STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

A PERFORMANCE AUDIT
OF THE

DEPARTMENT OF ADMINISTRATION-
DIVISIONS OF FINANCE & SURPLUS PROPERTY

DECEMBER 1981

A REPORT TO THE
ARIZONA STATE LEGISLATURE

REPORT 81-14

DOUGLAS R. NORTON, CPA
AUDITOR GENERAL

STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

December 18, 1981

Members of the Arizona Legislature
The Honorable Bruce Babbitt, Governor
Mr. Robert B. Tanguy, Director
Department of Administration

Transmitted herewith is a report of the Auditor General, A Performance Audit of the Department of Administration Divisions of Finance and Surplus Property. This report is in response to a January 30, 1980, resolution of the Joint Legislative Oversight Committee. This performance audit was conducted as a part of the Sunset review set forth in A.R.S. §§41-2351 through 41-2379.

The blue pages present a summary of the report; responses from the Director, Department of Administration, former Acting Director, Department of Administration, Assistant Director for Finance and Assistant Director for Surplus Property are found on the yellow pages preceding the appendices.

My staff and I will be pleased to discuss or clarify items in the report.

Respectfully submitted,

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OFFICE OF THE AUDITOR GENERAL

A PERFORMANCE AUDIT OF THE DEPARTMENT OF ADMINISTRATION FINANCE DIVISION AND SURPLUS PROPERTY DIVISION

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ARIZONA STATE LEGISLATURE

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TABLE OF CONTENTS

FINANCE DIVISION

INTRODUCTION AND BACKGROUND - FINANCE DIVISION 1
STATE PURCHASING OFFICE *
GENERAL ACCOUNTING OFFICE *

SURPLUS PROPERTY DIVISION *

APPENDICES

APPENDIX I - Legislative Council Memorandum O-81-20, April 23, 1981

APPENDIX II - Legislative Council Memorandum O-81-23, April 21, 1981

APPENDIX III - Legislative Council Memorandum O-81-22, May 11, 1981

APPENDIX IV - Legislative Council Memorandum O-81-34, July 7, 1981

APPENDIX V - Legislative Council Memorandum O-81-37, July 7, 1981

APPENDIX VI - Results of Auditor General survey of State agencies and political subdivisions

APPENDIX VII - Legislative Council Memorandum O-80-21, April 29, 1981

APPENDIX VIII - Legislative Council Memorandum O-81-40, July 20, 1981

APPENDIX IX - Legislative Council Memorandum O-81-65, July 16, 1981

APPENDIX X - Legislative Council Memorandum O-81-63, July 2, 1981

APPENDIX XI - Major findings, recommendations and corrective action in response to Federal reviews of the Surplus Property Division

APPENDIX XII - Legislative Council Memorandum O-81-62, July 1, 1981

* A separate table of contents is contained in each section.

DEPARTMENT OF ADMINISTRATION

FINANCE DIVISION

State Purchasing Office

General Accounting Office

INTRODUCTION AND BACKGROUND - FINANCE DIVISION

The Office of the Auditor General has conducted a performance audit of the Department of Administration, in response to a January 30, 1980, resolution of the Joint Legislative Oversight Committee. This performance audit was conducted as a part of the Sunset review set forth in Arizona Revised Statutes (A.R.S.) §§41-2351 through 41-2379.

The Finance Division, formerly the Department of Finance, was incorporated into the Department of Administration in 1973.

DOA-Finance, through the authority of A.R.S. §§41-721 through 41-740, is responsible for

- installing and maintaining a uniform system of accounting;
- evaluating and planning improvements in State fiscal matters;
- developing and maintaining a comprehensive long-range plan for capital outlay; and
- recommending administrative reorganization and management practices.

The Finance Division is funded by appropriations from the Legislature. Table 1 presents a summary of full-time employees, actual expenditures for fiscal years 1977-78 through 1979-80, estimated expenditures for fiscal year 1980-81 and the appropriation for 1981-82.

TABLE 1

SUMMARY OF DOA-FINANCE FULL-TIME EQUIVALENT EMPLOYEES (FTE) AND ACTUAL AND PROJECTED EXPENDITURES FOR FISCAL YEARS 1977-78 THROUGH 1981-82*

	Fiscal Years				
	1977-78	1978-79	1979-80	1980-81**	1981-82***
Personal services	$1,428,900	$1,590,100	$1,695,900	$1,943,800	$2,410,600
Employee-related expenditures	245,800	285,900	310,400	360,400	482,700
Professional and outside services	646,400	658,600	1,060,800	1,396,100	1,659,100
Travel:					
In State	19,400	20,800	19,300	30,000	35,200
Out of State	3,200	2,100	4,500	3,900	6,500
Other operating expenses	313,500	316,500	338,900	351,800	400,000
Equipment	5,600	3,300	74,400	25,300	17,200
Total	$2,662,800	$2,877,300	$3,504,200	$4,111,300	$5,011,300
FTE	106	107	107	109	111

* Source: DOA-Finance assistant director.

** Amounts represent June 30th actual amounts, which may be changed by 13th-month adjustments. Does not include $68,000,000 teachers' retirement monies.

*** Does not include $74,800,000 teachers' retirement monies.

DOA-Finance is comprised of six organizational units: Automation Section; Executive Budget Office; General Accounting Office; Operations Analysis; Facilities Planning and Construction Section and the State Purchasing Office.

The scope of the performance audit was limited to reviews of the State Purchasing Office, Facilities Planning and Construction Section and the General Accounting Office due to time and staff resource constraints. The results of reviews of the State Purchasing Office and the General Accounting Office are contained in separate sections of this report. In addition, a review of the Department of Administration - Surplus Property Division is included as a separate section of the report.

Additionally, questions have arisen concerning some information obtained during the course of the review of the Facilities Planning and Construction Section. In the interests of fairness and accuracy, the results of that review are not included in this report. A separate report on the Facilities Planning and Construction Section will be released in early 1982.

The Auditor General expresses gratitude to the assistant director for Finance and his staff for their assistance and consideration during the course of the audit.

DEPARTMENT OF ADMINISTRATION

FINANCE DIVISION

State Purchasing Office

TABLE OF CONTENTS

	Page
SUMMARY	i
INTRODUCTION AND BACKGROUND	1
SUNSET FACTORS	3
FINDING I	7
State government purchasing operations are excessively decentralized and not adequately controlled.	
CONCLUSION	18
RECOMMENDATION	18
FINDING II	19
Improvements are needed in the State Purchasing Office's quality control program.	
CONCLUSION	25
RECOMMENDATIONS	25
FINDING III	27
Improvements are needed in the vendor complaint process to ensure vendor compliance with State purchasing contracts.	
CONCLUSION	32
RECOMMENDATIONS	32
FINDING IV	35
Improvements are needed in the management information system used by the State Purchasing Office.	
CONCLUSION	39
RECOMMENDATIONS	39

Page

FINDING V 41

The term contract used by the State Purchasing Office needs to be revised because it may not serve the best interests of the State.

CONCLUSION 43

RECOMMENDATION 43

FINDING VI 45

Procedures used by the State Purchasing Office to solicit bids may not be in compliance with statutory requirements.

CONCLUSION 49

RECOMMENDATIONS 49

WRITTEN RESPONSE TO THE AUDITOR GENERAL REPORT 51

SUMMARY - STATE PURCHASING OFFICE

The State Purchasing Office (SPO) was created by the Legislature in 1967 and incorporated into DOA-Finance in 1973. SPO is responsible for reviewing and monitoring the purchasing activity of State agencies, prescribing standards and procedures, maintaining an inventory of State property and purchasing risk management services.

The purchasing function in State government is operationally decentralized. Although all State agencies, except the universities, the legislative and judicial branches, the Lottery Commission, and Arizona Correctional Enterprises, are required by statute to use the services of SPO, the ten largest agencies, designated as purchase-authorized, are able to buy most items without obtaining prior approval from SPO. SPO provides for the purchase of some high-volume and common-use items through negotiation of supply contracts and awards contracts for special purchases by agencies which have not been granted purchase-authorized status. Therefore, SPO's primary duty is contract administration.

Delegations and grants of authority to purchase-authorized agencies is excessive. In addition, SPO has failed to fulfill its statutory responsibility to monitor and review the purchasing activities of State agencies. As a result, the State purchasing system has been decentralized to a degree that exceeds legislative intent, and the State may incur unnecessary costs because user agencies do not always use supply contracts or follow required bidding procedures. SPO lacks enforcement capability to ensure agency compliance with established policies and procedures.

Further, purchasing staff may be duplicated in purchase-authorized agencies and SPO. Greater economy and efficiency could be obtained by either 1) granting SPO additional enforcement powers by allowing SPO to absorb an agency's purchasing staff if SPO determines that the agency's activities do not warrant purchase-authorized status, or 2) centralizing all purchasing activities and staff in SPO, except for purchases below a specified dollar limit. (page 7)

SPO also is responsible for monitoring the quality of goods purchased by State agencies. SPO has not developed adequate programs to evaluate vendor qualifications or pretest products prior to contract award to ensure that contracts are awarded only to responsible vendors and only for products which meet specifications. Additionally, testing of products received by agencies is limited and responsibility for inspection of most goods has been delegated to user agencies. SPO needs to develop a quality control program which will ensure that the State does not incur excessive product costs or receive lower quality goods than the cost warrants. (page 19)

Because SPO lacks sufficient statutory authority to investigate and resolve complaints and user agencies do not comply with SPO's requirements to submit all complaints regarding vendor products or performance, the complaint process is fragmented among several agencies. In addition, SPO has not developed written procedures for its own staff. As a result, complaint resolution is inconsistent, sometimes ineffective and may be untimely. The statutes need to be amended to grant SPO specific responsibility and authority for investigating and resolving complaints, including provisions for sanctions against vendors who fail to perform. (page 27)

SPO negotiates term contracts, or supply agreements, for high-volume and common-use commodities such as food items and some office supplies and furniture. These contracts are for indefinite quantities and may be used by any State agency. The management information system does not provide sufficiently detailed information to identify every item which should be placed on a term contract or forecast the needs of State agencies. (page 35) Further, SPO may not have fulfilled its administrative responsibility in that its term contract form has not been reviewed or approved by the Attorney General. The contract form needs to be revised because the Office may not be able to monitor or enforce provisions of a contract. The present form, and future changes to the form, should be reviewed and approved by the Attorney General to correct any deficiencies. (page 41)

Arizona statutes require bids to be solicited from all qualified suppliers who appear on the master bid list, including out-of-State vendors. As a result of a State Purchasing Office interpretation of the statutes, SPO does not always solicit bids from out-of-State vendors on the bid list. In addition, SPO has not developed a bid list which allows solicitation of bids from qualified vendors only. The provisions of the statutes governing bidding procedures need to be reviewed to determine if out-of-State vendors are intended for exemption. (page 45)

Consideration should be given to the following recommendations:

1. Strengthen the role of SPO through one of the following alternatives:

   - Alternative I
     - Amend A.R.S. §41-729 to a) specifically require agencies to follow SPO-established procedures, b) provide sanctions for agency noncompliance, and c) provide for the absorption of an agency's purchasing staff by SPO in the event SPO revokes its purchase-authorized status.

- SPO review each purchase-authorized agency to determine if its purchasing operations are economical and efficient.

- Require agencies to submit copies of purchase orders for SPO review.

- Alternative II

  Centralize State purchasing activities and staff in SPO and allow agencies to purchase certain products or products that cost less than a specified amount only.

2. The Legislature a) amend A.R.S. §41-729, subsection A, to require explicitly that SPO establish a quality control program, and b) appropriate funds for the implementation of the program.

3. SPO develop a quality control program to include:

   - Testing of delivered goods,
   - Inspection of goods at receipt, and
   - Requiring vendors to submit test results as required by specifications.

   User agency input and participation should be included in the program's development, and the program should be written to include standards for documentation of activities.

4. SPO study a plan for vendor evaluation. If these functions are instituted, the following should be included:

   - Development of vendor qualification criteria,
   - Requirement that vendors submit information which SPO requires for evaluation, and
   - Agency input to evaluate vendors under contract.

5. A.R.S. §41-729, subsection A, be amended to provide the State Purchasing Office with specific responsibility and authority for investigating and resolving complaints as follows:

   - Recognize SPO as the sole entity with such authority for vendors under term contracts and require all agencies to submit complaints concerning vendors in writing to SPO,
   - Provide for a formal suspension or debarment procedure and other sanctions which may be invoked against vendors for failure to perform, and
   - Provide for an appeal process for vendors against whom action has been taken.

6. The State Purchasing Office develop and implement internal staff procedures for investigating and resolving complaints, including guidelines for

   - Documentation of complaints and actions,
   - Appropriate action under varying circumstances, and
   - Time frames for actions.

7. SPO request budget authorization to institute a study to determine the feasibility of an internal management information system to review and record agency purchasing documents for use in contract administration decisions.

8. The Finance Division continue accounting system development and assess the AFIS purchasing module in terms of present information inadequacies.

9. The present term contract form, and future changes to the form, be reviewed and approved by the Attorney General.

10. The Legislature review the provisions of A.R.S. §41-730, subsection A, to determine if out-of-State vendors are intended for exemption.

11. SPO further refine the master bid list to identify vendors who are able to supply the product for which a bid is solicited.

INTRODUCTION AND BACKGROUND

The State Purchasing Office (SPO) was created by the Legislature in 1967 "...in order to make state government more economical and efficient...." The Office was incorporated into the Division of Finance, part of the Department of Administration (DOA-Finance), in 1973.

Under the provisions of Arizona Revised Statutes (A.R.S.) §§41-729 through 41-731, SPO is responsible for reviewing and monitoring the purchasing activity of State agencies, prescribing standards and procedures, maintaining an inventory of State property and purchasing risk management services.

The purchasing function in State government is operationally decentralized. Although all State agencies, except the universities, the legislative and judicial branches, the Lottery Commission, and Arizona Correctional Enterprises, are required by statute to use the services of SPO, the ten largest agencies, designated as purchase-authorized, are able to buy most items without obtaining prior approval from SPO. SPO provides for the purchase of some high-volume and common-use items through negotiation of supply contracts and awards contracts for special purchases by agencies which have not been granted purchase-authorized status. Therefore, SPO's primary duty is contract administration.

Table 1 contains full-time equivalent employee numbers and estimates of expenditures for the State Purchasing Office from fiscal year 1977-78 through 1981-82.

TABLE 1

SUMMARY OF FULL-TIME EQUIVALENT EMPLOYEES (FTE) AND ACTUAL AND PROJECTED EXPENDITURES FOR THE STATE PURCHASING OFFICE FOR FISCAL YEARS 1977-78 THROUGH 1981-82*

	Fiscal Years				
	1977-78	1978-79	1979-80	1980-81**	Estimated 1981-82***
FTE	20	20	20	20	20
Expenditures					
Personal services	$280,000	$303,700	$336,500	$402,900	$455,900
Employee-related expenditures	48,200	54,700	61,200	76,600	91,200
Professional and outside services		10,500	23,200	5,300	90,200
Travel:					
In State	1,200	800	2,100	1,800	2,600
Out of State	1,200	800	1,900	600	2,300
Other operating expenses	74,300	68,400	106,100	87,500	80,300
Equipment	1,500	400	2,100	900	7,900
Total	$406,400	$439,300	$533,100	$575,600	$730,400

* Source: Assistant director, DOA-Finance.

** Amounts are based on June 30th actual amounts, and may be changed by July 1981 adjustments.

*** Amounts are based on 1981-82 budget appropriation.

SUNSET FACTORS

Nine factors were reviewed to aid in the process of determining whether the Department of Administration-Division of Finance, State Purchasing Office should be continued or terminated, in accordance with Arizona Revised Statutes (A.R.S.) §§41-2351 through 41-2379.

SUNSET FACTOR: OBJECTIVE AND PURPOSE IN ESTABLISHING THE OFFICE

The State Purchasing Office (SPO) was created by the Legislature in 1967 to "...make state government more economical and efficient...." Pursuant to Arizona Revised Statutes (A.R.S.) §41-729, subsection A., SPO is required to investigate and review types of items and services purchased by State agencies and procurement methods used by agencies, to prescribe standards of quality and procurement procedures, to maintain capital equipment inventories and to purchase risk management services.

SPO has further identified its functions and responsibilities as

- Awarding State contracts for large-volume and common-use items,
- Processing individual purchases of $5,000 or more,
- Maintaining a current inventory of State-owned personal property, and
- Reviewing the purchasing practices and procedures of purchase-authorized State agencies, to ensure conformance with applicable statutes.

Local governments and other political subdivisions, such as school districts, may also use contracts negotiated by SPO.

SUNSET FACTOR: THE DEGREE TO WHICH THE OFFICE HAS BEEN ABLE TO RESPOND TO THE NEEDS OF THE PUBLIC AND THE EFFICIENCY WITH WHICH IT HAS OPERATED

SPO attempts to respond to the needs of the public by 1) effecting economies through negotiating with vendors contracts which provide lower prices to State agencies, 2) monitoring the quality of goods purchased, and 3) contributing to Arizona's economic growth by providing its vendors with the opportunity to obtain State contracts.

The use of term contracts has enabled agencies to obtain goods at lower prices than those available without such contracts. A survey of State agencies indicated that users are satisfied with the quality of products. However, lack of adequate management information impairs SPO's ability to identify every type of purchase which should be on contract. (page 35) In addition, SPO's monitering of the quality of products purchased with public monies is limited and poorly documented. (page 19)

SPO has afforded Arizona vendors an opportunity to obtain State contracts by 1) providing adequate time before the closing of bids and 2) evaluating bids in a timely manner. A survey of vendors revealed that they are satisfied with SPO's overall performance and plan to continue seeking SPO's business. However, procedures used to solicit bids may not be in compliance with statutory requirements. (page 45)

Our review of SPO operations revealed that SPO's level of efficiency is affected adversely by

- A lack of adequate management information to administer contracts. (page 35)
- Inadequate SPO monitoring of the purchasing activities of State agencies. (page 12)
- Insufficient control through the provisions of term contracts. (page 41)

SUNSET FACTOR: THE EXTENT TO WHICH THE OFFICE HAS OPERATED IN THE PUBLIC INTEREST

SPO is an administrative agency providing services to other State agencies and local governmental jurisdictions. Since SPO has obtained lower prices for these entities, it appears to have operated within the public interest.

SUNSET FACTOR: THE EXTENT TO WHICH THE RULES AND REGULATIONS PROMULGATED BY THE OFFICE ARE CONSISTENT WITH THE LEGISLATIVE MANDATE

In lieu of promulgating rules and regulations, SPO appropriately has issued a policies and procedures manual for State agencies. According to a Legislative Council memorandum dated April 23, 1981, issuance of the manual satisfies SPO's statutory responsibility under A.R.S. §41-729, subsection A, paragraph 2, to "Prescribe standards of quality, standard specifications and methods...." The memorandum states in part:*

> "...[T]he Legislature has not specifically required the issuance of regulations to set purchasing standards, specifications and methods. The purchasing section itself does not have authority to promulgate regulations although the assistant director for finance who heads the division of which the purchasing section is a part may issue regulations....To accomplish the legislative intent we believe that the purchasing section could either promulgate regulations through the assistant director for finance or, as is the case, issue a policy and procedures manual."

Directives in the manual are binding on all State agencies. SPO presently is revising the manual and intends to put the provisions in the form of regulations in the future. A review of the present manual did not reveal provisions that were inconsistent with Legislative intent.

SUNSET FACTOR: THE EXTENT TO WHICH THE OFFICE HAS ENCOURAGED INPUT FROM THE PUBLIC BEFORE PROMULGATING ITS RULES AND REGULATIONS AND THE EXTENT TO WHICH IT HAS INFORMED THE PUBLIC AS TO ITS ACTIONS AND THEIR EXPECTED IMPACT ON THE PUBLIC

SPO has solicited input for the revision of the policies and procedures manual from the Purchasing Advisory Council, which is comprised of representatives from purchase-authorized agencies. Nonpurchase-authorized agencies have not been involved in developing new policies and procedures.

A survey of user agencies indicated that most agencies are notified in writing about changes in procedures and receive copies of new ones.

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* Appendix I contains the memorandum text.

SUNSET FACTOR: THE EXTENT TO WHICH THE OFFICE HAS BEEN ABLE TO INVESTIGATE AND RESOLVE COMPLAINTS THAT ARE WITHIN ITS JURISDICTION

Complaints are received from user agencies and from vendors. Although agencies are required by the procedures manual to submit complaints to SPO in writing, many complain directly to the vendor or do not complain in writing, impairing the effectiveness of SPO's complaint-handling function. (page 27)

Our review revealed that the complaint-resolution process is fragmented, sometimes ineffective and may be untimely. (page 27)

SUNSET FACTOR: THE EXTENT TO WHICH THE ATTORNEY GENERAL OR OTHER APPLICABLE AGENCY OF STATE GOVERNMENT HAS THE AUTHORITY TO PROSECUTE ACTIONS UNDER THE ENABLING LEGISLATION

Although the enabling legislation does not define action for prosecution by the Attorney General, SPO has recourse against vendors for unsatisfactory performance of contractual obligations through the Office of the Attorney General. According to SPO officials, absence of specific redress has not caused problems.

SUNSET FACTOR: THE EXTENT TO WHICH THE OFFICE HAS ADDRESSED DEFICIENCIES IN ITS ENABLING STATUTES WHICH PREVENT IT FROM FULFILLING ITS MANDATE

SPO supported legislation introduced in 1981 which would have 1) standarized purchasing authority among State agencies, 2) further centralized the purchasing function, 3) provided for warehousing, 4) enlarged the scope of cooperative purchasing with non-State political subdivisions, and 5) clarified procedures regarding the master bid list. The bill did not pass. Earlier legislative proposals supported by SPO could not be identified.

SUNSET FACTOR: THE EXTENT TO WHICH CHANGES ARE NECESSARY IN THE LAWS OF THE OFFICE TO ADEQUATELY COMPLY WITH THE FACTORS LISTED IN THIS SUBSECTION

See pages 18, 25, 32 and 49.

FINDING I

STATE GOVERNMENT PURCHASING OPERATIONS ARE EXCESSIVELY DECENTRALIZED AND NOT ADEQUATELY CONTROLLED.

The State Purchasing Office (SPO) was created by the Legislature "to make state government more economical and efficient." Our review revealed that 1) excessive amounts of authority have been delegated or granted to user agencies, and 2) SPO has failed to fulfill its statutory responsibility to monitor and review the purchasing activities of State agencies. As a result, the State purchasing system has been decentralized to a degree that exceeds legislative intent, and the State may incur unnecessary costs because of user agency noncompliance with SPO procedures.

Legislative Intent

The 1967 enactment creating the Purchasing Division (now DOA-Finance, State Purchasing Office) reads:

> "It is the intention of this legislature: that a system of purchasing for state agencies be established in order to make state government more economical and efficient...."

According to a legislator who cosponsored the 1967 bill, the Legislature intended that the State's purchasing system be characterized by a high degree of centralization.

Centralized purchasing as a means to achieve purchasing economies and efficiency is recognized and supported by such organizations as the Council of State Governments, the National Association of State Purchasing Officials (NASPO), the U. S. Law Enforcement Assistance Administration and the American Bar Association (ABA). For example, ABA's Model Procurement Code for State and Local Governments contains the following commentary:

"...experience has shown that a cohesive and integrated procurement system, rather than one which is fragmented or diffused, will promote efficiency and economy and will best conserve the taxpayer's monies." (Emphasis added)

The Council of State Governments and NASPO, in State and Local Government Purchasing, further stress this:

"...it is axiomatic that purchasing programs be built on a centralized authority and with centralized responsibility."

Our review revealed that SPO has delegated excessive authority to user agencies and has done so without due consideration given to questions of economy, efficiency or effectiveness.

Delegations and Grants
Of Authority To State Agencies

Arizona law provides that the assistant director for finance may delegate purchasing authority and, in fact, requires such delegation under certain circumstances. A.R.S. §41-729, subsection B, paragraph 2, defines the parameters for delegation, stating in part:

"The assistant director for finance, through the purchasing section, may:

. . . . . .

"2. Authorize any budget unit directly to purchase, rent or otherwise provide for specified supplies, materials, equipment or contractual services. The assistant director for finance shall grant such authority to any budget unit which demonstrates the ability to procure such specified supplies, materials, equipment or contractual services at the same or less cost as would be available through the section of purchasing." (Emphasis added)

As of August 1, 1981:

- Agencies are required to use term contracts* negotiated by SPO. Commodities such as vehicles and data processing equipment, while not under term contract, must be contracted for by SPO.
- Ten agencies, designated as purchase-authorized, may purchase directly all items except those under term contract and those specifically excluded by SPO. These agencies must follow bidding and other purchasing procedures as specified by SPO.
- Agencies referred to as nonpurchase-authorized may make direct purchases of $500 or less per transaction of items not on term contract or specifically excluded by SPO. Other purchases must be referred to SPO.
- Several agencies are statutorily exempt from using SPO. These agencies are the Lottery Commission, Arizona Correctional Enterprises, the universities and the legislative and judicial branches.

These delegations appear to be excessive when compared to other states' delegations. A 1979 Council of State Governments survey showed that 35 of the 49 states with central purchasing authorities provided some exemptions from the central authority. However, the report noted that "Arizona reports an unusually large number of such exemptions." Most states exempt the universities and the legislative and judicial branches. Table 2 summarizes the Council's survey results.

* Term contracts, or supply agreements, are indefinite-quantity contracts through which any agency may purchase. Term contracts are used for high-volume and commonly used commodities, such as food items and some office supplies and furniture.

TABLE 2

A SUMMARY OF THE 1979 COUNCIL OF STATE GOVERNMENTS
STATE PURCHASING SURVEY RESULTS

State	Centralized Purchasing Authority	Exemptions from Centralized Purchasing Authority			
		State Universities	Legislative Branch	Judicial Branch	Number of Other Agencies
Alabama	X				3
Alaska	X	X	X		
Arizona	X	X	*	*	9*
Arkansas	X	X	X	X	1**
California	X	X***			1
Colorado	X	X			3
Connecticut	X		X	X	
Delaware	X	X	X	X	
Florida	X				
Georgia	X		X	X	
Hawaii	X****				
Idaho	X	X***	X°		
Illinois	X	X			
Indiana	X	X	X	X	1
Iowa	X	X			1
Kansas	X				
Kentucky	X	X			1
Louisiana	X				2
Maine	X	X	X	X	
Maryland	X	X			
Massachusetts	X		X°		4
Michigan	X				
Minnesota	X	X	X		
Mississippi					
Missouri	X	X	X	X	1
Montana	X				
Nebraska	X	X			
Nevada	X		X	X°°	
New Hampshire	X	X		X	
New Jersey	X		X	X	°°°
New Mexico	X	X	X	X	2
New York	X		X		°°°°
North Carolina	X				
North Dakota	X	X			
Ohio	X	X	X		3
Oklahoma	X	X	X		
Oregon	X				
Pennsylvania	X				
Rhode Island	X				3
South Carolina	X				
South Dakota	X				
Tennessee	X	X	X		3
Texas	X				
Utah	X		X		
Vermont	X				
Virginia	X				2
Washington	X	X	X		1
West Virginia	X				
Wisconsin	X				
Wyoming	X	X	X	X	1
Total	49	24	21	12	

* Does not include Drug Control District; granted purchase authorization in November 1980. Includes Game and Fish Department which has statutory exemptions for certain items up to specified dollar limits. Does not include statutory exemptions for legislative and judicial branches.

** Constitutional offices are exempt.

*** Only one university is exempt. Other universities in the state are not exempt.

**** Although Hawaii has a centralized purchasing authority, it is not mandatory for any agency to buy through central purchasing.

° Includes elected officials.

°° Supreme Court only.

°°° Includes quasi-state agencies, the number of which is not listed in survey responses.

°°°° Includes public benefit corporations, authorities and commissions, the number of which is not listed in survey responses.

The other 19 states shown in Table 2 which grant exemptions, on the average, have done so for two agencies only. Arizona has delegated authority to ten agencies* which purchased 52 percent of the $50.6 million spent on materials, supplies and equipment** from July 1980 through May 19, 1981. Accordingly, these agencies directly purchase a significant proportion of the commodities consumed by the State.

Of the ten purchase-authorized agencies, eight have not been critically reviewed by SPO to determine if such delegation is more efficient or economical than using centralized purchasing. In fact, SPO officials stated that seven agencies were, in effect, "grandfathered" as purchase-authorized agencies when the 1967 enactment bill was passed. These agencies are the Departments of Corrections, Education, Economic Security, Game and Fish, Health Services, Public Safety and Transportation.

The 1967 enactment bill provided that

> "...existing purchasing procedures of state agencies such as the board of regents be retained unless changes will result in greater economies...."

According to a former SPO administrator, the statute intended that <u>any</u> agency which had an existing purchasing <u>staff</u> would be a purchase-authorized agency. As a result the seven agencies were granted purchase-authorized status without review by SPO to determine if revoking their exempt status would result in more economical or efficient purchasing.

Further, there is no available documentation to justify exempt status being granted to three agencies granted exempt status since 1967: Division of Military Affairs, Arizona Criminal Intelligence Systems Agency (formerly Drug Control District) and State Compensation Fund. In addition, SPO audits of purchase-authorized agencies have not been sufficient in scope to determine if their purchase-authorized status should be continued.

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* Beyond the statutorily exempt agencies.

** Purchases of food, office and institutional supplies, equipment and other supplies only.

SPO Fails to Fulfill Statutory Responsibility to Review State Agencies' Activities

A.R.S. §41-729, subsection A, defines the responsibilities of the Office and states in part:

> "The purchasing section shall have the following duties:
>
> "1. Investigate and review the type, cost, quality and quantity of supplies, materials, equipment and contractual services presently used by all budget units of the state and the methods by which such supplies, materials, equipment and contractual services are acquired, delivered, accepted, stored and distributed by all budget units."

The delegation of purchasing authority to user agencies does not relieve SPO of the responsibility to investigate and review the purchasing activity of those exempt agencies. According to a Legislative Council memorandum dated April 21, 1981:*

> "Since the investigation and review is mandatory and comprehensive, any exception must be specifically authorized. Quite simply there are no exceptions.
>
> "The issue of direct purchasing by budget units is a separate and irrelevant consideration....
>
> "The conclusion that the investigation and review function is mandatory for all items used by all budget units is reinforced by 1975-76 Op. Att'y Gen. 75-11 (1975):
>
>> "'The Purchasing Section is not only authorized to "purchase, rent or otherwise provide for" the needs of state budget units under A.R.S. §41-729.B, it is also OBLIGATED to engage in numerous types of activities that provide the basis for an effective and efficient purchasing program under A.R.S. §41-729.A.'" (Emphasis added)

Further, according to a Council of State Governments survey of states, such investigative and review functions 1) may be used to ensure compliance with established procedures, and 2) are important factors when purchasing authority has been delegated to user agencies.

* Appendix II contains the memorandum text.

Notwithstanding statutory responsibility, 1) SPO does not currently engage in activities designed to monitor and review the purchasing activities of State agencies, and 2) SPO's limited agency reviews conducted in previous years were ineffective and lacked enforcement power.

Arizona's accounting system does not provide sufficiently detailed expenditure information to allow SPO to review types of purchases and vendors used by State agencies.* Other means are available under existing statutes, however, to allow SPO to monitor State agencies' purchasing procedures. These other means are for SPO to: 1) review purchasing documents, and 2) pre-approve or issue purchase orders or claims. Because of SPO's staff limitations and the high volume of State purchasing documents, the only practical review method is reviews of purchase orders and on-site agency audits. However, SPO discontinued on-site agency audits in November 1978 and reviews of purchase orders in December 1980. However, even when used by SPO, these activities proved to be ineffective due to: 1) the narrow scope of the audits, and 2) SPO's lack of enforcement capability.

Narrow Scope

SPO buyers had conducted annual audits on most agencies, but were required to review only a minimum of 24 purchase orders issued during a two-month period. Our review of those SPO audits completed between July 1977 and November 1978 indicated that 1) eleven percent of the audits were not documented, and 2) SPO buyers failed to test the minimum number of transactions in 77 percent of the cases for which documentation was available. For example, SPO buyers reviewed an average of only 14, and as few as two, purchase orders per audit. Further, audit findings and recommendations were not on file for 19 percent of the SPO audits we reviewed.

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* See page 37 for details regarding deficiencies in the accounting system.

Inadequate Enforcement Capability

SPO's review of agency purchasing was ineffective primarily because the Office cannot: 1) compel agencies to submit copies of their purchase orders for review, or 2) enforce compliance with audit recommendations or purchasing procedures.

According to a Legislative Council memorandum dated April 23, 1981,* the policies and procedures established by SPO are binding in all user agencies:

> "If the standards [prescribed in the policy and procedure manual] apply to the purchasing section, then a fortiori** they must apply to those state agencies which are not authorized to make their own purchases but rather have their purchases made by the purchasing section.
>
> "Similarly purchase authorized agencies are also subject to the manual's directives. Since their authority is derived from that belonging to the purchasing section these 'other budget units are bound by all the procedures and restrictions that govern purchasing by the purchasing section.'" (Emphasis added)

The SPO procurement manual states that an agency's approval as a purchase-authorized agency may be withdrawn for cause and, according to a Legislative Council memorandum dated May 11, 1981,*** SPO has authority to take such actions:

> "The power granted to the assistant director for finance, through the purchasing section, to authorize a budget unit to purchase is discretionary and the power of the assistant director for finance, through the purchasing section to revoke any authority he gave a budget unit to purchase is implied.

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* Appendix I contains the memorandum text.

** Based on the foregoing conclusion that the standards apply to the purchasing section, this conclusion is even more certain.

*** Appendix III contains the memorandum text.

> "...if a budget unit demonstrates the ability to procure certain supplies, materials, equipment or contractual services at the same or less cost as the purchasing section, it is mandatory that the assistant director for finance authorize the budget unit to engage in purchasing. Presumably, if the budget unit failed to continue to demonstrate that ability, the assistant director for finance could exercise his discretion to purchase or to authorize the budget unit to purchase directly." (Emphasis added)

As previously noted, purchases by purchase-authorized agencies represented 52 percent of total dollars spent for State supplies, materials and equipment from July 1980 through May 19, 1981. Thus, while SPO may have the authority to revoke an agency's purchase-authorized status, such action is not a viable alternative, because SPO lacks: 1) adequate staff to absorb the purchasing duties of agency employees, or 2) the authority to absorb the purchasing staff of any agency whose purchase-authorized status is withdrawn.

Duplication of Staff

Each purchase-authorized agency has developed a separate staff for purchasing activities. As a result, purchasing staff may be duplicated among purchase-authorized agencies, and agency practices do not comply with SPO policies and procedures.

As of July 1, 1981, administrative, buyer and clerical staff employed by purchase-authorized agencies was more than three times that of SPO. Table 3 presents a comparison of staffing levels for the purchasing function, excluding warehouse employees of the agencies.*

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* SPO is prohibited by statute from warehousing. Purchase-authorized agencies have 25 warehouse employees.

TABLE 3

COMPARISON OF PURCHASING STAFF OF STATE PURCHASING OFFICE AND PURCHASE-AUTHORIZED AGENCIES AS OF JULY 1, 1981

	State Purchasing Office	Purchase-authorized Agencies
Administrative positions	4	13
Buyers	10	26
Clerical positions	6	28.5
Total (excluding warehouse staff)	20	67.5

More centralization of the State purchasing function could produce economies by eliminating duplications in existing agency purchasing staffs. According to SPO, the consolidation of its presently diffused purchasing activity would result in a 15 percent reduction in total purchasing staff and a 20 percent reduction in staffing costs due to the elimination of duplicative administrative positions. These reductions would be achieved through attrition and selective replacement.

Agency Purchasing Practices Do Not Comply with Established Procedures

SPO has established purchasing procedures which are binding on State agencies. Our review revealed that user agency purchasing practices are not in compliance with established procedures in that 1) available term contracts are not always used, and 2) bidding procedures and emergency purchases are not documented adequately. As a result, the cost of some purchases may be excessive and the related purchase transactions invalid.

During the course of our audit we reviewed a random sample of 238 agency purchase orders and claims for compliance with State purchasing requirements. Our review revealed that agencies did not use available term contracts 15 percent of the time, and they purchased a brand other than the one specified in the term contract five percent of the time. Thus, agency practices were not in compliance with SPO requirements for 20 percent of the items we reviewed.

Audit staff also reviewed several direct agency purchases to determine if required bidding procedures were followed. Our review revealed that purchase-authorized agencies had not adhered to prescribed bidding procedures for 33 percent of the purchases reviewed in that they 1) failed to solicit the required number of bids, or 2) had not documented that single-source purchases were justified or approved by SPO.

Because term contract prices generally are lower than prices available without such a contract, agency noncompliance may result in excessive costs. The dollar impact of such noncompliance cannot be determined, however, because historical data concerning purchases of individual items is not available.

Additionally, purchase transactions which do not comply with SPO policy and procedure may be invalid, according to a Legislative Council memorandum dated July 1, 1981:*

> "...each budget unit must follow the specifications, standards and methods of the purchasing section.
>
> . . . . . .
>
> "...the failure to comply with the requirements of the purchasing section would render the action taken invalid." (Emphasis added)

Therefore, it is possible that contracts entered into by State agencies which do not comply with SPO bidding procedures, as well as purchases not made from term contract vendors, may be invalid.

It should be noted that at least one purchase-authorized agency has implemented purchasing policies and procedures which directly countermand SPO procedures. The manual for this agency states in part:

* Appendix IV contains the memorandum text.

"...in accordance with Departmental Policy and Procedures, when the State Purchasing Manual is at variance with the Procurement Regulations approved by Administrative Management of [the agency],...then the requirements of [the agency], as stipulated, shall be adhered to and shall take precedence over the State Purchasing Manual."

CONCLUSION

Arizona's purchasing procedures are excessively decentralized and characterized by significant noncompliance with State Purchasing Office procedures. SPO has not reviewed those agencies with delegated purchasing authority for economy or efficiency and has failed to maintain its mandated review of purchasing activities. As a result, the State may incur excessive costs for supplies, materials and equipment and duplicate purchasing activities exist.

RECOMMENDATION

Consideration should be given to the following alternatives:

Alternative I

1. Amend A.R.S. §41-729 to: a) specifically require agencies to follow SPO established procedures, b) provide sanctions for agency noncompliance, and c) provide for the absorption of an agency's purchasing staff by SPO in the event SPO revokes its purchase-authorized status.

2. SPO review each purchase-authorized agency to determine if its purchasing operations are economical and efficient.

3. Require agencies to submit copies of purchase orders for SPO review.

Alternative II

Centralize State purchasing activities and staff in SPO and allow agencies to purchase certain products or products that are below a specified cost only.

FINDING II

IMPROVEMENTS ARE NEEDED IN THE STATE PURCHASING OFFICE'S QUALITY CONTROL PROGRAM.

The State Purchasing Office (SPO) is charged with the statutory responsibility of monitoring the quality of goods purchased by State agencies. Our review revealed that SPO is not fulfilling that responsibility in that its vendor evaluation and products-testing programs are limited and poorly documented. As a result, agencies may incur excessive costs when product price is compared to product quality.

Statutory Responsibility for Quality Control

A.R.S. §41-729, subsection A, requires SPO to monitor the quality of goods purchased by user agencies:

> "The purchasing section shall have the following duties:
>
> "1. Investigate and review the type, cost, quality and quantity of supplies, materials, equipment and contractual services presently used by all budget units of the State...." (Emphasis added)

The Office has not fulfilled its statutory responsibility to review the quality of goods purchased. Our review revealed that SPO does not: 1) evaluate vendor qualifications adequately, 2) have established criteria by which to evaluate vendors, 3) document preaward tests of products adequately, 4) have a formal program to inspect products delivered to agencies, and 5) document or monitor product complaints from agencies adequately.

Inadequate Vendor Evaluations

SPO preselection procedures consist of vendor evaluations and preaward testing. These procedures are designed to ensure that contracts are awarded only to responsible vendors and only for products which meet specifications. However, SPO's vendor evaluations lack sufficient frequency and scope to be effective as a control mechanism and its preaward testing is severely impaired because of limited scope and inadequate documentation.

The Council of State Governments, in State and Local Government Purchasing, a report issued in conjunction with the National Association of State Purchasing Officials, supports preaward evaluation of vendors. The report states, in part:

> "Purchasing must determine supplier responsibility before awarding a contract.
>
> . . . . . .
>
> "...In addition to the potential savings in administrative, solicitation, and bonding costs, it brings discipline and structure to the process of determining supplier capability and responsibility."

SPO's sole means of evaluating the qualifications of a bidder prior to awarding a contract is through a vendor visit program. When SPO buyers visit vendors they 1) inspect facilities and interview appropriate personnel, and 2) determine if the vendor has the general capacity to perform on current or future contracts. The buyers obtain information concerning working conditions, lead times for delivery and financial condition. However, the buyers have visited vendor facilities so infrequently as to render the program ineffective. Further, SPO buyers do not verify the information they obtain from vendors during a visit.

Between December 1979, the implementation date of new procedures, and March 1, 1981, SPO's ten buyers have: 1) completed less than ten percent of the 20 monthly vendor visits required by SPO, 2) on the average, completed a total of only 1.75 vendor visits a month, and 3) visited only 25 of the approximately 3,000 vendors on the master bid list.

In addition to being insufficient in number, vendor visits are of questionable worth in view of the fact that the buyers do not verify the information they gather on vendor visits. According to an SPO official, buyers do not have access to vendor records to allow for an adequate investigation of vendor qualifications.

The American Bar Association has suggested statutory provisions for managing the purchasing function. The Model Procurement Code for State and Local Governments contains a provision granting a purchasing agency the authority to inspect the plant and records of a vendor under contract, as well as to require bidders to supply information concerning their abilities to fulfill contract requirements. The Code offers the following commentary:

> "(1) To obtain true economy, the [State] must minimize the possibility of a subsequent default by the contractor, late deliveries or other unsatisfactory performance which would result in additional administrative cost...it is important that the bidder or offeror will be a responsible contractor--that the contractor has the financial ability, resources, skills, capability and business integrity necessary to perform the contract." (Emphasis added)

No Established Criteria for Vendors

SPO has not established formal criteria for vendor qualifications, although SPO's procedure manual states that such criteria will be developed:

> "Supplier qualification criteria are established for the following reasons.
>
> "1. To insure that the supplier can fulfill his contract with the State.
> "2. To insure that the State gets the quality and quantity of materials covered in the contract."

Since specific criteria against which vendors are to be evaluated has not been developed, SPO lacks the means to determine if a vendor is, in fact, qualified and able to perform satisfactorily.

Preaward Testing Is Limited
and Poorly Documented

Preaward testing involves the evaluation of product samples to ensure that contracts are awarded only to vendors supplying products which meet specifications. Such tests include visual inspections, laboratory study and in-service product trials. Preaward testing can be used for a wide variety of goods, and the results of such tests and the samples tested can serve as a standard against which the quality of goods actually delivered can be measured. Accordingly, tested samples should be retained when practical and the results of such tests should be documented. SPO does neither in most cases.

According to SPO buyers and the assistant administrator, numerous products are pretested. However, our review of vendor and contract files indicated that test results are not documented in that samples tested and test results were not on file for most products. The only evidence of preaward testing available in SPO files was the results of tests of food products conducted by a panel of user agency personnel.

Further, product specifications sometimes require bidders to submit evidence of tests that demonstrate that the product meets established standards. SPO does not enforce this requirement for all products and vendors. Although SPO officials stated that new vendors are required to submit evidence of product tests, audit staff was unable to locate such documentation in SPO's files. SPO's failure to document the results of preaward tests, or enforce its own requirement that vendors submit test results, precludes it from providing assurance that contracts are awarded for products which meet the quality requirements of user agencies.

Control Subsequent to Award Is Insufficient

In addition to ensuring that contracts are awarded to responsible vendors for products which meet standards, the quality control function should, according to the Council of State Governments, include responsibility for monitoring the quality of items received by agencies. Neither SPO nor user agencies have established adequate inspection and testing programs for most of the products purchased by the State.

SPO has delegated responsibility for the inspection of most goods to user agencies. This practice is not, however, adequate to ensure that the goods received are of the quality required by specifications. The Council of State Governments, in State and Local Government Purchasing, commented:

> "Even when receiving personnel attempt to inspect deliveries, sometimes all they can do effectively is look for damage because they have no guidelines to follow and sometimes they are not even given a copy of the specifications. Without a formal program, therefore, it seems there can be little assurance that inspections are made and that they are thorough." (Emphasis added)

A majority of states use central purchasing inspectors to assist or supplement inspection at the agencies. A 1979 survey of states conducted by the Council of State Governments indicated that 26 states follow such a practice. In some instances, product nonconformance with specifications can be detected only by conducting tests or inspections on products delivered. To this end, some states have established testing programs in conjunction with state universities or technical schools.

The SPO testing program is limited to meat, paint and antifreeze. The meat-testing program is ineffective because samples are sent to a California laboratory* and test results are not received before the meat is consumed. The paint and antifreeze tests are performed by the Department of Transportation laboratory.

* There is no USDA-certified laboratory in Arizona.

Only two Arizona agencies have testing facilities. These two agencies use their laboratories only for specialized items, such as construction materials and police equipment.

Neither SPO nor State agencies perform sufficient product inspections and tests to determine that products delivered are of adequate quality and meet specifications.

Inadequate Documentation and
Monitoring of Agency Complaints

Because SPO does not have a viable vendor evaluation program it is entirely dependent on agency complaints to identify poor vendor performance or products. However, our review of SPO complaint procedures revealed that complaints are not adequately documented or consolidated into a file of complaints for each vendor.*

A survey of 20 western state purchasing programs by the Auditor General revealed that only two states, California and North Dakota, use systematic vendor-product evaluation programs.

The California office of procurement returns a copy of each purchase order to the agency which requisitioned goods. The back of the purchase order contains questions concerning delivery and compliance with specifications, and must be returned by the agency.

The purchasing agency in North Dakota requests user agencies to rate vendors against whom complaints are filed or who are being considered for a contract by the department of accounts and purchases. User agencies are asked to evaluate vendors regarding delivery, substitution of products and customer service.

* See page 28 for details regarding deficiencies in documentation of the complaint process.

Agencies May Have Incurred Excessive Costs

Failure to ensure that quality goods are received when needed creates the potential for the State to incur excessive expenses in that

- Items which are not available from contract vendors because of late or inadequate deliveries may have to be purchased at higher prices from noncontract suppliers.
- Products may be purchased more frequently due to inadequate product performance.
- Products of lower quality may be substituted without detection by the user agency.

CONCLUSION

The State Purchasing Office has not fulfilled its responsibility to monitor the quality of goods received by State agencies. SPO has not developed and implemented adequate procedures for: 1) prequalifying vendors, 2) evaluating vendor performance, 3) testing products prior to contract award, and 4) inspecting and testing products on receipt. As a result, a potential exists for the State to incur excessive product costs or receive lower quality goods than the cost warrants.

RECOMMENDATIONS

Consideration should be given to the following recommendations:

1. The Legislature a) amend A.R.S. §41-729, subsection A, to require explicitly that SPO establish a quality control program, and b) appropriate funds for the implementation of the program.

2. SPO develop a quality control program to include:
   - Testing of delivered goods,
   - Inspecting goods at receipt, and
   - Requiring vendors to submit test results as required by specifications.

   User agency input and participation should be included in the program's development, and the program should be written to include standards for documentation of activities.

3. SPO study a plan for vendor evaluation. If these functions are instituted, the following should be included:
   - Development of vendor qualification criteria,
   - Requirement that vendors submit information which SPO requires for evaluation, and
   - Agency input to evaluate vendors under contract.

FINDING III

IMPROVEMENTS ARE NEEDED IN THE VENDOR COMPLAINT PROCESS TO ENSURE VENDOR COMPLIANCE WITH STATE PURCHASING CONTRACTS.

The State Purchasing Office (SPO) requires State agencies to submit complaints regarding vendor products or performance as a means of monitoring vendor compliance with State purchasing contracts. Our review revealed that SPO cannot monitor vendor compliance adequately because 1) the complaint process is fragmented among several agencies, and 2) SPO has not developed written procedures to ensure that complaints are resolved in a consistent and timely manner. As a result, the vendor complaint process is not documented adequately, and complaints are not resolved effectively or in a timely manner.

Fragmentation of the Complaint Process

Arizona statutes do not specifically provide SPO with responsibility for investigating and resolving complaints. A.R.S. §41-729, subsection A, requires SPO to specify how State purchasing activities must be conducted:

> "The purchasing section shall have the following duties:
> 2. Prescribe...methods for the acquisition, delivery, acceptance, storage, retention and distribution for all supplies, materials, equipment and contractual services of budget units."

Accordingly, through its policies and procedures manual, SPO requires State agencies to submit in writing all complaints concerning vendors. Because SPO does not have means of enforcing this policy, agencies do not comply with the requirement and may resolve complaints without contacting SPO. As a result, the complaint process is fragmented among several State agencies.

An Auditor General survey of user agencies* indicated that, of the respondents, 37 percent do not file written vendor complaints with SPO.

Inconsistent Complaint Resolution and Use

SPO does not resolve or use consistently those vendor complaints it does receive. When SPO receives a complaint it is reviewed by the assistant administrator, who refers it along with recommended actions to the buyer responsible for that contract item. SPO has not, however, developed written procedures or guidelines regarding the action to be taken in specific circumstances or the time frame for such action.

As a result, complaints are resolved inconsistently, sometimes ineffectively and may not be resolved in a timely manner.

Documentation Is Inadequate

Complaint documentation is essential as a basis for 1) establishing criteria for awarding vendor contracts, and 2) imposing sanctions against vendors. The Council of State Governments, in State and Local Government Purchasing, a report issued in conjunction with the National Association of State Purchasing Officials, stresses the importance of adequate documentation:

> "Instances of nonconformance with specifications, noncompliance with contractual terms and conditions, or other types of complaints concerning suppliers' performance should be recorded and referred to central purchasing....A file of complaint forms and information on the action taken can serve as a record to help purchasing agents deal effectively with suppliers.
>
> "All records of complaints, actions taken, and the final resolution should be filed centrally so that they are accessible to all who have a need to review them." (Emphasis added)

* Appendix VI contains the tabulated results of this survey.

SPO does not maintain a comprehensive central file of complaints against vendors because 1) as noted above, agencies do not submit all complaints, and 2) SPO does not record most of the verbal complaints it does receive. Our review of SPO files revealed that 77 percent of the complaints which user agencies told audit staff they had submitted to SPO were not in vendor files. Further, agency purchasing staff members said that some of these complaints had been made verbally; thus, SPO not only does not enforce its own requirement that complaints be written, but neither does it document verbal complaints. In addition, the complaints that are documented in SPO files are not complete regarding actions taken against the vendor. Our review of complaints on file at SPO and those identified from surveys of State agencies and interviews with user agency purchasing officials revealed that 56 percent of the complaints were not documented as to what, if any, action SPO took to resolve them.

Action Taken on Complaints Is Ineffective

The most common action taken by SPO to resolve complaints is to warn vendors verbally. SPO relies heavily on verbal warnings because, according to SPO officials, vendor performance usually improves after such warnings. However, our review revealed that several vendors continued to have numerous complaints filed against them after being warned by SPO. The following case illustrates this occurrence, as well as the effects of incomplete documentation on the contract award process:

August 15, 1980

A State agency complained to SPO that a food vendor failed to meet contract requirements because 1) his product did not conform to specifications, 2) the weight was incorrect, and 3) the price on the invoice was incorrect.

September 5, 1980

SPO advised the agency that the vendor had been contacted and the problem should be resolved by the vendor and the agency.

September 5, 1980

The same agency complained to SPO that the same vendor failed to meet delivery requirements.

September 15, 1980

SPO awarded a food contract to the same vendor.

September 18, 1980

SPO sent a letter to the vendor warning that the contract could be canceled and stated:

> "Without qualification, there have been more discrepancy reports received from the agencies on your contract performance than all other commodities combined. This record could greatly affect our decisions on future contracts."

September 24, 1980

The same agency complained to SPO that the same vendor had failed to meet contract requirements, because deliveries were short in weight and both quantity and invoice price were incorrect.

October 2, 1980

SPO awarded a new contract to the vendor.

October 3, 1980

SPO again warned the vendor in writing that continued poor performance could result in contract cancelation.

It should be noted that SPO officials stated that they consider the substance of complaints as well as their number in awarding contracts. However, our review revealed that 1) SPO reawarded contracts to vendors who had been accused in agency complaints of providing poor quality products and inadequate deliveries, and 2) these same officials described such failures as "...very serious problems..." which "...cannot be tolerated...."

Currently, SPO may cancel a contract with a vendor or file suit against a vendor through the Office of the Attorney General. Further, a Legislative Council memorandum dated April 29, 1981,* states that SPO may remove vendors from the bid list and, therefore, preclude them from future bidding and award. The memorandum states in part:

> "The state purchasing section does not have specific statutory authority from the Legislature to remove a vendor from the master vendor bid list. However, the grant of an express power carries with it the authority to exercise all other activities reasonably necessary to carry it into effect....it can be reasonably implied that the state purchasing section could...remove those suppliers the office feels are not qualified to supply the item the state seeks to purchase.
>
> "Such a determination (that a supplier is not qualified) could be based on the past history of the supplier in fulfilling contract requirements...." (Emphasis added)

Arizona statutes do not, however, specifically provide for 1) sanctions against vendors who do not fulfill contractual obligations, or 2) procedures to be followed when sanctions are imposed against a vendor.

The Model Procurement Code developed by the American Bar Association contains specific provisions for suspension and debarment from bidding and other penalties available to procurement administrators, authority for resolution of contract disputes and procedures for appeals by vendors.

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* Appendix VII contains the memorandum.

Action May Not Be Taken in A Timely Manner

SPO appears to take an unreasonably long time to respond to those few complaints against vendors it receives. During fiscal years 1979-80 and 1980-81, SPO received approximately 50 complaints or an average of only three complaints per buyer per year. However, based on our review of adequately documented complaints on file at SPO, buyers take an average of seven working days to initiate action on complaints. In our opinion, seven working days is excessive, given the few complaints SPO receives and the potential adverse effects in terms of lost productivity and higher costs that can result from such delays.

CONCLUSION

SPO cannot adequately monitor vendor compliance with State contracts because it 1) lacks sufficient statutory authority to investigate and resolve complaints, 2) is not always notified of complaints against vendors, and 3) has no means to enforce compliance with its policies and procedures. In addition, SPO has not developed adequate guidelines or procedures for complaint resolution and has not documented vendor complaints adequately. As a result, SPO is not consistently resolving complaints effectively or in a timely manner.

RECOMMENDATIONS

Consideration should be given to the following recommendations:

1. A.R.S. §41-729, subsection A, be amended to provide the State Purchasing Office with specific responsibility and authority for investigating and resolving complaints as follows:
   - Recognize SPO as the sole entity with this authority for vendors under term contracts, and require agencies to submit complaints concerning vendors in writing to SPO,
   - Provide for a formal suspension or debarment procedure and other sanctions which may be invoked against vendors for failure to perform, and
   - Provide for an appeal process for vendors against whom action has been taken.

2. SPO develop and implement internal staff procedures for investigating and resolving complaints, including guidelines for
   - Documentation of complaints and actions,
   - Appropriate action under various circumstances, and
   - Time frames for actions to be taken.

FINDING IV

IMPROVEMENTS ARE NEEDED IN THE MANAGEMENT INFORMATION SYSTEM USED BY THE STATE PURCHASING OFFICE.

The management information system available to the State Purchasing Office (SPO) is inadequate in that financial data now available contains insufficient detail to be used in decision-making. As a result, SPO's ability to administer contracts is impaired, and the State may be incurring an unknown but potentially significant amount of unnecessary costs for purchases.

Present Accounting System Does Not Provide Adequate Information

The management information system used by a purchasing authority should provide sufficient data upon which purchasing officials may make sound decisions. The Council of State Governments and the National Association of State Purchasing Officials, in State and Local Government Purchasing, stress the importance of such information:

> "A proper program structure which is management oriented is needed, as are good information systems to permit evaluations of historical bid-award information and to provide input to planning, budgeting, and market analysis."

The State accounting system currently is the sole comprehensive source of information concerning purchases by State agencies. This system does not provide sufficiently detailed purchasing information. For example, purchase information is coded into general categories such as "office supplies" in the accounting system. As a result, specific usage information for items such as pens, paper clips or staplers is not available.

Additionally, State agencies' purchase documentation is inadequate to allow SPO monitoring and review of their operations.* For example, in many instances observed by audit staff, agency purchase documentation was so inadequate as to preclude the identification and subsequent review of agency purchases. Our review revealed that numerous claims contain such general descriptions as "office supplies," "groceries" or stock numbers only for items such as auto parts. Supporting documentation such as invoices for many claims did not, in most instances, provide sufficient additional information to identify the items purchased. As a result, SPO cannot: 1) identify every item which should be placed on a term contract basis, and 2) accurately determine the quantities of items that should be purchased under contract.

Inability to Identify Items
to Be Placed on Term Contract

Term contracting is a purchasing technique that establishes a source, or sources, of supply for specific items during a defined time period. Term contracts are awarded: 1) generally on a low-bid basis, and 2) for an approximate quantity and a definite time period. According to the Council of State Governments, term contracting provides numerous advantages, including lower prices, through volume buying, and

> "...(The purchaser) can reduce administrative costs by avoiding the highly repetitive activities involved in preparing and issuing Invitations for Bids on the same or similar items, and in receiving, controlling, and evaluating the responses. Widespread use of term contracting permits handling larger volumes of purchases with fewer personnel."

* See page 16 for a review of agency purchasing activities.

High-volume-purchased items which are commonly used by numerous agencies should be placed on term contracts because they could be acquired at lower cost if purchased through term contracts. Those products for which term contracts should be awarded, and the cost savings that would accrue to the State as a result, cannot be determined currently because information concerning actual usage of specific items is not available.

Inability to Forecast Needs Accurately

Given the limited capabilities of the State accounting system, SPO cannot compile historical data essential to the administration of term contracts such as agency purchases of specific items. In addition, SPO cannot forecast accurately the needs of user agencies or verify the accuracy of agency purchasing projections.

SPO's efforts to develop additional term contracts are impeded further by the agencies themselves in that they do not, according to SPO officials, 1) produce reliable projections of purchasing needs, and 2) submit projections in a timely manner, in spite of an SPO policy and procedure manual requirement that they do so. While Arizona statutes do not specifically require agency compliance with SPO policies, a Legislative Council memorandum dated April 23, 1981, concludes that such compliance is implicit.*

> "The (State Purchasing Office policy and procedure) manual requirements apply to the purchasing section, non-purchase authorized agencies and purchase authorized agencies."

Implied compliance with SPO policies notwithstanding, SPO has no means of compelling agencies to comply with its policies. Such noncompliance may impair SPO's term contract negotiations with current and prospective vendors and result in vendors bidding higher prices because of dissatisfaction with State purchasing practices.

* Appendix I contains the full text of the memorandum.

These inadequacies in the accounting system were identified previously during a 1978 Joint Legislative Budget Committee (JLBC) management study. The report states in part:

> "Currently, estimates are presented in commodity surveys. The surveys have not proven as accurate as would be desired. The accounting system does not provide sufficient detail to be of appreciable value for the planning of procurement." (Emphasis added)

A former SPO official also acknowledged the shortcoming of SPO's management information system in his reply to the JLBC study:

> "The lack of an automated systems approach and its attendant Management Information System has relegated the role of (State) purchasing buyers from a buyer or procurement role to a large percentage of time spent on basic clerical duties....Today the use of automated systems within the finance function of state government in Arizona is improperly designed for the finance needs. These shortcomings have not been rectified, and as a result, the finance system has not matured into other functions that should also be supported from the basic finance package. Currently, it requires a major clerical effort to extract even the most basic information from the current system in Accounts & Controls and/or the Purchasing Office to attempt to determine what is occurring in the Purchasing Office." (Emphasis added)

As of September 17, 1981, the State was attempting to implement a more detailed centralized accounting system through the Arizona Financial Information System framework (AFIS). The AFIS project team has been working with SPO and other agencies through the Purchasing Advisory Council to determine and coordinate data needs. The AFIS general ledger data base has been projected for implementation in fiscal year 1982-83, with additional information packages designed for specific needs to be implemented in subsequent years. An AFIS purchasing module is scheduled for development in fiscal year 1983-84. However, because of delays in AFIS implementation, SPO officials are skeptical that these deadlines will be met.

CONCLUSION

The State Purchasing Office's management information system is inadequate due to limitations of the State's accounting system. SPO is, therefore, unable to identify accurately: 1) the quantities of items needed by user agencies, and 2) items to which cost saving may accrue through volume buying. User agency noncompliance with SPO policies and procedures regarding need projection surveys have impaired SPO's ability to plan and procure for the State's needs efficiently.

RECOMMENDATIONS

Consideration should be given to the following recommendations:

1. SPO request budget authorization to institute a study to determine the feasibility of an internal management information system to review and record agency purchasing documents for use in contract administration decisions.

2. The Finance Division continue accounting system development and assess the AFIS purchasing module in terms of present information inadequacies.

FINDING V

THE TERM CONTRACT FORM USED BY THE STATE PURCHASING OFFICE NEEDS TO BE REVISED BECAUSE IT MAY NOT SERVE THE BEST INTERESTS OF THE STATE.

The term contract form used by the State Purchasing Office may not serve the best interests of the State. In addition, the Office may not have fulfilled its administrative responsibilities because the contract form has not been reviewed and approved by the Attorney General.

SPO'S Term Contract Form

The term contract form used by SPO consists of the following items:

- A summary form which specifies procedures for bidding, an agreement to "...furnish the items specified, at the prices indicated in strict accordance with the invitation for bid specifications, the...Standard Provisions, Terms and Conditions and...Addendum[s]..." and identification of the contract number, award date and term.
- Instructions and conditions for submitting bids, including provisions for modification of bids, cancelation by State and other contractual obligations.
- Addendums which specify additional terms and conditions.

However, the contract form does not, in all cases, include specifications which identify the product to be delivered or delivery requirements.

Further, a review of the contract form as of June 30, 1981, by the Assistant Attorney General assigned to SPO revealed that it may not be adequate. According to the Assistant Attorney General, the present contract form precludes control by SPO over contractual obligations of vendors. The Office may not be able to ensure that the provisions of the contract are met or be able to take sufficient corrective action against breaches of contract.

Form Not Approved by Attorney General

The current term contract form has been used since January 1980 without the approval of the Attorney General. An SPO official said that Office management assumed that the form had, at some time, been reviewed because it has always been the official contract form during his tenure.

Failure to seek review and approval before use of the form may constitute a breach of the Office's administrative duties. A Legislative Council memorandum dated July 20, 1981, concerning review of contracts, reads in part:*

> "Available evidence supports a classification of the term contract in the same status as the SPO policy and procedures manual. Both are policy statements which in all likelihood hold the status of administrative rules....
>
> . . . . . .
>
> "Administrative rules must, under the Arizona Administrative Rules Act (A.R.S. Title 41, chapter 6, article 1), be reviewed and certified by the Attorney General. It is at least arguable that if such policy statements as...term contracts...assume the status of administrative rules, then review by the Attorney General is required.
>
> . . . . . .
>
> "For the SPO to use a document ,such as the...term contract with a high statewide distribution without making a good-faith effort to secure legal review might be remiss administratively on the part of the SPO...." (Emphasis added)

* Appendix VIII contains the text of the memorandum.

However, failure to seek review does not invalidate a contract automatically. The Legislative Council memorandum continues:

> "...the fact that such review has not been given in the past would not constitute by itself sufficient grounds to invalidate a contract which otherwise complies with applicable state law. Contract validity can only be settled on a case-by-case basis through review of the contract terms and standing of the parties at issue." (Emphasis added)

There have been no such tests of the validity of the term contract form. However, because SPO may not be able to monitor effectively the contractual obligations of vendors or take action in response to inadequate performance, the contract form may not be in the best interest of the State.

CONCLUSION

The State Purchasing Office may not have fulfilled its administrative responsibility in that its term contract form has not been reviewed or approved by the Attorney General. As a result, the Office may not be able to monitor or enforce provisions of a contract.

RECOMMENDATION

It is recommended that the present term contract form, and future changes to the form, be reviewed and approved by the Attorney General.

FINDING VI

PROCEDURES USED BY THE STATE PURCHASING OFFICE TO SOLICIT BIDS MAY NOT BE IN COMPLIANCE WITH STATUTORY REQUIREMENTS.

Arizona statutes prescribe procedures for soliciting bids for purchases in excess of $5,000. As a result of a State Purchasing Office interpretation of the statutes, bid solicitation procedures may not be in compliance with statutory requirements. In addition, SPO has not developed a bid list which allows solicitation of bids from qualified vendors only.

Statutory Requirements

A.R.S. §41-730.A requires competitive bidding for purchases in excess of $5,000 and states in part:

> "...bids shall be solicited from the maximum number of qualified sources throughout the state consistent with the item to be purchased as determined by the assistant director for finance, but including all qualified suppliers who prior to the issuance of the invitation notify the purchasing section in writing that they desire to bid...." (Emphasis added)

SPO Procedures May Not Be in Compliance with Statutory Requirements

SPO has developed a master bid list of vendors who have expressed an interest in bidding by submitting applications to SPO. Our review revealed that SPO procedures for soliciting bids from these vendors may not be in compliance with statutory requirements.

A.R.S. §41-730.A. requires solicitation of bids from "...all qualified suppliers...." According to a Legislative Council memorandum dated July 7, 1981, such solicitations must include out-of-State vendors appearing on the master bid list. The memorandum reads in part:*

* Appendix V contains the text of the memorandum.

> "...The bid solicitation must by statute include all qualified suppliers, with no specific limitation as to geographical residence, who, prior to the issuance of the invitation to bid, have notified the SPS [State Purchasing section] in writing of the desire to bid on those items contained in the invitation." (Emphasis added)

In addition, authoritative sources support the solicitation of bids from all vendors on the bid list. The Council of State Governments, in State and Local Government Purchasing, a report prepared in conjunction with the National Association of State Purchasing Officials, contends that all bidders on the list should be solicited unless there are specific provisions for exceptions and these exceptions are documented adequately. According to the report,

> "The purpose of the bidders list is to provide the broadest competition among supplies who are qualified and willing to furnish items and services needed by state and local governments. The general rule, therefore, should be that when formal sealed bids are required for a particular item, all bidders on that list should be solicited....[T]here must be some provision for exceptions to the general rule, such as...requirements for local services which would not be of interest to non-local bidders....Where not all bidders on the bidders list are solicited, the required documentation must not only justify the action but also show that the maximum practicable competition was sought." (Emphasis added)

During the course of the audit we reviewed 29 contracts for purchases of more than $5,000. Our review indicated that, in 45 percent of the cases, invitations were not sent to all vendors appearing on the master bid list. In those 13 instances in which bids were not solicited from every vendor listed, half the vendors who had notified SPO that they desired to bid did not receive bid invitations.

When presented with these exceptions, an SPO spokesman claimed that Office understanding of the requirements of A.R.S. §41-730.A is that they apply only to in-State vendors. Consequently, if the Office determines that there are sufficient in-State vendors to provide for competitive bidding, invitations to bid are not sent to out-of-State vendors appearing on the master bid list.

Such a procedure is not in compliance with statutory requirements. The statutes do not contain provisions for exceptions and, according to the Legislative Council memorandum, the Office cannot exercise discretion in soliciting bids. The memorandum adds:

> "...The agency has no statutory authority to discriminate against qualified out-of-state vendors on the master vendor file who have expressed an interest in bidding on a particular commodity by refusing to send an invitation to bid on the grounds that there are already sufficient in-state vendors...." (Emphasis added)

In reviewing selected files in which not all vendors received bid invitations, audit staff noted that some of the omitted vendors were in-State suppliers. The assistant administrator admitted that the practice of not soliciting all in-State vendors was inappropriate.

Master Bid List Is Not Adequately Refined

SPO's master bid list is not adequately refined to allow solicitation of bids from qualified vendors only. The Council of State Governments, in State and Local Government Purchasing (1975), defined criteria for organizing a list of vendors, classified by commodity, to whom bids should be sent:

> "The bidders list should be organized so that it provides an effective means of soliciting qualified suppliers.

"In structuring the bidders list, major commodity classification groupings must first be established. These groupings should reflect the particular function with which a group of products is commonly associated. Too frequently, this first order of classification is so general that it bears little specific relationship to items in the group....Different categories of manufacturers are thereby included in too broad a classification, not all of which should receive all soliciations for the classification....

"Proper classifications are useful to the degree that products and suppliers are closely matched. This is done by even further refinement....

"Each classification must be analyzed to determine the proper level of detail for the products it covers.

"...This kind of subdivision provides a bidders list that is manageable and reduces wasteful solicitation." (Emphasis added)

The first four digits of the SPO commmodity code represent a class of commodities. The last five digits identify the stock number for an individual item within the class. SPO places each vendor on commodity lists based on the first four digits of the appropriate nine-digit SPO commodity code in order to identify the items on which vendors expressed a bidding interest. Therefore, since the four-digit code is not sufficiently refined, the vendor lists are too broad.

As a result, some vendors receive invitations to bid for products they cannot provide. An Auditor General survey of vendors revealed that the most frequent reason for declining to bid was the vendor's inability to supply the product.

SPO administrators stated that they plan to further refine the bid list.

CONCLUSION

The State Purchasing Office does not solicit bids from all vendors on the master bid list for purchases in excess of $5,000. Because A.R.S. §41-730.A may not provide for exceptions for out-of-State vendors, SPO procedures may not be in compliance with statutory requirements for competitive bidding. In addition, SPO solicits bids from unresponsive vendors because bid list classifications are too broad.

RECOMMENDATIONS

Consideration should be given to the following recommendations:

1. The Legislature review the provisions of A.R.S. §41-730.A to determine if out-of-State vendors are intended for exemption.

2. SPO further refine the master bid list to identify vendors who are able to supply the product for which a bid is solicited.

DEPARTMENT OF ADMINISTRATION
FINANCE DIVISION

STATE OF ARIZONA

THE CAPITOL
PHOENIX, ARIZONA 85007

BRUCE BABBITT, Governor
ROBERT B. TANGUY, Director
DONALD L. OLSON, Assistant Director

December 11, 1981

Mr. Douglas R. Norton, Auditor General
State Capitol
Legislative Services Wing, Suite 200
Phoenix, Arizona 85007

Dear Mr. Norton:

We are enclosing our response to your Performance Audit findings for the Department of Administration - Finance Division - State Purchasing Office. As you can see, we are in general agreement with your findings and in some cases have already prepared draft legislation to place your recommendations in effect.

Your Performance Team was very professional and courteous in the conduct of this audit and we are convinced the results of their efforts will help us do our job better.

Sincerely,

Donald L. Olson
Assistant Director for Finance

Robert B. Tanguy
Director

DLO:ks
Enclosure

RESPONSE OF THE STATE PURCHASING OFFICE TO THE PERFORMANCE AUDIT CONDUCTED BY THE OFFICE OF THE AUDITOR GENERAL AS PART OF THE SUNSET REVIEW.

FINDING I

STATE GOVERNMENT PURCHASING OPERATIONS ARE EXCESSIVELY DECENTRALIZED AND NOT ADEQUATELY CONTROLLED.

This, in our opinion, is the major finding of the performance audit. Effective resolution of this problem will establish the direction of purchasing in the State of Arizona. The Audit conclusion in FINDING I succinctly reflects the ambiguous environment in which Arizona currently conducts its purchasing operations.

> Arizona's purchasing procedures are excessively decentralized and characterized by significant noncompliance with State Purchasing Office procedures. SPO has not reviewed those agencies with delegated purchasing authority for economy or efficiency and has failed to maintain its mandated review of purchasing activities. As a result, the State may incur excessive costs for supplies, materials and equipment and duplicate purchasing activities exist.

We concur with the conclusion. However, as pointed out in the report, SPO discontinued on-site agency audits in November 1978 and the review of purchase orders in December 1980 because these activities proved to be ineffective. The review of agency purchasing was ineffective primarily because SPO could not enforce compliance with audit recommendations or purchasing procedures.

The Audit found that each purchase-authorized agency developed a separate staff for purchasing activities. "As a result, purchasing staff may be duplicated among purchase-authorized agencies ... . As of July 1, 1981 administrative, buyer and clerical staff employed by purchase-authorized agencies was more than three times that of SPO." The staff of SPO has remained constant at 20 FTE's for five years.

In FINDING I, the Audit provided two alternative recommendations. The two alternatives offer a choice between defined levels of efficiency and operational control, either of which can be implemented to result in a corresponding improvement in purchasing operations within State government.

Alternative I, as stated in the Audit report, is as follows:

1. Amend A.R.S. § 41-729 to: a) specifically require agencies to follow SPO established procedures, b) provide sanctions

for agency noncompliance, and c) provide for the absorption of an agency's purchasing staff by SPO in the event SPO revokes its purchase-authorized status.

2. SPO review each purchase-authorized agency to determine if its purchasing operations are economical and efficient.

3. Require agencies to submit copies of purchase orders for SPO review.

The centralization of procurement authority with selective and controlled purchasing authority delegated to the operating agencies is a basic tenet of effective public procurement. The Council of State Governments, in their comprehensive study of State and Local Government Purchasing, stated that:

> If a distillation can be made of a study which represents months of dedicated effort and intensive cooperation by purchasing officials and other public administrators, it might be said that where there is centralization, openness, impartially, and professionalism, government is well-served by public purchasing.

and further that:

> The centralization of purchasing authority is also the centralization of responsibility and accountability, and the central purchasing authority has the perspective of commonweal, not the special program interests of individual departments.

The advantages of Alternative I are:

1. It would be relatively simple to implement.

2. It addresses the operational areas that require control under a decentralized procurement organization.

3. It defines the authority relationship between agencies and the State Purchasing Office.

4. It would provide the State with unified procurement policies and procedures.

5. It provides the standardization of forms and data flow to develop a comprehensive purchasing information system.

6. It may substantially reduce costs for procured goods and services through more extensive and intensive use of State contracts.

The disadvantages of Alternative I are:

1. There would be no cost reduction in retaining the current duplication of staff and resources.

2. A comprehensive agency audit program would require either additional FTE authority or appropriation to contract for outside auditors to perform the function.

3. It would perpetuate the dysfunctional relationship inherent in the present organizational structure.

Proposed legislation to implement this alternative has been drafted.

Alternative Recommendation II, as stated in the Audit report, is as follows:

> Centralize State purchasing activities and staff in SPO and allow agencies to purchase certain products or products that are below a specified cost only.

The advantages of Alternative II are:

1. It would reduce the overall operational cost and number of F.T.E. currently assigned to purchasing operations for the State.

2. It may substantially reduce costs for procured goods and services through more extensive and intensive use of State contracts.

3. It provides vendors with a single point of contract which is responsible and accountable for the majority of the State purchasing program. (The legislative branch, judicial branch and universities would remain exempt from centralized purchasing.)

4. It provides for standardization of forms and data flow necessary to develop a comprehensive purchasing information system.

5. The control of all procurement document flow would eliminate the need for central purchasing to engage in extensive inspections and audits of agency purchasing operations.

6. It provides the State with unified procurement policies and procedures.

7. It would eliminate Arizona as one of the few states that have not centralized control of their purchasing operations and it would provide for greater expertise through greater buying specialization.

The disadvantages of Alternative II are:

1. There would be a major change in present agency purchasing procedures along with a reduction of agency purchasing prerogatives.

2. It would require more time and effort to implement than Alternative I.

3. There currently exists a need to further develop the intra-structure of the State Purchasing Office (i.e., computer-ization and model procurement code). Ideally, this develop-ment should occur prior to centralization.

If Alternative II is selected, a basic transition plan should be developed in which the Purchasing Advisory Council would be closely involved in the transition process.

Summary

Whichever alternative is selected and to whatever degree it is implemented, it will be a significant step towards the ultimate objective of a materials management organization that is responsible for, and responsive to, the needs of the State of Arizona.

FINDING II

IMPROVEMENTS ARE NEEDED IN THE STATE PURCHASING OFFICE QUALITY CONTROL PROGRAM.

The SPO has promulgated detailed policies and procedures to using agencies for monitoring and reporting vendor performance (see Arizona Procurement Manual). These sections instruct agency personnel how to receive, inspect, and accept goods and how to report vendor performance deficiences. However, the SPO is dependent upon reports from the user agencies to determine if products of satisfactory quality are being placed on contract and delivered as awarded.

The report states SPO's sole means of evaluating the qualifications of a bidder prior to awarding a contract is through a vendor visit program. Vendor visits are a valuable first hand measure but they are not SPO's sole means of evaluating the qualifications of bidders. Vendor application, past performance records, trade journals, information from other governmental entitites, Thomas Register, Buyers Laboratory Reports, and buyer knowledge are other methods used in vendor evaluation and selection.

The Audit appears to overemphasize the limited pre-award testing conducted by the SPO. By far the majority of items selected for contract are commercially accepted off-the-shelf items. To ascertain the capabilities of whether Westinghouse or General Electric can produce light bulbs, for example, would be an inefficient use of public funds. Independent laboratory test reports are utilized in addition to tests which are conducted by the State on selected products such as highway striping paint, food, building maintenance and some textile items. Further, all items placed on contract are subject to evaluation prior to award. On major contracts or complex commodities such as awards for computers, vehicles, and office furniture, the evaluation is done by a committee of user agencies or other technically qualified personnel. In addition, some awards are made conditioned on agency evaluation and acceptance.

The Audit suggests that consideration should be given to the following recommendations:

1. The Legislature: a) amend A.R.S. § 41-729, subsection A, to require explicitly that SPO establish a quality control program, and b) appropriate funds for the implementation of the program.

2. SPO develop a quality control program to include:

   - Testing of delivered goods,
   - Inspecting goods at receipt, and
   - Requiring vendors to submit test results as required by specifications.

3. SPO study a plan for vendor evaluation. If these functions are instituted, the following should be included:

   - Development of vendor qualification criteria,
   - Requirement that vendors submit information which SPO requires for evaluation, and
   - Agency input to evaluate vendors under contract.

We agree that an expansion of Arizona's quality control program should be considered. The first step would be to develop a plan for a quality control program that would consider the wide range of quality control applications, including a cost-benefit analysis for each. Since a quality control program would require the appropriation of additional funds, we suggest that a higher priority use of funds would be the development of a purchasing management information system (see FINDING IV.).

FINDING III

IMPROVEMENTS ARE NEEDED IN THE VENDOR COMPLAINT PROCESS TO ENSURE VENDOR COMPLIANCE WITH STATE PURCHASING CONTRACTS.

This Audit finding is generally accepted conditioned by the following observations:

1. There were less than 20 written "complaints" against vendors received in the State Purchasing Office in the past eighteen (18) months.

2. Most vendor problems are communicated by the user to the state buyer via phone, and are usually resolved by phone contacts with the vendor and the agency.

3. The situation described as a vendor problem by the user seldom identifies the real problem or the real culpit. A vast majority of cases are some variation of the following typical exchange:

   Agency: "Vendor won't deliver my order."

   Vendor Reply: "Agency is 90 days past due in payment of invoices for past deliveries. We cannot afford to carry the State any longer."

   Agency Accounting: "The vendor invoice does not match the purchase order."

   Vendor: "We just put our accounts receivable on a computer and there have been some problems. Can't the agency pay at least something."

   Agency: "We have a policy against paying partial deliveries."

   Vendor: "But I delivered $19,000 worth of a $20,000 order; the other chair (or beef sides) is on back order, etc., etc..

   It is often difficult to identify the "bad guys" in such cases. The responsibility is usally a matter of degree. It would certainly be improper to give a vendor bad marks solely on the basis of a user complaint.

4. Whenever a buyer is convinced that a vendor has, by commission or omission, failed to perform under the terms of a State contract, the State Purchasing Office will take action to terminate the contract. SPO has taken this action.

The conclusion of the Audit for FINDING III was as follows:

> SPO cannot adequately monitor vendor compliance with State contracts because it: 1) lacks sufficient statutory authority to investigate and resolve complaints, 2) is not always notified of compliants against vendors, and 3) has no means to enforce compliance with its policies and procedures. In addition, SPO has not developed adequate guidelines and procedures for complaint resolution and has not documented vendor complaints adequately. As a result, SPO is not consistently resolving complaints effectively or in a timely manner.

The Audit made the following recommendations:

1. A.R.S. § 41-729, subsection A, be amended to provide the State Purchasing Office with specific responsibility and authority for investigating and resolving complaints as follows:

   - Recognize SPO as the sole entity with this authority for vendors under term contracts, and require agencies to submit complaints concerning vendors in writing to SPO.
   - Provide for a formal suspension or debarment procedure and other sanctions which may be invoked against vendors for failure to perform, and
   - Provide for an appeal process for vendors against whom action has been taken.

2. SPO develop and implement internal staff procedures for investigating and resolving complaints, including guidelines for:

   - Documentation of complaints and actions,
   - Appropriate action under various circumstances, and
   - Time frames for actions to be taken.

The State Purchasing Office has taken positive action to implement recommendations of the Audit as follows:

1. A formal procedure for vendor suspension/debarment, based on the Model Procurement Code, has been developed by the SPO. The procedure includes provisions for a formal appeals process. Proposed legislation has been drafted.

2. The State Purchasing Office has developed a Vendor Deficiency Report procedure that simplifies the reporting process. The procedure has specified time frames within which action by the

State Purchasing Office must be taken. A three-part form has been developed to formally record and report the action taken on vendor complaints. The procedures and report form have been reviewed and approved by the Purchasing Advisory Council.

FINDING IV

IMPROVEMENTS ARE NEEDED IN THE MANAGEMENT INFORMATION SYSTEM USED BY THE STATE PURCHASING OFFICE.

The conclusion of the Audit on FINDING IV was as follows:

> The State Purchasing Office's management information system is inadequate due to limitations of the State's accounting system. SPO is, therefore, unable to identify accurately: 1) the quantities of items needed by user agencies, and 2) items to which cost savings may accrue through volume buying. User agency non-compliance with SPO policies and procedures regarding need projection surveys have impaired SPO's ability to plan and procure for the State's needs efficiently.

Attributing current inadequacy to the limitation of the State accounting system bypasses the premise that while the two systems interface they have discrete and separate functions and each operate from a different information data base, derived from separate sources. The basis for a reliable management information system is control over the source documentation flow.

The Audit provided the following recommendations:

1. SPO request budget authorization to institute a study to determine the feasibility of an internal management information system to review and record agency purchasing documents for use in contract administration decisions.

2. The Finance Division continue accounting system development and assess the AFIS purchasing module in terms of present information inadequacies.

We concur completely with the Audit's finding and recommendations.

The Purchasing Advisory Council has formed a committee to assist in the development of the separate AFIS Purchasing Module. However, development of the Purchasing Module is currently on hold due to the lack of funding.

FINDING V

THE TERM CONTRACT USED BY SPO NEEDS TO BE REVISED BECAUSE IT MAY NOT SERVE THE BEST INTERESTS OF THE STATE.

State Purchasing Office concurs that the contract form should be revised; however, we do not consider the current form invalid.

In general, terms and conditions of the forms are not unlike those as used by the Federal Government and other states. The education and experience of the SPO purchasing staff provides a full awareness of the legal aspects of procurement.

The form currently used, with minor modifications, was essentially composed by the Attorney General's staff when SPO was created. On several occasions the documents in their current form have been involved in litigation proceedings without a question or protest regarding contract form.

The comments offered by the Arizona Legislative Council on the subject is noted to wit: ". . . the attached contract provides for compliance with basic requisites of a valid contract. There is an offer, acceptance and consideration promised. More over there is nothing per se invalid about a contract evidenced by a standard written form such as attached. In fact such instruments are the norm in the public as well as the private sector . . ." .

The fact that the present contract procedures and forms preclude control over contractual obligations is a continuing concern shared by purchasing management. Term contract price agreements are established by the State Purchasing Office based on estimated State agency requirements and stipulated that purchases for State agency use will be from the contract vendors. Agency purchase orders are issued independent of any central control. Therefore, State contracts may be breached with the possibility of liability to the State Purchasing Office.

The Audit report recommendation for FINDING V is ". . . that the present term contract form, and future changes to the form, be reviewed and approved by the Attorney General."

The State Purchasing Office has requested Attorney General review of existing contract documents and will seek further review if substantive changes are indicated or proposed.

FINDING VI

PROCEDURES USED BY THE STATE PURCHASING OFFICE TO SOLICIT BIDS MAY NOT BE IN COMPLIANCE WITH STATUTORY REQUIREMENTS.

The State Purchasing Office maintains the State vendor file which is composed of vendors who have completed applications to receive bid invitations issued for special commodities and services. Other appropriate information is required on the vendor application and is reviewed by SPO staff prior to listing the vendor on the automated bid list retrieval system.

Vendors are requested to identify commodity coding and descriptive information pertaining to the commodities of interest. The procedure employed a four-digit code which was not sufficiently refined or specific. As a result many vendors appear on bid lists for products and services they cannot provide. Therefore, it is possible to issue a bid invitation to over one hundred vendors to which the response is less than ten competitive bids.

The SPO is currently in the process of re-registering vendors under an expanded classification system to purge the current file and establish a more effective and efficient file. This will result in a bid list that will better identify vendors to a more specific commodity or service. Therefore, there will be fewer "no bids". As an interim solution, buyers in the past reviewed the bid list and deleted the names of unqualified vendors when issuing a bid invitation. This deletion process was not arbitrary or discriminating but was based on the buyer's knowledge and experience. Some of the reasons vendors were deleted are as follows:

1. some are not able to supply product or service required in normal course of business;

2. some are on the bid list for commodities that are known not to be the vendor's area of interest;

3. some vendors do not realize that the State does not maintain a central receiving or warehouse facility to accept full shipments;

4. some are out-of-state manufacturers that are known to have in-state representatives currently on the bid list;

5. some vendors are known to have limited repair or maintenance capabilities for a specific requirement but are otherwise qualified vendors; and

6. some vendors have repeatedly returned "no bid" responses for the same or similar items and are recognized by buyers.

The SPO recognizes the statutory responsibility to issue bid invitations to all qualified vendors who have expressed a desire to receive bids. Nevertheless, in view of the Legislative Council memo dated 7-7-81, SPO has revised internal procedures so that bids are now solicited from all vendors on the master bid list for that specific commodity classification.

The Audit report provided the following recommendation:

1. The Legislature review the provisions of A.R.S. § 41-730.A. to determine if out-of-state vendors are intended for exemption.

2. SPO further refine the master bid list to identify vendors who are able to supply the product for which a bid is solicited.

SPO supports the Legislative Council opinion that ". . . the bid solicitation must by statute include all qualified suppliers, with no specific limitation as to geographical residence . . .".

A preference in bidding is opposed by SPO and all national public purchasing organizations.

The vendor file that will be reconstructed under the more detailed classification system will be systematically refined as a result of bid experience. This will result in a progressively higher rate of vendor response to bid invitations.

DEPARTMENT OF ADMINISTRATION

FINANCE DIVISION

General Accounting Office

Table of Contents

	Page
SUMMARY	i
INTRODUCTION AND BACKGROUND	1
SUNSET FACTORS	3
FINDING	7
Changes are needed to relieve the General Accounting Office of the statutory responsibility to determine if proposed expenditures appear to be for valid public purposes and to ensure that the General Accounting Office claims-processing procedures are in compliance with required procedures.	
CONCLUSION	10
RECOMMENDATIONS	11
OTHER PERTINENT INFORMATION	13
WRITTEN RESPONSE TO AUDITOR GENERAL REPORT	15

SUMMARY - GENERAL ACCOUNTING OFFICE

The General Accounting Office (GAO), formerly the Accounts and Controls Office, is an organizational unit of DOA-Finance. GAO is responsible for maintaining a centralized accounting system for the State. GAO's duties include: 1) providing fiscal control over State spending through claims-approval and warrant-writing functions, and 2) maintaining a centralized reporting system and financial records.

Arizona law requires GAO to review claims submitted by State agencies for propriety and authenticity. While GAO has developed audit procedures to fulfill this responsibility and ensure agency compliance with other statutes governing expenditures, our review revealed some functions are not performed and some existing procedures are not always followed. GAO's delegation of some responsibilities is not appropriate. (page 7)

GAO does process claims in a timely manner and discounts from vendors for prompt payment normally are not lost. (page 13)

Consideration should be given to the following recommendations:

1. Amend A.R.S. §35-181.02 to
   - Delete GAO's responsibility to determine that claims are for valid public purposes,
   - Recognize agency claim certification as sufficient evidence of expenditure propriety, and
   - Require GAO to perform post audits of claims of agencies audited triannually by the Office of the Auditor General, on a selective basis, to ensure agencies are discharging their duties properly.

Such a post audit should include:

1. Determining the propriety and valid public purposes of claims,
2. Determining that expenditures are properly approved,
3. Ensuring that invoice amounts are not over or under paid, and
4. Verifying that expenditures are in compliance with applicable statutes.

2. GAO require agencies to submit a separate certification that they have complied with A.R.S. §§41-1051 through 41-1056 for outside professional services expenditures in excess of $5,000.

3. GAO perform post audits of claims for outside professional services in excess of $5,000 on a selective basis for agencies audited triannually by the Office of the Auditor General.

INTRODUCTION AND BACKGROUND

The General Accounting Office (GAO), formerly the Accounts and Controls Office, is an organizational unit of the DOA-Finance Division.

GAO, operating under the provisions of A.R.S. §41-732, is responsible for maintaining a centralized accounting system for the State. GAO's duties include: 1) providing fiscal control over State spending through claims-approval and warrant-writing functions, and 2) maintaining a centralized reporting system and financial records.

GAO is funded by appropriations from the Legislature.

Table 1 contains a summary of actual and projected full-time equivalent employees (FTE), expenditures and workload indicators for fiscal years 1977-78 through 1981-82.

TABLE 1

SUMMARY OF FULL-TIME EQUIVALENT EMPLOYEES (FTE), ACTUAL AND PROJECTED EXPENDITURES AND WORKLOAD MEASURES FOR THE GENERAL ACCOUNTING OFFICE FOR FISCAL YEARS 1977-78 THROUGH 1981-82*

	Fiscal Year				
	1977-78	1978-79	1979-80	1980-81**	1981-82***
FTE****	55	54	52	52	54
Number of encumbrances and claims processed	569,600	590,000	649,000	713,900	785,300
Personal services	$ 580,100	$ 621,700	$ 645,300	$ 809,900	$ 981,000
Employee-related expenditures	99,800	111,600	123,600	153,200	195,100
Professional and outside services	638,700	647,400	1,029,500	1,380,000	1,555,100
Travel:					
In State	300	200	100	500	2,800
Out of State			1,000	1,400	1,500
Other operating expenses	159,200	168,000	150,200	187,800	221,100
Equipment	2,800	2,400	19,600	4,900	3,800
Total	$1,480,900	$1,551,300	$1,969,300	$2,537,700	$2,960,400

As shown in Table 1, while the number of encumbrances and claims processed increased from 569,600 in fiscal year 1977-78 to an estimated 785,300 in fiscal year 1981-82, an increase of 37.9 percent, the number of full-time equivalent employees decreased from 55 to 54.

Due to time and staffing constraints, the scope of our review of the General Accounting Office was limited to claims and encumbrances processing. The audit did not include reviews of the manner in which revenues, expenditures and other budgetary information is recorded or the report reconciliation function.

* Source: Assistant director, DOA-Finance.

** June 30, 1981, actual expenditures may be changed by 13th-month adjustments.

*** Based on appropriated amount for 1981-82.

**** Total FTE involved in all GAO functions, including payroll, transaction recording and claims-processing.

SUNSET FACTORS

Nine factors were reviewed to aid in the process of determining whether the Department of Administration-Division of Finance, General Accounting Office should be continued or terminated, in accordance with A.R.S. §§41-2351 through 41-2379.

SUNSET FACTOR: OBJECTIVE AND PURPOSE IN ESTABLISHING THE OFFICE

No explicit statement of intent appears in the statutes governing the State accounting function. Arizona law provides that the assistant director of DOA-Finance perform a broad range of accounting activities. A.R.S. §41-732, subsection A, states:

> "The assistant director for finance shall be the general accountant of the state and keeper of all public account books, vouchers, documents and papers relating to accounts and contracts of the state and to its revenue, debts and fiscal affairs, not required by law to be placed in some other office or kept by some other person."

GAO, an organizational unit of the Division, fulfills this statutory responsibility. GAO provides fiscal control over State spending by determining that claims are valid prior to issuing warrants, and summarizing fiscal information for management reporting purposes. GAO developed the following goals and objectives for fiscal year 1981-82:

- Maintain the Statewide centralized financial records and the reporting system which provides: 1) sufficient controls to ensure compliance with State and Federal laws and regulations, 2) information to manage the assets of the State, and 3) the historical data needed for planning and forecasting;
- Provide accounting services to all State agencies;
- Process claims in a timely manner;
- Record and process revenue accurately and in a timely manner;

- Provide training to user agencies in proper accounting procedures; and
- Recommend statutory and procedural changes to improve productivity.

SUNSET FACTOR: THE DEGREE TO WHICH THE OFFICE HAS BEEN ABLE TO RESPOND TO THE NEEDS OF THE PUBLIC AND THE EFFICIENCY WITH WHICH IT HAS OPERATED

Among its duties, GAO is responsible for 1) processing claims in a timely manner, and 2) determining if claims are proper. The Office does process claims in a timely manner. (page 13) As shown in Table 1, the number of full-time equivalent positions has remained virtually unchanged while the workload, in terms of encumbrances and claims processed, has increased more than 37 percent during the last five fiscal years.

However, our review revealed that GAO has been unable to review claims submitted by State agencies for propriety and authenticity as required by Arizona law because it would be impracticable to do so. (page 7)

SUNSET FACTOR: THE EXTENT TO WHICH THE OFFICE HAS OPERATED WITHIN THE PUBLIC INTEREST

GAO has developed procedures to 1) ensure that budget units do not exceed their budget capacity, and 2) establish and maintain the processing of encumbrances, claims and warrants for the expenditure and accounting of public funds. GAO appears not to have taken actions that are contrary to the public interest.

SUNSET FACTOR: THE EXTENT TO WHICH RULES AND REGULATIONS PROMULGATED BY THE OFFICE ARE CONSISTENT WITH THE LEGISLATIVE MANDATE

GAO has not issued rules and regulations but has, instead, prescribed accounting procedures by publishing a manual for use by State agencies.

GAO has delegated responsibility to State agencies for determining that their expenditures serve a valid public purpose. Our review revealed that such delegation is not in compliance with statutory requirements. (page 9)

SUNSET FACTOR: THE EXTENT TO WHICH THE OFFICE HAS ENCOURAGED INPUT FROM THE PUBLIC BEFORE PROMULGATING ITS RULES AND REGULATIONS AND THE EXTENT TO WHICH IT HAS INFORMED THE PUBLIC AS TO ITS ACTIONS AND THEIR EXPECTED IMPACT ON THE PUBLIC

The GAO has not promulgated rules and regulations. DOA's "Annual Report of the State of Arizona," detailing State receipts and expenditures, is the result of GAO record-keeping activities and reflects the scope of GAO operations.

The Office has compiled a State accounting manual for user agencies.

SUNSET FACTOR: THE EXTENT TO WHICH THE OFFICE HAS BEEN ABLE TO INVESTIGATE AND RESOLVE COMPLAINTS THAT ARE WITHIN ITS JURISDICTION

GAO has no statutory responsibility to investigate and resolve complaints. Therefore, this factor was not addressed in our review.

SUNSET FACTOR: THE EXTENT TO WHICH THE ATTORNEY GENERAL OR ANY OTHER APPLICABLE AGENCY OF STATE GOVERNMENT HAS THE AUTHORITY TO PROSECUTE ACTIONS UNDER ENABLING LEGISLATION

A.R.S. §35-196 provides that the assistant director, DOA-Finance, or the Attorney General may institute actions for the recovery of State monies if GAO deems an agency is incurring obligations illegally. The violation of prescribed fiscal procedures is a class 1 misdemeanor. According to GAO officials, this authority is sufficient.

SUNSET FACTOR: THE EXTENT TO WHICH THE OFFICE HAS ADDRESSED DEFICIENCIES IN THE ENABLING STATUTES WHICH PREVENT IT FROM FULFILLING ITS STATUTORY MANDATE

GAO assisted in drafting HB 2401, proposed for the 1981 legislative session. The bill related to public finances and provided for the following major changes related to GAO operations:

- Raising the requirement* for encumbrance documents from $50 to $500;
- Abolishing the travel advance revolving fund.

HB 2401 did not pass.

SUNSET FACTOR: THE EXTENT TO WHICH CHANGES ARE NECESSARY IN THE LAWS OF THE OFFICE TO ADEQUATELY COMPLY WITH THE FACTORS LISTED IN THIS SUBSECTION

Based on our review, changes are needed in the laws governing GAO to assist it to comply with the factors listed in this subsection. (page 11)

* Presently, a proposed expenditure greater than $50 expended from an appropriated fund must have an encumbrance document. GAO hoped to increase that requirement to $500 to eliminate the need to process small encumbrances.

FINDING

CHANGES ARE NEEDED TO RELIEVE THE GENERAL ACCOUNTING OFFICE OF THE STATUTORY RESPONSIBILITY TO DETERMINE IF PROPOSED EXPENDITURES APPEAR TO BE FOR VALID PUBLIC PURPOSES AND TO ENSURE THAT THE GENERAL ACCOUNTING OFFICE CLAIMS-PROCESSING PROCEDURES ARE IN COMPLIANCE WITH REQUIRED PROCEDURES.

Arizona law requires GAO to review claims submitted by State agencies for propriety and authenticity. While GAO has developed audit procedures to fulfill this responsibility and ensure agency compliance with other statutes governing expenditures, our review revealed that 1) GAO does not, for all intents and purposes, review claims to determine if they appear to be for valid public purposes as required in Arizona statutes, and 2) existing review procedures are not always followed.

Statutory Requirements

A.R.S. §35-181.02, subsection A, requires the assistant director, DOA-Finance to 1) audit all claims, and 2) determine whether they appear to be for valid public purposes:

> "The assistant director for finance shall audit, adjust and settle the amount of claims, against the state payable out of funds of the state, except claims expressly required or permitted by law to be audited and settled by some other officer. The assistant director for finance shall establish audit policies consistent with generally accepted governmental accounting procedures in order to effect prompt and correct payment of state obligations. The assistant director for finance shall also determine whether the proposed expenditure is provided for in the agency budget, appears to be for a valid public purpose and whether funds are available for payment." (Emphasis added)

Additionally, A.R.S. §35-182 requires GAO to review claims for authenticity:

> "Before any claim against the state is paid by the division of finance, the division shall require a certification in a form prescribed by the assistant director for finance and signed by the authorized representative or representatives of the budget unit presenting the claim."

Further, several legislative leaders informed audit staff that they perceive GAO as performing a control function and providing assurance that claims are legitimate and for valid public purposes.

To fulfill its statutory responsibility to "...effect prompt and correct payment of state obligations...." the DOA-Finance assistant director has developed procedures for claims review. These procedures are included in the State accounting manual, which states:

> "...claims are reviewed (by GAO) for mathematical accuracy (and)...validity of purpose...."

Further, the State accounting manual requires agencies to submit to GAO evidence of compliance with the statutes governing competitive bidding for outside professional-services contracts in excess of $5,000:

> "A certification by the agency that in awarding the contract it has complied with all the provisions of A.R.S. Title 41, chapter 6.1, sec. 41-1051 through 41-1056, and that supporting documents are on file and are available for inspection."

Statutory responsibility and legislative intent notwithstanding, the GAO claims-review process is inadequate in that 1) GAO does not perform some required review functions, and 2) existing review procedures are not always followed.

GAO Does Not Perform
Some Required Review Functions

Contrary to statute and its own formal procedures, GAO does not determine: 1) the mathematical accuracy of claims, or 2) that claims appear to be for valid public purposes. Instead, GAO procedures are, with very few exceptions, limited to reviewing for the presence of authorized signatures and supporting invoices for validity. As a result, the responsibility for verifying the authenticity and correctness of claims lies not with GAO but with the submitting agencies.

Currently GAO requires agencies to certify that a claim is for a valid public purpose. However, such a requirement does not relieve GAO of the responsibility to make a similar judgment. Legislative Council, in a memorandum dated July 16, 1981,* noted that an agency certification does not shift responsibility from GAO to the agency for determining legality and propriety:

> "...the assistant director for finance remains statutorily responsible for the legality and propriety of an expenditure regardless of the agency certification as to the legality and propriety of that expenditure.
>
> . . . . . .
>
> "The assistant director for finance is obligated to perform the above mentioned duties (under A.R.S. §35-181.02) regardless of the agency certification." (Emphasis added)

According to the directors of several large State agencies, the responsibility to determine the validity and propriety of claims submitted to GAO lies with the agencies' staffs. In addition, a director expressed the opinion that it is a duplication for GAO to review claims to determine if they are for valid public purposes.

* Appendix IX contains the memorandum text.

Further, GAO officials concede that it is not possible for them to evaluate a claim in terms of whether a valid public purpose is served, because the lack of clerical staff and the large volume of claim documents restricts GAO from making such a determination.

Existing Review Procedures
Are Not Always Followed

GAO's review of claims for authenticity and compliance with statutory requirements for competitive bidding is not adequate.

Audit staff reviewed a sample of claims processed by GAO and discovered that two percent of them either were not signed by persons authorized to sign claims or were not signed at all.

In addition, two of the five claims for professional outside services that audit staff reviewed were not certified properly. GAO staff maintains that separate certifications are not necessary; that the signature on the claim form is sufficient. However, it should be noted that a claim certification verifies that 1) goods or services have been received, and 2) the expenditure is for a valid public purpose but does not certify that the agency has complied with the competitive bidding statutes as required by GAO's own procedures manual.

It should be noted that the Office of the Auditor General conducts annual financial audits of the ten largest State agencies and triannual audits of all other State agencies. Therefore, GAO claims reviews could be performed on a limited basis.

CONCLUSION

GAO does not review claims to determine that they appear to be for valid public purposes, and does not always follow required review procedures.

RECOMMENDATIONS

Consideration should be given to the following recommendations:

1. Amend A.R.S. §35-181.02 to
   - Delete GAO's responsibility to determine that claims are for valid public purposes,
   - Recognize agency claim certification as sufficient evidence of expenditure propriety, and
   - Require GAO to perform post audits of claims of agencies audited triannually by the Office of the Auditor General, on a selective basis, to ensure agencies are discharging their duties properly.

   Such a post audit would include:
   1. Determining the propriety and valid public purposes of claims,
   2. Determining that expenditures are properly approved,
   3. Ensuring that invoice amounts are not over or under paid, and
   4. Verifying that expenditures are in compliance with applicable statutes.

2. GAO require agencies to submit a separate certification that they have complied with A.R.S. §§41-1051 through 41-1056 for outside professional services expenditures in excess of $5,000.

3. GAO perform post audits of claims for outside professional services in excess of $5,000 on a selective basis for agencies audited triannually by the Office of the Auditor General.

OTHER PERTINENT INFORMATION

A review of the processing time of claims by GAO was undertaken to determine if potential discounts were lost due to processing delays. Our review of GAO operations revealed that 1) GAO claims-processing is timely, and 2) discounts normally are not lost.

GAO Claims Review Is Performed in a Timely Manner

GAO performs the following steps in processing claims:

- The claim is date-stamped to document the time and date it was received,
- A series of manual and electronic reviews are made to ensure the claim is prepared properly, and
- A warrant is issued and made available for the State agency submitting the claim.

Our review of a sample of claims issued between July 1, 1980, and March 31, 1981, revealed that GAO takes an average of 2.6 working days to process a claim. It should be noted that there is an average delay of 3.7 days between the date the submitting agency prepares the claim and the date it is reviewed by GAO. Therefore, agencies take longer to submit claims than GAO takes to process them.

Discounts Normally Are Not Lost

Agencies generally have warrants available for payment to vendors a minimum of seven working days from the date they prepare the claim. Those vendors who offer discounts generally require payment within ten days of the billing date in order for a discount to apply. Thus, it appears that GAO is not causing the State to lose discounts. Additionally, few vendors offer such discounts. An Auditor General survey of vendors on the State Purchasing Office master vendor list revealed that only 12 percent offer discounts for prompt payment.

DEPARTMENT OF ADMINISTRATION
FINANCE DIVISION

STATE OF ARIZONA

THE CAPITOL
PHOENIX, ARIZONA 85007

BRUCE BABBITT, Governor
ROBERT B. TANGUY, Director
DONALD L. OLSON, Assistant Director

December 11, 1981

Mr. Douglas R. Norton, Auditor General
State Capitol
Legislative Services Wing, Suite 200
Phoenix, Arizona 85007

Dear Mr. Norton:

We are enclosing our response to your Performance Audit finding for the Department of Administration - Finance Division - General Accounting Office. We are in general agreement with your finding.

Your Performance Team was very professional and courteous in the conduct of this audit and we are sure your report will be helpful to us in realizing our objectives.

Sincerely,

Donald L. Olson
Assistant Director for Finance

Robert B. Tanguy
Director

DLO:ks
Enclosure

RESPONSE OF THE GENERAL ACCOUNTING OFFICE TO THE PERFORMANCE AUDIT CONDUCTED BY THE OFFICE OF THE AUDITOR GENERAL AS PART OF THE SUNSET REVIEW.

FINDING

CHANGES ARE NEEDED TO RELIEVE THE GENERAL ACCOUNTING OFFICE OF THE STATUTORY RESPONSIBILITY TO DETERMINE IF PROPOSED EXPENDITURES APPEAR TO BE FOR VALID PUBLIC PURPOSES AND TO ENSURE THAT THE GENERAL ACCOUNTING OFFICE CLAIMS-PROCESSING PROCEDURES ARE IN COMPLIANCE WITH REQUIRED PROCEDURES.

We concur that changes are needed to relieve the General Accounting Office of the statutory responsibility to determine if proposed expenditures appear to be for valid public purpose. The General Accounting Office has prepared draft legislation to eliminate that statutory responsibility. The change would clearly shift responsibility for valid public purpose to the agency.

We also concur that the General Accounting Office claims-processing procedures are not in compliance with stated procedures. However, we do not believe the procedures, as stated, are required. The accounting manual does state that claims are to be reviewed for mathematical accuracy. This procedure for reviewing all claims for mathematical accuracy has been discontinued by the General Accounting Office as it was determined that the cost involved and staffing requirements for 100% duplication of an agency procedure was not in the best interest of the State and could not be cost justified. , The accounting manual does need to be revised to reflect current procedure.

In addition, the State's accounting manual requires agencies to submit to the General Accounting Office an additional certification as evidence of compliance with statutes governing competitive bidding for other professional services contracts in excess of $5,000. This procedure also has been discontinued as it has been determined that the certification already required on the claim form is adequate for the purposes of the General Accounting Office and the audit purposes in determining compliance with ARS Title 41, Chapter 6.1.

A significant problem does exist in regard to the General Accounting Office's ability to pre-audit payments of professional services contracts less than $5,000 in order to insure that the contracts do not exceed $5,000. A new procedure is being developed to provide the General Accounting Office with additional information on those contracts under $5,000 and to inform the agencies of the specific legal requirements.

The accounting manual will be updated in conjunction with the preparation of the new manual for the new Arizona Financial Information System (AFIS) to reflect current policy. The General Accounting Office is proposing eight (8) separate pieces of legislation which, if adopted, will have a major impact on the accounting procedures of the State of Arizona. Major revisions of the accounting manual will be delayed pending legislative decision regarding these proposed changes.

DEPARTMENT OF ADMINISTRATION

SURPLUS PROPERTY DIVISION

TABLE OF CONTENTS

	Page
SUMMARY	i
INTRODUCTION AND BACKGROUND	1
SUNSET FACTORS	7
FINDINGS	
FINDING I	15
The Surplus Property Division is not in compliance with Federal regulations requiring an advisory group.	
CONCLUSION	16
RECOMMENDATION	16
FINDING II	17
The Surplus Property Division's manual record-keeping system is inadequate.	
CONCLUSION	18
RECOMMENDATION	18
WRITTEN RESPONSE TO THE AUDITOR GENERAL REPORT	19

SUMMARY - SURPLUS PROPERTY DIVISION

An agency for the disposition of surplus property was first created in 1955 by Executive Order. The Surplus Property Division (SPD) was included within the Department of Administration when the Department was created in 1973.

SPD is responsible for the acquisition, accumulation and disposition of Federal and State surplus property to State and local public agencies and eligible nonprofit educational and public health institutions. The Federal program, which is maintained apart from the State's, is operated with the approval and cooperation of the U.S. General Services Administration (GSA) through a State Plan approved by the Governor and GSA.

Federal regulations require that an advisory body assist the Division in several functional areas. An advisory body had not been appointed as of June 30, 1981. SPD's noncompliance could endanger Arizona's future participation in the Federal surplus property program. (page 15)

The SPD manual inventory record-keeping system is inadequate. An automated system would allow SPD to account for items over which it has stewardship and communicate the availability of those items to user agencies. (page 17)

Consideration should be given to the following recommendations:

1. The Governor select and appoint qualified persons to an advisory board with duties as described in the State Plan.
2. The Director of the Department of Administration consider its Data Processing Division's feasibility study to automate SPD's inventory system.

INTRODUCTION AND BACKGROUND - SURPLUS PROPERTY DIVISION

An agency for the disposition of surplus property was first created in 1955 by Executive Order to

> "...acquire, warehouse and distribute federal surplus property to tax supported or tax exempt institutions or agencies within the state."

The Surplus Property Division (SPD) was included within the Department of Administration when the Department was created in 1973.

The Division is responsible for the acquisition, accumulation and disposition of Federal and State surplus property to State and local public agencies and eligible nonprofit educational and public health institutions. The Federal program, which is maintained apart from the State's, is operated with the approval and cooperation of the U.S. General Services Administration (GSA) through a State Plan approved by the Governor and GSA.

The Division oversees transfers and disposals of State property, except property owned by the State universities. Arizona State University and the University of Arizona maintain their own surplus property departments, and disperse their own transfers and disposals. The Department of Public Safety is not required by law to use the services of the Division, but has elected to do so.

SPD, physically located at the Capitol Complex, consists of a warehouse, offices, an outdoor storage area, and housing for typewriter maintenance, office machine rehabilitation, furniture rehabilitation and silver recovery programs. Income from these programs help finance the operation of the Division.

The Division is operated through two revolving funds -- $50,000 for the Federal program and $50,000 for the State program. To recover expenses, SPD assesses user fees for 1) the transfer of property, and 2) repair services through the maintenance and rehabilitation programs.

Tables 1 and 2 contain revenue and expenditure summaries for fiscal years 1976-77 through 1979-80 and estimates for fiscal year 1980-81 for the Federal and State surplus property programs.

TABLE 1

SUMMARY OF REVENUES AND EXPENDITURES FOR THE FEDERAL SURPLUS PROPERTY PROGRAM FOR FISCAL YEARS 1976-77 THROUGH 1980-81

	1976-77	1977-78	1978-79	1979-80	1980-81
Operating revenues:					
Service and handling fees	$170,419	$192,545	$300,469	$232,172	$ 29,569
Other	258	1,456		6,260	
Total	$170,677	$194,001	$300,469	$238,432	$229,569
Expenditures:					
Salaries and wages	$ 81,865	$ 89,449	$107,838	$114,449	$117,925
Employee-related	13,679	18,845	23,098	23,922	28,149
Travel:					
In State	18,667	15,229	16,415	8,343	7,652
Out of State	2,512	3,937	10,767	17,590	10,735
Rent (warehouse offices)	14,576	22,133	20,117	12,238	10,199
Freight**	15,675	4,872	38,929	13,716	12,593
Other	15,763	24,530	50,003	46,010	53,170
Total	$162,737	$178,995	$267,167	$236,268	$240,423
Net income (loss) from operations	$ 7,940	$ 15,006	$ 33,302	$ 2,164	$(10,854)

* Freight includes charges by hired carriers and service and handling charges by other states for property moved to Arizona.

TABLE 2

SUMMARY OF REVENUES AND EXPENDITURES FOR THE STATE SURPLUS PROPERTY PROGRAM FOR FISCAL YEARS 1976-77 THROUGH 1980-81

	1976-77	1977-78	1978-79	1979-80	1980-81
Operating revenues:					
Fees and charges (net of refunds)*	**	$31,070	$70,625	$(20,745)	$(45,311)
Equipment repairs	**	2,230	5,215	94,330	137,129
Rental of equipment	**	1,542	1,185	1,558	3,026
Auction, bid, scrap	**	249	4,818	107,078	237,194
Total	$ 27,765	$35,091	$81,843	$182,221	$332,038
Expenditures:					
Salaries and wages	$ 25,805	$27,994	$25,145	$ 90,222	$165,387
Employee related	3,662	5,467	4,946	19,442	44,409
Rent	5,689		**	12,238	14,277
Travel in State	911		**	5,356	13,089
Repair shop supplies	1,273		**	18,160	30,686
Other expenditures	3,524	841	9,301	21,690	42,823
Total	$ 40,864	$34,302	$ 39,392	$167,108	$310,671
Net income (loss) from operations	$(13,099)	$ 789	$ 42,451	$ 15,113	$ 21,367

* Refunds to agencies are monies collected by SPD forwarded to donating agencies which do not receive appropriations from the General Fund. These agencies are allowed to set a desired price for the item, to which SPD adds a handling fee. SPD retains the handling fee and remits the remainder to the agency.

** Not available.

Because of time constraints, our audit review did not include SPD compliance with applicable donee eligibility requirements and physical verification of appropriate donee use of surplus property.

The Auditor General expresses gratitude to the assistant director and employees of the Surplus Property Division for their cooperation, assistance and consideration during the course of the audit.

SUNSET FACTORS

Nine factors were reviewed to aid in the process of determining whether the Department of Administration - Surplus Property Division should be continued or terminated in accordance with Arizona Revised Statutes (A.R.S.) §§41-2351 through 41-2379.

SUNSET FACTOR: THE OBJECTIVE AND PURPOSE IN ESTABLISHING THE DIVISION

The Surplus Property Division (SPD) was created by Executive Order on July 27, 1955, to

> "[A]ct as a clearing house of information as to the availability of federal surplus real and personal property and state surplus personal property or political subdivisions thereof and assist eligible institutions in locating such property and in ascertaining the terms and conditions under which such property might be obtained." (Emphasis added)

Its present purpose is stated in A.R.S. §41-813, as adopted in 1972 when the Division was included in the Department of Administration.

The Division has the authority to

1. Acquire and distribute Federal surplus property for public purpose,

2. Transfer State property among eligible donees, and

3. Otherwise dispose of State surplus property. The Division also is authorized to provide maintenance and repair services to increase utilization of property.

The Division states that its objective is

> "...(to be) responsible for effecting fair and equitable distribution of Federal and State surplus personal property to those many elements of State and local government and certain nonprofit educational and public health activities; accordingly property is acquired, maintained and serviced, reconditioned, rented, transferred, traded, sold and condemned making proper charges limited to those reasonably related to the costs of service and handling." (Emphasis added)

SUNSET FACTOR: THE DEGREE TO WHICH THE DIVISION HAS BEEN ABLE TO RESPOND TO THE NEEDS OF THE PUBLIC AND THE EFFICIENCY WITH WHICH IT HAS OPERATED

Since the majority of the Division's activities do not involve the general public, for purposes of this review the public is assumed to consist of those agencies currently and potentially eligible for SPD services.

During fiscal year 1979-80, the Division transferred to eligible agencies $6,062,629* of State property. Additionally, the Division's typewriter repair and maintenance program saved the State approximately $30,000 as a result of repairing 3,000 typewriters.

The Division also reported that its furniture repair program, started in December 1979, generated approximately $8,500 in revenues as of June 1980 via fees it charged to agencies for services rendered. In July 1980, the Division began selling silver salvaged from State agency X-ray facilities and residue from tooth fillings. As of April 1981, ten agencies had participated in the program.

It appears that SPD's efficiency would be enhanced if improvements were made to its inventory records, and if the current manual record-keeping system were eliminated. (page 17)

* Estimated acquisition cost.

SUNSET FACTOR: THE EXTENT TO WHICH THE DIVISION HAS OPERATED WITHIN THE PUBLIC INTEREST

The most frequently requested items from the Division are office furniture, office equipment and heavy equipment, such as wheeled vehicles. We estimate that more than half the items transferred from State agencies to the Division's warehouse or directly to other participating agencies are office machines and furniture. The average transfer time from receipt of office equipment by SPD to placement with an agency was approximately 45 days. The average transfer time for heavy equipment and wheeled vehicles, which are frequently requested items and difficult to obtain, was approximately 29 days.

Our review revealed that State agencies are the largest users of State surplus property (38 percent) and that school districts are a close second (35 percent). An Auditor General survey of agencies and political subdivisions* revealed that 86 percent of the respondents were regularly contacted by SPD about items available in inventory, and 60 percent at least occasionally contacted SPD before buying.

The Division appears to serve the public interest by increasing State revenues or reducing State expenditures in three ways. First, it provides a uniform method of transferring usable property, thus reducing the need to purchase new items. Second, SPD auctions and scrap sales generate revenues to the State. Third, SPD maintenance and repair programs reduce the need for purchases of new equipment. During fiscal year 1979-80, SPD generated $213,000 in service and handling charges and rental fees, $107,100 in auction and scrap sale revenues and $94,300 in equipment repair charges. It should be noted that these figures do not include representation of the dollars saved by eliminating purchases of new items.

* Survey sent to 170 State agencies and political subidivisions; 88, or 52 percent, responded.

SUNSET FACTOR: THE EXTENT TO WHICH RULES AND REGULATIONS PROMULGATED BY THE DIVISION ARE CONSISTENT WITH THE LEGISLATIVE MANDATE

Arizona statutes do not require the Division to promulgate rules and regulations. However, policies and procedures are binding on the agencies which are served by SPD, according to a Legislative Council memorandum dated July 2, 1981.* Policies and procedures are consistent with legislative mandate. However, an advisory board required by the State Plan** and needed to ensure State eligibility in the Federal Surplus Property Program has not been created. (page 15)

SPD operates under three procedures manuals. These manuals detail: 1) agency procedures to obtain Federal and State surplus property, 2) agency procedures to dispose of State surplus property, and 3) internal procedures for SPD staff.

SPD has taken the following steps to address the major findings*** in two Federal audits conducted during 1980:

- Increased donee eligibility reviews,
- Discontinued rental of Federal property to State agencies,
- Conducted annual physical inventories and record reconciliations as required,
- Reduced age of accounts receivable, and
- Increased property control.

* See Appendix X for the text of this memorandum.

** The State Plan is required by Federal law and developed by each state to govern state agencies charged with disposing of surplus property.

*** Appendix XI contains detailed information on each major finding or recommendation and related SPD action.

SUNSET FACTOR: THE EXTENT TO WHICH THE DIVISION HAS ENCOURAGED INPUT FROM THE PUBLIC BEFORE PROMULGATING ITS RULES AND THE EXTENT TO WHICH IT HAS INFORMED THE PUBLIC AS TO ITS ACTIONS AND THEIR EXPECTED IMPACT ON THE PUBLIC

The Division does not have express authority to promulgate rules and regulations. The Division does, however, have formal policies and procedures which do change occasionally. Based on a survey of user agencies and political subdivisions, 67 percent had at some time been notified by SPD of program changes. Of those that had been notified, 69 percent had been notified of changes in procedures and 49 percent had been notified of Federal changes.

Many SPD procedural changes concern Federal procedures and are not subject to agency input. While agency input is allowed for changes in State program policies, such changes have been few since 1978, when State statutes were revised to conform more closely with Federal requirements.

According to SPD, agencies are informed of changes in procedures in two ways. First, bulletins are sent to agencies quarterly, announcing and explaining changes. Second, changes also may be announced and explained during SPD compliance and utilization reviews conducted by a compliance and utilization officer, usually during the last week of each month.

SUNSET FACTOR: THE EXTENT TO WHICH THE DIVISION HAS BEEN ABLE TO INVESTIGATE AND RESOLVE COMPLAINTS THAT ARE WITHIN ITS JURISDICTION

Statutes for the Division do not specify responsibility for a complaint review process. Therefore, this Sunset factor does not apply.

SUNSET FACTOR: THE EXTENT TO WHICH THE ATTORNEY GENERAL OR ANY OTHER APPLICABLE AGENCY OF STATE GOVERNMENT HAS THE AUTHORITY TO PROSECUTE ACTIONS UNDER THE ENABLING LEGISLATION

Arizona statutes do not specifically provide SPD with a means to remedy misuse of property acquired from it. However, a Legislative Council memorandum dated July 1, 1981,* states that a remedy is available:

> "...the Division could seek a writ of mandamus or an injunction against the offending public agency in such cases. Additionally, if there is wanton disregard of ministerial duties by the Surplus Property Division in the transfer or handling of surplus property or by any public agency in obtaining surplus property it is a clearly accepted principle of law that the malfeasor is subject to personal liability to one to whom the duty is owing." (Emphasis added)

According to SPD officials, the absence of a statutory remedy for instances of property misuse has not created a problem.

SUNSET FACTOR: THE EXTENT TO WHICH THE DIVISION HAS ADDRESSED DEFICIENCIES IN ITS ENABLING STATUTES WHICH PREVENT IT FROM FULFILLING ITS STATUTORY MANDATE

The Division was included in the Department of Administration in 1972. Division staff in 1978 supported the only statutory revisions that had occurred: political subdivisions were allowed the opportunity to apply for eligibility to utilize SPD, and statutory provisions were added to allow the operation of the repair and maintenance programs and the operation of two revolving funds, one for the State program and the other for the Federal program.

The assistant director for SPD claims further statutory changes are not needed.

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* See Appendix XII for memorandum text.

SUNSET FACTOR: THE EXTENT TO WHICH CHANGES ARE NECESSARY IN THE LAWS OF THE DIVISION TO ADEQUATELY COMPLY WITH THE FACTORS LISTED IN THIS SUBSECTION

Our review determined that statutory changes are not necessary for the Division to comply adequately with the factors of this subsection.

FINDING I

THE SURPLUS PROPERTY DIVISION IS NOT IN COMPLIANCE WITH FEDERAL REGULATIONS REQUIRING AN ADVISORY GROUP.

Federal regulations require that an advisory body assist the Division in several functional areas. Our review revealed that an advisory board had not been appointed as of June 30, 1981. As a result, SPD is not in compliance with Federal requirements and such noncompliance could cause the Federal government to withhold surplus property.

Federal Requirements

Public Law 41CFR 101-44.202(11), which governs the operation of the Federal surplus property programs of state agencies, requires advisory assistance:

> "(requires)...consultation by the state agency with advisory bodies and public and private groups which can assist the state agency in determining the relative needs and resources of donees, the utilization of donable property by eligible donees, and how distribution of donable property can be effected to fill existing needs of donees."

According to Federal requirements, details of the advisory board organization and maintenance are specified in the State Plan.

The State Plan developed in Arizona, in compliance with appropriate Federal regulations, requires an advisory body to perform the following functions:

- Make recommendations for program operations,
- Hear and review complaints,
- Act as liaison between State agencies and public and private groups, and
- Review factors used in determining service charges.

The advisory board should, according to the State Plan, consist of nine members appointed by, and to serve at the convenience of, the Governor. However, due to the absence of gubernatorial action, no such board exists.

Advisory Board Not Appointed

Since the State Plan's development in 1977, no advisory board has been created. The assistant director for SPD has sent letters to the present and past governors requesting board appointments, but no action has been taken. A Federally conducted review of SPD operations as of June 3, 1980, noted that Arizona had not conformed to its own State Plan because an advisory body had not been appointed.

Effects of Noncompliance with Federal Regulations

Lack of compliance with the State Plan could result in the withholding of surplus Federal property until such noncompliance is corrected.

Public Law 41CFR101-44.202 (e) states the possible consequences of noncompliance:

> "...(when) the State agency does not operate in accordance with the provisions of the plan, allocation and transfer of surplus donable property may be withheld until the nonconformance is corrected."

Thus, continued absence of an advisory board could result in Federal surplus property being withheld from Arizona's SPD program.

CONCLUSION

Federal requirements of an advisory board to assist in the operation of an Arizona surplus property agency have not been satisfied. This situation could endanger Arizona's future participation in the Federal surplus property program.

RECOMMENDATION

It is recommended that the Governor select and appoint qualified persons to an advisory board with duties as described in the State Plan.

FINDING II

THE SURPLUS PROPERTY DIVISION'S MANUAL RECORD-KEEPING SYSTEM IS INADEQUATE.

SPD uses a manual inventory system to 1) account for property stored in its warehouse, and 2) document transfers of State and Federal property. Our review revealed that the use of a manual record-keeping system impairs SPD's ability to 1) account for items over which it has stewardship, and 2) communicate the availability of those items to user agencies. A DOA-Data Processing Division study of means to automate the system is underway and should be considered when completed.

Manual Inventory System

SPD's manual inventory system for the State program is maintained by one employee. SPD files contain the following records: 1) transfer documents for items that have been disposed of, 2) active inventory cards for items in inventory, 3) "dead cards" for items transferred out of inventory, and 4) transfer documents and invoices for items purchased by eligible agencies.*

During fiscal year 1979-80, SPD's manual system was used to record approximately 10,500 items within the State program, totaling $4,230,870, and to record approximately 7,500 items through the third quarter of fiscal year 1980-81.

Stewardship Responsibility

Two audits conducted within the past year have noted the need for improved SPD inventory accounting control. Both a Federal review and a financial audit by the Office of the Auditor General revealed that some inventoried items could not be located because of paperwork errors. Our performance audit also revealed errors caused by inadequacies in SPD's manual record keeping.

* In addition, SPD enters transfer documents in a log book and assigns a number to each item for cross reference to other files.

As a result, SPD's ability to fulfill its stewardship responsibility is impaired by its manual record-keeping system.

Communication with User Agencies

SPD regularly prepares bulletins which include, among other things, lists of items in inventory. These bulletins identify only about five percent of SPD's total inventory and usually include highly desirable items or items that have been in inventory for a long time. SPD is unable to produce a more current or complete listing because it is not practicable to do so through use of the manual record-keeping system.

An Auditor General survey of State agencies and other SPD users identified the need for an expanded and more timely listing of items available in SPD's inventory.

Study by DOA-Data Processing Division

SPD requested DOA-Data Processing Division to assess the possibility of automating SPD's inventory accounting, billing and accounts receivable systems. The study has begun; however, the completion date is uncertain. SPD expects to finance an automated system through revenues generated by SPD service and handling fees.

CONCLUSION

The SPD manual inventory record-keeping system is inadequate. As a result, SPD cannot fulfill its stewardship responsibility effectively, and its ability to communicate with user agencies is impaired.

RECOMMENDATION

It is recommended that the Director of the Department of Administration consider the Data Processing Division feasibility study to automate SPD's inventory system.

DEPARTMENT OF ADMINISTRATION
SURPLUS PROPERTY DIVISION

STATE OF ARIZONA

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BRUCE BABBITT, GOVERNOR
~~ROBERT C. DICKESON~~, DIRECTOR
VON M. BULL, ASSISTANT DIRECTOR
George Britton,
Acting Director

November 6, 1981

Mr. Douglas R. Norton
Auditor General
State Capitol, Legislative Services Wing, Suite 200
1700 West Washington
Phoenix, Arizona 85007

Dear Mr. Norton:

Attached are written comments in response to the sunset audit of the Department of Administration, Surplus Property Division.

We appreciate the opportunity to comment on the audit. Additionally, we are particularly pleased that the audit finds the Surplus Property Division (SPD) to be generally well managed and to have saved the Arizona taxpayer significant sums of money as noted on page 141 of the audit.

Respectfully submitted,

Von M. Bull

George Britton

VMB/lb
Attachment

RESPONSE OF THE SURPLUS PROPERTY DIVISION, DEPARTMENT OF ADMINISTRATION, TO THE PERFORMANCE AUDIT CONDUCTED BY THE OFFICE OF THE AUDITOR GENERAL AS PART OF THE SUNSET REVIEW.

The Division wishes to thank the Auditor General's staff for their efforts and their courtesy in their acceptance of suggested language as well as substantiative changes during the Draft Review process. Particularly considering the difficulties in understanding the technical aspects of Surplus Property management, the Auditor's staff has done a commendable job. They have made two suggestions: one has been implemented and the other was under consideration at the time of the audit.

FINDING I: THE SURPLUS PROPERTY DIVISION IS NOT IN COMPLIANCE WITH FEDERAL REGULATIONS REQUIRING AN ADVISORY GROUP.

RESPONSE: At the time of the audit, Finding I was correct. An advisory committee complying with the Federal requirement has now been formed.

FINDING II: THE SURPLUS PROPERTY DIVISION'S MANUAL RECORD-KEEPING SYSTEM IS INADEQUATE.

RESPONSE: We disagree that the existing manual record-keeping system is inadequate. The current records system permits adequate management and control over the Division's operations, however, we do agree that automation would enhance the operation of the Division including inventory, accounts receivable, mailing lists, request cards, and donee files.

An automation feasibility study was underway during the audit and is nearly completed. Automation implementation has been held up because of funds availability and because of the move of SPD into new offices. Completion of the feasibility study is expected by June 1982 and, subject to funds availability, SPD records can be automated during Fiscal Year 1982-83.

November 6, 1981

APPENDIX I

LEGISLATIVE COUNCIL MEMORANDUM (0-81-20)

APRIL 23, 1981

ARIZONA LEGISLATIVE COUNCIL

MEMO

April 23, 1981

TO: Douglas R. Norton
Auditor General

FROM: Arizona Legislative Council

RE: Request for Research and Statutory Interpretation (0-81-20)

This is in response to a request submitted on your behalf by Gerald A. Silva in a memo dated April 9, 1981. No input was received from the attorney general concerning this request.

FACT SITUATION:

Arizona Revised Statutes (A.R.S.) section 41-729, subsection A, paragraph 2 defines the duties of the state purchasing section and states:

> A. The purchasing section shall have the following duties:
>
> * * *
>
> 2. Prescribe standards of quality, standard specifications and methods for the acquisition, delivery, acceptance, storage, retention and distribution of all supplies, materials, equipment and contractual services of budget units.

The state purchasing section has not promulgated administrative rules and regulations. Required procedures for purchasing activities by both purchase authorized and non-purchased authorized agencies are contained in a policy and procedures manual issued by the state purchasing section.

QUESTIONS PRESENTED:

1. Does the issuance of a policy and procedures manual in lieu of administrative rules and regulations satisfy the requirements of A.R.S. section 41-729, subsection A, paragraph 2?

2. Are the requirements set forth in the policy and procedures manual legally binding upon a) the purchasing section, b) non-purchase authorized agencies and c) purchase authorized agencies?

ANSWERS:

1. Yes. In this instance, the legislature has not specifically required the issuance of regulations to set purchasing standards, specifications and methods. The purchasing section itself does not have authority to promulgate regulations although the assistant director for finance who heads the division of which the purchasing section is a part may issue regulations. A.R.S. section 41-722, subsection B, paragraph 5. To accomplish the legislative intent we

believe that the purchasing section could either promulgate regulations through the assistant director for finance or, as is the case, issue a policy and procedures manual.

2. The requirements prescribed by the policies and procedures manual are binding in each of the situations described. The language of A.R.S. section 41-729 is both clear and all-encompassing. The standards, specifications and methods set forth in the manual apply to all supplies, materials, equipment and contractual services of budget units. To infer that the manual is not binding on the purchasing section would lead to an absurd result. In construing statutes, Arizona courts will attempt to give them a sensible construction which will accomplish the legislative intent and at the same time avoid an absurd result. A.R.S. section 1-211; State v. Valenzuela, 116 Ariz. 61, 567 P.2d 1190 (1977). The authority to prescribe such standards was contained in Laws 1967, chapter 55 which enunciated clear legislative intent "that a system of purchasing for state agencies be established in order to make state government more economical and efficient". A reasonable construction of A.R.S section 41-729 can lead to only one conclusion. The purchasing standards prescribed by the purchasing section must apply to the section itself to fit within the scheme of making government purchasing more economical and efficient.

If the standards apply to the purchasing section, then a fortiori they must apply to those state agencies which are not authorized to make their own purchases but rather have their purchases made by the purchasing section.

Similarly, purchase authorized agencies are also subject to the manual's directives. Since their authority is derived from that belonging to the purchasing section these "other budget units are bound by all the procedures and restrictions that govern purchasing by the purchasing section." 75 Op. Att'y Gen. 75-11 (1975).

CONCLUSIONS:

1. The policy and procedures manual does satisfy the requirements of A.R.S. section 41-729, subsection A, paragraph 2:

2. The manual requirements apply to the purchasing section, non-purchase authorized agencies and purchase authorized agencies.

cc: Gerald A. Silva
Performance Audit Manager

APPENDIX II

LEGISLATIVE COUNCIL MEMORANDUM (O-81-23)

APRIL 21, 1981

ARIZONA LEGISLATIVE COUNCIL

MEMO

April 21, 1981

TO: Douglas R. Norton
Auditor General

FROM: Arizona Legislative Council

RE: Request for Research and Statutory Interpretation (O-81-23)

This is in response to a request submitted on your behalf by Gerald A. Silva in a memo dated April 9, 1981. No input was received from the attorney general concerning this request.

FACT SITUATION:

Arizona Revised Statutes (A.R.S.) section 41-729, subsection A defines the duties of the state purchasing office and states:

> The purchasing section shall have the following duties:
>
> 1. Investigate and review the type, cost, quality and quantity of supplies, materials, equipment and contractual services presently used by all budget units of the state and the methods by which such supplies, materials, equipment and contractual services are acquired, delivered, accepted, stored and distributed by all budget units. (Emphasis added.)

The state purchasing office (office) surveys budget units to determine quantities of some commodities which agencies estimate they will purchase. The office has discontinued audits of purchase authorized agencies and has no other procedures for monitoring purchasing activity by state agencies.

QUESTION PRESENTED:

Are the procedures currently used by the state purchasing office in compliance with A.R.S. section 41-729, subsection A, paragraph 1?

ANSWER: No

DISCUSSION:

As this office previously stated in memorandum (O-81-17):

> The general rule of statutory construction is that where a statute is plain and unambiguous there is no room for construction. City of Mesa v. Killingsworth, 96 Ariz. 290, 394 P.2d 410 (1965). Only when it is obvious from the act itself that the legislature intended that words be used in a different sense than its common

> meaning will the customary meaning of words be disregarded. One who contends that a provision of an act must not be applied according to the natural or customary sense of its language must show that some other section of the act expands or restricts its meaning or that there is other evidence which imports a different meaning. Sutherland, Statutes and Statutory Construction section 46.01 (4th ed., Sands, 1972). Generally, a clear and unambiguous statutory provision is one having a meaning that is not contradicted by other language in the same act. Id., section 46.04.

A.R.S. section 41-729, subsection A lists several mandatory duties of the office. These duties are in contrast to and distinct in their legal requirements from the discretionary powers listed in subsection B of that section. Subsection A, paragraph 1 clearly requires the office to perform several functions in all instances. The office is to investigate and review the type, cost, quality, quantity and methods of acquisition, delivery, acceptance, storage and distribution of all supplies, materials, equipment and contractual services used by all budget units. Although not specifically applicable, the definition of "budget unit" in A.R.S. section 35-101 reinforces an inclusive intent. In addition to budget units, the office may provide the same services for school districts on a discretionary basis. A.R.S. section 41-729, subsection B, paragraph 4.

Since the investigation and review is mandatory and comprehensive, any exception must be specifically authorized. Quite simply, there are no exceptions.

The issue of direct purchasing by budget units is a separate and irrelevant consideration from the question presented. Certain budget units have been expressly authorized by the legislature to make their own purchases of supplies. See, e.g. A.R.S. sections 17-266 (game and fish department) and 15-1682 (Arizona board of regents). In addition to separate authorization, the office may authorize budget units to purchase certain items directly and must authorize certain budget units to purchase certain items in certain instances. A.R.S. section 41-729, subsection B, paragraph 2. None of this, however, provides any exception to the requirement that the office monitor and evaluate all purchases by all budget units.

The conclusion that the investigation and review function is mandatory for all items used by all budget units is reinforced by 1975-1976 Op. Att'y Gen. 75-11 (1975):

> The Purchasing Section is not only authorized to "purchase, rent or otherwise provide for" the needs of state budget units under A.R.S. section 41-729.B, it is also obligated to engage in numerous types of activities that provide the basis for an effective and efficient purchasing program under A.R.S. section 41-729.A. (Emphasis added.)

CONCLUSION:

The state purchasing office is required by A.R.S. section 41-729, subsection A, paragraph 1 to investigate and review the type, cost, quality,

quantity and methods of acquisition, delivery, acceptance, storage and distribution of all supplies, materials, equipment and contractual services used by all budget units. No discretion or exception is provided.

cc: Gerald A. Silva
Performance Audit Manager

APPENDIX III

LEGISLATIVE COUNCIL MEMORANDUM (O-81-22)

MAY 11, 1981

ARIZONA LEGISLATIVE COUNCIL

MEMO

May 11, 1981

TO: Douglas R. Norton
Auditor General

FROM: Arizona Legislative Council

RE: Request for Research and Statutory Interpretation (O-81-22)

This is in response to a request submitted on your behalf by Gerald A. Silva in a memo dated April 9, 1981. No input was received from the attorney general concerning this request.

FACT SITUATION:

Arizona Revised Statutes (A.R.S.) section 41-729, subsection B, paragraph 2 allows, and in some cases requires, the division of finance purchasing section to grant purchase authorized status to some agencies:

> Authorize any budget unit directly to purchase, rent or otherwise provide for specified supplies, materials, equipment or contractual services. The assistant director for finance shall grant such authority to any budget unit which demonstrates the ability to procure such specified supplies, materials, equipment or contractual services at the same or less cost as would be available through the section of purchasing.

The division of finance purchasing section procurement manual states:

> Approval may be withdrawn, for cause, by the State Manager of Purchasing with the concurrence of the Assistant Director for Finance.

QUESTIONS PRESENTED:

1. May the division of finance purchasing section revoke "purchase authorized" status?

2. For what causes may "purchase authorized" status be withdrawn?

ANSWERS:

1. Yes.

2. See discussion.

DISCUSSION:

1. Generally, a grant of an express power carries with it the authority to exercise all other activities reasonably necessary to carry it into effect, and this has been

employed with great liberality in interpreting statutes granting administrative powers. Sutherland, Statutes and Statutory Construction section 65.03 (4th ed., Sands, 1972). The powers granted may involve a multitude of functions that are discoverable only through practical experience. For example, where the power to create an office is granted, the power to abolish it is implied. Id. Section 55.04.

A.R.S. section 41-729, subsection B, paragraphs 1 and 2 provide that:

> B. The assistant director for finance, through the purchasing section, may:
>
> 1. Purchase, rent or otherwise provide for the furnishing of supplies, materials, equipment and contractual services for budget units which do not require warehousing by the division.
>
> 2. Authorize any budget unit directly to purchase, rent or otherwise provide for certain specified supplies, materials, equipment or contractual services. The assistant director for finance shall grant such authority to any budget unit which demonstrates the ability to procure such specified supplies, materials, equipment or contractual services at the same or less cost as would be available through the section of purchasing.

In construing statutes, the court must look to a statute as a whole and give a harmonious effect to all of its sections. State v. Standsberry, 114 Ariz. 351, 560 P.2d 1258 (1976 Ct. App.).

The power granted to the assistant director for finance, through the purchasing section, to authorize a budget unit to purchase is discretionary, and the power of the assistant director for finance, through the purchasing section, to revoke any authority he gave a budget unit to purchase is implied. On revocation of the authority given a budget unit to purchase, the assistant director for finance may exercise his authority to purchase for that budget unit pursuant to A.R.S. section 41-729, subsection B, paragraph 1.

Please note, however, that, if a budget unit demonstrates the ability to procure certain supplies, materials, equipment or contractual services at the same or less cost as the purchasing section, it is mandatory that the assistant director for finance authorize the budget unit to engage in purchasing. Presumably, if the budget unit failed to continue to demonstrate that ability, the assistant director for finance could exercise his discretion to purchase or to authorize the budget unit to purchase directly.

2. The division of finance purchasing section procurement manual states that authority given to a budget unit to purchase directly may be withdrawn for cause. (See Arizona Legislative Council Memorandum (O-81-20) and 1 Am. Jur. 2d Administrative Law section 96 (1962) regarding policy statements by administrative agencies.)

In 75 Op. Att'y Gen. 11 (1975) the attorney general addressed the question of which budget units may engage directly in purchasing. Regarding cases in which the assistant director for finance exercises his discretion to authorize a budget unit to purchase directly, the attorney general stated that:

Such a decision in our view involves considerations such as weighing the efficiency of large scale central purchasing and other economic factors, administrative feasibility and relative expertise. It is not, however, the responsibility of the Attorney General's office to determine whether in a particular case purchasing should be done by the Purchasing Section or another state budget unit.

It would similarly be inappropriate for this office to determine for what causes the assistant director for finance, through the purchasing section, may withdraw the authority he gives in his discretion to a budget unit to purchase directly. However, the decision to withdraw authority could properly involve considerations similar to those given in originally granting the authority.

CONCLUSIONS:

1. The assistant director for finance, through the purchasing section, has the implied power to revoke any authority he gave a budget unit to purchase directly.

2. It is inappropriate for this office to determine for what causes the assistant director for finance, through the purchasing section, may withdraw the authority he gives in his discretion to a budget unit to purchase directly. However, the decision to withdraw authority could properly involve considerations similar to those given in originally granting the authority.

cc: Gerald A. Silva
Performance Audit Manager

APPENDIX IV

LEGISLATIVE COUNCIL MEMORANDUM (O-81-34)

JULY 7, 1981

ARIZONA LEGISLATIVE COUNCIL

MEMO

July 7, 1981

TO: Douglas R. Norton
Auditor General

FROM: Arizona Legislative Council

RE: Request for Research and Statutory Interpretation (O-81-34)

This is in response to a request submitted on your behalf by Gerald A. Silva in a memo dated July 1, 1981. No input was received from the attorney general concerning this request.

FACT SITUATION:

Arizona Revised Statutes (A.R.S.) section 41-729, subsection A provides that the state purchasing section shall:

> 1. Investigate and review the type, cost, quality and quantity of supplies, materials, equipment and contractual services presently used by all budget units of the state and the methods by which such supplies, materials, equipment and contractual services are acquired, delivered, accepted, stored and distributed by all budget units.
>
> 2. Prescribe standards of quality, standard specifications and methods for the acquisition, delivery, acceptance, storage, retention and distribution for all supplies, materials, equipment and contractual services of budget units. (Emphasis added.)

However, A.R.S. section 41-724, subsection A exempts the Arizona board of regents from the requirement to utilize the purchasing section services and states:

> The Arizona board of regents and legislative and judicial branches of state government shall not be subject to the provisions of this article except as prescribed by law.

A.R.S. section 41-730 requires competitive bids for purchases in excess of $5,000 and prescribes procedures to be followed in calling for such bids.

A.R.S. section 17-266, subsection A provides that the Arizona game and fish department may, without calling for bids, expend:

> 1. For an item of construction or reconstruction, not to exceed fifteen thousand dollars. . . .
>
> 2. For purchase of equipment, not to exceed ten thousand dollars.
>
> 3. For purchase of supplies and materials, not to exceed two thousand five hundred dollars.

QUESTIONS PRESENTED:

1. Is the Arizona game and fish department required to use the services of the state purchasing section for purchases other than those specified by A.R.S. section 17-266, subsection A?

2. Are any other state agencies specifically exempted from the provisions of A.R.S. section 41-729, subsection A?

3. What are the legal ramifications if agencies which have not been exempted from the provisions of A.R.S. section 41-729, subsection A do not follow the prescribed specifications, standards and methods of the section?

ANSWERS:

1. Generally, an enumeration of exceptions from the operation of a statute indicates that the statute should apply to all cases not specifically enumerated. Sutherland, Statutes and Statutory Construction section 47.11 (4th ed., Sands, 1972). Under the terms of A.R.S. section 17-266, subsection A, the game and fish department may expend, without employing competitive bidding, funds up to $15,000 on construction, up to $10,000 for the purchase of equipment and up to $2,500 for the purchase of supplies and materials. This statute provides no other exception to the game and fish department from the general rule that purchases be made from competitive bids. Thus, for those expenditures of monies over the prescribed statutory amount, the game and fish department must use competitive bids. Furthermore, A.R.S. section 17-266, subsection B states in part:

> The [game and fish] commission shall call for bids on all items of construction or reconstruction and purchases of equipment, material, or supplies which exceed the amounts respectively provided in subsection A. . . .

The primary responsibility for purchasing activity is with the purchasing section. A.R.S. section 41-729. However, budget units may engage in purchasing activities if they have been expressly authorized by the legislature. A.R.S. section 17-266 provides an exemption from the competitive bidding requirements to the game and fish department for certain items of construction or reconstruction and for certain purchases. However, this exemption applies only to competitive bidding. It does not exempt the department from other aspects of purchasing not related to the competitive bidding process. Thus to this extent and to those items of construction or reconstruction and purchases which exceed the prescribed statutory amount, the department is required to use the services of the state purchasing section.

2. It is impermissible for a state budget unit to purchase directly unless it has been authorized to do so by the legislature or unless the assistant director for finance has exercised his discretion to purchase or to authorize such other budget unit to purchase directly under A.R.S. section 41-729, subsection B. 75 Op. Att'y. Gen. 75-11 (1975).

A review of the Arizona Revised Statutes indicates that, other than the exemption provided for in A.R.S. section 41-724, the legislature has specifically exempted the application of A.R.S. section 41-729 from the joint underwriting plan board of directors in retaining defense counsel for certain disputed claims arising with respect to the actions of the joint underwriting plan's policyholders. A.R.S. section 20-1709.

3. The purchasing section has broad authority and responsibility in the area of purchasing. The purchasing section is not only authorized to purchase, rent or otherwise provide for the needs of state budget units, it is also obligated to engage in numerous types of activities that provide the basis for an effective and efficient purchasing program. A.R.S. section 41-729; 75 Op. Att'y. Gen. 75-11 (1975).

Therefore, unless the legislature otherwise requires, each budget unit must follow the specifications, standards and methods of the purchasing section. A.R.S. section 38-443 prescribes as a general rule that a public officer who knowingly omits to perform any duty the performance of which is required of him by law is guilty of a class 2 misdemeanor. In addition, some provisions of A.R.S. Title 35 may also apply to this situation. See, e.g., A.R.S. sections 35-196 and 35-211 and possibly sections 25-151 and 35-154.

Finally, the failure to comply with the requirements of the purchasing section would render the action taken invalid. The invalidity of proceedings not in compliance is one of the prime characteristics of a mandatory provision of law. See Department of Revenue v. Southern Union Gas Co., 119 Ariz. 512, 582 P.2d 158 (1978); Black's Law Dictionary 867 (5th ed. 1979).

CONCLUSIONS:

1. The game and fish department is required to use the services of the purchasing section for those items of construction or reconstruction and those purchases which are not exempt from the competitive bidding requirements and from other aspects of purchasing not related to the competitive bidding process.

2. Other than the exemption provided for in A.R.S. section 41-724, the legislature has specifically exempted the application of A.R.S. section 41-729 from the joint underwriting plan board of directors in retaining certain defense counsel.

3. Nonfeasance on the part of a public officer is a class 2 misdemeanor. In addition, the failure to comply with the requirements of the purchasing section would render the action taken invalid.

cc: Gerald A. Silva
Performance Audit Manager

APPENDIX V

LEGISLATIVE COUNCIL MEMORANDUM (O-81-37)

JULY 7, 1981

ARIZONA LEGISLATIVE COUNCIL

MEMO

July 7, 1981

TO: Douglas R. Norton
Auditor General

FROM: Arizona Legislative Council

RE: Request for Research and Statutory Interpretation
(O-81-37)

This is in response to a request submitted on your behalf by Gerald A. Silva in a memo dated July 1, 1981. No input was received from the attorney general concerning this request.

FACT SITUATION:

Arizona Revised Statutes (A.R.S.) section 41-730, subsection A requires competitive bidding for purchases in excess of five thousand dollars and states in part:

> /B/ids shall be solicited from the maximum number of qualified sources throughout the state consistent with the item to be purchased as determined by the assistant director for finance, but including all qualified suppliers who prior to the issuance of the invitation notify the purchasing section in writing that they desire to bid. . . .

The department of administration, section on purchasing (state purchasing section) has not solicited bids from all vendors on the master vendor file who have expressed an interest in bidding on a particular commodity. If the state purchasing section feels that there are sufficient in-state vendors, invitations to bid are not sent to out-of-state vendors who are on the vendor list. In addition, if the state purchasing section knows that a vendor has requested to be placed on the vendor list for a specific item but cannot in fact supply the item in question, invitations to bid are not sent to the vendor.

QUESTIONS PRESENTED:

1. Are state purchasing section procedures in compliance with the provisions of A.R.S. section 41-730, subsection A?

2. What are the legal implications of executing a contract if the state purchasing section is not in compliance with A.R.S. section 41-730, subsection A?

ANSWERS:

1. See discussion. The state purchasing section (SPS) is statutorily required to solicit bids from all qualified vendors on the master vendor file who have expressed an interest in bidding on a particular commodity. The agency has no statutory authority to discriminate against qualified out-of-state vendors on the master vendor file who have expressed an interest in bidding on a particular commodity by refusing to send an invitation to bid on the grounds that there are already sufficient in-state vendors. There is sufficient statutory authority for the SPS to not send an invitation to bid to a vendor who has requested placement on the master vendor list to supply a particular commodity but who cannot in fact supply the commodity in question.

2. See discussion. The legal consequences would vary on a case-by-case basis depending on the nature, extent and duration of the noncompliance with the operative statute.

DISCUSSION:

1. Administrative agencies are creatures of legislation without inherent or common law powers. The general rule applied to statutes granting powers to administrative agencies is that they have only those powers as are conferred either expressly or which follow by necessary implication. Sutherland, Statutes and Statutory Construction section 65.02 (4th ed., Sands, 1972); Corporation Commission v. Consolidated Stage Company, 63 Ariz. 257, 161 P.2d 110 (1945); Garvey v. Trew, 64 Ariz. 342, 170 P.2d 845 (1946). The department of administration, section on purchasing must follow the dictates of the Arizona Revised Statutes in exercising its administrative powers and duties relating to purchasing as well as with respect to every other matter.

It is an elementary principle of statutory construction that each word in a statute be given effect. Sutherland, id., section 46.06; State v. Superior Court for Maricopa County, 113 Ariz. 248, 550 P.2d 626 (1976). The words of a statute are to be given their common meaning unless it appears from the context or otherwise that a different meaning is intended. Ross v. Industrial Commission, 112 Ariz. 253, 540 P.2d 1234 (1975).

The operative statute (A.R.S. section 41-730, subsection A) clearly requires the SPS to solicit bids from the maximum number of qualified sources throughout the state. The scope of the solicitation is governed by the nature of the item to be purchased as determined by the department of administration assistant director for finance (finance director). The bid solicitation must by statute include all qualified suppliers, with no specific limitation as to geographical residence, who, prior to the issuance of the invitation to bid, have notified the SPS in writing of the desire to bid on those items contained in the invitation. The SPS has no statutory discretion in this regard. Had the state legislature desired that the SPS have discretion, it must be assumed that it would have so provided in A.R.S. section 41-730, subsection A.

Thus, by the terms of the operative statute, the SPS must solicit bids from all qualified vendors on the master vendor list who have expressed an interest in bidding on a particular commodity.

The question of whether the SPS is required to solicit bids from qualified out-of-state suppliers is somewhat more complicated. To review, the operative provision of A.R.S. section 41-730, subsection A provides that "/b/ids shall be solicited from the maximum number of qualified sources throughout the state . . . ." (Emphasis added.) Later in the same subsection, the Legislature has provided that the solicitation include:

> /A/ll qualified suppliers who prior to the issuance of the invitation notify the purchasing section in writing that they desire to bid on materials, supplies, equipment or contractual services contained in the invitation. (Emphasis added.)

As noted above, it is an elementary principle of statutory construction that each word in a statute will be given effect. When the legislature provides that the solicitation include "all qualified suppliers", it must be assumed that there was no intention to limit the solicitation on a geographic basis in the case of those suppliers who have expressed a prior interest to bid. The only permissible restriction which may be imposed by statute is whether the vendor is qualified or not. It would require considerable stretching of the term "qualified supplier" to extract a geographical limitation.

The clear focus in A.R.S. section 41-730 is on free, "open market" competition and the resultant benefits to the state of acquiring the highest quality products at the lowest possible costs. The legislature has, in other areas of the statutes, (see, for example, A.R.S. section 35-241, relating to preference for certain contractors who have paid state and county taxes and who have performed satisfactorily on past contracts) carved out exceptions to the competitive principle by granting a preference to in-state firms. Had the state legislature wanted to do so in this case, one must assume that it would have so provided.

As we understand the final question in the stated fact situation, if the SPS determines, in certain circumstances, that a vendor who has requested to be placed on the master vendor file to supply a commodity would, in fact, be unable to supply the commodity in question, invitations are not sent to the vendor. In this situation, the SPS would clearly appear to be acting within the scope of its statutory authority. Note again that, under the operative provision of A.R.S. section 41-730, subsection A, a solicitation need only include all qualified suppliers who notify the SPS in writing that they desire to bid on materials, supplies, equipment or contractual services. A supplier who, in fact, would be unable to supply the item for which placement on the master vendor list has been requested would certainly not appear to be qualified and would thus not have to be included in any solicitation for bids.

2. The legal implications of executing a contract for the purchase of supplies, materials, equipment, risk management services, insurance and

contractual services, if the state purchasing section is not in full compliance with A.R.S. section 41-730, subsection A, would depend on the nature, extent and duration of the noncompliance. Thus, this question can be answered only on a case-by-case basis.

RECOMMENDATION:

If the state purchasing section believes that it needs the flexibility to limit or otherwise alter the competitive bidding requirement prescribed by A.R.S. section 41-730, appropriate corrective legislation should be recommended to the legislature.

cc: Gerald A. Silva
Performance Audit Manager

APPENDIX VI

AUDITOR GENERAL SURVEY OF STATE AGENCIES AND POLITICAL SUBDIVISIONS

MAY 26, 1981

OFFICE OF THE AUDITOR GENERAL
Survey of State Agencies & Political Subdivisions

Agency or political subdivision _____
Annual purchase volume (dollars) _____
Respondent _____
Position _____
Phone number _____
Type of products usually purchased _____

1.a. Has your agency been granted purchase authorized status (authority to purchase items not on term contracts without using the State Purchasing Office)?

_____YES _____NO

b. If yes, when? _____

c. If yes, what percentage of your annual purchases are made through term contracts (supply agreements) executed by the State Purchasing Office (SPO)?

2.a. If you represent a municipality, school district or other political subdivision, what percentage of your annual purchases are made through term contracts (supply agreements) executed by SPO?

8/43 (19%) do not use supply agreements. Average Percentage is 21%, with range from less than one to sixty percent.

b. If you do not purchase through SPO contracts, why not?

__4__ SPO does not have term contracts for needed items
__2__ Prices under term contracts are greater than those available without term contracts
__3__ Other (please specify) _____

If your political subdivision has not used SPO term contracts, please go on to Question 18.

3. Have you been satisfied with the quality of products received under SPO term contracts (supply agreements)?

17 Satisfied with all products
44 Satisfied with most products
10 Satisfied with some products
2 Dissatisfied with most products
0 Dissatisfied with all products
7 N/R

4. If you checked one of the last four responses, please indicate reason(s) for dissatisfaction. (check all applicable)

28 Late deliveries
14 Insufficient inventory received
30 Quality inferior to specifications
0 Spoilage
11 Other (please specify) _____
5 N/R

5.a. Are the prices of products purchased under supply agreements competitive?

42 Prices under supply agreement are less than those available without supply agreement.
4 Prices under supply agreement are the same as those available without supply agreement.
1 Prices under supply agreement are greater than those available without supply agreement.
13 Varies by commodity
6 Don't know
14 N/R

b. If you checked one of the last two responses, list which commodities and amount by which supply agreement price exceeds market price.

6. What is the extent of the agency's or subdivision's involvement with SPO in writing specifications? (check all applicable)

	Supply Agreements	Contracts for One-time Purchases
Always involved	-0-	17
Usually involved	7	8
Seldom involved	20	5
Never involved	43	6
N/R	10	9

N/R = No Response

7. What is the extent of the agency's or subdivision's involvement with SPO in the bid evaluation process? (check all applicable)

	Supply Agreements	Contracts for One-time Purchases
Always involved	3	15
Usually involved	3	4
Seldom involved	11	10
Never involved	54	7
N/R	9	9

8.a. What product quality control procedure does your agency or subdivision use? (check all applicable)

63 Inspect product at receipt for correct quantity & spoilage
44 Inspect product at receipt for conformance with specifications as shown on contract
20 Test product in-house for conformance with specifications
4 Contract with independent laboratory for testing
2 Other (please specify) _____
5 No product quality control program
6 N/R

b. If you test or contract to test for conformance to specifications, what products are tested?

c. If you use only one procedure or procedures vary by product, why is quality control so limited?

9.a. If a product or vendor performance is not satisfactory, do you complain?

70 YES 3 NO 7 N/R

b. If yes, is the complaint in writing?

36 YES 25 NO 9 N/R

c. To whom is the complaint made? (check all aplicable)

47 SPO
53 Vendor
1 Other (please specify) _____
8 N/R

10. How many complaints have you filed in the past two years?

a. With SPO 159
b. With the vendor 196
c. Other (specify) 1

N/R = No Response

11. If complaint was made to SPO, what action, if any, was taken? (check all applicable)

19 Vendor was contacted only
17 Inferior product was replaced
9 Vendor contract was canceled
1 Suit was filed
8 No action taken
5 Other (please specify) _____
10 Don't know
Not applicable
6 N/R

12. If any action was taken by SPO in response to complaints, has it been adequate?

15 Always
14 Sometimes
-0- Never
11 Don't know if action was taken
1 N/R

13. If complaint was made to agency other than SPO, what action, if any, was taken?

1 Vendor was contacted only
1 Inferior product was replaced
-0- Vendor contract was canceled
-0- Suit was filed
-0- No action taken
-0- Other (please specify) _____
-0- Not applicable

14. List the vendors against whom you had the most complaints, the products they supply and the reason for complaint.

15. What are the effects of poor product quality and poor vendor performance?

43 Products not available when needed
17 Higher cost of products
28 Other (specify) _____

10 Don't know
11 N/R

N/R = No Response

16.a. Has SPO informed you of changes in policy and procedure?

59 YES 7 NO 5 DON'T KNOW 9 N/R

b. If yes, how were you notified? (check all applicable)

15 Verbal notification
55 Received copy of new policies or procedures
4 Other (please specify) _____
2 N/R

17. Has your agency or political subdivision been involved in developing new SPO policies and procedures to be followed?

10 YES 59 NO 4 DON'T KNOW 7 N/R

18. Is your agency or political subdivision contacted by Surplus Property Division to inform you of available items?

76 YES 9 NO -0- DON'T KNOW 3 N/R

If yes, how frequently? _____

19. Have you been notified that any of the following items are available through the Surplus Property Division? (check all applicable)

61 Typewriters, calculators and other office machines
65 Office furniture
64 Motor vehicles
56 Heavy equipment
25 Clothing
____ Other (please specify) _____

20.a. Do you contact Surplus Property before purchasing items through SPO?

4 Always
48 Sometimes
31 Never
5 N/R

b. If you have ever contacted Surplus Property, list the items you were seeking.

Office equipment	28
Office Furniture	26
Vehicles	8
Heavy Equipment	13
Other equipment	7
No Response	18

N/R = No Response

21.a. Have you ever been notified about changes in regulations or procedures for using Surplus Property?

59 YES 9 NO 14 DON'T KNOW 6 No Response

b. If yes, were these changes in: (check all applicable)

29 Federal regulations?
35 State regulations?
41 Procedures developed by Surplus Property?
____ Don't know

22. Have you ever been involved in developing new procedures regarding use of surplus properties?

-0- Always
3 Sometimes
79 Never
6 N/R

23. How could the State Purchasing Office improve its performance?

24. How could the Surplus Property Division improve its performance?

Thanks for your cooperation. If you have any questions about this survey, please call Ms. Dawn Sinclair at (602) 255-4385.

Please return the questionnaire in the postage-paid envelope by June 9, 1981, to:

Office of the Auditor General
Legislative Services Wing, Suite 200
State Capitol
Phoenix, AZ 85007

N/R = No Response

APPENDIX VII

LEGISLATIVE COUNCIL MEMORANDUM (0-80-21)

APRIL 29, 1981

ARIZONA LEGISLATIVE COUNCIL

MEMO

April 29, 1981

TO: Douglas R. Norton, Auditor General

FROM: Arizona Legislative Council

RE: Request for Research and Statutory Interpretation (0-80-21)

This is in response to a request submitted on your behalf by Gerald A. Silva in a memo dated April 9, 1981. No imput was received from the Attorney General concerning this request.

FACT SITUATION:

Arizona Revised Statutes (A.R.S) section 41-730, subsection A, requires competitive bidding and states in part:

> /B/ids shall be solicited from the maximum number of qualified sources throughout the state consistent with the item to be purchased. . . including all qualified suppliers who prior to the issuance of the invitation notify the purchasing section in writing that they desire to bid. . . .

The state purchasing section procedures manual states:

> A master vendor bid list has been established to comply with statutory requirements and to insure that all vendors who wish to do business with the State receive the bids on an impartial basis.

QUESTIONS PRESENTED:

1. Does the state purchasing section currently have the authority to remove any vendor from the master vendor bid list?

2. For what causes may vendors be removed from the bid list?

ANSWERS:

1. Yes.

2. See discussion.

DISCUSSION:

1. Pursuant to A.R.S. section 41-730, subsection A, the legislature has required the state purchasing section to issue bids and specifications within a sufficient time and in sufficient detail before a purchase is made in order to permit free competition. The purchase section is required to solicit bids so that the maximum number of qualified sources throughout this state have an opportunity to bid on state purchases.

Since administrative agencies are without inherent or common-law powers, they receive only those powers which are conferred either expressly or by necessary implication. Sutherland, Statutes and Statutory Construction section 65.02 (4th ed., Sands, 1972).

The state purchasing section does not have specific statutory authority from the legislature to remove a vendor from the master vendor bid list. However, the grant of an express power carries with it the authority to exercise all other activities reasonably necessary to carry it into effect. Sutherland, section 65.03. Presumably, the state purchasing section created the master vendor bid list in order to comply with their legislative mandate. Once this list was compiled, it can be reasonably implied that the state purchasing section could, following its mandate to seek all qualified sources, remove those suppliers the office feels are not qualified to supply the item the state seeks to purchase.

2. The only requirement for bidding on state purchases by suppliers is that the supplier be qualified. A.R.S. section 41-730. Black's Law Dictionary 1117 (5th ed. 1979) defines "qualified" as being synonymous with adapted, fitting, entitled, susceptible, capable or competent.

Thus, if the state purchasing section determines that a supplier is not qualified, the supplier may be removed from the master bid list. Such a determination could be based on the past history of the supplier in fulfilling contract requirements, the failure of a supplier to make a bid for a significant time period or other relevant evidence received by the section. Ultimately, it is the duty of the state purchasing section to determine, on a case by case basis, whether there is sufficient cause to remove a vendor from the list. Generally, administrative interpretation, practice and usage are accorded great weight by the courts as an extrinsic aid in the interpretation of statutes. Sutherland, section 65.05.

CONCLUSIONS:

1. There is implied authority for the state purchasing section to remove a vendor from the master vendor bid list.

2. The state purchasing section could remove suppliers from the list if the section determined that the supplier was not entitled, capable or competent to bid on a state purchase.

cc: Gerald A. Silva
Performance Audit Manager

APPENDIX VIII

LEGISLATIVE COUNCIL MEMORANDUM (0-81-40)

JULY 20, 1981

ARIZONA LEGISLATIVE COUNCIL

MEMO

July 20, 1981

TO: Douglas R. Norton
Auditor General

FROM: Arizona Legislative Council

RE: Request for Research and Statutory Interpretation (O-81-40)

This is in response to a request submitted on your behalf by Gerald A. Silva in a memo dated July 17, 1981. No input was received from the Attorney General concerning this request.

FACT SITUATION:

Attached is a sample of a term contract (supply agreement)* executed by the State Purchasing Office (SPO). We are unable to determine if these forms have been approved by the Attorney General's Office.

QUESTIONS PRESENTED:

1. Are the term contracts executed by the SPO valid? If not, what changes should be made?

2. If the term contract has never been reviewed by the Attorney General, is its use valid? If not, what are the legal ramifications?

3. If the term contract has been reviewed once, should it be re-reviewed? If so, how often?

ANSWERS:

1. In general, yes. However, a detailed analysis of the attached term contract** is beyond the scope of our responsibilities in providing statutory research and interpretation services for your office.

Arizona Revised Statutes (A.R.S.) section 41-729, subsection A, paragraph 2 provides that the Department of Administration, purchasing section (State Purchasing Office or SPO) is required to:

> Prescribe standards of quality, standard specifications and methods for the acquisition, delivery, acceptance, storage, retention and distribution of all supplies, materials, equipment and contractual services of budget units. (Emphasis added.)

---

* Also known as a form contract.

** While the terms "supply agreement", "form contract" and "term contract" mean approximately the same, the latter term will be used in this memo for the sake of conformity.

The general rule applied to statutes granting powers to administrative agencies is that they have only those powers that are conferred either expressly or which follow by necessary implication. Sutherland, Statutes and Statutory Construction section 65.02 (4th ed., Sands, 1972); Corporation Commission v. Consolidated Storage Company, 63 Ariz. 257, 161 P.2d 110 (1945); Garvey v. Trew, 64 Ariz. 342, 170 P.2d 845 (1946). The SPO must follow the dictates of the Arizona Revised Statutes in exercising its administrative powers and duties relating to purchasing as well as with respect to every other matter.

In that the SPO is authorized by A.R.S. section 41-729 to prescribe standards and methods for the acquisition, delivery and acceptance of goods and supplies purchased by state budget units, there can be little question that the agency has the authority to prescribe term contracts to effectuate this purpose as long as such contracts are applied by the several agencies in a manner which is otherwise consistent with such statutory requirements as those prescribed pursuant to the competitive bidding procedures of A.R.S. section 41-730.

In rendering research services for the Auditor General, the Legislative Council performs a necessarily limited function relating to statutory research and interpretation. This office should not presume to issue a definitive legal opinion on any subject which is not directly controlled by Arizona statutes and applicable case law. A complete answer to the question presented would require analysis through the perspective of the varied nuances of prevailing contract law. Such an assignment is beyond the powers and duties of this office. You may wish to ask the Attorney General for assistance in this area.

Having stated the preceding caveat, a few general principles of contract law are noted as governing the attached contract as well as any other contract. According to Black's Law Dictionary (5th ed. 1979), a "contract" is an agreement between two or more persons which creates an obligation to either act or not to act in a particular context. The essentials of a valid contract are competent parties, agreement as to subject matter, a legal consideration, mutuality of agreement and mutuality of obligation.

At the risk of oversimplification, it should be emphasized that there are no "magical" words which are required to make a valid contract. As noted in 17 Corpus Juris Secundum (CJS) section 57 (1963):

> /N/o particular form of words is essential to create an enforceable written agreement provided that the language used is sufficiently definite and certain to enable the court to ascertain the terms and conditions on which the parties intended to bind themselves.

The exclusive legal reference in the interpretation of contracts is to the intention of the parties. The use of improper words and phrases or informal expressions will not affect the validity of the agreement as long as the intentions of the parties are clear.

The attached contract provides for compliance with the basic requisites of a valid contract. There is an offer, acceptance and consideration promised. Moreover, there is nothing per se invalid about a contract evidenced by a standard written form such as the attached. In fact, such instruments are the norm in the public as well as the private sector.

The attached term contract would appear to clearly fall within the authority of the SPO under A.R.S. section 41-730, subsection B. This subsection provides, in pertinent part, that the SPO shall require that bids:

/B/e opened publicly at the time and place stated in the invitation. Awards shall be made with reasonable promptness by giving written notice to the responsible bidder whose bid conforms to the invitation and will be the most advantageous to the state with respect to price, conformity to the specification and other factors. However, all bids may be rejected if the purchasing section determines that rejection is in the public interest.

In conclusion, while a detailed analysis of the attached term contract is beyond the statutory research and interpretation services which can be provided by this office, there appears to be little question that it conforms with the applicable statutes governing the SPO.

2. Available evidence supports a classification of the term contract in the same status as the SPO policy and procedures manual. Both are policy statements which in all likelihood hold the status of administrative rules and, as such, should be reviewed by the Attorney General. Contract validity must, however, be approached on a case-by-case basis with the primary emphasis being on the terms of the contract itself and the standing of the parties entering into the agreement.

A.R.S. section 41-729, subsection A, paragraph 2 provides:

> A. The purchasing section shall have the following duties:
>
> * * *
>
> 2. Prescribe standards of quality, standard specifications and methods for the acquisition, delivery, acceptance, storage, retention and distribution of all supplies, materials, equipment and contractual services of budget units.

As noted in Arizona Legislative Council Memorandum (O-81-20):

> . . . the legislature has not specifically required the issuance of regulations to set purchasing standards, specifications and methods. The purchasing section itself does not have authority to promulgate regulations although the assistant director for finance who heads the division of which the purchasing section is a part may issue regulations. A.R.S. section 41-722, subsection B, paragraph 5. To accomplish the legislative intent we believe that the purchasing section could either promulgate regulations through the assistant director for finance or, as is the case, issue a policy and procedures manual.

While term contracts such as the attached are apparently not a part of the SPO policy and procedures manual, we believe that they would assume the same status as administrative rules. Support for the proposition that policy statements may be viewed as administrative rules may be drawn from 1 Am. Jur. 2d Administrative Law section 96 (1962) which provides:

> There is a type of rulemaking . . . by which . . . /a statute is/ implemented by the statement by the administrative agency of general principles by which it will be governed in the exercise of its authority, irrespective of whether such authority is exercised in a "legislative" or "judicial" manner.

Administrative rules must, under the Arizona Administrative Procedures Act (A.R.S. Title 41, chapter 6, article 1) be reviewed and certified by the Attorney General. It is at least arguable that if such policy statements as the SPO purchasing manual and such term contracts as the attached assume the status of administrative rules, then review by the Attorney General is required.

The SPO apparently seeks review as a matter of course by the Attorney General's Office of all state contracts specifically written on a one-time basis to cover the purchase in question. For the SPO to use a document such as the attached term contract with a high statewide distribution without making a good-faith effort to secure legal review might be remiss administratively on the part of the SPO. It is a clearly accepted principle of law that the derogation of a ministerial duty can subject the malfeasor to personal liability to one to whom the duty is owing to the extent of any resulting injuries. Industrial Commission v. Superior Court In and For Pima County, 5 Ariz. App. 100; 423 P.2d 375 (1975); State v. Superior Court of Maricopa County, 123 Ariz. 324, 599 P.2d 777 (1979).

There is no question that the services of the Attorney General are available to the SPO if the latter so desires. A.R.S. section 41-192, subsection A, paragraph 1 provides that the Attorney General shall:

> Be the legal advisor of the departments of the state and render such legal services as the departments require.

Thus, if the SPO desires to a have a formal legal review of term contracts such as the attached, the Attorney General is required to provide the necessary legal services.

While available evidence indicates that the Attorney General should review term contracts such as the attached prior to use, the fact that such review has not been given in the past would not constitute by itself sufficient grounds to invalidate a contract which otherwise complies with applicable state law. Contract validity can only be settled on a case-by-case basis through review of the contract terms and standing of the parties at issue.

3. Once a decision is made to seek Attorney General review of the term contract, a rule of reason suggests that the document be re-reviewed each time a substantive change is proposed to be implemented.

RECOMMENDATION:

If it is determined that irregularities have developed in the invitation to bid, the bid itself or award procedures administered by the State Purchasing Office, your office may wish to recommend corrective legislation to the Legislature. Perhaps a more detailed outline of requirements would be more helpful to all concerned.

cc: Gerald A. Silva
Performance Audit Manager

APPENDIX IX

LEGISLATIVE COUNCIL MEMORANDUM (0-81-65)

JULY 16, 1981

ARIZONA LEGISLATIVE COUNCIL

MEMO

July 16, 1981

TO: Douglas R. Norton
Auditor General

FROM: Arizona Legislative Council

RE: Request for Research and Statutory Interpretation (O-81-65)

This is in response to a request submitted on your behalf by Gerald A. Silva in a memo dated July 10, 1981. No input was received from the attorney general concerning this request.

FACT SITUATION:

Arizona Revised Statutes (A.R.S.) section 35-181.01, subsection A states:

> A. All claims against the state for obligations authorized, required or permitted to be incurred by any state officer or agency, shall be paid in accordance with procedures prescribed by the assistant director for the division of finance.

A.R.S. section 35-181.02, subsection A states in part:

> /T/he assistant director for finance shall establish audit policies consistent with generally accepted governmental accounting procedures in order to effect prompt and correct payment of state obligations.

A.R.S. section 35-182 states:

> Before any claim against the state is paid by the division of finance, the division shall require a certification in a form prescribed by the assistant director for finance and signed by the authorized representative or representatives of the budget unit presenting the claim.

QUESTION PRESENTED:

Does the agency certification (see form A&C10A) on the face of the claim then shift the responsibility for the legality and propriety of the expenditure from Accounts and Controls to the authorized agency representative?

ANSWER:

The assistant director for finance remains statutorily responsible for the legality and propriety of an expenditure regardless of the agency certification as to the legality and propriety of that expenditure. A.R.S. section 35-181.02 provides in full as follows:

> A. The assistant director for finance shall audit, adjust and settle the amount of claims against the state payable out of funds of the state,

except claims expressly required or permitted by law to be audited and settled by some other officer. The assistant director for finance shall establish audit policies consistent with generally accepted governmental accounting procedures in order to effect prompt and correct payment of state obligations. The assistant director for finance shall also determine whether the proposed expenditure is provided for in the agency budget, appears to be for a valid public purpose and whether funds are available for payment.

B. If such audit discloses that all or any portion of a claim is not for a valid public purpose connected with the activities of the budget unit in which the claim originated, the assistant director for finance shall refuse to draw a warrant except for such amount as it appears is for a valid public purpose. He shall state his reasons for rejection to the originating budget unit and no warrant shall be drawn for such purpose until a new claim, stating specifically the valid public purpose of and the necessity for each particular item or amount of expenditure referred to in the statement of reasons by the assistant director for finance, is resubmitted, certified by the person making the expenditure and again approved for disbursement by the originating officer, board, commission or department. If the claim is refiled and it again appears that it is not for a valid public purpose, the assistant director for finance shall again reject the claim and report the facts of the rejection to the originating budget unit and to the governor and no warrant shall be drawn on such claim unless the governor specifically approves the claim in whole or in part. If sufficient funds are not available for payment of the claim, it shall be rejected and returned to the originating agency. (Emphasis added.)

The responsibilities of the assistant director for finance prescribed under A.R.S. section 35-181.02 are mandatory. See discussion in Arizona Legislative Council Memorandum (O-81-12). The assistant director for finance is required to determine whether the proposed expenditure is provided for in the agency budget, appears to be for a valid public purpose and whether funds are available for payment. If the required audit by the assistant director for finance discloses that all or any portion of a claim is not for a valid public purpose, the assistant director is required to refuse to draw a warrant except for such amount as it appears is for a valid public purpose.

The assistant director for finance is obligated to perform the above mentioned duties regardless of the agency certification required under A.R.S. section 35-182. It should be noted that A.R.S. section 35-181.02 was added in the same piece of legislation which amended A.R.S. section 35-182 to require certification in a form prescribed by the assistant director for finance before any claim is paid by the division of finance.

cc: Gerald A. Silva
Performance Audit Manager

APPENDIX X

LEGISLATIVE COUNCIL MEMORANDUM (O-81-63)

JULY 2, 1981

ARIZONA LEGISLATIVE COUNCIL

MEMO

July 2, 1981

TO: Douglas R. Norton
Auditor General

FROM: Arizona Legislative Council

RE: Request for Research and Statutory Interpretation (0-81-63)

This is in response to a request submitted on your behalf by Gerald A. Silva in a memo dated June 26, 1981. No input was received from the Attorney General concerning this request.

FACT SITUATION:

Arizona Revised Statutes (A.R.S.) sections 41-812 through 41-819 do not specifically provide for the Department of Administration, Surplus Property Division to promulgate rules and regulations.

Currently, therefore, the Surplus Property Division does not have rules and regulations. They currently operate under 1) the State Plan, which is required under Federal Regulations and provided for in A.R.S. section 41-813, and 2) a procedures manual developed by the Division.

QUESTIONS PRESENTED:

1. Does the Surplus Property Division have the authority to promulgate rules and regulations?

2. Are those policies and procedures that the Surplus Property Division has developed regarding other agency use of the Surplus Property Division binding on those agencies?

ANSWERS:

1. No. The Surplus Property Division does not have the authority to promulgate rules and regulations. The powers and duties of an administrative agency are to be measured by the statute creating them. Kendall v. Malcolm, 98 Ariz. 329, 404 P.2d 414 (1965). The statutes (A.R.S. sections 41-812 through 41-819) creating the Surplus Property Division do not grant it the authority to promulgate rules and regulations.

The assistant directors of other divisions of the Department of Administration are specifically granted that authority. The assistant director for finance and the assistant director for public buildings maintenance have authority to promulgate rules and regulations under certain conditions. A.R.S. sections 41-722, subsection B, paragraph 5 and 41-793, subsection B. If the Legislature had intended that the Surplus Property Division have the authority to promulgate rules and regulations it would have so provided in the statutes creating the Surplus Property Division.

Contrary to the specified fact situation, A.R.S. sections 41-812 through 41-819 provide no specific authority for the Surplus Property Division to "act" if surplus property is misused or obtained for personal use. The grant of administrative authority to the Division is more general in nature.

The operation of the Surplus Property Division as an administrative subdivision of the Arizona Department of Administration is prescribed by A.R.S. Title 41, chapter 4, article 8. Under A.R.S. section 41-813, the Surplus Property Division is required to, among other things:

> 1. Act as a clearing house of information as to the availability of federal surplus real and personal property and state surplus personal property or political subdivisions thereof and assist eligible institutions in locating such property and in ascertaining the terms and conditions under which such property might be obtained.
>
> * * *
>
> 4. Take such action as may be necessary to meet the minimum standards of operation prescribed in accordance with the Federal Property Act. (Emphasis added.)

Under A.R.S. section 41-814, the Surplus Property Division may, among other things:

> 2. Transfer surplus property to or between state budget units, political subdivisions and nonprofit institutions or organizations, and sell, rent, trade, condemn and otherwise dispose of surplus, obsolete or unused supplies, materials and equipment of state budget units, political subdivisions and nonprofit institutions or organizations.
>
> * * *
>
> 5. Make such certifications, take such action, make such expenditures and enter into such contracts, agreements and undertakings for and in the name of the state, including cooperative agreements with any federal or state agencies providing for utilization by and exchange between them of the property, facilities, personnel and services of each by the other. (Emphasis added.)

A.R.S. section 41-815 provides, in pertinent part, that any public agency within this state may confer upon any officer or employee such authority as is necessary under applicable federal laws and regulations to secure the transfer of surplus property and "/t/o obligate the state or political subdivision and its funds to the extent necessary to comply with the terms and conditions of such transfers."

By obtaining surplus property for improper use as stated in your question, it is assumed that your primary reference is to surplus property which is obtained by a public agency for legitimate purposes pursuant to a valid transfer agreement and then diverted to improper uses. In such circumstances, a variety of procedural remedies is available, including:

1. Mandamus. This is a writ which issues from the supreme court or the superior court and may be directed to a public agency or any of its officers or employees compelling the performance of a ministerial duty. In this case, the ministerial duty would be with respect to the performance of the agreement providing for the transfer of surplus property. Please note that ministerial duties are those which involve no judgmental decision or discretion on the part of the official. Obviously, however, many improper uses of property could be the result of judgmental decisions.

2. Injunction. This is an equitable remedy issued or granted by a court at the suit of a complainant party directed to a defendant party in the action which can be phrased to restrain the latter from the continuation of an unjust and inequitable act which is injurious to the plaintiff and is not such as can be adequately redressed by an action at law.

There is a general policy of judicial liberalness towards responsible agency interpretations of their own administrative authority. Thus, where the proper exercise of the powers of an administrative agency is dependent upon a determination of facts, the findings and conclusions of the agency are usually presumed to be correct on judicial review. Sutherland, id., section 65.05. However, this is not to say that the Surplus Property Division has the authority to preside over the transfer of surplus property for what responsible officials of the division know to be improper uses. If your question is referencing this type of situation or any other circumstance in which the responsible officials of a public agency obtain surplus property for uses known to be improper, it should be noted that it is a clearly accepted principle of law that the wanton disregard of a ministerial duty can subject the malfeasor to personal liability to one to whom the duty is owing to the extent of any resulting injuries. Industrial Commission v. Superior Court In and For Maricopa County, 5 Ariz. App. 100, 423 P.2d 375 (1975); State v. Superior Court In and For Maricopa County, 123 Ariz. 324, 599 P.2d 777 (1979). Thus, if it could be demonstrated that the Surplus Property Division or any public agency receiving surplus property was acting in wanton disregard of its ministerial duties under A.R.S. sections 41-812 through 41-819 or any other section, then a course of action exists to the extent of any resulting injuries.

A definitive answer to your question in terms of the proper recourse for the Surplus Property Division to utilize would require a more detailed statement of the applicable fact situation.

RECOMMENDATION:

In that current statutes do not prescribe recourse for the Surplus Property Division when surplus property is obtained for improper uses, you may wish to recommend corrective legislation to the Legislature.

cc: Gerald A. Silva
Performance Audit Manager

APPENDIX XI

MAJOR FINDINGS, RECOMMENDATIONS AND CORRECTIVE ACTION IN RESPONSE TO FEDERAL REVIEWS OF THE SURPLUS PROPERTY DIVISION

MAY 19, 1980 & JUNE 3, 1980

MAJOR FINDINGS, RECOMMENDATIONS AND CORRECTIVE ACTION IN RESPONSE TO FEDERAL REVIEWS OF THE SURPLUS PROPERTY DIVISION

PROBLEM/RECOMMENDATION	SPD ACTION
General Services Administration (GSA) audit May 19, 1980	
- Increases donee compliance and eligibility reviews	- Increased to 12-15 donee compliance visits a month - Added one employee for this activity
- Review eligibility files - Obtain and complete documents; eliminate ineligible donees	- Colorcoded eligibility files to flag impending expirations - Working to complete documentation - Working to eliminate ineligible donees
- Accept authorized payment methods only	- Currently accepting authorized forms only
- Discontinue rental of Federally donated property to State agencies - Forward previously collected rental fees to GSA	- Discontinued rental of Federal property, substituting with State property - Appropriate fees forwarded
- Conduct annual physical inventories and reconcile with records in accordance with State Plan	- Working to reconcile within time limits set in State Plan

PROBLEM/RECOMMENDATION	SPD ACTION
Arizona State Agency Review for Surplus Property June 3, 1980	
- Advised to reduce accounts receivable more than 90 days old (42 percent of accounts receivable)	- Working to reduce with recently added staff
- Agencies not knowledgable of restrictions	- Efforts made to make agencies more aware of restrictions
- Catalogs of inventory items are issued infrequently	- Still issued every three months only
- Advisory body for consultation nonexistent	- Still not established (see page 145)
- Distribution documents and invoices needed to be completed fully	- Agencies being urged to complete documents
- Staff vacancies need to be filled	- Hired a compliance and utilization officer
- Security controls on property need to be stricter	- Visitors to warehouse are required to use sign-in book and designated parking areas

APPENDIX XII

LEGISLATIVE COUNCIL MEMORANDUM (O-81-62)

JULY 1, 1981

ARIZONA LEGISLATIVE COUNCIL

MEMO

July 1, 1981

TO: Douglas R. Norton
Auditor General

FROM: Arizona Legislative Council

RE: Request for Research and Statutory Interpretation (0-81-62)

This is in response to a request submitted on your behalf by Gerald A. Silva in a memo dated June 26, 1981. No input was received from the Attorney General concerning this request.

FACT SITUATION:

Arizona Revised Statutes (A.R.S.) sections 41-812 through 41-819 provide the Department of Administration, Surplus Property Division with the authority to act if surplus property is misused or obtained for personal use.

QUESTION PRESENTED:

What recourse, if any, does the Surplus Property Division have when the property is obtained for improper use?

ANSWER:

While current statutes do not specifically detail procedural remedies for the Surplus Property Division if surplus property is obtained by a public agency* for improper uses, the Division could seek a writ of mandamus or an injunction against the offending public agency in such cases. Additionally, if there is a wanton disregard of ministerial duties by the Surplus Property Division in the transfer or handling of surplus property or by any public agency in obtaining surplus property, it is a clearly accepted principle of law that the malfeasor is subject to personal liability to one to whom the duty is owing.

DISCUSSION:

Administrative agencies are creatures of legislation without inherent or common law powers. The general rule applied to statutes granting powers to administrative agencies is that they have only those powers as are conferred either expressly or by necessary implication. Sutherland, Statutes and Statutory Construction, section 65.02 (4th ed., Sands, 1972); Garvey v. Trew, 64 Ariz. 342, 170 P.2d 845 (1946); and Corporation Commission v. Consolidated Stage Company, 63 Ariz. 257, 161 P.2d 110 (1945). The Surplus Property Division must adhere to the provisions of the Arizona Revised Statutes in the exercise of its administrative functions.

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*For the purposes of this memo, public agency is defined as this state or any agency or political subdivision of this state.

The Surplus Property Division has only those powers and duties provided in A.R.S. Title 41, chapter 4, article 8. The Surplus Property Division is required to perform the functions listed in A.R.S. section 41-813 and has the specific powers relating to acquistion and distribution of surplus property listed in A.R.S. section 41-814. The Surplus Property Division is also required to receive and process applications from eligible institutions for the acquisition of federal surplus real property (A.R.S. section 41-816) and make proper charges and assess proper fees for handling surplus property (A.R.S. section 41-817).

2. Yes. The policies and procedures developed by the Surplus Property Division regarding other agency use of the Surplus Property Division are binding on those agencies.

Even though the Legislature did not require issuance of rules and regulations by the Surplus Property Division to govern other agency use of the Surplus Property Division, some kind of binding procedures are necessary for the Surplus Property Division to operate effectively. The power of the Surplus Property Division to issue binding procedures is implied from the provisions setting forth the powers and duties of the Surplus Property Division. "Where a statute confers powers or duties in general terms, all powers and duties incidental and necessary to make such legislation effective are included by implication." Sutherland, Statutes and Statutory Construction, section 55.04 (4th ed., Sands, 1972); Maricopa County v. Douglas, 69 Ariz. 35, 208 P.2d 646 (1949). If the statutes setting forth the powers and duties of the Surplus Property Division are to be effective, that is if the Surplus Property Division is to comply with the Federal Property Act and federal regulations and provide a uniform, consistent surplus property service for other agencies, the Surplus Property Division must be able to develop and issue binding policies and procedures to be followed by agencies using the Surplus Property Division.

Support for the proposition that the policies and procedures developed by the Surplus Property Division may be viewed as binding policies and procedures may be drawn from 1 Am. Jur. 2d Administrative Law section 96 (1962) which provides:

> There is a type of rulemaking or policy-stating by which a statute administered is implemented by the statement by the administrative agency of general principles by which it will be governed in the exercise of its authority, irrespective of whether such authority is exercised in a "legislative" or "judicial" manner.

Also see Arizona Legislative Council memorandum (0-81-20).

CONCLUSIONS:

1. The Surplus Property Division does not have the authority to promulgate rules and regulations.

2. The policies and procedures developed by the Surplus Property Division regarding other agency use of the Surplus Property Division are binding on those agencies.

cc: Gerald A. Silva
Performance Audit Manager