in the following paragraphs.

- We identified 8 service contracts which were awarded without monitoring and review clauses. **Table 22** lists the 8 contracts identified.

**Table 22**

<b>Agency</b>	<b>Provider</b>
Department of Natural Resources	American Computer Services
Department of Public Health	American Computer Services
Iowa Vocational Rehabilitation Services	Siemens Building Technology, Inc.
Fort Dodge Correctional Facility	Baker Group
Iowa Public Television	Siemens Building Technology, Inc.
Iowa State Penitentiary	Siemens Building Technology, Inc.
Iowa Workforce Development	Robert Half International
Newton Correctional Facility	Siemens Building Technology, Inc.

- We identified 2 contracts which did not include a start or stop date. The contracts were between the Iowa Department of Public Health and American Computer Services and Iowa Vocational Rehabilitation Services and Robert Half International.
- We identified multiple employment contracts for employees of Robert Half International through the Department of Public Safety which did not specify an end date.
- As discussed in previous sections of this report, we regularly identified contracts entered into by improperly referencing a master agreement. Each time a master agreement was improperly referenced, the result was an improper sole source procurement, which in turn means the state agency did not properly solicit bids and notify TSB providers of the solicitation as required by the IAC.

**Recommendations –**

Based on our review of compliance with the requirements established by Chapters 106 and 107 of the IAC, DAS should:

- Designate resources to oversight and compliance activities to ensure state agencies are operating in compliance with the IAC.
- Include specific contract clause requirements in the training material and online procurement resources available to purchasing agents to ensure purchasing agents are aware of the required contract language for service contracts. Possible procurement aids could include procurement checklists with appropriate examples of documentation necessary to complete the procurements attached to the checklist.

**J. New Legislation**

On March 10, 2010, Governor Culver signed SF 2088. The legislation addressed state government reorganization and efficiency. Included in SF 2088 were new requirements

for DAS in the area of purchasing. The portion of the legislation related to DAS purchasing is included in **Appendix M**.

Although the changes provided in SF 2088 were not in effect at the time of our review, we determined changes required by SF 2088 were related to specific areas of purchasing we included in our testing procedures of statewide procurement. Therefore, while we did not specifically test controls over newly enacted requirements of SF 2088, we have commented on the changes implemented in SF 2088 based on the information we gathered during our fieldwork.

#### **Observations -**

- Section 70 of SF 2088 states after a system of uniform standards and specifications for purchasing is developed, “all items of general use shall be purchased by state agencies through the department (i.e. DAS), except items used by the state board of regents and institutions under the control of the state board of regents.”

As addressed previously in this report, master agreements are often not awarded in a truly competitive manner, meaning DAS has not awarded master agreements based on receipt and review of multiple bids and selection of the single provider meeting qualifications at the lowest price as the sole winner of the bid. Instead, many master agreements are awarded on the basis of soliciting bids even if only 1 bid is received.

In addition, many master agreements are awarded to multiple providers. According to DAS officials we spoke with, it is their intent to have a number of qualified service providers available from which agencies can procure services. However, when multiple providers offering the same goods or services receive awards, pricing varies by provider and there are no requirements to go to the lowest price provider to obtain services.

We also found little evidence negotiations are conducted as a regular part of DAS procurement procedures to ensure the prices in the master agreements are fair and reasonable. In addition, we identified master agreements which do not establish pricing at all. Rather, pricing is to be negotiated between the provider and the state agency on a case by case basis.

Given these circumstances, mandatory use of master agreements provides no guarantee state agencies are receiving prices which have been based on truly competitive pricing. Therefore, mandatory use of master agreements by state agencies may not achieve the desired result of improving pricing for state agencies.

In addition to concerns with the quality of master agreements, DAS’ ability to obtain competitive pricing may be hindered by the State’s segregated purchasing processes. By exempting the Board of Regents and institutions under the control of the Board of Regents, the State is reducing its ability to leverage volume discounts obtainable when guaranteeing volume sales to vendors.

- Section 71 of SF 2088 states DAS may grant approval to state agencies to purchase directly from providers if DAS deems it more economical for the agency to do so.

Currently, there are no controls in place which would allow DAS to identify purchases made by state agencies for which it should be granting approval prior to purchase. In order for this control to be effective, DAS must have the ability to monitor state agency procurements and controls should be in place which would preclude state agencies from purchasing directly from providers unless they receive DAS approval.

- Section 72 of SF 2088 states DAS may designate specific goods or services of general use as goods or services which are required to be purchased from the master agreements.

Master agreements must be entered into based on true competitive bidding procedures. If they are not, pricing established in the master agreement does not represent the best value to state agencies and should not be mandatory. Prior to designating certain master agreements as mandatory, DAS must first establish pricing through true competitive means. In addition, DAS should establish controls which will preclude procurement outside of DAS master agreements without DAS approval.

- Section 75 of SF 2088, in part, requires DAS to take the following actions:
  - Require state employees who conduct bids for services to receive training about procurement rules and regulations and procurement best practices on an annual basis and
  - Establish a work group to collaborate on best practices to implement the best cost savings for the state concerning purchasing.

Requiring mandatory training for purchasing agents procuring services should improve service contract documentation and purchasing agent understanding of requirements. In addition, it should allow DAS more authority to step in and suspend purchasing agent activity in the event they improperly conduct procurements because DAS will have adequate verification the purchasing agent received training which clearly instructed the purchasing agent of specific actions which are improper.

Work groups should also serve to enhance oversight of procurement activity. Specifically, if work group leaders are dispersed throughout state agencies, they should be more accessible and there should be more knowledge of procurement requirements throughout state agencies rather than concentrated at DAS.

### **Recommendations –**

Based on our observations of the new legislation with consideration of the findings and recommendations we identified during our review, DAS should implement the following:

- Master agreements should include specific pricing established as a result of true competitive bidding procedures. No master agreements should be established without specific pricing or outside a competitive bid.
- Internal controls to preclude state agencies from procuring goods or services outside of mandatory master agreements should be implemented if DAS is required to approve procurements outside of master agreements.

### **K. Other Concerns**

During our fieldwork, we identified the following concerns regarding the payment methods related to the use of master agreements. The concerns include how state agencies pay for goods and services and additional fees incurred. The operational budget of DAS is based on fees collected from state agencies and rebates collected from providers.

#### **1. Payment Processing**

As part of its responsibilities for managing master agreements, DAS utilizes the I/3 online payment processing system to review payments state agencies make to providers.

When state agencies place a delivery order for goods against a master agreement in the I/3 system, the system automatically calculates the master agreement pricing of the products purchased in accordance with the master agreement which allows DAS to confirm the state agency paid the price for the goods which was established in the master agreement. The system will not process payments not in accordance with the unit prices of the master agreement pre-loaded in the I/3 system.

The I/3 system also processes payments for purchase orders, which are stand alone contracts not associated with a master agreement. In accordance with Chapter 105 of the IAC, purchase orders may be placed for goods or services not covered by master agreements.

For goods purchases, competitive bidding documentation should be included in the I/3 system. For service purchases, competitive bidding documentation is not necessary unless the order is greater than \$5,000.00. All purchase orders for goods greater than \$5,000.00 are routed to DAS purchasing agents for approval because orders greater than \$5,000.00 are not permissible outside DAS unless the state agency has been authorized as a procurement center of excellence.

I/3 system payments related to service contracts are not routed through DAS. Rather, DAS has delegated oversight responsibility for service contracting to individual state agencies because of the specific nature of the service needs of each state agency.

#### **Findings –**

- According to DAS officials we spoke with, the ability to provide oversight of statewide procurements of goods is largely dependent on the way state agencies input data and process payments in the I/3 system. For example, if state agencies process orders utilizing General Accounting Expenditure (GAX) forms, DAS cannot review the detail of the orders. If the payment is processed using a GAX form, the payment is processed without DAS approval and the only way to determine the amount of the payment is to do a payment search of the system for the provider paid. By that point, the payment has already been processed and DAS has no authority to deny the payment, even if the procuring state agency should have obtained DAS approval prior to processing the order.

GAX forms are the main payment form used by the I/3 system to process payments to providers. DAS purchasing agents believe removal of agency authority to process payments utilizing GAX forms would serve to increase the effectiveness of DAS in providing oversight by ensuring DAS can access contract information in the I/3 system. However, an official from the State Accounting Enterprise of DAS (DAS-SAE) stated it is not realistic to remove the system's main payment form. Instead, the DAS-SAE official stated if DAS needs agencies to process payments using forms other than the GAX form, it should implement requirements in its administrative rules and monitor usage of its contracts to ensure state agencies using its contracts are following requirements to use specific forms.

- Because DAS has delegated service contracting oversight to individual state agencies, there is no central oversight body for service contracting within the State. As demonstrated throughout this report, there are several findings regarding service contracting which could have been avoided if adequate oversight procedures were conducted.
- DAS officials we spoke with stated if DAS denies approval of a payment to a provider because documentation was not adequate to verify the procurement was appropriate, the purchasing state agency currently has the ability to reprocess the payment to the provider in I/3 by utilizing a GAX form which circumvents DAS approval. An official we spoke with stated there was an instance she was aware of when DAS denied approval of a payment. The state agency responded by processing the order through

utilization of a GAX form and DAS didn't become aware of it until after the payment was processed.

Due to the risks DAS stated exist with payments processed using GAX forms, we tested a selection of payments made with GAX forms by state agencies DAS stated historically process all payments with GAX forms. Of the 7 payments tested, 2 payments were related to non-master agreement purchases and were not required to be conducted in accordance with the master agreement. Consistent with concerns previously addressed, 1 payment could not be reconciled to the master agreement because the master agreement did not specify unit pricing. The remaining 4 payments tested were consistent with master agreement pricing. Therefore, we found limited concerns in the payments tested and did not expand testing.

### **Recommendations -**

- DAS should work with DAS-SAE officials to modify GAX forms to allow for collection of procurement data necessary for DAS to perform its oversight function. Utilizing separate forms may cause confusion and allow state agencies the option of selecting the form requiring information not adequate for DAS to utilize in its oversight activities.
- As discussed in **Finding J**, on March 10, 2010, after completion of our fieldwork, Governor Culver signed SF 2088, which included new *Code* language requiring mandatory annual training for purchasing agents responsible for service contracting at state agencies. In addition to training on service contracting rules and regulations, DAS should consider including I/3 payment processing training and providing instruction to purchasing agents so they are aware of their specific spending limitations and responsibilities for inputting data into the I/3 system.
- By obtaining records of course completion or signatures of purchasing agents stating they understand their responsibilities, DAS could discern whether purchasing agents were uninformed or attempting to circumvent DAS internal controls. If purchasing agents continued to process orders without processing them through DAS, DAS would have more reason to utilize the authority given to it to rescind delegated purchasing authority.

## **2. State Agency Fees**

As previously discussed, Chapter 105 of the IAC states DAS shall procure goods and services of general use for all state agencies in the Executive Branch except those exempted by law, as listed in **Table 1**. DAS does not receive an appropriation for operations of DAS-GSE, which is responsible for administration of the general use master agreements. Fees billed to state agencies are utilized to provide funding for DAS operations. Certain exempt agencies are not required to pay the fees to DAS.

State agency fees are based on each state agency's proportion of state spending with master agreement providers. For example, if an agency's purchases represented 15% of the total state purchases from master agreement providers, that agency would be charged 15% of the DAS fee amount, which was \$1,011,146.00 for fiscal year 2010. **Schedule 1** is a listing of the state agency fees by agency which were collected for fiscal year 2010.

DAS does not distinguish between master agreement purchases and non-master agreement purchases. For example, if an agency solicits bids on an agency-specific project and a provider which holds a master agreement with DAS wins the contract, the amount of the contract will be included in the agency's total purchases from which DAS determines its fees, even though the procurement was not associated with a DAS master agreement.

A DAS official we spoke with stated some state agencies exempt from DAS authority pay DAS fees but others do not. The DAS official stated some exempt state agencies pay the fee because they paid the fee under the previously utilized billing structure. However,

other state agencies are exempt because they have their own purchasing staff and aren't likely to utilize DAS master agreements. The DAS official stated there is no way to determine whether procurements were originated by a DAS contract or the agency's purchasing staff. Therefore, DAS does not assess the agency the DAS fee.

**Table 23** summarizes the amount of state agency purchases made with DAS master agreement providers which were not assessed the DAS fee and the amount DAS would have collected in fees from those agencies had it allocated the agencies their portion of the \$1,011,146.00 total fee collection.

**Table 23**

State Agency	Purchases	Potential DAS Fee
Department for the Blind^	\$ 247,366.70	1,653.45
Department for the Blind - Capitals^	245,377.80	1,640.15
Corrections Farm Account^	146,700.22	980.57
Iowa Communications Network^	2,619,748.15	17,510.92
Judicial Department^	826,108.30	5,521.87
Legislative House^	29,354.72	196.21
Legislative Senate^	32,260.88	215.64
Legislative Joint Express^	227.47	1.52
Legislative Citizens Aide^	7,960.97	53.21
Legislative Services Agency^	345,196.26	2,307.36
Parole Board~	3,505.69	23.43
Public Defense – Capitals~	187,475.24	1,253.12
Public Safety - Capitals*	2,778,747.80	18,573.71
Board of Regents^	843.75	5.64
Iowa Lottery Authority^	232,804.00	1,556.11
Executive Council^	317,157.02	2,119.94
Total	\$8,020,834.97	53,612.85

^ - Per DAS, state agencies do not pay the DAS fee because they are exempt from centralized purchasing requirements.

~ - Per DAS, these state agencies were missed or not charged due to the minimal amount of purchases.

\* - During fieldwork, we asked DAS why Public Safety – Capitals was not assessed the DAS fee. Upon evaluation, DAS responded it addressed the issue and started collecting fees from the state agency upon discovery.

On March 10, 2010, Governor Culver signed SF 2088, titled Reorganization and Efficiency Act, on March 10, 2010. SF 2088, which became effective July 1, 2010, provides DAS with authority to designate specific goods and services of general use as items agencies are required to purchase through master agreements established by DAS. This requirement extends to state agencies previously exempt from DAS procurement requirements. Therefore, the state agencies specifically exempted in **Table 1** may no longer be exempt from centralized purchasing requirements and should pay the DAS fee. SF 2088 also introduces additional DAS procurement changes, which have been discussed throughout this report.

**Findings -**

- DAS bases its fees on total payments to providers with master agreements. DAS does not distinguish between master agreement purchases and non-master agreement purchases. DAS should not be entitled to fees for contracts managed by other state agencies and other state agencies should not have to pay DAS fees on contracts entered into independent of DAS.
- State agencies exempt from DAS purchasing requirements often depend on master agreements to meet competitive procurement requirements. However, they do not have to pay the DAS fee. If all state agencies utilizing DAS contracting services

through use of master agreements were required to pay the DAS fee, \$53,612.85 of the total DAS fee for fiscal year 2010 would have been allocated to the agencies currently not paying a fee.

- DAS stated it does not charge certain state agencies a fee due to their exempt status from centralized purchasing requirements. However, DAS is not consistent in this practice as many exempt state agencies pay the DAS fee. For example, elected officials are charged the fee even though they are exempt from centralized purchasing requirements. According to a DAS official, DAS assesses these offices the DAS fee because they were required to pay the fee in the previous billing structure. Further, the DAS official stated, in most cases, elected official offices do not have their own purchasing staff and, therefore, rely on DAS master agreements or request assistance from DAS purchasing agents. The DAS official then stated some of the larger exempt state agencies have their own purchasing staff and, since DAS cannot distinguish between procurements made by the state agency or made through master agreements, it does not assess a fee. We determined these explanations were inconsistent. Specifically,
  - If the explanation DAS officials gave for not charging certain state agencies the DAS fee is due to the inability to determine if the payments made to providers are related to master agreements, none of the state agencies would be assessed the fee. During our testing, we identified significant payments to providers with master agreements which were unrelated to master agreements. As a result, total purchases upon which DAS is assessing its fees are significantly different than the purchases specifically related to master agreements. Some of the largest procurements from those providers, particularly in the area of construction, are not related to master agreements. As a result, DAS fees are not consistent with master agreement usage. Some state agency fees may be too high and some may be too low.
  - If DAS assesses fees based on the whether the state agency has dedicated procurement staff, it would need to make significant adjustments because many state agencies currently paying the fee are large enough to employ dedicated procurement staff and other state agencies not paying the fee are smaller and most likely don't have dedicated procurement staff. DAS is not consistently applying this methodology when determining whether state agencies are required to pay the DAS fee.
- In accordance with documentation provided by DAS, fiscal year 2010 fees were based on total state agency purchases of \$142,491,293.40 recorded for fiscal year 2007. However, this total excluded purchases by state agencies listed in **Table 23** which currently are not required to pay the DAS fee. Inclusion of all state agencies conducting business with master agreement providers would have resulted in total fees of \$53,612.85 being allocated to the agencies in **Table 23** instead of agencies not exempt from the fee. As currently operating, agencies subject to the DAS fee were allocated \$53,612.85 in fees which would have been allocated to the agencies in **Table 23** had they been included in the allocation of fees to state agencies which utilize master agreements.
- In addition to specific agencies not paying the DAS fee, the fees are determined through an extraction of payment data from the I/3 system. Several state agencies or state authorities do not track payments in the I/3 system. Therefore, any state agency utilizing the master agreement providers which does not track payments in the I/3 system was also not assessed a fee for DAS services. DOT, for example, was not included in **Table 23** because it does not track payments in the I/3 system. DOT currently does not pay the DAS fee even though DOT frequently bases procurements of general use goods and services on master agreements. In addition, DAS does not have information regarding the purchasing DOT does with master agreement providers.

- According to a DAS official we spoke with, DAS currently does not plan to adjust the DAS fee structure to require all state agencies to pay DAS fees, even though DAS will be managing general use contracts all state agencies will be required to use for specific general use goods and services.

According to the DAS representative we spoke with, it would be difficult to assess fees to exempt agencies due to the lack of procurement data available to DAS. As previously discussed, some exempt agencies do not use I/3 to process payments to providers and I/3 is the tool DAS currently uses to determine the level of usage of master agreements by each state agency which is used to calculate each agency's fees.

- The DAS calculation of total purchases from master agreement providers used as the basis of its fees assessed to state agencies does not distinguish between master agreement purchases and non-master agreement purchases. Therefore, agencies conducting their own solicitations for contracts are assessed fees based on all purchases from master agreement providers.
- During review of the larger state agencies assessed fees, we determined Public Safety - Capitals was not paying DAS a fee, even though the state agency was a participating Executive Branch agency. DAS followed up with Public Safety - Capitals and later told us they had corrected the error and were now collecting the required fees from the agency.

### **Recommendations –**

After review of the current DAS fee structure, we have developed specific recommendations to ensure fees are allocated consistently among master agreement users. Recommendations related to continuation of master agreement usage should be considered in conjunction with changes to master agreements which have been recommended throughout the body of this report.

- DAS should develop procedures to assess fees in a consistent manner for use of master agreements. State agencies utilizing the master agreements save time and resources by utilizing the master agreements and, therefore, should share in the costs to maintain the master agreements. This includes state agencies which currently do not track provider purchases in the I/3 system.
- DAS should reassess its current billing structure and ensure it is billing state agencies based on consistent methodology.

All state agencies now required to utilize centralized procurement as a result of SF 2088 should be assessed the DAS fee. By assessing all state agencies the DAS fee, the DAS fees will be fairly distributed.

- DOT should be required to report its purchases from master agreement providers to DAS and should be assessed the DAS fee for general use goods and services. According to section 314.1 of the *Code*, DOT's procurement responsibilities are for "construction, reconstruction, improvement, or repair or maintenance of a highway, bridge, or culvert." Although it is exempt from centralized purchasing requirements for these specific areas of procurement, it is not necessary for DOT to be exempt from centralized purchasing requirements on general use goods and services.

### **3. Rebates**

In addition to receiving fees from state agencies utilizing DAS master agreements, DAS also receives provider rebates to supplement its operational budget. DAS has negotiated a 1% rebate with specific providers, payable to DAS based on total usage of provider contracts, including state agencies and political subdivisions. The DAS official we spoke with explained this has allowed DAS to recover expenses related to services DAS provides

to agencies currently not paying DAS fees or political subdivisions which are not required to pay usage fees. Depending on the amount of rebates received, state agencies may receive a portion of the rebates from DAS and the remaining portion is used to supplement the DAS budget.

**Table 24** lists the rebates received from providers in fiscal years 2009 and 2010 and how the funds were allocated.

<b>Description</b>	<b>Fiscal Year 2009</b>	<b>Fiscal Year 2010</b>
Rebates received	\$ 970,712.00	819,332.00
Rebates retained by DAS	610,712.00	719,332.00
Rebates disbursed to agencies	\$ 360,000.00	100,000.00

As summarized in the **Table**, DAS retains a majority of rebates received from providers. In fiscal years 2009 and 2010, DAS retained 63% and 88%, respectively, of the total rebates received. A majority of the rebates retained are used to supplement the operating budget of DAS. The difference between the DAS budget and the amounts collected through fees and rebates is adjusted through use of a revolving fund.

**Table 25** summarizes the DAS budget and total revenues for fiscal years 2009 and 2010.

<b>Description</b>	<b>Fiscal Year 2009</b>	<b>Fiscal Year 2010</b>
<b>Budget</b>	\$ 1,691,355.00	1,835,204.00
<b>Revenues:</b>		
Fees collected	1,010,686.00	1,011,133.00
Rebates retained	610,712.00	719,332.00
Reimbursement from SSI*	-	120,384.00
Total revenues	1,621,398.00	1,850,849.00
Adjustment to/from revolving fund	\$ (69,957.00)	15,645.00

\* - Strategic Sourcing Initiative

DAS provides rebates to state agencies by crediting the agencies utilizing the same allocation process utilized to calculate agency fees. For example, the Iowa Veterans Home's (IVH's) purchases were approximately 5% of the total purchases for the State. Therefore, IVH paid 5% of the \$1,011,146.00 total DAS fee. IVH then received a rebate of 5% of the \$100,000.00 rebate DAS extended to state agencies in fiscal year 2010. IVH receives rebate monies regardless of whether it utilized the providers specifically offering the rebates. Only state agencies paying fees to DAS receive rebates. State agencies listed in **Table 23** and political subdivisions earning rebates through use of providers offering rebates currently are not eligible to receive rebates.

DAS stated it calculates the amount to return to state agencies by first assessing the financial and operational needs of DAS and returning the amount in excess of needs to state agencies. Rebates utilized to supplement the budget at DAS go to funding salaries, conference and training costs and new technologies DAS will utilize. Any excess funds collected go to the revolving fund to be utilized in the future. A DAS official we spoke with stated the rebate program has been very effective and rebates could eventually grow to an amount which would allow DAS to be fully funded by provider rebates, thus eliminating the need for DAS fees to state agencies.

## Findings –

- Rebates provided currently do not offer state agencies an incentive to utilize the master agreements. Since state agencies will not receive the full amount of the rebates and the rebates are not returned to state agencies in accordance with the state agencies rebate-eligible purchases, the rebates are not tied directly to the purchases. Further, a majority of rebates received supplement the DAS budget and are not returned to the state agencies or political subdivisions which made the purchases earning the rebates.
- In accordance with Federal requirements, costs paid with Federal funds must be net of all applicable credits, including rebates, in order to be allowable under Federal awards. Therefore, when state agencies use Federal funds to pay for goods or services from providers which provide rebates, they should only use Federal funds for the costs net of the rebates earned.

DAS believes this is not an issue because DAS returns a portion of the fees it collects to state agencies. In addition, a majority of rebates retained by DAS are from political subdivision purchases, not state agency purchases. DAS also provided documentation from a Federal auditor related to purchase card rebates. However, purchase card rebates are not the same as master agreement rebates. Therefore, sufficient documentation to verify retaining master agreement rebates related to Federal funding is appropriate was not provided.

- State agencies which do not pay DAS fees, as summarized in **Table 23**, earned rebates of \$12,816.37 in fiscal year 2007 by utilizing DAS master agreements which offer a 1% rebate. However, because those state agencies are not currently paying DAS fees, the agencies did not receive a portion of the rebates.

## Recommendations –

- DAS should evaluate the current use of rebates with consideration of the impact of its use of rebates on individual state agencies to ensure use of rebates is equitable and efficient. Options considered should include using rebates for services which benefit all state agencies, such as for funding oversight activities, and returning rebates to the state agencies which earned the rebates. However, if DAS returned all the rebates, service fees for all state agencies would need to be adjusted.
- If DAS continues to retain rebates, it should consult with Federal officials to ensure its planned use of those rebates is in accordance with Federal requirements.

## COMMENTS ON RESPONSES TO FINDINGS AND RECOMMENDATIONS

### DAS

Throughout the audit process, DAS officials provided pertinent information regarding procurement procedures, goals and challenges facing DAS and state agencies. In addition, we kept DAS officials informed of preliminary issues and concerns we identified as we conducted the review. The cooperation and assistance received from DAS officials gave us a better understanding of the complex issues facing DAS and other state agencies in the area of procurement. In addition, as a result of receiving the preliminary results of our review, DAS was able to be proactive in implementing changes to improve procurement processes. We provided a copy of this report to DAS officials for their review and response to the findings and recommendations. A copy of the response is included in **Appendix N**. As summarized in the **Appendix**, DAS has taken significant actions to address findings and recommendations contained in the report. For example, DAS has been providing service contract training to State employees in an effort to educate them

on the unique nature of service contracting. In addition, architect and engineering master agreements were not renewed due to the concerns identified in the report. These examples demonstrate DAS' proactive efforts to implement the recommendations and improve procurements, not only at DAS but at all state agencies.

**Appendix N** includes a listing of specific improvements DAS has implemented since 2008. Although the time period for the specific contracts, master agreements and invoices included in our testing was fiscal year 2007 through fiscal year 2008, many of the findings identified were procedural or demonstrated the problems associated with certain processes. Therefore, the specific date of the contract, master agreement or invoice was not as important as the procedures used to award or process it. For this reason, the findings included in this report could be applied to contracts, master agreements and invoices occurring at later dates.

However, certain responses included in DAS' written response warrant additional comment.

- DAS stated ITQ agreements were changed in August 2009 and were no longer available for use by agencies without a competitive selection process (page 144.) However, during our testing, we identified an ITQ agreement which continued to be the basis for large payments made to an ITQ provider well after this time. Although we believe DAS has taken steps to remove ITQ agreements from availability, DAS should continue to monitor ongoing contracts which were established on an improper basis of an ITQ agreement.
- DAS stated DAS purchasing agents were required to benchmark pricing on large dollar contracts as part of the competitive procurement process beginning in 2009 (page 144.) According to a DAS official we spoke with, this requirement is included on the internal contract checklist each purchasing agent is required to complete for their master agreements. While this is a positive change, this requirement is limited to DAS purchasing agents and there are no requirements for other state agencies to perform benchmarking analyses when making purchases independent of DAS.
- DAS stated TSB contracts will not be renewed (page 145.) Agencies planning to purchase goods and services from TSBs will be directed to the Department of Inspections and Appeals' website. We concur the master agreement title should be removed from TSB contracts since the contracts were not arrived at competitively. However, this change will not eliminate state agencies exceeding the \$10,000.00 per transaction limitation. DAS should evaluate whether the examples we identified in the report where state agencies exceeded the \$10,000.00 purchasing threshold are representative of further abuses or whether they are isolated instances. If further abuses exist, DAS needs to address those issues.
- DAS stated it will continue to classify solicitations only receiving 1 bid as competitively awarded because more than 1 supplier was given the opportunity to bid and because the industry classifies this as a competitive contract (page 145.) While we understand the industry position and the challenge of awarding contracts when multiple bids are not received, additional support is warranted to ensure prices awarded are truly competitive. On page 144 of DAS' response, DAS stated its purchasing agents are required to conduct benchmark pricing on large dollar contracts as part of the competitive procurement process. If this process is completed and documented in the contract file, it would provide the additional support warranted in these instances.

## DOC

We provided a copy of **Section H** of this report to DOC officials for their review and response to the findings and recommendations. A copy of DOC's response is included in **Appendix O**. While DOC officials responded to each of the 6 specific recommendations included on pages 84 through 85, **Section H** includes several significant findings to which DOC officials did not respond. Specific recommendations were not developed for all findings in **Section H** because it is not anticipated these findings will occur in the future. Based on the testing we performed, the nature of the concerns identified are unique to the development of the relationship between DOC and ATG.

One of the findings not responded to pertains to the amendment to the ATG contract which canceled DOC's rights to 50% of ATG's licensing fees. No supporting documentation has been provided to justify why DOC agreed to forfeit its rights to the fees and the Attorney General's Office did not have any record of amendments to the contract. Specifically, the unanswered questions concerning the contract amendment are listed as numbers 1 through 6 on page 82.

As illustrated by **Appendix O**, in addition to replying to the 6 specific recommendations made in **Section H**, DOC included an "Overview" section of their response. Certain contents of the "Overview" section warrant additional response.

- DOC stated we began correspondence with DOC in April 2009 to review current practices related to ICON and by July 2010, after several communication exchanges, recommended the development of a formal contractual relationship with ATG which was accomplished in September 2010 (page 150.)

In a meeting with the DOC Director on March 16, 2009, we explained DOC was improperly referencing the DAS ITQ agreement and a base contract with ATG was necessary. This was reiterated to the DOC Director in an email dated April 23, 2009. Therefore, we do not understand why it took DOC until September 2010 to establish a formal contract with ATG.

- DOC's response states DOC did not discover a sole source justification was required until after it awarded a contract to ATG on September 23, 2010 (page 150.) DOC stated the Auditor's Office informed DOC of the requirement and DOC completed and submitted the sole source justification in January 2011.

Sole source justification requirements have been in place for many years. In addition, several DOC staff have achieved advanced procurement certifications, which means they have received training on the IAC and should be aware of sole source procurement documentation requirements. Therefore, it is unclear why DOC was unaware of this requirement.

- DOC stated it implemented a change order process in November 2009 (page 152.)

While we acknowledge DOC's efforts to improve accountability and tracking of specific deliverables, the Auditor's Office did not participate in recommending or developing the change order process. Rather, the change order process was DOC's effort to improve oversight of projects it paid ATG to complete. We did not evaluate the change order process DOC implemented. DOC should consult DAS to ensure the change order process is compliant with procurement requirements and all necessary actions are taken when approving additional services.

As illustrated by **Appendix O**, after the "Overview" section of its response, DOC included responses to the 6 specific recommendations made in **Section H**. The following conclusions are made to the 6 responses.

- Response regarding additional follow-up from the Attorney General's Office is accepted.

- Response regarding steps to enhance documentation procedures is accepted. As stated previously, we did not review the change order process implemented by DOC. However, we concur a change order process implemented to modify existing contracts is a good control.
- DOC provided a summary of benefits and cost savings DOC has achieved as a result of the ICON system maintained by ATG (page 152.)

This response does not address the recommendation on page 85 that DOC evaluate costs associated with ATG services to determine if hiring permanent staff to handle routine IT tasks would be financially beneficial.

- Response regarding working with DAS to implement control procedures for service contracting activities is accepted.
- Response regarding additional review of procurement activities is accepted.
- Response regarding DOC's plan to continue to seek advanced procurement authority is accepted.

## **Schedule**

**Schedule 1**

A Review of Statewide Procurement  
Summary of State Agency Fees Paid to DAS  
Fiscal Year 2010

<b>Agency</b>	<b>Monthly Fee</b>	<b>Annual Amount</b>
Department of Administrative Services	\$ 11,815.35	141,784.19
Department of Agriculture and Land Stewardship	410.58	4,926.95
Agriculture Development Authority	9.74	116.87
Attorney General	60.21	722.52
Attorney General - Consumer Advocate	9.06	108.70
Auditor of State	21.92	263.02
Ethics and Campaign Disclosure Board	22.25	267.04
Civil Rights Commission	4.26	51.14
Department of Commerce - Alcoholic Beverages	1,162.40	13,948.77
Department of Commerce - Banking	144.37	1,732.47
Department of Commerce - Credit Union	6.85	82.21
Department of Commerce - Insurance	142.42	1,709.01
Department of Commerce - Professional Licensing	25.61	307.36
Department of Commerce - Utilities	51.91	622.90
Department of Corrections - Central Office	274.84	3,298.06
Department of Corrections - Ft. Madison	2,324.30	27,891.61
Department of Corrections - Anamosa	1,510.00	18,120.03
Department of Corrections - Oakdale	3,067.04	36,804.46
Department of Corrections - Newton	1,516.51	18,198.13
Department of Corrections - Mt. Pleasant	1,026.88	12,322.55
Department of Corrections - Rockwell City	425.29	5,103.50
Department of Corrections - Clarinda	767.65	9,211.84
Department of Corrections - Mitchellville	869.45	10,433.38
Department of Corrections - Industries	778.02	9,336.23
Department of Corrections - Ft. Dodge	1,714.64	20,575.65
Department of Corrections - Capitals	186.48	2,237.73
Department of Cultural Affairs	175.44	2,105.29

A Review of Statewide Procurement  
 Summary of State Agency Fees Paid to DAS  
 Fiscal Year 2010

<b>Agency</b>	<b>Monthly Fee</b>	<b>Annual Amount</b>
State Historical Society	11.11	133.38
Department of Economic Development	891.39	10,696.68
Department of Education	387.12	4,645.41
Department of Education - Vocational Rehabilitation Services	379.50	4,554.00
College Aid Commission	63.28	759.32
Department of Education - Iowa Public Television	3,187.31	38,247.69
Department on Aging	57.29	687.51
Iowa Workforce Development	1,735.69	20,828.32
Department of Administrative Services - Capitols	7,735.11	92,821.31
Governor	53.64	643.72
Department of Human Rights	94.20	1,130.39
Department of Human Services - Central Office	2,328.97	27,947.61
Department of Human Services - Area and County	1,149.62	13,795.39
Department of Human Services - Toledo	398.34	4,780.12
Department of Human Services - Eldora	311.28	3,735.37
Department of Human Services - Civil Commitment Unit	25.23	302.78
Department of Human Services - Cherokee	255.20	3,062.34
Department of Human Services - Clarinda	1,519.32	18,231.79
Department of Human Services - Independence	442.03	5,304.41
Department of Human Services - Mt. Pleasant	902.23	10,826.74
Department of Human Services - Glenwood	5,256.36	63,076.33
Department of Human Services - Woodward	4,622.24	55,466.88
Department of Human Services - Assistance Payments	1,575.76	18,909.07
Department of Inspections and Appeals	397.95	4,775.41
Department of Inspections and Appeals - Public Defender	168.28	2,019.35
Department of Inspections and Appeals - Racing and Gaming	113.64	1,363.71
Law Enforcement Academy	97.47	1,169.60

**Schedule 1**

A Review of Statewide Procurement  
Summary of State Agency Fees Paid to DAS  
Fiscal Year 2010

<b>Agency</b>	<b>Monthly Fee</b>	<b>Annual Amount</b>
Department of Management	22.91	274.90
Department of Natural Resources	3,179.31	38,151.76
Department of Natural Resources - Capitals	4.00	48.03
IPERS	518.20	6,218.39
Public Employment Relations Board	20.96	251.50
Public Defense	1,287.08	15,444.97
Department of Public Defense - Emergency Management	582.97	6,995.70
Department of Public Health	5,857.52	70,290.18
Department of Public Safety	2,782.97	33,395.62
Department of Revenue	2,783.28	33,399.34
Secretary of State	38.63	463.51
Governor's Alliance on Substance Abuse	160.31	1,923.66
Treasurer of State	68.07	816.81
Department of Veterans Affairs - Vets Home	4,272.95	51,275.35
Department of Veteran's Affairs - Capitals	-	-
Total	\$ 84,262.17	1,011,146.00

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A Review of Statewide Procurement

Staff

This review was conducted by:

Annette K. Campbell, CPA, Director  
Tina Stuart, Senior Auditor  
Alison Herold, Staff Auditor  
Jessica Green, Staff Auditor  
Gabriel Stafford, CPA, Staff Auditor

  
Tamera S. Kusian, CPA  
Deputy Auditor of State

**A Review of Statewide Procurement**

## **Appendices**

A Review of Statewide Procurement  
Architectural and Engineering Mastering Agreement



**STATE OF IOWA**  
**MASTER AGREEMENT**  
Contract Declaration and Execution

**MA# 005 CT3059MV6OF10**

**EFFECTIVE BEGIN DATE:** 01-01-2009  
**EXPIRATION DATE:** 12-31-2009  
**PAGE:** 1 of 3

**VENDOR:**

**Howard R Green Co**  
8710 Earhart Ln SW  
Cedar Rapids, IA 52404  
USA

**VENDOR CONTACT:**  
STEVEN HEYER  
**PHONE:** 800-728-7805 **EXT:**  
**EMAIL:** sheyer@hrgreen.com  
FOB

**ISSUER:**  
RANDALL STAPP  
**PHONE:** 515-242-5005  
**EMAIL:** Randall.Stapp@iowa.gov

**Contract For:** Architectural and engineering services statewide as needed.

Contract to provide Architectural and engineering services statewide as needed for various projects pursuant to the specifications, terms and conditions of sealed bid No. RFP 0207335078 dated October 19, 2006, on file with the Dept of Administrative Services, General Services Enterprise, Purchasing, Hoover State Office Building, Level A, Des Moines, IA 50319-0105.

This A & E Consultant Vendor is qualified to provide the following services on an as needed basis:  
2. Building Envelope Consultation (BE) (not including roofing design services)  
4. Mechanical, Electrical and Plumbing Engineering Consultation (MEP).

To review -  
AIA Document B141 - 1997 Part 1.  
AIA Document B141 - 1997 Part 2 Template.  
Rebates, Hourly Rates and Reimbursable Rates specific to each project category.  
Please contact: randy.stapp@iowa.gov

**RENEWAL OPTIONS**

**FROM** 01-01-2009 **TO** 12-31-2009  
**FROM** 01-01-2010 **TO** 12-31-2010  
**FROM** 01-01-2011 **TO** 12-31-2011  
**FROM** 01-01-2012 **TO** 12-31-2012

**AUTHORIZED DEPARTMENT**

ALL  
SUB Political Sub-divisions

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR		STATE OF IOWA	
CONTRACTOR'S NAME (If other than an individual, state whether a corp., partnership, etc. Howard R. Green Company		AGENCY NAME D.A.S.	
BY (Authorized Signature) 	Date Signed 01/14/09	BY (Authorized Signature) 	Date Signed 1/14/09
Printed Name and Title of Person Signing Steven R. Heyer, P.E., Vice President		Printed Name and Title of Person Signing Randall Stapp P.A. 3	
Address 8710 Earhart Lane S.W., Cedar Rapids, IA 52404		Address 1305 E. Walnut	

A Review of Statewide Procurement  
 Architectural and Engineering Mastering Agreement

MA# 005 CT3059MV6OF10



STATE OF IOWA  
 MASTER AGREEMENT  
 Contract Declaration and Execution

EFFECTIVE BEGIN DATE: 01-01-2009  
 EXPIRATION DATE: 12-31-2009  
 PAGE: 2 of 3

LINE NO.	QUANTITY / SERVICE DATES	UNIT	COMMODITY / DESCRIPTION	UNIT COST / PRICE OF SERVICE
1	0.00000	906		\$0.000000
FROM:01-01-2009TO:12-31-2009				\$0.000000

**ARCHITECTURAL SERVICES, PROFESSIONAL**  
**ARCHITECTURAL SERVICES, PROFESSIONAL**  
 Owner will negotiate projects on a case-by-case basis with consultant. Each project will be specified on a Delivery Order presented to the consultant by the Owner. Each Delivery Order will provide as much information as possible about the specific project scope, budget and schedule.  
 Consultant will negotiate fees specific to each Delivery Order based on the available information and the Master Agreement. Consultant and Owner will use a separate AIA Document B141-1997 Part 2 to define consultant services and fees for each Delivery Order.  
 Use the attached Part 2 template and modify with attachments or contact DAS Purchasing for assistance creating work order specific Part 2 documents.  
 Use Exhibit A - Accountable Government Act Template or another mutually agreeable format for Accountable Government Act required performance measures.

2	0.00000	925		\$0.000000
FROM:01-01-2009TO:12-31-2009				\$0.000000

**ENGINEERING SERVICES, PROFESSIONAL**  
**ENGINEERING SERVICES, PROFESSIONAL**  
 Owner will negotiate projects on a case-by-case basis with consultant. Each project will be specified on a Delivery Order presented to the consultant by the Owner. Each Delivery Order will provide as much information as possible about the specific project scope, budget and schedule.  
 Consultant will negotiate fees specific to each Delivery Order based on the available information and the Master Agreement. Consultant and Owner will use a separate AIA Document B141-1997 Part 2 to define consultant services and fees for each Delivery Order.  
 Use the attached Part 2 template and modify with attachments or contact DAS Purchasing for assistance creating work order specific Part 2 documents.  
 Use Exhibit A - Accountable Government Act Template or another mutually agreeable format for Accountable Government Act required performance measures.

A Review of Statewide Procurement  
Architectural and Engineering Mastering Agreement



**STATE OF IOWA**  
**MASTER AGREEMENT**  
Contract Declaration and Execution

**MA# 005 CT3059MV6OF10**

EFFECTIVE BEGIN DATE: 01-01-2009  
EXPIRATION DATE: 12-31-2009  
PAGE: 3 of 3

**TERMS AND CONDITIONS**

**AIA Architectural Engineering**

Refer to attached AIA document(s) for Terms and Conditions.

A Review of Statewide Procurement  
 Targeted Small Business Master Agreement

FROM :

FAX NO. :2242112

Feb. 22 2008 02:47PM P2

MA# 005 TSB0011-08



STATE OF IOWA  
**MASTER AGREEMENT**  
 Contract Declaration and Execution

EFFECTIVE BEGIN DATE: 02-05-2008  
 EXPIRATION DATE: 08-05-2009  
 PAGE: 1 of 5

**VENDOR:**

Business Furnishings &  
 2575 Woodland Ct

West Des Moines, IA 50266-2100  
 USA

**VENDOR CONTACT:**  
 Coby Koester  
 PHONE: 515-226-8846 EXT:  
 EMAIL: businessfum@aol.com  
 FOB

**ISSUER:**  
 PAMELA DICKEY  
 PHONE: 515-281-6355  
 EMAIL: Pam.Dickey@iowa.gov

Contract For: FURNITURE, OFFICE, NEW

Contract to Provide Targeted Small Business Purchases which Total \$10,000 or less per Project, Pursuant to Targeted Small Business(Tsb) Legislation and TSB Certification. Office Furniture Product Categories include: Seating, Casegoods, Conference Furniture, Tables, Files, Computer Furniture, Dining, Lobby, Cable Floor, Desks.

**RENEWAL OPTIONS**

FROM 08-06-2009 TO 08-05-2010

**AUTHORIZED DEPARTMENT**

ALL  
 . SUB Political Sub-divisions

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR		STATE OF IOWA	
CONTRACTOR'S NAME (If other than an individual, state whether a corp., partnership, etc.)		AGENCY NAME	
<i>Lauri A. Weissenburger</i> 2/22/08		PROCUREMENT SERVICES	
BY (Authorized Signature)	Date Signed	By (Authorized Signature)	Date Signed
LAURI A. WEISSENBURGER		<i>Pamela Dickey</i>	2/5/08
Printed Name and Title of Person Signing		Printed Name and Title of Person Signing	
2575 WOODLAND CT.		Pamela Dickey	
Address		Address	
W. DES MOINES, IA 50266		Hoover State Ofc. Bldg. Dsm	

A Review of Statewide Procurement  
Targeted Small Business Master Agreement



**STATE OF IOWA**  
**MASTER AGREEMENT**  
Contract Declaration and Execution

**MA# 005 TSB0011-08**

**EFFECTIVE BEGIN DATE: 02-05-2008**  
**EXPIRATION DATE: 08-05-2009**  
**PAGE: 1 of 5**

**VENDOR:**

**Business Furnishings &  
2575 Woodland Ct**

**West Des Moines, IA 50266-2100  
USA**

**VENDOR CONTACT:**

Coby Koester  
**PHONE: 515-226-8846 EXT:**  
**EMAIL: businessfum@aol.com**  
**FOB**

**ISSUER:**

**PAMELA DICKEY**  
**PHONE: 515-281-6355**  
**EMAIL: Pam.Dickey@iowa.gov**

**Contract For: FURNITURE, OFFICE, NEW**

Contract to Provide Targeted Small Business Purchases which Total \$10,000 or less per Project, Pursuant to Targeted Small Business(Tsb) Legislation and TSB Certification. Office Furniture Product Categories include: Seating, Casegoods, Conference Furniture, Tables, Files, Computer Furniture, Dining, Lobby, Cable Floor, Desks.

**RENEWAL OPTIONS**

**FROM 08-06-2009 TO 08-05-2010**

**AUTHORIZED DEPARTMENT**

**ALL**  
**SUB Other Governmental Entities**

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR	STATE OF IOWA
CONTRACTOR'S NAME (If other than an individual, state whether a corp., partnership, etc.)	AGENCY NAME
BY (Authorized Signature)                      Date Signed	BY (Authorized Signature)                      Date Signed
Printed Name and Title of Person Signing	Printed Name and Title of Person Signing
Address	Address

A Review of Statewide Procurement  
 Targeted Small Business Master Agreement

MA# 005 TSB0011-08



STATE OF IOWA  
 MASTER AGREEMENT  
 Contract Declaration and Execution

EFFECTIVE BEGIN DATE: 02-05-2008  
 EXPIRATION DATE: 08-05-2009  
 PAGE: 2 of 5

LINE NO.	QUANTITY / SERVICE DATES	UNIT	COMMODITY / DESCRIPTION	UNIT COST / PRICE OF SERVICE
1	0.00000	425	FURNITURE: OFFICE Arcadia- 38% Discount From Last Price List;freight not included; Seating, Casegoods, Conference Furniture	\$0.000000 \$0.000000
2	0.00000	425	FURNITURE: OFFICE Harter-38% Discount From Last Price List; Complete Line Of Seating; Lifetime Warranty. Freight not included.	\$0.000000 \$0.000000
3	0.00000	425	FURNITURE: OFFICE Spec - 38% Discount Off Last Price List; Seating, Tables, Files, Computer Furniture. Freight not included.	\$0.000000 \$0.000000
4	0.00000	425	FURNITURE: OFFICE Indiana Desk,40% Discount From Last Price List; Freight not Included; Casegoods, Conference, Dining, Lobby, Seating, Over \$3,000 List.	\$0.000000 \$0.000000
5	0.00000	425	FURNITURE: OFFICE KI- 38% Discount From Last Price List; Freight Not Included;	\$0.000000 \$0.000000
6	0.00000	425	FURNITURE: OFFICE Howe- 38% Discount From Last Price List; Freight not Included; Tables.	\$0.000000 \$0.000000
7	0.00000	425	FURNITURE: OFFICE Stylex Seating,35% Discount From Last Price List, Freight not Included.	\$0.000000 \$0.000000
8	0.00000	96286	Transportation of Goods and Other Freight Services Freight charges. In addition, in the Absence Of Dock Facilities, Contact The Vendor For Approx. Delivery Charges. Installation Services, Such As Unpacking And Inspecting Have Not Been Made A Part Of This Agreement. If Installation Service Is Needed, This Should Be Itemized On Your Purchase Order.	\$0.000000 \$0.000000
9	0.00000	425	FURNITURE: OFFICE Tayco-40% discount from last price list, freight no included;	\$0.000000 \$0.000000
10	0.00000	425	FURNITURE: OFFICE Don Smith & Assoc.-40% discount from last price list, freight not included; desks, chairs, tables	\$0.000000 \$0.000000
11	0.00000	425	FURNITURE: OFFICE Office Specialty; 38% discount from last price list; office files; freight not included.	\$0.000000 \$0.000000

A Review of Statewide Procurement  
Targeted Small Business Master Agreement

**MA# 005 TSB0011-08**



**STATE OF IOWA**  
**MASTER AGREEMENT**  
Contract Declaration and Execution

EFFECTIVE BEGIN DATE: 02-05-2008  
EXPIRATION DATE: 08-05-2009  
PAGE: 3 of 5

LINE NO.	QUANTITY / SERVICE DATES	UNIT	COMMODITY / DESCRIPTION	UNIT COST / PRICE OF SERVICE
12	0.00000	425		\$0.000000
			<b>FURNITURE: OFFICE</b> Creative Wood; 38% discount from last price list. reception desks, systems furniture, conference room, casegoods; freight not included.	\$0.000000
13	0.00000	425		\$0.000000
			<b>FURNITURE: OFFICE</b> Patriot seating; 38% discount from last price list; seating; freight not included	\$0.000000
14	0.00000	425		\$0.000000
			<b>FURNITURE: OFFICE</b> SIS; 38% discount from last price list.school furniture, tables, chairs, ergonomic items	\$0.000000
15	0.00000	425		\$0.000000
			<b>FURNITURE: OFFICE</b> SpaceCo, 20% discount form last price list; price does not include freight or installation. Ergonomic products - drawers, flatscreen monitor arms.	\$0.000000
16	0.00000	425		\$0.000000
			<b>FURNITURE: OFFICE</b> National Furniture-35% discount from last price list, freight not included; seating, case goods, reception furniture, conference, lobby.	\$0.000000

A Review of Statewide Procurement  
Targeted Small Business Master Agreement



**STATE OF IOWA**  
**MASTER AGREEMENT**  
Contract Declaration and Execution

MA# 005 TSB0011-08

EFFECTIVE BEGIN DATE: 02-05-2008  
EXPIRATION DATE: 08-05-2009  
PAGE: 4 of 5

**TERMS AND CONDITIONS****Incorporation**

The Request for Proposal and/or bid documents for this project and the vendor's proposal in response to the RFP or Bid together with any clarifications, attachments, appendices, or amendments of the State or the Vendor are incorporated into this Contract by reference as if fully set forth in this Contract.

**Remedies upon Default**

In any case where the vendor has failed to deliver or has delivered non-conforming goods and/or services, the State shall provide a cure notice. The notice to cure shall state the maximum length of time the vendor has to cure. If after the time period stated in the notice to cure has passed, the vendor continues to be in default, the State may procure goods and/or services in substitution from another source and charge the difference between the contracted price and the market price to the defaulting vendor. The State's Attorney General shall be requested to make collection from the defaulting vendor.

**Force Majeure**

Force majeure includes acts of God, war, civil disturbance and any other causes which are beyond the control and anticipation of the party affected and which, by the exercise of reasonable diligence, the party was unable to anticipate or prevent. These provisions of force majeure also apply to subcontractors or suppliers of the Vendor. Force majeure does not include financial difficulties of the Vendor or any associated company of the Vendor, or claims or court orders that restrict the Vendor's ability to deliver the goods or services contemplated by this Agreement. Neither the Vendor nor the State shall be liable to the other for any delay or failure of performance of this Agreement caused by a force majeure, and not as a result of the fault or negligence of a party.

**Subcontractors**

The successful vendor shall be responsible for all acts and performance of any subcontractor or secondary supplier that the successful vendor may engage for the completion of any contract with the State. A delay that results from a subcontractor's conduct, negligence or failure to perform shall not exempt the vendor from default remedies. The successful vendor shall be responsible for payment to all subcontractors and all other third parties.

**Termination-Non-Appropriation**

Notwithstanding any other provision of this contract, if funds anticipated for the continued fulfillment of this contract are at any time not forthcoming or insufficient, either through the failure of the State to appropriate funds, discontinuance or material alteration of the program for which funds were provided, then the State shall have the right to terminate this contract without penalty by giving not less than thirty (30) days written notice documenting the lack of funding, discontinuance or program alteration.

**Immunity of State/Fed Agencies**

The vendor shall defend and hold harmless the State and Federal funding source for the State of Iowa from liability arising from the vendor's performance of this contract and the vendor's activities with subcontracted and all other third parties.

**Assignment**

Vendors may not assign contracts or purchase orders to any party (including financial institutions) without written permission of the General Services Enterprise - Purchasing.

**Anti-Trust Assignment**

For good cause and as consideration for executing this purchase order, the vendor, through its duly authorized agent, conveys, sells, assigns, and transfers to the State of Iowa all rights, title and interest in and to all causes of action it may now or hereafter acquire under the anti-trust laws of the United States and the State of Iowa, relating to the particular goods or services purchased or acquired by the State of Iowa pursuant to the using State of Iowa agency.

**Delivery and Acceptance**

When an award has been made to a vendor and the purchase order issued, deliveries are to be made in the following manner.

A. Deliveries - All deliveries are to be made only to the point specified on the purchase order. If delivery is made to any other point, it shall be the responsibility of the vendor to promptly reship to the correct location. Failure to deliver procured goods on time may result in cancellation of an order or termination of a contract at the option of the State.

B. Delivery Charges - All delivery charges should be to the account of the vendor whenever possible. If not, all delivery charges should be prepaid by vendor and added to the invoice.

C. Notice of Rejection - The nature of any rejections of a shipment, based on apparent deficiencies disclosed by ordinary methods of inspection, will be given by the receiving agency to the vendor and carrier within a reasonable time after delivery of the item, with a copy of this notice to the General Services Enterprise - Purchasing. Notice of latent deficiencies which would make items unsatisfactory for the purpose intended may be given by the State of Iowa at any time after acceptance.

**Delivery and Acceptance (cont)**

D. Disposition of Rejected item - The vendor must remove at the vendor's expense any item rejected by the State. If the vendor fails to remove that rejected item, the State may dispose of the item by offering the same for sale, deduct any accrued expense and remit the balance to the vendor.

E. Testing After Delivery - Laboratory analysis of an item or other means of testing may be required after delivery. In such cases, vendors will be notified in writing that a special test is being made and that payment will be withheld until completion of the testing process.

**Title to Goods**

The vendor warrants that the goods purchased hereunder are free from all liens, claims or encumbrances.

**Indemnification**

To the extent that goods are not manufactured in accordance with the State's design, the vendor shall defend, indemnify and hold harmless

A Review of Statewide Procurement  
Targeted Small Business Master Agreement



STATE OF IOWA  
MASTER AGREEMENT

MA# 005 TSB0011-08

EFFECTIVE BEGIN DATE: 02-05-2008  
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Contract Declaration and Execution

the State of Iowa, the State's assignees, and other users of the goods from and against any claim of infringement of any Letter Patent, Trade Names, Trademark, Copyright or Trade Secrets by reason of sale or use of any articles purchased hereunder. The State shall promptly notify the vendor of any such claim.

**Nondiscrimination**

The vendor is subject to and must comply with all federal and state requirements concerning fair employment and will not discriminate between or among them by reason of race, color, religion, sex, national origin or physical handicap.

**Warranty**

The vendor expressly warrants that all goods supplied shall be merchantable in accordance with the Uniform Commercial Code, Section 2-314 and the Iowa Code, Section 554.2314.

**Taxes**

The State of Iowa is exempt from the payment of Iowa sales tax, motor vehicle fuel tax and any other Iowa tax that may be applied to a specified commodity and/or service. Contractors performing construction activities are required to pay state sales tax on the cost of materials. The Iowa Department of Revenue exemption letter will be furnished to a vendor upon request.

**Hazardous Material**

All packaging, transportation, and handling of hazardous materials shall be in accordance with applicable federal and state regulations including, but not limited to, the Material Safety Data Sheet provision of O.S.H.A. Hazard Communication Standard 29CFR 1910.1200, and Iowa Administrative Code, Chapter 567.

**Public Records**

The laws of the State of Iowa require procurement records to be made public unless exempted by the Code of Iowa.

**Miscellaneous**

The terms and provisions of this contract shall be construed in accordance with the laws of the State of Iowa. Any and all litigation or actions commenced in connection with this contract shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa. If however, jurisdiction is not proper in Polk County District Court, the action shall only be brought in the United States District Court for the Southern District of Iowa, Central Division, providing that jurisdiction is proper in that forum. This provision shall not be construed as waiving any immunity to suit or liability, which may be available to the State of Iowa.

If any provision of this contract is held to be invalid or unenforceable, the remainder shall be valid and enforceable.

**Records Retention**

The vendor shall maintain books, records, and documents which sufficiently and properly document and calculate all charges billed to the State of Iowa throughout the term of this Agreement for a period of at least five (5) years following the date of final payment or completion of any required audit, whichever is later. The vendor shall at, no charge, permit the Auditor of the State of Iowa, or any authorized representative of the State (or where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government) to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records, or other records of the vendor relating to orders, invoices, or payments documentation or materials pertaining to this Agreement.

**Independent Contractor**

The vendor is an independent contractor performing services for the State of Iowa, and as such shall not hold itself out as an employee or agent of the State.

**Performance Monitoring**

For all service contracts, the requirements of Iowa Code sections 8.47 shall be incorporated into final terms and conditions of the contract.

**N30**

NET 30 DAYS

A Review of Statewide Procurement

Brand Name Award Grid

Security Brand Name System/Product	Baker Group	CI3	Johnson Controls
Aiphone		35.00%	
Altronix		35.00%	
American Dynamics		35.00%	
American FiberTek		28.00%	
Andover		52.00% - 71.00%	
AXIS Communications		5.00%	
Blonder		20.00%	
Bosch Security		35.00%	
CBC America		35.00%	
CoVi		25.00%	
Creative			
Dedicated Micros		35.00%	
Ditek		35.00%	
DMP	31.00%	35.00%	
DSX	26.00%		
DVTel		15.00%	
Dynalock			
Elmotech			
Extreme CCTV		35.00%	
Flir		5.00%	
GE Security		45.00%	
Genetec		10.00%	
HID		40.00% - 58.00%	
Hirsch	16.00%		
Honeywell Video			
I3 DVR	6.00%		
Integral Technologies		37.50%	
International Fiber Systems (IFS)		30.00%	
Johnson Controls			57.25%
JVC		25.00%	
Kantech		15.00%	
Kramer Electronics		35.00%	
Microtek Electronics		20.00%	
Middle Atlantic Products		35.00%	
NICE Systems		35.00%	
Nitek		30.00%	
NVT		35.00%	
OnSSI		10.00%	
Panasonic Security		25.00%	
Pelco	38%	40.00%	
Pelco Endura	37%		
Sanyo		45.00%	
Schlage Electronics		35.00%	
Securitron		30.00%	
Siemens OTN			
SiPass			
Software House		5.00% - 35.00%	
Sony		10.00%	
Talk-A-Phone		25.00%	
Tamron		35.00%	
TOA		40.00%	
Verichip			
Verint Video Solutions		15.00%	
Vicon			
Winsted		15.00%	
360 Surveillance		4.00%	

A Review of Statewide Procurement

Brand Name Award Grid

Security Brand Name System/Product	Per Mar Security	Siemens	SimplexGrinnell
Aiphone			
Altronix			
American Dynamics			31.00%
American FiberTek			
Andover			
AXIS Communications			
Blonder			
Bosch Security	19.00%		
CBC America			
CoVi			
Creative		20.00%	
Dedicated Micros			
Ditek			
DMP			
DSX		25.00%	
DVTel		5.00%	
Dynalock		37.00%	
Elmotech		37.00%	
Extreme CCTV			
Flir			
GE Security			
Genetec			
HID			
Hirsch			
Honeywell Video	19.00%		
I3 DVR			
Integral Technologies			36.00%
International Fiber Systems (IFS)		27.00%	
Johnson Controls			
JVC			
Kantech			
Kramer Electronics			
Microtek Electronics			
Middle Atlantic Products		27.00%	
NICE Systems		27.00%	
Nitek			
NVT			
OnSSI			
Panasonic Security			
Pelco			
Pelco Endura		37.00%	
Sanyo			
Schlage Electronics			
Securitron			
Siemens OTN		27.00%	
SiPass		22.00%	
Software House			3.00% - 30.00%
Sony			
Talk-A-Phone			
Tamron			
TOA			
Verichip		25.00%	
Verint Video Solutions		10.00%	
Vicon		32.00%	
Winsted			
360 Surveillance			

A Review of Statewide Procurement

Invitation to Qualify Contract



STATE OF IOWA  
MASTER AGREEMENT

MA# 005 CTITQ0021 X 3  
EFFECTIVE BEGIN DATE: 02-20-2002  
EXPIRATION DATE: 02-28-2009  
PAGE: 1 of 5

BUYER : ASHLEY SUPER  
ashley.super@iowa.gov  
515-281-7073

FOB  
PAYMENT TERMS (%): DAYS:

**VENDOR:**

Robert Half Internationa  
Office Team, File 73484  
PO Box 60000  
San Francisco, CA 94160-3484  
USA

**VENDOR CONTACT:**

Abbey Clark  
PHONE: 515-223-9525 EXT:  
EMAIL: abbey.clark.hankins@rht.com  
VENDOR #: 94164875203

**DESCRIPTION OF ITEMS CONTRACTED**

CONSULTING, IT  
SEE ATTACHED DOCUMENTS  
Contract To Furnish IT Consulting And Staff Augmentation Pursuant To The Specifications, Terms And Conditions Of Sealed Bid  
BD80200S102 On File With The Department Of Administrative Services, GSE Purchasing Division, Hoover Building, Level A, Des Moines,  
Iowa 50319-0105.

For Complete Instructions On How To Use This Contract Contact The Department Of Administrative Services, General Services Enterprise.

This Contract Is For The Following ITQ Service Categories Only:

- 1) Strategy / Vision / Consulting
- 2) Project Management
- 4) Developing
- 7) Training
- 8) On-Going Support
- 9) Administration

Contact:  
Meredith Carle  
Ph: 515-282-6876  
Fax: 515-244-5613  
Email: Meredith.Carle@RHT.com  
Rustina.Knutzon@RHT.com

PCQT# \_\_\_\_\_  
Rating: 8.54

**RENEWAL PERIODS**  
FROM 03-01-2007 TO 02-28-2009

A Review of Statewide Procurement

Invitation to Qualify Contract



FROM 03-01-2009 TO 02-28-2011

**STATE OF IOWA  
MASTER AGREEMENT**

MA# 005 CTITQ0021 X 3  
EFFECTIVE BEGIN DATE: 02-20-2002  
EXPIRATION DATE: 02-28-2009  
PAGE: 2 of 5

**THRESHOLDS**

MINIMUM ORDER AMOUNT:  
MAXIMUM ORDER AMOUNT:  
NOT TO EXCEED AMOUNT:

**AUTHORIZED DEPARTMENT**

ALL  
SUB Political Sub-divisions

**TOTAL** \$0.00

VENDOR: \_\_\_\_\_

APPROVED BY: \_\_\_\_\_

THIS MA IS SUBJECT TO THE TERMS AND  
CONDITIONS ATTACHED HERETO.  
PLEASE SEE ATTACHMENTS FOR  
FURTHER DESCRIPTIONS.

A Review of Statewide Procurement

Invitation to Qualify Contract



STATE OF IOWA  
MASTER AGREEMENT

MA# 005 CTITQ0021 X 3  
EFFECTIVE BEGIN DATE: 02-20-2002  
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LINE NO.	QUANTITY / SERVICE DATES	UNIT	COMMODITY / DESCRIPTION	UNIT COST / PRICE OF SERVICE
1	0.00000		91829	\$0.000000 \$0.000000

Computer Software Consulting  
Contract To Furnish IT Consulting And Staff Augmentation Pursuant To The Specifications, Terms And Conditions Of Sealed Bid BD80200S102 On File With The Department Of Administrative Services, GSE Purchasing Division, Hoover Building, Level A, Des Moines, Iowa 50319-0105.

For Complete Instructions On How To Use This Contract Contact The Department Of Administrative Services, General Services Enterprise.

This Contract Is For The Following ITQ Service Categories Only:

- 1) Strategy / Vision / Consulting
- 2) Project Management
- 4) Developing
- 7) Training
- 8) On-Going Support
- 9) Administration

PCQT# \_\_\_\_\_  
Rating: 8.54

A Review of Statewide Procurement

Invitation to Qualify Contract



STATE OF IOWA  
MASTER AGREEMENT

MA# 005 CTITQ0021 X 3  
EFFECTIVE BEGIN DATE: 02-20-2002  
EXPIRATION DATE: 02-28-2009  
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**TERMS AND CONDITIONS**

**Remedies upon Default**

In any case where the vendor has failed to deliver or has delivered non-conforming goods and/or services, the State shall provide a cure notice. The notice to cure shall state the maximum length of time the vendor has to cure. If after the time period stated in the notice to cure has passed, the vendor continues to be in default, the State may procure goods and/or services in substitution from another source and charge the difference between the contracted price and the market price to the defaulting vendor. The State's Attorney General shall be requested to make collection from the defaulting vendor.

**Force Majeure**

Force majeure includes acts of God, war, civil disturbance and any other causes which are beyond the control and anticipation of the party affected and which, by the exercise of reasonable diligence, the party was unable to anticipate or prevent. These provisions of force majeure also apply to subcontractors or suppliers of the Vendor. Force majeure does not include financial difficulties of the Vendor or any associated company of the Vendor, or claims or court orders that restrict the Vendor's ability to deliver the goods or services contemplated by this Agreement. Neither the Vendor nor the State shall be liable to the other for any delay or failure of performance of this Agreement caused by a force majeure, and not as a result of the fault or negligence of a party.

**Subcontractors**

The successful vendor shall be responsible for all acts and performance of any subcontractor or secondary supplier that the successful vendor may engage for the completion of any contract with the State. A delay that results from a subcontractor's conduct, negligence or failure to perform shall not exempt the vendor from default remedies. The successful vendor shall be responsible for payment to all subcontractors and all other third parties.

**Termination-Non-Appropriation**

Notwithstanding any other provision of this contract, if funds anticipated for the continued fulfillment of this contract are at any time not forthcoming or insufficient, either through the failure of the State to appropriate funds, discontinuance or material alteration of the program for which funds were provided, then the State shall have the right to terminate this contract without penalty by giving not less than thirty (30) days written notice documenting the lack of funding, discontinuance or program alteration.

**Immunity of State/Fed Agencies**

The vendor shall defend and hold harmless the State and Federal funding source for the State of Iowa from liability arising from the vendor's performance of this contract and the vendor's activities with subcontracted and all other third parties.

**Assignment**

Vendors may not assign contracts or purchase orders to any party (including financial institutions) without written permission of the General Services Enterprise - Purchasing.

**Anti-Trust Assignment**

For good cause and as consideration for executing this purchase order, the vendor, through its duly authorized agent, conveys, sells, assigns, and transfers to the State of Iowa all rights, title and interest in and to all causes of action it may now or hereafter acquire under the anti-trust laws of the United States and the State of Iowa, relating to the particular goods or services purchased or acquired by the State of Iowa pursuant to the using State of Iowa agency.

**Delivery and Acceptance**

When an award has been made to a vendor and the purchase order issued, deliveries are to be made in the following manner.

- A. Deliveries - All deliveries are to be made only to the point specified on the purchase order. If delivery is made to any other point, it shall be the responsibility of the vendor to promptly reship to the correct location. Failure to deliver procured goods on time may result in cancellation of an order or termination of a contract at the option of the State.
- B. Delivery Charges - All delivery charges should be to the account of the vendor whenever possible. If not, all delivery charges should be prepaid by vendor and added to the invoice.
- C. Notice of Rejection - The nature of any rejections of a shipment, based on apparent deficiencies disclosed by ordinary methods of inspection, will be given by the receiving agency to the vendor and carrier within a reasonable time after delivery of the item, with a copy of this notice to the General Services Enterprise - Purchasing. Notice of latent deficiencies which would make items unsatisfactory for the purpose intended may be given by the State of Iowa at any time after acceptance.

**Delivery and Acceptance (cont)**

- D. Disposition of Rejected Item - The vendor must remove at the vendor's expense any item rejected by the State. If the vendor fails to remove that rejected item, the State may dispose of the item by offering the same for sale, deduct any accrued expense and remit the balance to the vendor.
- E. Testing After Delivery - Laboratory analysis of an item or other means of testing may be required after delivery. In such cases, vendors will be notified in writing that a special test is being made and that payment will be withheld until completion of the testing process.

**Title to Goods**

The vendor warrants that the goods purchased hereunder are free from all liens, claims or encumbrances.

**Indemnification**

To the extent that goods are not manufactured in accordance with the State's design, the vendor shall defend, indemnify and hold harmless the State of Iowa, the State's assignees, and other users of the goods from and against any claim of infringement of any Letter Patent, Trade Names, Trademark, Copyright or Trade Secrets by reason of sale or use of any articles purchased hereunder. The State shall promptly notify the vendor of any such claim.

**Nondiscrimination**

The vendor is subject to and must comply with all federal and state requirements concerning fair employment and will not discriminate between or among them by reason of race, color, religion, sex, national origin or physical handicap.

**Warranty**

The vendor expressly warrants that all goods supplied shall be merchantable in accordance with the Uniform Commercial Code, Section 2-314 and the Iowa Code, Section 554.2314.

**Taxes**

The State of Iowa is exempt from the payment of Iowa sales tax, motor vehicle fuel tax and any other Iowa tax that may be applied to a specified commodity and/or service. Contractors performing construction activities are required to pay state sales tax on the cost of materials. The Iowa Department of Revenue exemption letter will be furnished to a vendor upon request.

**Hazardous Material**

## A Review of Statewide Procurement

## Invitation to Qualify Contract



STATE OF IOWA  
MASTER AGREEMENT

MA# 005 CTITQ0021 X 3  
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...all packaging, transportation, and handling of hazardous materials shall be in accordance with applicable federal and state regulations including, but not limited to, the Material Safety Data Sheet provision of O.S.H.A. Hazard Communication Standard 29CFR 1910.1200, and Iowa Administrative Code, Chapter 567.

**Public Records**

The laws of the State of Iowa require procurement records to be made public unless exempted by the Code of Iowa.

**Miscellaneous**

The terms and provisions of this contract shall be construed in accordance with the laws of the State of Iowa. Any and all litigation or actions commenced in connection with this contract shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa. If however, jurisdiction is not proper in Polk County District Court, the action shall only be brought in the United States District Court for the Southern District of Iowa, Central Division, providing that jurisdiction is proper in that forum. This provision shall not be construed as waiving any immunity to suit or liability, which may be available to the State of Iowa.

If any provision of this contract is held to be invalid or unenforceable, the remainder shall be valid and enforceable.

**Records Retention**

The vendor shall maintain books, records, and documents which sufficiently and properly document and calculate all charges billed to the State of Iowa throughout the term of this Agreement for a period of at least five (5) years following the date of final payment or completion of any required audit, whichever is later. The vendor shall at, no charge, permit the Auditor of the State of Iowa, or any authorized representative of the State (or where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government) to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records, or other records of the vendor relating to orders, invoices, or payments documentation or materials pertaining to this Agreement.

**Independent Contractor**

The vendor is an independent contractor performing services for the State of Iowa, and as such shall not hold itself out as an employee or agent of the State.

**Performance Monitoring**

For all service contracts, the requirements of Iowa Code sections 8.47 shall be incorporated into final terms and conditions of the contract.

**Confidentiality**

Each party may have access to confidential information of the other party to the extent necessary to carry out their responsibilities under the Agreement and Software License Agreement. Such confidential information shall, at all times, remain the property of the party disclosing the confidential information. Each party shall preserve the confidentiality of the confidential information disclosed or furnished by the other party, and shall maintain procedures for safeguarding such confidential information. Each party shall accept responsibility for providing adequate supervision and training to its agents, employees and any approved contractors and subcontractors to ensure compliance with the terms of this Agreement.

**Works Made for Hire**

All information, reports, studies, flow charts, diagrams, and other tangible and intangible material of any nature, whatsoever, produced by the vendor for delivery to the State during the course of this engagement and all copies of any of the foregoing shall be the sole and exclusive property of the State, and all such material and all copies shall be deemed "works made for hire" of which the State shall be deemed the author.

To the extent that the materials are not deemed "works made for hire", the vendor hereby irrevocably grants, assigns, transfers, and sets over to the State all legal and equitable right, title, and interest of any kind, nature or description in and to the materials and the vendor shall be entitled to make absolutely no use of any of the materials except as may be expressly permitted in this Agreement.

**Vendor's Property**

Notwithstanding provisions of "works made for hire", the vendor shall own all of its pre-existing methods, techniques, and processes, including software and documentation, that it brings to this engagement and shall own all enhancements to these methods, techniques and processes, including software and documentation, that are developed during the course of this engagement ("Vendor's Property") and (b) the vendor shall have the right to retain copies of all materials referred to in "works made for hire" in its files evidencing its services for the Information Technology Enterprise. The vendor agrees to grant the State/ITE a royalty-free, nonexclusive, nontransferable license to use, duplicate and disclose the Vendor's Property for the purposes contemplated by this Agreement.

**N60**

NET 60 DAYS

A Review of Statewide Procurement

Example Invoice from Robert Half International



Page: 1  
 Invoice Date: 11/06/2007  
 Invoice No: 20038137  
 Customer Number: 01510-000079-000  
 Fed Tax ID: 94-1648752

Labor Invoice - DUE UPON RECEIPT

PERSONAL & CONFIDENTIAL  
 Don L Dursky  
 STATE OF IOWA  
 200 E GRAND AVE  
 DEPT OF ECONOMIC DEV  
 DES MOINES IA 50309-1827

Please Remit To:  
 Robert Half Technology  
 FILE 73484  
 P.O. BOX 60000  
 San Francisco CA 94160-3484

Line	Employee Name	Wk-Ended	*Report-To* Supervisor	Qty	UOM	Bill Rate	Amount
1	Spong, Jason M	11/02/2007	Dursky, Don L	40.00	HRS REG.	\$ 37.00	\$ 1,480.00
Subtotal for Week-Ended: 11/02/2007				40.00	HRS		\$ 1,480.00

12/17/07  
DD

Invoice Subtotal: \$ 1,480.00  
**TOTAL AMOUNT DUE :** \$ 1,480.00

We provide more timely and accurate information to the business community by sharing our accounts receivable information with National Credit Reporting Agencies.  
 Any questions regarding this invoice please call: (800) 356-1994  
 For qualified technology professionals please call: (515) 282-6876

Please detach and return this remittance stub with your payment.

Thank you for choosing Robert Half Technology!

Robert Half Technology  
 FILE 73484  
 P.O. BOX 60000  
 San Francisco CA 94160-3484

Customer Number	Invoice Number	Total Amount
01510-000079-000	20038137	\$ 1,480.00

0151000007900020038137001480004

## A Review of Statewide Procurement

## Copy of Letter from Department of Corrections Director



STATE OF IOWA

CHESTER J. CULVER, GOVERNOR  
PATTY JUDGE, LT. GOVERNORDEPARTMENT OF CORRECTIONS  
JOHN BALDWIN, DIRECTOR

March 10, 2009

Over 10 years ago, Advanced Technologies Group (ATG) in conjunction with another firm, bid on a piece of work for the Department of General Services. I was a member of the Selection Committee and while we did not give that particular piece of business to ATG, I did like their approach to technology development.

At that time ATG was a TSB and a vendor on the State contract for IT services through the Department of General Services. We used that contract to hire ATG to do our initial banking program.

At that time we were a much smaller agency, with a nonfunctional data system run by the Department of Human Services under a 28E agreement dating back to 1983.

ATG was the only vendor that showed any interest in working with the DOC. We did try to work with other vendors and hired a consultant to help us select a vendor; however, we were unsuccessful because of our lack of sufficient resources to pay the Oracle charges.

Our first endeavor with ATG was our creation of a unified banking system between the institutions and community-based corrections.

Since that time we have worked with ATG to create the nations premier offender management system.

We have always used the original and succeeding GSE/DAS IT services contracts for IT services and we followed the various state-wide initiatives for TSB firms.

Over the years a virtual sole source relationship has developed between ATG and the DOC. While never the goal or intent of the DOC to become so closely tied to a single IT vendor, the unique public/private partnership has been beneficial to this State. Every project has been on-time, well-received by end-users and met project goals. Additionally, this is a prime example of the State working with an Iowa TSB to create jobs for Iowans. Today ATG hires over 50 individuals in Iowa and continues to be a fully domestic production company, not outsourcing or off-shoring any software development, helpdesk or management functions.

B

The mission of the Iowa Department of Corrections is:  
**To advance successful offender reentry to protect the public, staff and offenders from victimization.**

(Office) 515-725-5701 - 510 East 12th Street, Des Moines, Iowa 50319 - (FAX) 515-725-5799

[www.doc.state.ia.us](http://www.doc.state.ia.us)

A Review of Statewide Procurement

Copy of Contract Between ATG and DOC

SOFTWARE DISTRIBUTION AGREEMENT

This Agreement, made and effective this 23 day of March, 2000, by and between the Iowa Department of Corrections and Advanced Technologies Group, Inc. The parties agree as follows:

**SECTION 1. IDENTITY OF THE PARTIES.**

**1.1** The Iowa Department of Corrections ("DOC") is a state department authorized to enter into this Agreement. DOC's address is 420 Keo Way, Des Moines, Iowa 50309.

**1.2** Advanced Technologies Group, Inc. ("ATG") is an Iowa corporation. ATG's address is 1601 - 48<sup>th</sup> Street, Suite 220, West Des Moines, Iowa, 50266-6722.

**SECTION 2. PURPOSE.** The parties have entered into this Agreement for the purpose of developing and marketing of computer software programs designed for correctional institutions.

**SECTION 3. TRANSFER OF RIGHTS.** Subject to the terms of this Agreement, DOC hereby transfers entire rights, title and interest in the software program and any derivative works listed in Exhibit A to ATG.

**SECTION 4. PERPETUAL LICENSE.** ATG hereby grants to DOC a perpetual, nonexclusive, and nontransferable license to use the software program or programs listed in Exhibit A. This license also includes any enhancements, updates, and improvements to the software program or programs covered by this Agreement. This license also includes the right to copy the software program or programs as embodied in executable form, in whole or in part, for DOC's business use.

**SECTION 5. SOURCE CODES.** ATG shall escrow the source codes for all software program or programs listed in Exhibit A with a mutually acceptable escrow agent. DOC shall pay all costs of the escrow arrangement.

**SECTION 6. SOFTWARE DISTRIBUTION.** Subject to the terms of this Agreement, ATG agrees to market and distribute these software program or programs listed in Exhibit A to correctional institutions. ATG agrees to use its commercially reasonable efforts to market and distribute the computer program or programs subject to this Agreement. In connection with its software distribution activities, ATG shall not make any representations or commitments on behalf of the DOC. Additionally, ATG is solely responsible for any and all customization, modifications, and training required by any end-users of the software program or programs covered by this Agreement. DOC shall have no liability whatsoever to the end-users of these software program or programs covered by this Agreement.

**SECTION 7. DISCLAIMERS OF WARRANTIES.** IT IS UNDERSTOOD AND AGREED BY ALL PARTIES THAT THE PRODUCTS ARE PROVIDED "AS IS." DOC SPECIFICALLY DISCLAIMS ALL WARRANTIES EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE INCLUDING WITHOUT LIMITATIONS DEFECTS IN THE TAPE, DISKETTE OR OTHER PHYSICAL MEDIA AND DOCUMENTATION, OPERATION OF THE PRODUCTS, AND ANY PARTICULAR APPLICATION OR USE OF THE PRODUCTS.

**SECTION 8. LIMITATION OF LIABILITY.** IN NO EVENT SHALL DOC BE LIABLE FOR ANY DAMAGES, LOSS OF PROFIT OR ANY OTHER COMMERCIAL DAMAGE, INCLUDING BUT NOT LIMITED TO SPECIAL, INCIDENTAL, CONSEQUENTIAL OR OTHER INDIRECT DAMAGES UNDER ANY CAUSE OF ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, CLAIMS ARISING FROM MALFUNCTION OR DEFECTS IN THE PRODUCTS AS WELL AS ANY CLAIMS BY END-USERS OF THE SOFTWARE PROGRAM OR PROGRAMS COVERED BY THIS AGREEMENT.

**SECTION 9. COMPENSATION.** In consideration for transferring ownership of the software programs listed in Exhibit A to ATG, ATG shall pay DOC fifty percent (50%) of any licensing fees, less 50% of marketing expenses, paid by end-users. DOC's share of the licensing fees shall be applied by ATG to the costs of developing additional software for DOC. When all development costs have been paid, DOC's share of licensing fees shall be paid directly to DOC.

## A Review of Statewide Procurement

## Copy of Contract Between ATG and DOC

**SECTION 10. INSOLVENCY OR BANKRUPTCY**

**10.1** ATG shall notify the DOC in writing if:

**10.1.1** ATG files a voluntary petition in bankruptcy, a voluntary petition to reorganize its business, or a voluntary petition to effect a plan or other arrangements with creditors; or

**10.1.2** ATG files an answer admitting the jurisdiction of the court and the material allegations of an involuntary petition filed pursuant to the United States Bankruptcy Code as amended; or

**10.1.3** ATG is adjudicated bankrupt, makes an assignment for the benefit of creditors, applies for or consents to the appointment of a receiver or trustee for all or any part of its property; or

**10.1.4** ATG institutes dissolution or liquidation proceedings with respect to its business; or

**10.1.5** An order is entered approving an involuntary petition to reorganize the business of ATG for all or part of its property; or

**10.1.6** If a writ or warrant of attachment, execution, distraint, levy, possession or any similar process that may materially affect the operation of ATG is issued by any court or administrative agency against all or any material portion of ATG's property.

**10.2** In the event that a petition, writ or warrant is not dismissed or a stay of foreclosure obtained or the appointment, assignment, or proceedings are not rescinded or terminated within 120 days of issuance, making, or commencement thereof, and the effect thereof is to materially impede or frustrate the ability of ATG to fulfill its obligations under this Agreement, then the DOC may terminate this Agreement without penalty, unless:

**10.2.1** Within 120 days after the election or appointment of any receiver or trustee of ATG or ATG as a debtor-in-possession in connection with any reorganization or similar proceedings, ATG shall have remedied any uncured failure to comply with any provision of this Agreement; and

**10.2.2** Within the 120 days, the receiver or trustee or ATG as debtor-in-possession, shall have executed an agreement with the DOC, their successors or assigns, which shall have been approved by the court having jurisdiction, whereby the receiver or trustee or ATG in its capacity as debtor-in-possession, assumes all obligations and agrees to be bound fully by each and every provision of this Agreement

**SECTION 11. INDEMNIFICATION.**

**11.1** By ATG. ATG agrees to indemnify and hold the State of Iowa and the DOC harmless from any and all liabilities, damages, settlements, judgments, costs and expenses, including reasonable attorneys fees of the Attorney General's Office, and the costs and expenses and attorney fees of other counsel required to defend the State of Iowa and the DOC, related to or arising from third party claims:

**11.1.1** Any violation of this Agreement; or

**11.1.2** Any negligent acts or omissions of ATG; or

**11.1.3** ATG's performance or attempted performance of this Agreement; or

**11.1.4** Any failure by ATG to comply with all local, state and federal laws and regulations; or

**11.1.5** Any failure by ATG to make all reports, payments and withholdings required by Federal and State law with respect to social security, employee income and other taxes, fees or costs required by ATG to conduct business in the State of Iowa; or

A Review of Statewide Procurement

Copy of Contract Between ATG and DOC

11.1.6 Any infringement of any copyright, trademark, patent, or other intellectual property right.

11.1.7 In the event that DOC or ATG become aware of any claim by any third party that the software infringes of any copyright, trademark, patent, or other intellectual property right that the party shall promptly notify the other party of such claim. ATG shall have the opportunity to modify the software, to remedy claimed violation, obtain license from third party. In the event that it becomes economically impractical for ATG to continue its obligations under this agreement, ATG has the right to terminate this agreement.

11.2 By the DOC. Consistent with Article VII, Section 1 of the Iowa Constitution and Iowa Code Chapter 669, the DOC agrees to indemnify ATG and hold it harmless against any and all losses, costs, damages, expenses claims, demands causes of action, judgments and settlements, including reasonable attorney fees arising out of the DOC's negligence or wrongful acts or omissions in the performance of this Agreement or use of the software. ATG shall be responsible for all damages to persons or property that occurs as a result of ATG's fault, negligence, gross negligence, bad faith, fraud or other wrongful acts in the performance of this Agreement.

**SECTION 12. CONTRACT ADMINISTRATION.**

12.1 Compliance With The Law and Regulations. ATG shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations and orders when performing the services under this Agreement, including without limitation, all laws applicable to the prevention of discrimination in employment and the use of targeted small businesses as subcontractors or suppliers.

12.2 Amendments. This Agreement may be amended in writing from time to time by mutual consent of the parties. All amendments to this Agreement must be fully executed by the parties.

12.3 Third Party Beneficiaries. There are no third party beneficiaries to this Agreement. This Agreement is intended only to benefit the DOC and ATG.

12.4 Choice of Law and Forum. The terms and provisions of this Agreement shall be construed in accordance with the laws of the State of Iowa. Any and all litigation or actions commenced in connection with this Agreement shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa.

12.5 Assignment and Delegation. This Agreement may not be assigned, transferred or conveyed in whole or in part without the prior written consent of the other parties. For purposing of construing this clause, a transfer of a controlling interest in ATG shall be considered an assignment.

12.6 Integration. This Agreement represents the entire Agreement between the parties and none of the parties are relying on any representation that may have been made which is not included in this Agreement.

12.7 Not a Joint Venture. Nothing in this Agreement shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent and principal relationship) between the parties hereto. Each party shall be deemed to be an independent contractor contracting for services and acting toward the mutual benefits expected to be derived here from. No party, unless otherwise specifically provided for herein, has the authority to enter into any contract or create an obligation or liability on behalf of, in the name of, or binding upon another party to this Agreement.

12.8 Supersedes Former Agreements. This Agreement supersedes all prior Agreements between the DOC and ATG for the services provided in connection with this Agreement.

12.9 Waiver. Except as specifically provided for in a waiver signed by duly authorized representatives of the DOC and ATG, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Agreement shall not be construed as affecting any subsequent breach or the right to require performance with respect thereto or to claim a breach with respect thereto.

## A Review of Statewide Procurement

## Copy of Contract Between ATG and DOC

**12.10 Notices.** Notices under this Agreement shall be in writing and delivered to the representative of the party to receive notice (identified below) at the address of the party to receive notice as it appears below or as otherwise provided for by proper notice hereunder. The effective date for any notice under this Agreement shall be the date of delivery of such notice (not the date of mailing) which may be effected by certified U.S. Mail return receipt requested with postage prepaid thereon or by recognized overnight delivery service, such as Federal Express or UPS. Failure to accept "receipt" shall constitute delivery.

If to DOC: Iowa Department of Corrections  
Attn: Director  
420 Keo Way  
Des Moines, Iowa 50309

If to ATG: Advanced Technologies Group, Inc.  
Attn: President  
1601 - 48<sup>th</sup> Street, Suite 220  
West Des Moines, Iowa 50266-6722

**12.11 Authorization.** Each party to this Agreement represents and warrants to the other parties that:

**12.11.1** It has the right, power and authority to enter into and perform its obligations under this Agreement.

**12.11.2** It has taken all requisite action (corporate, statutory, or otherwise) to approve execution, delivery and performance of this Agreement, and this Agreement constitutes a legal, valid and binding obligation upon itself in accordance with its terms.

**12.12 Successors in Interest.** All the terms, provisions, and conditions of the Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, and legal representatives.

**12.13 Record Retention And Access.** ATG shall maintain books, records, and documents which sufficiently and properly document and calculate all charges billed to the DOC throughout the term of this Agreement for a period of at least three (3) years following the date of final payment or completion of any required audit, whichever is later. ATG shall permit the Auditor of the State of Iowa or any authorized representative of the State and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of ATG relating to orders, invoices, or payments or any other documentation or materials pertaining to this Agreement. ATG shall not impose a charge for audit or examination of ATG's books and records.

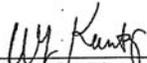
A Review of Statewide Procurement

Copy of Contract Between ATG and DOC

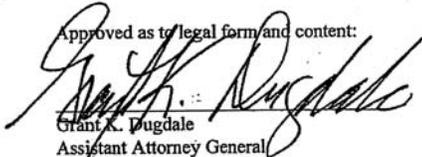
SECTION 13. EXECUTION

IN WITNESS WHEREOF, in consideration of the mutual covenants set forth above and for other goods and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties have entered into the above Agreement and have caused their duly authorized representatives to execute this Agreement.

IOWA DEPARTMENT OF CORRECTIONS

  
\_\_\_\_\_  
W.L. ("Kip") Kautzky, Director

3-23-2000  
Date

Approved as to legal form and content:  
  
\_\_\_\_\_  
Grant K. Dugdale  
Assistant Attorney General

3/22/2000  
Date

ATTORNEY FOR IOWA DEPARTMENT  
OF CORRECTIONS AND FIFTH JUDICIAL  
DISTRICT DEPARTMENT OF  
CORRECTIONAL SERVICES

ADVANCED TECHNOLOGIES GROUP, INC.

  
\_\_\_\_\_  
Atul Gupta  
Chairman & CEO

3/23/2000  
Date

c:\d\atgcon.doc

## A Review of Statewide Procurement

## Copy of Contract Between ATG and DOC

## Exhibit A

**ICON-Banking** -- The Banking system is designed specifically for managing offender and trust account banking transactions for Department of Correction's institutional and community-based correctional facilities. It provides the following features:

- **Primary and Savings Accounts** -- Each offender can have a Primary account and a Savings account which are used like a checking account and gate money respectively.
- **Obligation/Debt Management** -- The system provides for the entry and accounting of various types of offender obligations (restitution, fines, court fees, victim compensation, etc.)
- **Automatic Deductions** -- Deductions for obligation payments and savings are automatically completed for each income entered. The offender's Primary, Savings and Obligation accounts are all updated and checks are queued for printing.
- **Planned Budgets** -- The system supports interactive creation of a budget between offender and the counselor. The system allows the Business Office to maintain control over actual expenditures, as they "commit" the budget to actually implement the budgeted transactions.
- **Rent Charges** -- The system automatically assesses rent for selected offenders and tracks their rent balance. Rent balances are considered an obligation and therefore can be serviced using any/all payment methods.

**ICON-Offender Management** -- The Offender management system is specifically designed to support the various activities undertaken by DOC personnel to monitor and rehabilitate offenders under their supervision. The system supports the following activities:

- **Tracking offenders arrest, charges, sentencing and supervision history**
- **Recording offender demographics** -- The system allows corrections to centrally record the offender's name, birth, citizenship, address, relationships, social security number, FBI numbers, military history etc.
- **Housing Information** -- The system helps the corrections officers track offenders housed in their residential facility and institutions
- **Rules and Rule Violations** -- The system tracks the rules an offender is expected to obey, and records the response to rule violations.
- **Assessment and Interventions** -- The records the results of select assessment tools, the needs identified by the assessment tools, and the interventions used to treat the offender.

A Review of Statewide Procurement

Advanced Technology Group Invitation to Qualify Contract

**MA# 005 CTITQ0036 X**



**STATE OF IOWA**  
**MASTER AGREEMENT**  
 Contract Declaration and Execution

EFFECTIVE BEGIN DATE: 02-01-2010  
 EXPIRATION DATE: 01-31-2012  
 PAGE: 1 of 4

**VENDOR:**

Advanced Tech Group Inc  
 1601 48th St Ste 220  
 W Des Moines, IA 50266  
 USA

**VENDOR CONTACT:**  
 FAX 515-221-1266  
 PHONE: 800-340-6091 EXT:  
 EMAIL:  
 FOB

**ISSUER:**  
 LAURIE HOING  
 PHONE: 515-281-0656  
 EMAIL: laurie.hoing@iowa.gov

**Contract For:** CONSULTING, IT

**Contract For:** SEE ATTACHED DOCUMENTS

Contract To Furnish IT Consulting And Staff Augmentation Pursuant To The Specifications, Terms And Conditions Of Sealed Bid BD80200S102 On File With The Department Of Administrative Services, GSE Purchasing Division, Hoover Building, Level A, Des Moines, Iowa 50319-0105.

For Complete Instructions On How To Use This Contract Contact The Department Of Administrative Services, General Services Enterprise.

This Contract Is For The Following ITQ Service Categories Only:

- 1) Strategy / Vision / Consulting
- 4) Developing
- 9) Administration

**Contact:**

Atul Gupta  
 Ph: 515-221-0095  
 Fax: 515-221-1266  
 Email: atul@a-t-g.com

PCQT# 01000082  
 Rating: 9.29

**RENEWAL OPTIONS**

FROM 02-01-2008 TO 01-31-2010  
 FROM 02-01-2010 TO 01-31-2012

**AUTHORIZED DEPARTMENT**

- ALL
- SUB Other Governmental Entities
- 238 Corrections Central Office
- 239 Corrections Training Academy
- 240 Community Based Corrections
- 242 Corrections Fort Madison
- 243 Corrections Anamosa
- 244 Corrections Oakdale
- 245 Corrections Newton
- 246 Corrections Mt Pleasant
- 248 Corrections Clarinda
- 249 Corrections Mitchellville

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

251 Corrections Form Account	<b>CONTRACTOR</b>	<b>STATE OF IOWA</b>
252 Corrections Form Account	<b>CONTRACTOR'S NAME</b> (If other than an individual, state whether a corp., partnership, etc.)	<b>AGENCY NAME</b>
	<b>BY (Authorized Signature)</b> <b>Date Signed</b>	<b>BY (Authorized Signature)</b> <b>Date Signed</b>
	<b>Printed Name and Title of Person Signing</b>	<b>Printed Name and Title of Person Signing</b>
	<b>Address</b>	<b>Address</b>

A Review of Statewide Procurement

Advanced Technology Group Invitation to Qualify Contract

MA# 005 CTITQ0036 X



STATE OF IOWA  
**MASTER AGREEMENT**  
 Contract Declaration and Execution

EFFECTIVE BEGIN DATE: 02-01-2010  
 EXPIRATION DATE: 01-31-2012  
 PAGE: 2 of 4

LINE NO.	QUANTITY / SERVICE DATES	UNIT	COMMODITY / DESCRIPTION	UNIT COST / PRICE OF SERVICE
1	0.00000		91829	\$0.000000 \$0.000000

**Computer Software Consulting**  
**Computer Software Consulting**  
 Contract To Furnish IT Consulting And Staff Augmentation Pursuant To The Specifications, Terms And Conditions Of Sealed Bid BD80200S102 On File With The Department Of Administrative Services, GSE Purchasing Division, Hoover Building, Level A, Des Moines, Iowa 50319-0105.

For Complete Instructions On How To Use This Contract Contact The Department Of Administrative Services, General Services Enterprise.

This Contract Is For The Following ITQ Service Categories Only:

- 1) Strategy / Vision / Consulting
- 4) Developing
- 9) Administration

Contact:  
 Atul Gupta  
 Ph: 515-221-0095  
 Fax: 515-221-1266  
 Email: atul@a-t-g.com

PCQT# 01000082  
 Rating: 9.29

A Review of Statewide Procurement

Advanced Technology Group Invitation to Qualify Contract

MA# 005 CTITQ0036 X



STATE OF IOWA

EFFECTIVE BEGIN DATE: 02-01-2010

EXPIRATION DATE: 01-31-2012

MASTER AGREEMENT

PAGE: 3 of 4

Contract Declaration and Execution

**TERMS AND CONDITIONS**

**Remedies upon Default**

In any case where the vendor has failed to deliver or has delivered non-conforming goods and/or services, the State shall provide a cure notice. The notice to cure shall state the maximum length of time the vendor has to cure. If after the time period stated in the notice to cure has passed, the vendor continues to be in default, the State may procure goods and/or services in substitution from another source and charge the difference between the contracted price and the market price to the defaulting vendor. The State's Attorney General shall be requested to make collection from the defaulting vendor.

**Force Majeure**

Force majeure includes acts of God, war, civil disturbance and any other causes which are beyond the control and anticipation of the party affected and which, by the exercise of reasonable diligence, the party was unable to anticipate or prevent. These provisions of force majeure also apply to subcontractors or suppliers of the Vendor. Force majeure does not include financial difficulties of the Vendor or any associated company of the Vendor, or claims or court orders that restrict the Vendor's ability to deliver the goods or services contemplated by this Agreement. Neither the Vendor nor the State shall be liable to the other for any delay or failure of performance of this Agreement caused by a force majeure, and not as a result of the fault or negligence of a party.

**Subcontractors**

The successful vendor shall be responsible for all acts and performance of any subcontractor or secondary supplier that the successful vendor may engage for the completion of any contract with the State. A delay that results from a subcontractor's conduct, negligence or failure to perform shall not exempt the vendor from default remedies. The successful vendor shall be responsible for payment to all subcontractors and all other third parties.

**Termination-Non-Appropriation**

Notwithstanding any other provision of this contract, if funds anticipated for the continued fulfillment of this contract are at any time not forthcoming or insufficient, either through the failure of the State to appropriate funds, discontinuance or material alteration of the program for which funds were provided, then the State shall have the right to terminate this contract without penalty by giving not less than thirty (30) days written notice documenting the lack of funding, discontinuance or program alteration.

**Immunity of State/Fed Agencies**

The vendor shall defend and hold harmless the State and Federal funding source for the State of Iowa from liability arising from the vendor's performance of this contract and the vendor's activities with subcontracted and all other third parties.

**Assignment**

Vendors may not assign contracts or purchase orders to any party (including financial institutions) without written permission of the General Services Enterprise - Purchasing.

**Anti-Trust Assignment**

For good cause and as consideration for executing this purchase order, the vendor, through its duly authorized agent, conveys, sells, assigns, and transfers to the State of Iowa all rights, title and interest in and to all causes of action it may now or hereafter acquire under the anti-trust laws of the United States and the State of Iowa, relating to the particular goods or services purchased or acquired by the State of Iowa pursuant to the using State of Iowa agency.

**Delivery and Acceptance**

When an award has been made to a vendor and the purchase order issued, deliveries are to be made in the following manner.

A. Deliveries - All deliveries are to be made only to the point specified on the purchase order. If delivery is made to any other point, it shall be the responsibility of the vendor to promptly reship to the correct location. Failure to deliver procured goods on time may result in cancellation of an order or termination of a contract at the option of the State.

B. Delivery Charges - All delivery charges should be to the account of the vendor whenever possible. If not, all delivery charges should be prepaid by vendor and added to the invoice.

C. Notice of Rejection - The nature of any rejections of a shipment, based on apparent deficiencies disclosed by ordinary methods of inspection, will be given by the receiving agency to the vendor and carrier within a reasonable time after delivery of the item, with a copy of this notice to the General Services Enterprise - Purchasing. Notice of latent deficiencies which would make items unsatisfactory for the purpose intended may be given by the State of Iowa at any time after acceptance.

**Delivery and Acceptance (cont)**

D. Disposition of Rejected item - The vendor must remove at the vendor's expense any item rejected by the State. If the vendor fails to remove that rejected item, the State may dispose of the item by offering the same for sale, deduct any accrued expense and remit the balance to the vendor.

E. Testing After Delivery - Laboratory analysis of an item or other means of testing may be required after delivery. In such cases, vendors will be notified in writing that a special test is being made and that payment will be withheld until completion of the testing process.

**Title to Goods**

The vendor warrants that the goods purchased hereunder are free from all liens, claims or encumbrances.

**Indemnification**

To the extent that goods are not manufactured in accordance with the State's design, the vendor shall defend, indemnify and hold harmless the State of Iowa, the State's assignees, and other users of the goods from and against any claim of infringement of any Letter Patent, Trade Names, Trademark, Copyright or Trade Secrets by reason of sale or use of any articles purchased hereunder. The State shall promptly notify the vendor of any such claim.

**Nondiscrimination**

## A Review of Statewide Procurement

## Advanced Technology Group Invitation to Qualify Contract



**STATE OF IOWA**  
**MASTER AGREEMENT**

MA# 005 CTITQ0036 X

EFFECTIVE BEGIN DATE: 02-01-2010  
 EXPIRATION DATE: 01-31-2012  
 PAGE: 4 of 4

**Contract Declaration and Execution**

The vendor is subject to and must comply with all federal and state requirements concerning fair employment and will not discriminate between or among them by reason of race, color, religion, sex, national origin or physical handicap.

**Warranty**

The vendor expressly warrants that all goods supplied shall be merchantable in accordance with the Uniform Commercial Code, Section 2-314 and the Iowa Code, Section 554.2314.

**Taxes**

The State of Iowa is exempt from the payment of Iowa sales tax, motor vehicle fuel tax and any other Iowa tax that may be applied to a specified commodity and/or service. Contractors performing construction activities are required to pay state sales tax on the cost of materials. The Iowa Department of Revenue exemption letter will be furnished to a vendor upon request.

**Hazardous Material**

All packaging, transportation, and handling of hazardous materials shall be in accordance with applicable federal and state regulations including, but not limited to, the Material Safety Data Sheet provision of O.S.H.A. Hazard Communication Standard 29CFR 1910.1200, and Iowa Administrative Code, Chapter 567.

**Public Records**

The laws of the State of Iowa require procurement records to be made public unless exempted by the Code of Iowa.

**Miscellaneous**

The terms and provisions of this contract shall be construed in accordance with the laws of the State of Iowa. Any and all litigation or actions commenced in connection with this contract shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa. If however, jurisdiction is not proper in Polk County District Court, the action shall only be brought in the United States District Court for the Southern District of Iowa, Central Division, providing that jurisdiction is proper in that forum. This provision shall not be construed as waiving any immunity to suit or liability, which may be available to the State of Iowa.

If any provision of this contract is held to be invalid or unenforceable, the remainder shall be valid and enforceable.

**Records Retention**

The vendor shall maintain books, records, and documents which sufficiently and properly document and calculate all charges billed to the State of Iowa throughout the term of this Agreement for a period of at least five (5) years following the date of final payment or completion of any required audit, whichever is later. The vendor shall at, no charge, permit the Auditor of the State of Iowa, or any authorized representative of the State (or where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government) to access and examine, audit, except and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records, or other records of the vendor relating to orders, invoices, or payments documentation or materials pertaining to this Agreement.

**Independent Contractor**

The vendor is an independent contractor performing services for the State of Iowa, and as such shall not hold itself out as an employee or agent of the State.

**Performance Monitoring**

For all service contracts, the requirements of Iowa Code sections 8.47 shall be incorporated into final terms and conditions of the contract.

**Confidentiality**

Each party may have access to confidential information of the other party to the extent necessary to carry out their responsibilities under the Agreement and Software License Agreement. Such confidential information shall, at all times, remain the property of the party disclosing the confidential information. Each party shall preserve the confidentiality of the confidential information disclosed or furnished by the other party, and shall maintain procedures for safeguarding such confidential information. Each party shall accept responsibility for providing adequate supervision and training to its agents, employees and any approved contractors and subcontractors to ensure compliance with the terms of this Agreement.

**Works Made for Hire**

All information, reports, studies, flow charts, diagrams, and other tangible and intangible material of any nature, whatsoever, produced by the vendor for delivery to the State during the course of this engagement and all copies of any of the foregoing shall be the sole and exclusive property of the State, and all such material and all copies shall be deemed "works made for hire" of which the State shall be deemed the author.

To the extent that the materials are not deemed "works made for hire", the vendor hereby irrevocably grants, assigns, transfers, and sets over to the State all legal and equitable right, title, and interest of any kind, nature or description in and to the materials and the vendor shall be entitled to make absolutely no use of any of the materials except as may be expressly permitted in this Agreement.

**Vendor's Property**

Notwithstanding provisions of "works made for hire", the vendor shall own all of its pre-existing methods, techniques, and processes, including software and documentation, that it brings to this engagement and shall own all enhancements to these methods, techniques and processes, including software and documentation, that are developed during the course of this engagement ("Vendor's Property") and (b) the vendor shall have the right to retain copies of all materials referred to in "works made for hire" in its files evidencing its services for the Information Technology Enterprise. The vendor agrees to grant the State/ITE a royalty-free, nonexclusive, nontransferable license to use, duplicate and disclose the Vendor's Property for the purposes contemplated by this Agreement.

**N60**

NET 60 DAYS

**Appendix I**

A Review of Statewide Procurement

Example Invoice from ATG to DOC



**Advanced Technologies Group, Inc.**  
 1601 48th Street, Suite 220  
 W. Des Moines, IA 50266  
 Fed Id: 42-1362765  
 Phone: (515) 221-9344; Fax: (515) 221-1266

**Invoice**

DATE	INVOICE #
7/31/2007	5760

<b>BILL TO</b>
IA Department of Corrections ATTN: John Baldwin 510 E. 12th Des Moines, IA 50319

P.O. NO.	TERMS	DUE DATE	Covers Period From/To		
1680-47	Due on receipt	7/31/2007	July 2007		
DESCRIPTION		Quantity/Hours	RATE	AMOUNT	
DOC ICON Continued development and support		850	150.00	127,500.00	
DOC ICON Medical and Pharmacy		225	150.00	33,750.00	
DOC Public Website changes		4	150.00	600.00	
DOC Centralized Banking		300	150.00	45,000.00	
ICON Nutrition System		12	150.00	1,800.00	
<i>238A2108004</i> <b>FUND 0001</b> <b>AGENCY 238</b> <b>ORGN. 221A</b> <b>OBJT. 4181</b>					
<b>Total</b>				\$208,650.00	

*David Murray 8/15/07*

A Review of Statewide Procurement

Copy of Amendment to Contract Between ATG to DOC

**AMENDMENT NO. 1  
TO  
SOFTWARE DISTRIBUTION AGREEMENT**

This Amendment No. 1 ("Amendment") is to a Software Distribution Agreement ("Agreement") dated as of March 23, 2000, by and between Advanced Technologies Group, Inc. ("ATG") and the Iowa Department of Corrections ("DOC").

DOC and ATG would like to amend the Agreement as set forth below and, in consideration of the mutual covenants contained in this Amendment the Parties hereby amend the Agreement as follows:

1. Section 9.0 of the Agreement is deleted in its entirety.
2. Except as expressly set forth herein the Agreement remains in full force and effect.

IN WITNESS WHEREOF, the parties have entered into this Agreement No. 1 as of July 27, 2003.

**Iowa Department of Corrections  
("DOC")**

By: John Baldwin  
Name: John Baldwin  
Title: Director

**Advanced Technologies Group, Inc.  
("ATG")**

By: Atul Gupta  
Name: Atul Gupta  
Title: Chairman and CEO

A Review of Statewide Procurement

Department of Corrections Change Order Example



ATG Change Order Request Form

Project Name: ICON	Change Control Number: 00019
Requested by: Name: Toni Tassone Phone #: 515.725.5711	Date of request: 05/01/2009 Organization: Iowa DOC E-mail address: toni.tassone@iowa.gov
Description of: <b>Change requirement -</b> Facilitate the electronic exchange of PSI orders and submission with the courts through the CJIS bus. <b>Needs justification -</b> CJIS standards. <b>Actions required -</b> 1. Scope 2. Development 3. Testing (Deployment, Support DOC Testing Personnel) 4. Documentation 5. Deployment	
Impact assessment: <b>Functional elements -</b> Database and code changes as above. <b>Master timeline schedule -</b> October 2009	
Expected Impact on Existing Data: None	
Separate Rollout Required: Yes	

Resource Requirements	Cost	Target Date
Development, Deployment, Training	\$55,050	October 2009

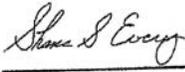
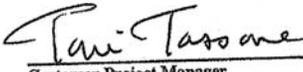
Approved by:

\* Required for financial/timeline impacted change requests

Advanced Technologies Group, Inc. Rev. 01/13/03

A Review of Statewide Procurement

Department of Corrections Change Order Example

	<u>06/01/2009</u>
ATG Project Manager	Date
	<u>10-13-09</u>
Customer Project Manager	Date

\* Required for financial/timeline impacted change requests

Advanced Technologies Group, Inc.

Rev. 01/13/03

A Review of Statewide Procurement

Copy of Change Order Summary Provided by DOC

CHANGE ORDERS						
Change Order Number	Amount	Item(s)	FY	Signed & returned to Shane & RJ	Billed	Status
1 - ICON	?		9			
2 - ICON Medical	\$2,550		10	yes	yes	done
3 - ICON Medical	\$11,400		10	yes	yes	done
4 - ICON Medical	\$7,950		10	yes	yes	done
4 - ICON	\$142,500	Grievance module	10	yes	yes	done
5 - ICON	\$174,000	Property module	10	yes	yes	pending rollout
6 - ICON	\$39,300	BEP monitoring	10	yes	yes	4/6/2010 rollout
7	\$103,200	Security Standards rework	10	yes	yes	done
8	\$12,150	Offender attachments rework	10	yes	yes	done
9	\$9,900	Custody Classification enhancements	10	yes	yes	done
10	\$0	Add crime code class to PSI report instance offenses, add date of document field to the PSI attachment screen, add visitor address, facility, housing unit to the Visitor 18th b'day report, SIR assessment updates following BOP criteria updates	10	yes	yes	done
11	\$23,400	Offender locks	10	yes	yes	done
12	\$8,400	SVP rework	10	yes	yes	done
13	\$0	Phone number control	10	yes	yes	done
14	\$4,050	Threat group photo report	10	yes	yes	done
15	\$0	Zip code functionality	10	yes	yes	done
16	\$3,000	Custody Classification enhancements	10	yes	yes	done
17	\$5,100	Numerous misc. items - see change order	10	yes	yes	done
18	\$1,500	Custody Classification/Transfer Instances	10	yes	yes	done
19	\$55,050	PSI-CJIS project	10	yes	yes	done
20	\$600	Adhoc accounts	10	yes	yes	done
21	\$2,250	Custody Classification enhancements	10	yes	yes	done
22	\$1,800	special sentence off. in field serv. Listing	10	yes	yes	done
23	\$4,800	5th and 6th district work unit changes	10	yes	yes	done
24	\$66,000	Sex Offender-CJIS project	?	no		pending
25	\$42,000	Crime Code - CJIS project	?	no		pending
26 - ICON	\$2,400	Grievances - updating attachments	10	yes	yes	done
26 - CIR	\$10,200	CIR enhancements	10	yes		done

A Review of Statewide Procurement

Copy of Change Order Summary Provided by DOC

27	\$4,800	Security Stand. Non Toxin Multiple	10	yes	yes	done
28	\$4,800	Offender attachments - remove date range	10	yes	yes	done
29	\$4,800	ISORA8 enhancements	10	yes	yes	done
30	\$4,800	Static99 enhancements	10	yes	yes	done
31	\$0	Add secondary man. To the dude screen	10	yes	yes	done
32	\$10,000	PSI-CJIS project - statewide	10	yes	yes	being deployed district by district
33	\$1,800	Add TDD to VINE data exchange files	10	yes	yes	done on our end - VINE to pay \$1,800.
34	\$2,400	Threat group photo report for CBC	10	yes	yes	done
35	\$0	NCRP extract		cancelled		
36	\$18,000	Property further changes	10	no		done
37 & 55	\$12,600	BEP further changes	10	no	yes	done
38	\$3,000	ISORA8/Static99 combined	10	yes	yes	done
39	\$600	Custody Classification enhancements	10	yes	yes	done
40	\$1,200	Release County/Region to Release plan	10	yes	yes	done
41	\$0	Zip Code functionality/city in all caps	10	yes	yes	done
42	\$0	BOP Release Plan - Reviewed checkbox	10	yes	yes	done
43	\$900	Grievance enhanced security issue	10	yes	yes	done
44	\$0	Grievance - counting of spec. needs/MH	10	yes	yes	done
45	\$600	NCRP extract change	10	yes	yes	done
46	\$1,200	offender trip schedules w/wo svp reports	10	yes	yes	done
47	\$2,400	security standard reports	10	yes	yes	done
48	\$135	institution disciplinary appeals report	10	yes	yes	done
49	\$900	grievance enhancements	10	yes	yes	done
50	\$2,400	PSI exchange CJIS attachment issue	10	yes	yes	done
51	\$1,800	Release notification types	10	yes	yes	done
52	\$2,400	sex offender registry	10	yes	yes	done
1220	\$19,800	Bank cards to offenders at release	10	yes		Banking
53	\$300	SVP	10	yes	yes	done
54	\$2,400	special sentence stuff	10	yes	yes	done
55	\$1,800	Monitoring Caseload List and Composite Rep	10	yes	yes	done
56	\$135	Offender Frame LOS update	10	yes	yes	done
57	\$300	PSI rejected and ICON sent date	10	yes	yes	done
58	\$600	Institution caseload review report updates	10	yes	yes	done
59	\$135	crime codes maintenance class addition	10	yes	yes	done
60	\$300	BOP data exchange charge updates	10	yes	yes	done
61	\$135	security standards count report	10	yes	yes	done
62	\$2,400	grievance updates	10	yes	yes	done
63			10	yes		done
64	\$135	security standards pat search multiple	10	yes	yes	done
65	\$0	OWI continuum II wording change	10	no	yes	done
66	\$900	security standards adulterated UA	10	yes	yes	done

**Appendix L**

## A Review of Statewide Procurement

## Copy of Change Order Summary Provided by DOC

67	\$1,500	ISORA/Static99 changes	10	yes	yes	done
68	\$2,400	ICON showing "not a public record" notation	10	yes	yes	done
69	\$900	Parole ROV Cert of Employability	10	yes	yes	done
70	\$600	Duplicate corrections Identifiers	10	yes	yes	done
71	\$0	Sec Standard Non Tox Multiple Defaults	10	yes	yes	done
72	\$1,500	Threat Group Photo Reports - CBC - fixes	10	yes	yes	done
73	\$300	CJIS Victim Assignment Zip Code updates	10	yes	yes	done
74	\$4,500	BEP monitoring updates	10	yes	yes	done
75	\$1,200	CJIS PSI Troubleshooting	10	yes	yes	done

## A Review of Statewide Procurement

## Copy of Senate File 2088 Excerpt

SW Purchasing  
Senate File 2088 - changes to procurement requirements

Senate File 2088 - Excerpt relating to DAS

## DIVISION VII

40 12 DEPARTMENT OF ADMINISTRATIVE SERVICES == PURCHASING  
40 13 Sec. 70. Section 8A.302, subsection 1, Code 2009, is amended  
40 14 to read as follows:  
40 15 1. Providing a system of uniform standards and  
40 16 specifications for purchasing. When the system is developed,  
40 17 all items of general use shall be purchased by state  
40 18 agencies through the department, except items used by  
40 19 the state department of transportation, board of regents  
40 20 and institutions under the control of the state board of  
40 21 regents. However, the department may authorize the department  
40 22 of transportation, the department for the blind, and any other  
40 23 agencies otherwise exempted by law from centralized purchasing,  
40 24 to directly purchase items used by those agencies without going  
40 25 through the department, if the department of administrative  
40 26 services determines such purchasing is in the best interests  
40 27 of the state. However, items of general use may be purchased  
40 28 through the department by any governmental entity.  
40 29 Sec. 71. Section 8A.311, subsection 10, paragraph a, Code  
40 30 2009, is amended to read as follows:  
40 31 a. The director shall adopt rules providing that any state  
40 32 agency may, upon request and approval by the department,  
40 33 purchase directly from a vendor if the direct purchasing is  
40 34 as economical or more economical than purchasing through the  
40 35 department, or upon a showing if the agency shows that direct  
41 1 purchasing by the state agency would be in the best interests  
41 2 of the state due to an immediate or emergency need. The rules  
41 3 shall include a provision permitting a state agency to purchase  
41 4 directly from a vendor, on the agency's own authority, or if  
41 5 the purchase will not exceed ten thousand dollars and the  
41 6 purchase will would contribute to the agency complying with or  
41 7 exceeding the targeted small business procurement goals under  
41 8 sections 73.15 through 73.21.  
41 9 Sec. 72. NEW SECTION. 8A.311A Centralized purchasing.  
41 10 1. The department may designate goods and services of  
41 11 general use that agencies shall, and governmental subdivisions  
41 12 may, purchase pursuant to a master contract established by the  
41 13 department for that good or service. The department shall  
41 14 establish a master contract subject to the requirements of  
41 15 this section if the department determines that a high-quality  
41 16 good or service can be acquired by agencies and governmental  
41 17 subdivisions at lower cost through the establishment of a  
41 18 master contract.  
41 19 2. The department shall establish a master contract  
41 20 pursuant to this section on a competitive basis, and the  
41 21 purchase of a good or service pursuant to the contract shall be  
41 22 deemed to satisfy any otherwise applicable competitive bidding  
41 23 requirements.  
41 24 3. Upon the establishment of a master contract for a good or  
41 25 service pursuant to this section, an agency shall purchase the  
41 26 good or service pursuant to the contract, and shall not expend  
41 27 money to purchase the good or service directly from a vendor

A Review of Statewide Procurement

Copy of Senate File 2088 Excerpt

41 28 and not through the contract, unless any of the following  
41 29 applies:  
41 30 a. The department determines, upon a request by the agency,  
41 31 that the agency can satisfy the requirements for purchase of  
41 32 the good or service directly from a vendor as provided in  
41 33 section 8A.311, subsection 10, paragraph "a".  
41 34 b. The agency is purchasing the good or service pursuant  
41 35 to another contract in effect on the effective date of the  
42 1 master contract. However, the agency shall terminate the  
42 2 other contract if the contract permits the termination of the  
42 3 contract without penalty and the agency shall not renew the  
42 4 other contract beyond the current term of the other contract.  
42 5 Sec. 73. Section 8A.312, Code 2009, is amended to read as  
42 6 follows:  
42 7 8A.312 Cooperative purchasing.  
42 8 The director may purchase items through the state department  
~~42 9 of transportation, institutions under the control of the state~~  
~~42 10 board of regents, and any other agency specifically exempted~~  
~~42 11 by law from centralized purchasing as well as from other~~  
~~42 12 interstate and intergovernmental entities. These state~~  
~~42 13 agencies shall upon request furnish the director with a list~~  
~~42 14 of and specifications for all items of office equipment,~~  
~~42 15 furniture, fixtures, motor vehicles, heavy equipment, and other~~  
~~42 16 related items to be purchased during the next quarter and~~  
~~42 17 the date by which the director must file with the agency the~~  
~~42 18 quantity of items to be purchased by the state agency for the~~  
~~42 19 department. The department shall collaborate and cooperate~~  
~~42 20 with the state board of regents and institutions under the~~  
~~42 21 control of the state board of regents, as provided in section~~  
~~42 22 262.9B, and any other state agency exempt from centralized~~  
~~42 23 purchasing to explore joint purchases of general use items that~~  
~~42 24 present opportunities to obtain quality goods and services~~  
~~42 25 at the lowest reasonable cost. The department shall be liable~~  
~~42 26 to the state agency for the proportionate costs the items~~  
~~42 27 purchased for the department bear to the total purchase price.~~  
~~42 28 When items purchased have been delivered, the state agency~~  
~~42 29 shall notify the director and after receipt of the purchase~~  
~~42 30 price shall release the items to the director or upon the~~  
~~42 31 director's order.~~  
42 32 Sec. 74. Section 307.21, subsection 1, paragraph d, Code  
42 33 Supplement 2009, is amended to read as follows:  
42 34 d. Provide centralized purchasing services for the  
42 35 department, in cooperation with if authorized by the department  
43 1 of administrative services. The administrator shall, when  
43 2 the price is reasonably competitive and the quality as  
43 3 intended, purchase soybean-based inks and plastic products with  
43 4 recycled content, including but not limited to plastic garbage  
43 5 can liners, and shall purchase these items in accordance  
43 6 with the schedule established in section 8A.315. However,  
43 7 the administrator need not purchase garbage can liners in  
43 8 accordance with the schedule if the liners are utilized by a  
43 9 facility approved by the environmental protection commission  
43 10 created under section 455A.6, for purposes of recycling. For  
43 11 purposes of this section, "recycled content" means that the  
43 12 content of the product contains a minimum of thirty percent  
43 13 postconsumer material.  
43 14 Sec. 75. STATE GOVERNMENT PURCHASING EFFORTS == DEPARTMENT

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A Review of Statewide Procurement

Copy of Senate File 2088 Excerpt

43 15 OF ADMINISTRATIVE SERVICES. In order to facilitate efficient  
43 16 and cost-effective purchasing, the department of administrative  
43 17 services shall do the following:  
43 18 1. Require state agencies to provide the department a report  
43 19 regarding planned purchases on an annual basis and to report  
43 20 on an annual basis regarding efforts to standardize products  
43 21 and services within their own agencies and with other state  
43 22 agencies.  
43 23 2. Require state employees who conduct bids for services to  
43 24 receive training on an annual basis about procurement rules and  
43 25 regulations and procurement best practices.  
43 26 3. Identify procurement compliance employees within the  
43 27 department.  
43 28 4. Review the process and basis for establishing  
43 29 departmental fees for purchasing.  
43 30 5. Establish a work group to collaborate on best practices  
43 31 to implement the best cost savings for the state concerning  
43 32 purchasing.  
43 33 6. Explore interstate and intergovernmental purchasing  
43 34 opportunities and encourage the legislative and judicial  
43 35 branches to participate in consolidated purchasing and  
44 1 efficiencies wherever possible.  
44 2 7. Expand the use of procurement cards throughout state  
44 3 government to facilitate purchasing of items by state agencies.

A Review of Statewide Procurement

Copy of DAS' Response to Findings and Recommendations



Governor Terry E. Branstad  
Lt. Governor Kim Reynolds  
Mike Carroll, Director

TO: David Vaudt, Auditor of State  
FR: Mike Carroll, Director, Department of Administrative Services  
RE: Review of Statewide Procurement  
DT: Wednesday, October 19, 2011

The Department of Administrative Services (DAS) appreciates the Auditor of State's thorough review of service contracting, State agency use of master agreements, and DAS' responsibility for overseeing master agreements.

Since the Auditor's review of contracts (2007-2008), DAS has implemented a number of improvements suggested by the Auditor. Improvements made by DAS since 2008 include:

- The Invitation to Qualify (ITQ) agreements (prequalified vendors for IT staff augmentation) are no longer available for use by agencies without a competitive selection process. DAS made this change in August of 2009 because agencies mistakenly believed they could use an information technology vendor without conducting a competitive selection process.
- DAS Procurement now conducts a competitive procurement process on behalf of the DAS Human Resource Enterprise (HRE) for temporary services contracts. This process began in 2011.
- DAS conducts evaluations to determine if agencies are properly using DAS contracts and complying with service contracting terms and conditions. This process began in 2010.
- Pricing data is required for all DAS contracts. New DAS contracts are reviewed for pricing compliance. This process began in 2011.
- DAS purchasing agents are required by DAS Procurement policy and procedure to benchmark pricing on large dollar contracts as part of the competitive procurement process. Purchasing agents provide the administrator with a competitive procurement checklist to ensure benchmarking was completed. This process began in 2009.
- DAS Procurement has provided service contract training to 238 State employees. The training emphasizes proper use of master agreements, competitive bidding requirements, matching invoices to master agreement pricing, and purchasing rules and procedures. This process began in 2009 and training continues to occur on a regular basis.
- During FY 12, the DAS Procurement budget reflects receipts of \$895,829 in rebate revenue. As a result, agencies fees were reduced by \$895,829.
- Architect and Engineer master agreements were not renewed. Architects and Engineers will be selected per requirements of Iowa Administrative Rule Chapter 105 and the Code of Iowa.

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A Review of Statewide Procurement

Copy of DAS' Response to Findings and Recommendations

- Building automation contracts will be bid pursuant to the requirements of Code of Iowa, Chapter 26.

Page 12 of the Executive Summary of the audit summarizes all of the recommendations contained in the report. DAS will implement the following improvements in response to the Auditor's recommendations.

*Comprehensive review and evaluation of current master agreements*

DAS is conducting a comprehensive review and evaluation of all master agreements, beginning with services, to determine if the contract should be cancelled, rebid, or whether additional information is required to assist the agencies utilizing the contract. One hundred and eighty-two (182) service contracts have been identified. Sixty-five (65) were procured on behalf of multiple agencies. One hundred and eight (108) service contracts were requested by agencies that had authority to procure their own contract, but chose to have DAS conduct the procurement. Pricing data was included on all service contracts with the exception of Targeted Small Business contracts.

A listing of DAS service agreements is available for review. Service contracting represents approximately 20% of the total number of DAS contracts. After completing a review of service contracts, the remaining contracts for goods will be reviewed.

Targeted Small Business (TSB) contracts will not be renewed. Most TSB contracts do not contain pricing because agencies are permitted to use a TSB without a competitive bid for up to \$10,000. When an agency desires to utilize a TSB, it will be directed to the Department of Inspection and Appeals website, which lists products, services, and contact information for a TSB.

Contracts awarded to multiple providers will be reviewed to determine if a compelling business case exists for multiple providers. Critical systems or processes may require the availability or redundancy of more than one provider for a variety of reasons and those reasons will be documented.

DAS will continue to follow government procurement rules and best practices procedures when awarding contracts. *The National Institute of Government Purchasing Dictionary of Terms* defines a competitive contract as "A contract where the process used for the solicitation of bids assures that a reasonable and representative number of suppliers are given an opportunity to bid." In cases where DAS solicits bids from multiple vendors and only one vendor responds, a documented award determination will be made based upon research, agency input and/or cost estimates. If only one vendor responds, a contract with the responding vendor would not be considered "sole source"

A Review of Statewide Procurement

Copy of DAS' Response to Findings and Recommendations

because multiple vendors were solicited and bid results were not known at the time of the solicitation.

*Establish Controls to monitor service contracting activities*

DAS will establish a quality assurance team (QAT) to ensure that master agreements are properly utilized by State agencies. The QAT will review and pre-approve/disapprove master agreement purchases before purchases are made. DAS will work with the Auditor of State to determine a statistically valid sampling methodology for this review. Attachment #1 contains a draft proposal for DAS Procurement oversight regarding master agreement purchases. In addition, all State agencies will be required to use the State accounting system for all purchases, the correct payment document, and the correct delivery order process when utilizing a master agreement.

*Consistent application of procurement rules across executive branch agencies*

State executive branch agencies will be required to follow DAS purchasing rules for goods and services of general use. DAS will amend its rules to clarify that all State agencies must follow DAS rules and procedures. DAS will work with the Department of Transportation (DOT) to incorporate additional rule requirements specific to the DOT. Only goods and services of general use will be included. Specialty contracts (road construction, etc.) will not be included. The Code of Iowa exempts the Board of Regents from following DAS rules.

DAS will establish a formalized Memorandum of Understanding (MOU) with each agency when purchasing authority is delegated. The MOU will note specific authority, uniform rules, and the basis for revoking authority.

*Assessment of fees*

Procurement fees will be assessed to all State executive branch agencies effective FY 14. DAS will work with the Iowa Department of Transportation to determine its fee calculation because DAS does not have information regarding DOT's usage of master agreements.

*Rebates*

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A Review of Statewide Procurement

Copy of DAS' Response to Findings and Recommendations

On an annual basis, DAS Procurement assembles an operational budget that comprehensively identifies all expenses necessary to fund the operation. The total annual operating expense, less the estimated annual value of rebates, provides a "net" figure that is the sole basis for assessing fees to customer agencies. Accordingly, annual customer cost assessments are based upon "net" annual operating expenses and accordingly, federal cost participation is automatically taken into account. During FY 12, the DAS Procurement budget anticipates receiving \$895,829 in rebate revenue. Without these rebates, fees to state agencies would be \$895,829 more than currently being paid.

*Pricing on master agreements*

All DAS contracts will require pricing data. Vendors that offer discounted prices will be instructed to provide an invoice that documents both the list price and the discounted price so agencies can verify that the proper percentage discount was received. Invoices that do not contain the list price and discount price will be rejected until they are submitted with the required and correct information. On a quarterly basis, DAS will review vendor contracts containing discounts to ensure the vendor is invoicing at discounted prices. DAS currently conducts price verification on large dollar contracts and will expand this process to include lower dollar contracts.

*Reconciliation of orders against master agreements*

On a quarterly basis, DAS will require agencies to verify and document that goods and services acquired through a master agreement were received and invoiced according to the terms and conditions of that master agreement.

*Temporary Staffing*

When the HRE temporary services contract expired, DAS Procurement assumed procurement responsibilities and awarded the temporary service contract. Upon completion of contract negotiations, State agencies will be notified.

A Review of Statewide Procurement

Copy of DAS' Response to Findings and Recommendations

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Governor Terry E. Branstad  
Lt. Governor Kim Reynolds  
Mike Carroll, Director

Attachment #1

**Draft DAS Quality Assurance Initiative**

Establish a quality assurance team and process within DAS to ensure proper use of each master agreement (MA).

**Responsibilities of team:**

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1. Review each agency MA request prior to issuing a purchase order to a vendor. The review would ensure that the item or service being purchased is on MA and that the MA is being properly utilized.
2. Review MA contracts established by DAS Procurement for pricing and justification, inclusive of the rationale for utilization of multiple vendors.
3. Train agency staff regarding proper procedures for service contracting.
4. Assist with updating administrative rules regarding purchasing procedures.
5. Establish and implement policies and procedures for delegating and revoking agency purchasing authority.
6. On a quarterly basis, review each MA that provides a price discount to ensure the vendor invoiced correctly.
7. Inform vendors regarding State policies and proper invoicing procedures.
8. Review agency expenditures to ensure that a competitive procurement process was utilized.

**Staffing**

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**Potential Options:**

1. Review all orders placed against master agreements.

During FY 11, 29,512, a total of orders/payments were made to MA vendors. It is estimated that reviewing all of these orders will require approximately 14,756 hours (30 minutes/order) and approximately eight (8) additional staff.

2. Review only orders that do not reference master agreement

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A Review of Statewide Procurement

Copy of DAS' Response to Findings and Recommendations

During FY 11, a total of 11,407 orders/payments to MA vendors did not reference the MA. It is estimated that between three (3) and four (4) additional staff would be required to review these orders. Calvin mentioned that this may be difficult to workflow these types of documents.

3. Review 20% of all documents

Review every fifth order (20%) made against a MA (5,902 orders based upon FY11 volume). It is estimated that two (2) additional staff would be required to review these orders.

In addition to reviewing an order against a MA, DAS needs to fulfill the responsibilities listed above in #2-8. One additional staff person will be needed for these responsibilities, for a total of three (3) additional staff.

To initiate this process, I recommend assigning Lois and Barb (part-time basis) to begin reviewing orders against MAs until full-time staff is in place. Both Lois and Barb are familiar with the I/3 system, understand the proper use of contracts, and are immediately available.

### Funding

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Assume pay-grade 26 (Management Analysis 2).

Annual salary is \$40,643.20-\$61,755.20.

An employee in the middle of the pay range pay would receive \$50,000 annually plus benefits.

Total salary cost = \$150,000 plus benefits.

DAS Procurement's balance brought forward could be used to pay these costs in FY 12. In the future, these costs can be covered by the rebates received by DAS Procurement. DAS Procurement operational expenses currently covered by rebates can be billed accordingly to customer agencies as part of their utility fee.

A Review of Statewide Procurement

Copy of DOC's Response to Findings and Recommendations

Iowa Department of Corrections

ICON & Procurement Response

**Overview**

From 1998 through March 2009, the DOC utilized a DAS approved state contract technology provider list to procure development of the ICON system. In 1998, DOC, in consultation with the Auditor and Attorney General Office's, began development of the ICON banking system, which has progressed to over 10 other modules focusing from case management, pharmacy, medical, commissary, etc during this 11-year period.

In April 2009, the Auditor's office began correspondence with the DOC in review of current practices. Several communication exchanges were completed to understand the existing process to develop ICON and utilization of the DAS approved technology provider list. By July 2010, the Auditor's Office advised the development of a formal contractual relationship with ATG, which would replace the current DAS approved technology provider list. As recommended, DOC established a contract with ATG in September 2010 and included sole source justification language as part of the contract as noted,

"WHEREAS, the Contractor is a software development company, developer and owner of Offender Management Suite, a group of highly specialized software products utilized by several large federal and state correctional and private entities including the nationally specialized *Association of State Correctional Administrators*. Offender Management Suite was developed by interviewing over 1000 users from different areas of the Department of Corrections (DOC), Attorney General's Office, State Auditors, Citizen's Ombudsmen, Court Information Systems, Judges and Clerk of Courts, Public Safety, Legislative Bureau and several other agencies. OMS facilitates efficient daily operations of the DOC and strategic management decisions. Each module is designed to provide line staff with services that make tasks simpler. By having all information stored in a structured format, users are able to evaluate effectiveness of various programs, services, service providers etc. Having a common central database supporting institutions, community based corrections and field offices, allows executive management to make more informed decisions on how to improve offender re-entry initiatives, reduce recidivism and improve operational efficiencies. Furthermore, since OMS is specifically designed to support sharing of information between agencies, by including information necessary to interface with Public Safety and Court Information Systems, for the first time Corrections is able to enjoy the benefits of linking with systems from other agencies. Typical health records software is designed to serve public hospitals and private medical clinics; it does not adapt well to serve needs of correctional institutions. ATG's *Electronic Medical Records (EMR)* and *Pharmacy Administration* solution have been very successful in correctional environments because they were a product of collaborative effort with correctional nurses, doctors, psychologists, psychiatrists, dentists and pharmacists."

Once the contract with ATG was signed, the DOC discovered through the Auditor's Office that a separate sole source justification document needed to be complete and signed. This document was completed and submitted January 2011.

A Review of Statewide Procurement

Copy of DOC’s Response to Findings and Recommendations

In reference to the contract, “Change Order” includes enhancements and other services defined by the DOC,

”1.32. Time/Materials/Product/Services Charges - all software and data changes, enhancement requests, additional services requested by the Customer will be defined in a Change Order, which will document the modifications request, the impact on current data, the fixed cost for the effort required, and target date for delivery.”

Prior to the contract established in 2010, DOC operated with specific deliverables; however, 100% of the development and implementation documentation was not saved or could not be retrieved as part of the Auditor’s review. The DOC now operates with planning, estimation, development and implementation documents secured for future reference and accountability. The DOC agrees future documentation is necessary to substantiate contractual rates compared to fair market rates, even though a sole source arrangement exists.

**Recommendations**

- The DOC welcomes additional follow-up from the Attorney General’s Office to further review procurement activities in accordance with centralized procurement procedures. The DOC currently utilizes DAS for procurement activities and has successfully collaborated with DAS to the extent DOC has received DAS designation as an “advance procurement authority” and our staff continue to complete advance procurement courses or training to achieve or continue this certification. The current list of DOC staff with *advance procurement certification* and or training includes.

Name	Agency	Certified
Oswald, Lisa	DOC, Anamosa	Progressing to Certification
Anderson, Dale	DOC Central Office	Progressing to Certification
Powell, RJ	DOC Central Office	Progressing to Certification
Kennebeck, Jill	DOC, Anamosa	Advance Procurement Certification
Haer, Jodi	DOC, Clarinda	Advance Procurement Certification
Rieks, Sue	DOC, Eldora	Advance Procurement Certification
Little, Karen	DOC, Fort Dodge	Advance Procurement Certification
Freeman, Sonya	DOC, Fort Madison	Advance Procurement Certification
Hamm, Teri	DOC, Fort Madison	Advance Procurement Certification
Choate, Lori	DOC, Mitchellville	Advance Procurement Certification
Housh, Kim	DOC, Mt. Pleasant	Advance Procurement Certification
Bleakney, Deb	DOC, Newton	Advance Procurement Certification
Mantemach, Carol	DOC, Oakdale	Advance Procurement Certification
Baker Meredith	DOC, Rockwell City	Advance Procurement Certification

A Review of Statewide Procurement

Copy of DOC's Response to Findings and Recommendations

- The DOC agrees, and has taken steps to enhance documentation procedures, to ensure future payments to ATG are based upon pre-established deliverables as defined by the "Change Order" process. Per the auditor's review, November 2009, DOC deployed a change order process to track changes to the ICON suite of modules. This change order process works in conjunction with the "scope document" process that has been in place since the inception of ICON. The scope document qualifies in detail how a project is defined, while the "change order" documents the cost, expected deployment date and a summary of the definition of the project.
- In 2000, as part of an ongoing ICON funding request, the DOC promised to reduce and then stabilize the prison population, with the objective being to eliminate the need for an additional prison to be constructed to bring Iowa into compliance with past federal lawsuit cases.

The DOC has fulfilled that promise. Excluding construction costs, the yearly operating costs of a prison is approximately \$25 million per year. At a minimum, the state has saved at least \$100,000,000 in fixed costs by using the ICON system to stabilize the prison population.

Other less dramatic impacts have been accomplished by the development of the ICON system.

- Staffing levels in records and business offices have been reduced because of ICON efficiencies.
- Central Pharmacy was created using the electronic medical record in ICON. Last year alone, DOC realized over a \$1,000,000 reduction in pharmacy spending.
- Telemedicine has been enhanced by the ICON system and allowed the DOC to have a very robust telemedicine system, which has reduced offender trips to UIHC and provides constitutional required medical services to offenders.
- Data sharing with DPS has improved accuracy and timeliness of information vital public safety.
- Centralized offender accounting has resulted in increased fund accuracy with reduced staff.

Another cost saving includes the continued efficient use of administration, security and treatment staff in our prison system through the technology advancements of ICON. In 1981, Oakdale, the Iowa Medical & Classification Center, included 6 business office staff with 81 patients. Today, 5 business office staff process case management, fiscal, commissary and other critical transactions through ICON with almost 1,000 offenders on a daily basis. The decrease of one staff member alone, over an 11-year period, equates to over \$500,000 of savings.

Comparing other states technology budgets with comparable offender populations, such as Oregon's \$10.2M annual budget and Minnesota's \$8.8M annual budget; they far exceed what Iowa DOC has expended over an 11-year period in ICON development.

Additionally, the cost to utilize the ICON suite of modules over the past 11-years is less than \$.01 penny per day per offender and less than \$.10 cents per user per day.

- DOC will continue to work with DAS to implement control procedures for service contracting activities. The DOC will continue to comply with internal policies and procedures in compliance with Code of Iowa and Administrative rules. The DOC has successfully demonstrated compliance, through past audit's and willingness to collaborate with DAS on a continued basis in procurement activities. Again, once the process changed to discontinue using the DAS approved technology provider list through the Auditor's Office guidance, a contract was established with ATG for future ICON development.

A Review of Statewide Procurement

Copy of DOC's Response to Findings and Recommendations

- DOC welcome's additional review of the procurement activities with a selection of other providers to determine if contracts are being properly administered. It should be noted DOC currently seeks and completes DAS procurement training and continues to leverage DAS expertise to contract and procure goods and services.
  
- DOC agrees and will to strive for continued DAS designation as an "advance procurement authority" as previously noted. The DOC strictly adheres to Auditor's Office requirements, Code of Iowa and Administrative Rules when processing payments and agrees non-compliant payments should not be approved for payments.