

Vermont State Auditor

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***Report to the Agency of Administration,***

*Agency of Education, Agency of Human Services Central Office,  
Department of Buildings and General Services, Department for Children  
and Families, and the Department of Vermont Health Access*

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**Sole Source Contracts:  
Extraordinary Use in Ordinary  
Times**

## **Mission Statement**

The mission of the Vermont State Auditor's Office is to hold government accountable. This means ensuring taxpayer funds are used effectively and efficiently, and that we foster the prevention of waste, fraud, and abuse.

### ***Principal Investigator***

*Andrew C. Stein*

## **Non-Audit Inquiry**

This is a non-audit report. A non-audit report is a tool used to inform citizens and management of issues that may need attention. It is not an audit and is not conducted under generally accepted government auditing standards. A non-audit report does not contain recommendations. Instead, the report includes information and possible risk-mitigation strategies relevant to an entity that is the object of the inquiry.

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## Executive Summary

The State of Vermont has long prescribed to a policy of contracting for services and materials “in a cost effective manner through the use of an open and competitive contract solicitation process.”<sup>1</sup> The policy is designed to ensure taxpayers receive a high value for their contracted dollars and businesses are afforded an equal opportunity to compete for contracts.

Therefore, sole source contracts awarded to a vendor without a competitive bid ought to be reserved for “extraordinary circumstances.”<sup>2</sup> After regularly encountering sole source contracts through the course of audit and investigative work, the Vermont State Auditor’s Office (SAO) initiated an investigation of sole source practices. The objectives were to: 1) quantify the frequency and dollar value of sole source contracts at selected agencies and departments, and 2) evaluate whether those entities are following sole source guidelines outlined in Bulletin No. 3.5, the State’s contracting policy.

To accomplish these objectives, the SAO drew from nearly 1,000 contracts managed by: the Agency of Education (AOE), the Agency of Human Services Central Office (AHSCO), the Department of Buildings and General Services (BGS), the Department for Children and Families (DCF), and the Department of Vermont Health Access (DVHA).

The SAO found that while sole source contracts are intended for extraordinary circumstances, this selection method is commonplace for some departments and agencies. When combining all FY15 contracts for these entities, the sole source selection was among the most prevalent means by which contracts were awarded. Sole source contracts accounted for 41% of these contracts, and they valued \$68 million, or 27% of the total amount.<sup>3</sup> These values are for sole source contracts awarded by five agencies and departments in one year and reflect only a portion of state government. The total dollar value of noncompetitive contracts across state government is certainly much higher, though difficult to extract without a centralized tool that the State currently lacks.

While some sole source selections were justified, many were not. Numerous memos lacked a justification for using a sole source selection, and others lacked evidence to substantiate claims. We identified memos based on erroneous information and time constraints that appeared to be of agencies’ own making. Frequent amendments to contracts contravened Bulletin 3.5, and legislative directives were used to sidestep the contracting policy of the State. Furthermore, familiarity with contractors often took precedence over an open and competitive process.

The SAO is encouraged by the administration’s initiative to include a field for procurement methods in the State accounting system. A centralized tool will help the administration, agency heads, contract managers, and the SAO better monitor and evaluate the State’s contracting practices.

The high frequency of sole source contracts across the five departments and agencies in this analysis raises serious questions about the effectiveness of the State’s contract management. It is the policy of the State to employ an open and competitive bidding process to award contracts for goods and services. As such, State officials have a responsibility to the public and to Vermont businesses to make every effort to competitively bid contracts.

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<sup>1</sup> Vermont Agency of Administration, *Bulletin No. 3.5*, 2008. [Read here.](#)

<sup>2</sup> *Ibid.*

<sup>3</sup> When including the DVHA’s \$90 million contract with Fletcher Allen Health Care for funding graduate medical education, the amount of dollars sole-sourced climbs to \$158 million and represents 46% of the contract total.

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## Overview

For more than 20 years, it has been the policy of the State of Vermont “to obtain high quality services and materials in a cost effective manner through the use of an open and competitive contract solicitation process.”<sup>4</sup> This was the policy of the State when the Agency of Administration issued its 1995 contracting guidelines, called Bulletin No. 3.5, and this is the policy of the State today.<sup>5</sup>

Competitive bidding is aimed at ensuring taxpayers receive the highest value for their contracted dollars. Competitive practices should also afford Vermont businesses a fair opportunity to obtain contracts with the State. “In this regard, the State prescribes to a free and open bidding process that affords all businesses equal access and opportunity to compete for state contracts for goods and services,” wrote Governor Howard Dean in a 1991 Executive Order, which is referenced in the current contracting guidelines.<sup>6</sup>

Bulletin 3.5 permits different types of competitive solicitation. A “standard bid” includes a Request for Proposals (RFP) that is issued publicly.<sup>7</sup> Contracts between \$15,000 and \$100,000 can be awarded via a “simplified bid,” which is used when a state entity develops a statement of work for a service or product and solicits proposals from at least three potential bidders. A “pre-qualified bid” is sometimes used for routine services, and this process qualifies a group of bidders in advance of specific work.<sup>8</sup> The last of the competitive solicitation processes is a “qualification-based selection,” which requires approval by the Secretary of Administration. This process ranks vendors by qualification, and costs are negotiated with bidders in order of their qualifications.<sup>9</sup>

Bulletin 3.5 allows for waivers to contracting guidelines at the discretion of the Secretary of Administration. The bulletin also outlines a method for adopting contracting plans at agencies and departments, allowing these entities to use a process approved by the Agency of Administration that deviates from the bulletin.

Another exception to competitive bidding practices is the “sole source” contract. Sole source contracts are awarded to one vendor without competition and should be limited to “extraordinary circumstances.” Bulletin 3.5 calls for state agencies to make “every reasonable effort ... to promote a competitive solicitation process” before resorting to this method of contract selection.<sup>10</sup>

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<sup>4</sup> See: [Bulletin 3.5, 1995](#) and [Bulletin 3.5, 2008](#).

<sup>5</sup> At the time this report was written, the State relied on the 2008 version of Bulletin 3.5, which was the most current version.

<sup>6</sup> Howard Dean, [Executive Order No. 3-20](#), 1991.

<sup>7</sup> The RFP includes critical details such as contact information, timelines, requirements, contextual information, a statement of work, and selection criteria.

<sup>8</sup> This process should still afford other vendors opportunities to be added to pre-qualified lists for future contracts.

<sup>9</sup> Bulletin 3.5, 14, 16-21. For qualification-based selections, if the state cannot negotiate a satisfactory rate with a qualified vendor, the state continues down its list to the next qualified bidder, and so on. Certain contracts that draw from federal funds require this type of selection.

<sup>10</sup> Bulletin 3.5, 22.

The section of Bulletin 3.5 that offers guidance on sole source contracts states:

*Every reasonable effort should be taken to promote a competitive solicitation process when selecting a contractor. However, in extraordinary circumstances, negotiating with only one contractor may be appropriate. Examples of when a sole source contract might be appropriate include when time is critical for performance of the required services (such as emergency repairs) and/or when only one contractor is capable of providing the needed service or product. In other than an emergency situation a supervisor desiring to execute a sole-source contract that has a value of greater than \$15,000 but no more than \$100,000 must forward a copy of the proposed contract, notice of intent to execute, and a justification for the contract to the Secretary at least two weeks prior to the planned execution date. If, by ten business days after receipt by the Secretary, the Secretary does not object, the contract may be executed. For sole source contracts having a value of more than \$100,000, the Secretary must approve the contract prior to its execution by the supervisor. At least four weeks should be allowed to obtain this approval.<sup>11</sup>*

Sole source contract requests and materials are first reviewed by the Agency of Administration's Department of Finance and Management. Budget analysts at the department evaluate the contract package and send it to the Secretary of Administration with their notes and a recommendation about whether to approve or deny the arrangement.<sup>12</sup>

## Objectives

The Vermont State Auditor's Office (SAO) initiated an inquiry into the State's use of sole source practices after regularly encountering these uncompetitive contracts through the course of audit and investigative work. The need to ensure Vermont taxpayers are receiving the greatest value for their contracted dollars is heightened by the dramatic increase in contracts for personal services since 2001. Between 2001 and 2014, executive branch contracts for services increased 180%, from 719 to 2,011. The overall value of contracts for services over this period grew 300%, from \$130.4 million to \$519.7 million.<sup>13</sup>

The objectives of the investigation into sole source contracts were to: 1) quantify the frequency and dollar value of sole source contracts at selected agencies and departments, and 2) evaluate whether those departments are following sole source guidelines outlined in Bulletin 3.5.

To accomplish these objectives, the SAO drew from a sample of nearly 1,000 contracts managed by five state agencies and departments.<sup>14</sup> The SAO chose to review contracts awarded by: the Agency of Education (AOE), the Agency of Human Services Central Office (AHSCO), the Department of Buildings

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<sup>11</sup> Bulletin 3.5, 22.

<sup>12</sup> This process is briefly outlined on page 27 of Bulletin 3.5

<sup>13</sup> These figures were collected from Workforce Reports by the Department of Human Resources. They do not reflect peaks and troughs during this period. [Read the reports here.](#)

<sup>14</sup> While we included 767 contracts beginning in FY15 for frequency and dollar value analyses, we also reviewed contracts that began before FY15, but were active during that fiscal year.

and General Services (BGS), the Department for Children and Families (DCF), and the Department of Vermont Health Access (DVHA).

This report is divided into two main sections. The first section outlines the frequency and dollar value of sole source contracts, and the second section focuses on various trends we identified and concerns we have about particular contracts and practices.

## Frequency of Sole Source Contracts

To assess how frequently the five agencies and departments employed sole source practices, we took a snapshot by accounting for all contracts that commenced in fiscal year 2015 (FY15). We reviewed a total of 764 contracts for the five agencies, carrying a total value of \$343.3 million (See Table 1).<sup>15</sup>

Of those contracts, 41% were sole-sourced. That translates to \$158 million, or 46% of the total contract value, that was sole-sourced.<sup>16</sup>

BGS awarded the greatest number of contracts in FY15 because the department includes the Office of Purchasing and Contracting, which oversees buying of materials, equipment, commodities, and printing for state agencies.

Meanwhile, DVHA's total contract amount was driven up by a \$90 million agreement with Fletcher Allen Health Care (now University of Vermont Medical Center) for funding graduate medical education for three years.<sup>17</sup> Since the high value of this contract made it an outlier, and since it is a legitimate use of the sole source guidelines, we removed it from the figures and graphs below and in all tables except for Table 1. The combined value of DVHA's 67 remaining contracts for FY15 totaled \$70.8 million, of which \$27.9 million was sole-sourced (See Table 2).

**Table 1: Contracts Beginning in FY15**

Agency/Dept.	Total # of Contracts	Value of Contracts
DVHA	68	160,765,882
BGS	379	111,026,634
DCF	228	54,507,373
AOE	64	13,222,490
AHS CO	25	3,781,243
<b>Total</b>	<b>764</b>	<b>\$343,303,621</b>

**Table 2: Sole Source Contracts beginning in FY15**

Agency / Department	Total # of Contracts	Total Value of Contracts
DCF	123	28,980,698
DVHA*	30	27,905,510
AOE	55	4,481,340
BGS	88	3,550,048
AHS CO	18	3,004,951
<b>Total</b>	<b>314</b>	<b>\$67,992,546</b>

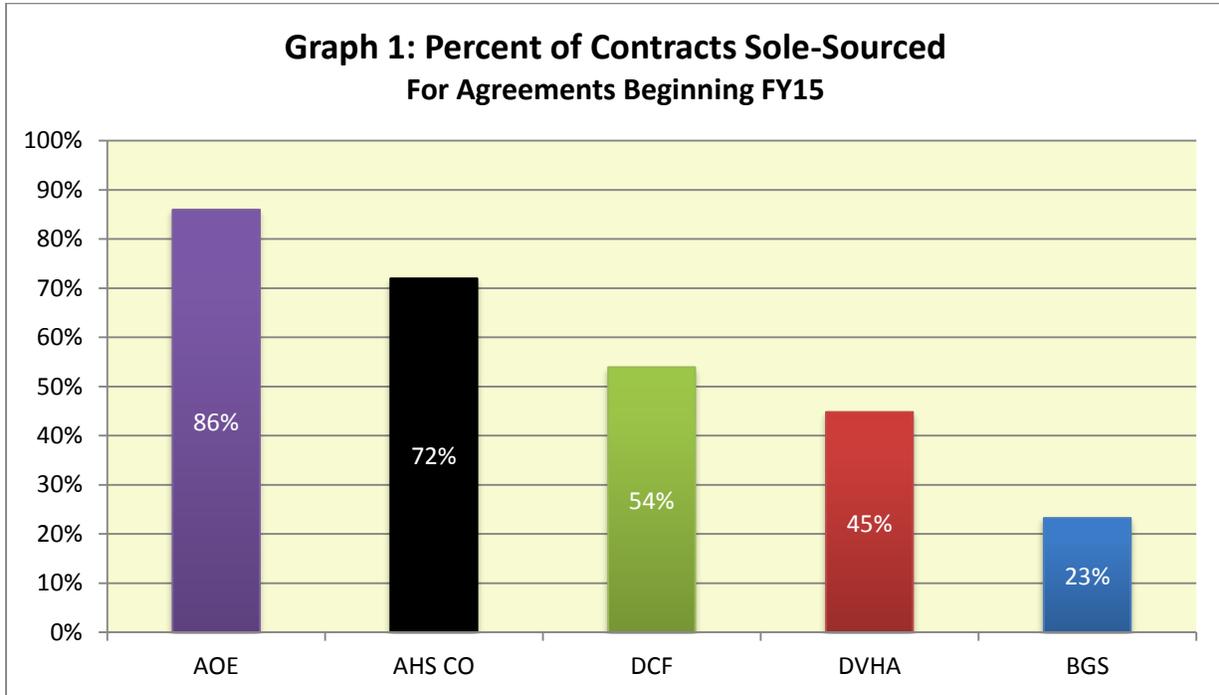
*\*DVHA figures in this table do not include a \$90 million contract mentioned in the text at left.*

<sup>15</sup> Some contracts covered less than a full year, and some were for periods of more than a year.

<sup>16</sup> These values differ from those in the Executive Summary and throughout the remainder of the report due to the removal of a \$90 million contract that DVHA oversees. An explanation is included in the text above.

<sup>17</sup> See: [Fletcher Allen Contract #26786](#).

Using the measure of contracts that began in FY15 to evaluate the prevalence of sole source practices, the frequency rate ranged from 86% at AOE to 23% at BGS (see Graph 1). These figures indicate that while sole source contracts are intended for “extraordinary circumstances,” sole source contracts are commonplace for some departments and agencies.



AOE’s contracting plan allows the agency to independently approve certain types of contracts, such as those for hearing officers and those agreements with a value equal to or less than \$7,500. Therefore, some of AOE’s sole source contracts were entered through its AOA-approved contracting plan.<sup>18</sup>

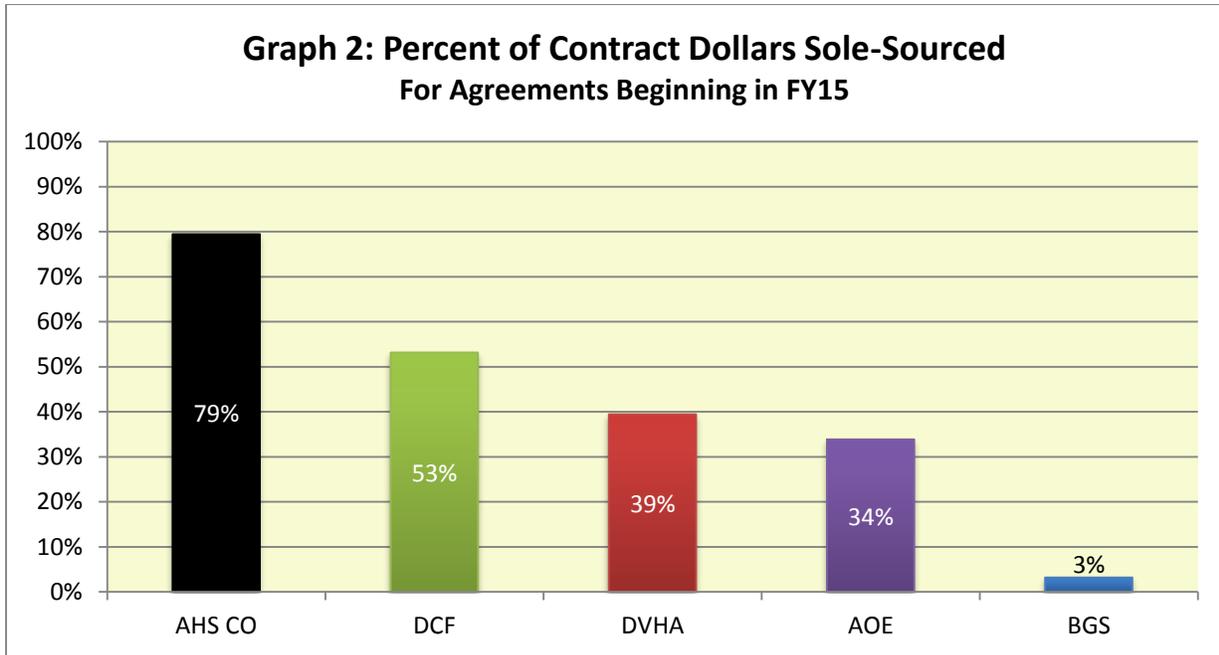
Using dollars instead of individual contracts to evaluate the incidence of sole source contracts, AHSCO had the highest utilization rate. Although AHSCO contracted the smallest dollar value of all five agencies, it sole-sourced 79% of \$3.8 million in FY15 contracts (See Graph 2). It is notable that a \$900,000 bundled contract with the 14 county sheriff departments is justified. The two-year contract accounts for nearly 30% of the AHS sole source agreements. The sheriff departments supervise and provide transportation services for individuals who are committed to DCF, the Department of Corrections, and/or the Department of Mental Health.<sup>19</sup>

DCF sole-sourced 53% of its FY15 contracted dollar value. It is notable that we did not include \$15.6 million in contracts that DCF sole-sourced for FY15 because those contracts began at the end of FY14. Although these contracts pertained to FY15, they did not begin in FY15, and therefore we excluded them from this analysis.

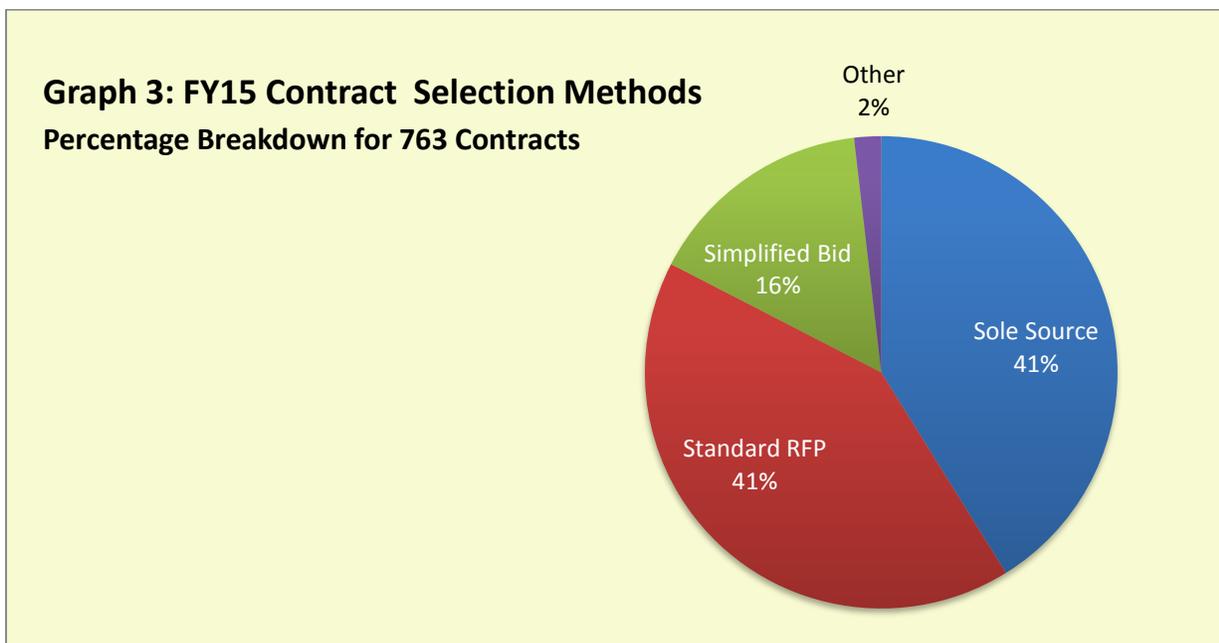
<sup>18</sup> Vermont Agency of Education Contracting Plan, 2014.

<sup>19</sup> This contract is technically 14 contracts that are administered under one umbrella and budgeted amount. For that reason, we included it in our accounting as one contract.

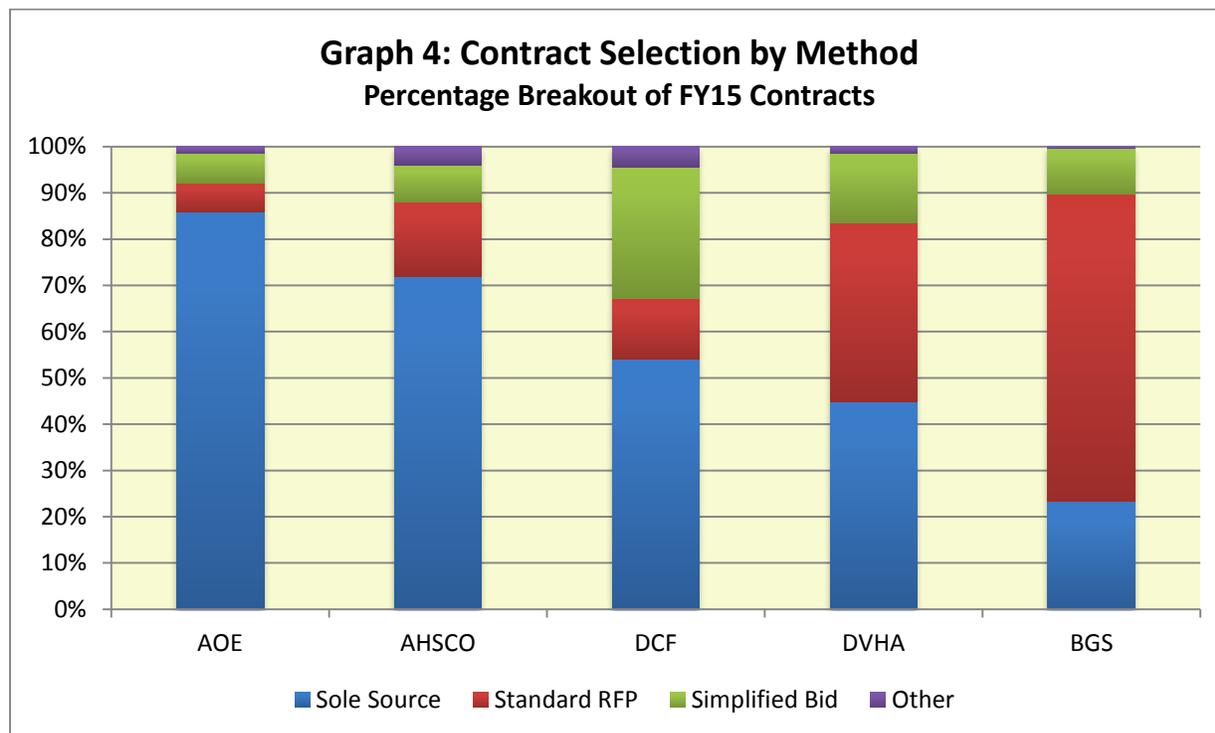
Meanwhile, DVHA sole-sourced 39% of the total dollar value of its FY15 contracts, and AOE sole-sourced 34%. Despite BGS' oversight of the greatest amount of contracted dollars, the department had the lowest sole-source rate – only 3% of \$111 million in FY15 contracts.



Of the 763 contracts included in this analysis, the sole source selection was among the most common (See Graph 3). Using the other metric of contract dollar value, 63% of dollars were awarded via standard RFP, 27% were awarded by sole source, 7% were awarded using other means, and 3% were selected by simplified bid.



Graph 4 shows the frequency of contract selection methods at each agency. Of all five agencies, only BGS awarded the majority of its contracts by standard RFP, using an open and competitive process to select 66% of its contracts. DVHA awarded 39% of its contracts with a standard RFP, AHSCO selected 16% of contracts with a standard RFP, DCF used an RFP for 13% of contracts, and AOE selected only 6% of contracts with a standard RFP.



When we combined contracts bid by standard and simplified processes for analysis, BGS selected 77% of its FY15 contracts using a competitive bid process. By contrast, DVHA selected 54% of contracts using a competitive process, DCF chose 42% of contracts using a competitive bid, AHSCO chose 24% of contracts using these methods, and AOE chose only 13% of contracts by standard or simplified bid.

## Sole Source Trends and Concerns

Of the hundreds of sole source agreements reviewed, we identified numerous contracts that were appropriately sole-sourced. Those contracts included emergency repairs on utility lines and state buildings – matters that required swift action. There were also cases where departments and agencies had no option but to sole-source with a contractor for maintenance and improvements of proprietary systems, equipment, and software. Other cases where sole source selections were appropriate included situations mandated by statute, vendors chosen by the federal government, or when no vendors bid on a contract and a department sought out a contractor for the work.

Although some sole source practices were appropriate, many contracts raised questions and concerns about the possible abuse of sole source procedures. Frequently, sole source justifications lacked any mention of extraordinary circumstances, let alone evidence of them. In other cases, sole source

justifications were based on unsubstantiated evidence. We also reviewed numerous sole-source contracts that appear to have been used for routine matters.

This section provides an overview of the major trends and areas of concern we identified across sole source contracts and for particular arrangements. The SAO is not questioning the quality of the services provided by the contractors, but rather raising concerns about the State's decision to sole-source certain types of contracts.

## The Phantom Ruling

DCF contracts roughly \$20 million annually to providers for Medicaid services under the Private Non-Medical Institutions Medicaid option.<sup>20</sup> DCF is contracting with 11 providers this fiscal year. Contracts for these services are sole-sourced, and these arrangements appear to stretch back to the mid-1990s.<sup>21</sup>

A common justification for these contracts has been that the federal government prohibits DCF from competitively bidding these services.

"A ruling issued by the Health Care Finance Administration in 1996 prevents the department from securing Medicaid services by competitive bid," DCF's Deputy Commissioner wrote in memos from 2009-2015. "Therefore it is my intention to enter into sole source contracts with the existing providers for a period up to four years."

A search of past rulings of the federal administration yielded no results that would prevent the State from competitively bidding for these services. We asked DCF for documentation associated with said 1996 ruling, and the department was unable to provide it.

We also contacted the Centers for Medicare and Medicaid Services (CMS), which was formerly called the Health Care Financing Administration. Officials at CMS reviewed their files and could find no documentation that would substantiate the ruling referenced by DCF. Furthermore, a CMS representative wrote: "Typically, to assure economy and efficiency of provider rates, we allow states to use competitive bidding to subject rates to market forces."<sup>22</sup>

It is unclear why the department has relied upon this erroneous justification for sole-sourcing these services. But the repeated approval by administrations over the years raises questions about the level of scrutiny and verification employed when reviewing and approving sole source contracts.

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<sup>20</sup> A Private Non-Medical Institution is an organization that is not a health insurance company or a community health care center, provides medical care to its residents with medical providers, and receives capitation payments from Medicaid for its Medicaid-eligible residents. [See 42 CFR §434.2.](#)

<sup>21</sup> The language in the memoranda for most of these contracts indicates that this reasoning has been used to sole-source these contracts since 1996. The earliest contract documents we were able to review dated back to 2009 and included the language about a ruling that neither the SAO, DCF, nor CMS could find.

<sup>22</sup> E-mail from Stephen Mills to Andrew Stein, September 17, 2015.

## Timing

Bulletin 3.5 tells departments and agencies that using a “sole source contract might be appropriate ... when time is critical for performance of the required services (such as emergency repairs).” However, the record shows frequent use of this justification for situations that were clearly not emergencies. Furthermore, certain tight timelines for contracting appear to stem from poor planning, and urgency of an agency’s own making should not enable a circumvention of the competitive bid process.

### *AOE Example*

AOE requested sole source contracts for five contractors using the same memo. The contracts were for providing services as “external systems coaches” for a program called the “K-12 Vermont Multi-tiered System of Supports.”<sup>23</sup> The agency wrote: “time is critical (for AOE to not jeopardize continued receipt of major federal funding).”<sup>24</sup> The justification explains that this funding is part of a \$2.9 million federal grant, called a Statewide Professional Development Grant, that began in 2012 and ends in May 2017.<sup>25</sup> AOE, therefore, had more than two years of lead time to plan for the procurement of these services when it requested sole source contracts in November 2014. Furthermore, AOE contracted for these exact services the year before with at least one of these contractors, and that contract was sole-sourced as well.<sup>26</sup> This suggests that the agency knew well in advance that it would need to contract for these services and that timing was either not a main factor in the decision to sole-source or was made critical due to poor planning.

Additionally, AOE argued that the “work is highly specialized, qualitative, systemic, and cumulative in a way that necessitates AOE’s expert discretionary selection of only the most qualified providers.”<sup>27</sup> Since the agency identified five vendors who could provide this service, it is possible that other qualified vendors might have been interested in bidding if they were given an opportunity. We don’t doubt that this work requires a high level of expertise. But AOE could have identified qualified vendors and exercised its judgment through a competitive process. These actions are not mutually exclusive.

AOE has since argued that it sole-sourced these contracts because the contractors received extensive training from the agency, and finding new contractors would be time-intensive and expensive. We question why the training issue was not included in the initial justification, which was four pages in length. We also question why the agency was unable to provide evidence of a competitive bidding process.<sup>28</sup>

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<sup>23</sup> Of these five contracts, only three were executed. They totaled \$88,000 for a year’s worth of this service.

<sup>24</sup> The parenthetical was part of the original text.

<sup>25</sup> Rebecca Holcombe to Jeb Spaulding, *Sole Source Contracts: K-12 Multi-Tiered Systems of Support (MTSS) External Systems Coaches*, 2014.

<sup>26</sup> Data from VISION indicates that AOE contracted to four of the five vendors the previous year, though the SOA only has documentation to validate one of these vendors.

<sup>27</sup> Holcombe to Spaulding, *Sole Source Contracts*, 2014.

<sup>28</sup> See Appendix B. AOE mentions that these contracts were chosen by an application process, but provides no documentation or further details.

## *DVHA Example*

Numerous DVHA justifications also raised similar questions about timing. For example, justifications in September and October of 2014 for sole source contracts with Behavioral Health Network and Stone Environmental, Inc. argue that a competitive bid process would cause the State to miss year two and three milestones for a federal State Innovation Models (SIM) grant.<sup>29</sup> DVHA contracted \$120,000 to Stone Environmental for a year to provide an inventory of the State's health data systems, and the department contracted \$471,077 for nearly two years to Behavioral Health Network to support data gathering and data quality improvements for the Designated Agencies and Specialized Service Agencies.

The \$45 million SIM grant was awarded to the State in early 2013 to support health care reform initiatives. The sole source arrangements with Stone and with Behavioral Health Network were sought roughly 20 months after the award of the grant, in the last third of the project's second year.<sup>30</sup> While bidding at the end of year two might have jeopardized the state's ability to meet fast-approaching deadlines, it is unclear why these contracts weren't planned for in advance to take advantage of a competitive process.<sup>31</sup>

The two memos for these contracts also state that these vendors are "uniquely positioned," but the department provided no evidence in the memo that it had attempted to identify other vendors that could provide these services. Behavioral Health Network, for example, is the association for 16 Designated and Special Service Agencies.<sup>32</sup> It is not unreasonable to suggest that the vendor was well positioned to provide this service, but if the organization provides the best value for this service it should stand out in an RFP process. There is a difference between entities that are well positioned to provide a service and entities that are the sole vendors capable of providing a service. Competitively bidding these contracts could identify new vendors that are qualified and would help ensure taxpayers are getting the best value for these services.

Another justification concerning time that was used repeatedly by DVHA, including in the memos for the above two contracts, is that a standard RFP process would take four to six months to complete and would therefore jeopardize DVHA's ability to meet various deadlines and objectives. We compared some of these contracts with agreements for similar services at the Green Mountain Care Board and found that the Board's RFP and selection process often took two to three months.<sup>33</sup>

For example, DVHA contracted with Stone Environmental for \$249,350 over a four-year period to develop and implement a web-based database application for managing the Blueprint for Health's

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<sup>29</sup> Sole source justifications for Stone Environmental contract #28079 and Behavioral Health Network of Vermont contract #27379.

<sup>30</sup> Behavioral Health Network is better known as [Vermont Care Network](#).

<sup>31</sup> See: [Project Plan and Timeline document](#) from the SIM Grant application.

<sup>32</sup> See: [The list of member agencies](#) that comprise the Behavioral Health Network/Vermont Care Partners.

<sup>33</sup> This was the case for 50% of the RFPs readily available on the Board's website. See: [Green Mountain Care Board RFPs](#).

practice and provider data.<sup>34</sup> This database application was aimed at reducing a manual and time-consuming process.

DVHA's four-year contract with Stone Environmental for database services included a memo that said: "Going out to bid for a new vendor would take up to six (6) months and significantly slow down efforts already underway, costing valuable time and staff resources." The efforts underway reference a prototype database that Stone developed for the State via a sole source contract.<sup>35</sup>

By contrast, the Green Mountain Care Board used a competitive bid process to select a contractor to implement a hospital data management system for planning, forecasting, and reporting budgets to the Board.<sup>36</sup> Within three months, the RFP process was completed, and the vendor was under contract for a maximum value of \$260,224 over five years.<sup>37</sup>

If DVHA's RFP process regularly takes four to six months, it raises questions about the department's procedures and suggests the need for the department to streamline its competitive bidding processes. Time pressures are a legitimate consideration in contracting decisions. The State, however, must preserve accountability and ensure it gets the highest value for contracted services in a timely manner.

## Amending Up

The SAO found that contracts are sometimes sole-sourced and then amended up to significantly higher values. A BGS contract with Architecture Plus, for example, grew by 1,775%, from \$150,000 in 2008 to \$2,812,350 in 2015. The vendor received a sole source contract to continue work that began in 2005 to develop site plans for residential psychiatric facilities. The contract was amended upwards several times, which the department said was caused by new legislative mandates and Tropical Storm Irene. Although one of these circumstances might be extraordinary, the lack of competitive bidding over a seven-year period is not best practice, especially considering the significant changes to the project's scope and the contract's value.

Another example of this practice is when DVHA contracted with Bailit Health Purchasing as part of the SIM Grant to provide technical assistance for the initiative's sub-grant program. DVHA said that it sole-sourced this contract due to the contractor's familiarity with Vermont, the content, and because "DVHA feels it is in the best interest of the State at this time to seek sole source approval for these technical assistance services for (an amount) not to exceed ... \$190,000." That initial contract was for one year. Its scope was then enlarged, and its period was expanded to three years. The value of the contract was increased 550% to \$1.23 million.<sup>38</sup>

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<sup>34</sup> Stone Environmental Contract #24433.

<sup>35</sup> Stone Environmental Contract #22886.

<sup>36</sup> Green Mountain Care Board RFP for a Business Performance Management System. [Read here.](#)

<sup>37</sup> Adaptive Planning, Inc. Contract #24077. [Read here.](#)

<sup>38</sup> Bailit Health Purchasing Contract #26095.

These are only two of the numerous contracts we reviewed that were amended in a similar fashion. Bulletin 3.5 states:

*One purpose of this Bulletin is to minimize contract amendments, especially as they relate to significant changes in the scope of services and/or contract price amount. It is generally desirable to avoid contract amendments because they emphasize negotiations between an agency and a contractor and thus can diminish the advantages of the competitive bidding process.<sup>39</sup>*

Furthermore, in boldface type, the Bulletin makes clear: **“Agencies must not ... use the contract amendment process to avoid the requirements in this Bulletin relating to competitive solicitation.”**

The practice of amending contracts upward in value and greatly shifting their scope without a new competitive bid is not isolated to sole source contracts. We have reviewed numerous contracts awarded via standard and simplified bid that were amended upwards in significant value without a new bid.

## No Reason Provided

The SAO reviewed 24 DCF contracts that were active in FY15 and were sole-sourced to out-of-state residential facilities to aid high-risk individuals with acute circumstances and/or disorders. These 24 contracts valued nearly \$20 million. When annualized to cover the period of only FY15, they valued almost \$12 million.

One example of this type of contract is an agreement with Justice Resource Institute, Inc. of Massachusetts to treat three emotionally disturbed adolescent youth from May 2014 to June 2015 for \$895,239.<sup>40</sup> Another example is a DCF contract with Hillcrest Educational Centers, Inc. out of Massachusetts for the same period to provide psychiatric treatment to six Vermont youth for \$1,114,646.<sup>41</sup>

The problem that the SAO identified with these contracts is that the memos used to justify their selections do not actually substantiate why the department sole-sourced these services.

The memos for these contracts included a section labeled, “Why This Contract Was Not Put Out To Bid.” The memos stated: “At any given point in time, we expect to have 35-40 children out-of-state in residential programs. Our preference is to provide services to children in Vermont, if possible; however, some of these programs are able to be tailored to meet the needs of a particular child.”

This language does not tell a budget analyst or an auditor why these services could not have been put out to bid, which is especially important considering the cost of the services. Contracting to an out-of-state vendor does not necessitate a sole source solution.

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<sup>39</sup> Bulletin 3.5, 30.

<sup>40</sup> Justice Resource Institute, Inc. Contract #26332.

<sup>41</sup> Hillcrest Educational Centers, Inc. #26333.

In addition to these contracts, there were several other sole source memos from DCF and one from DVHA that did not provide a justification for why contracts were sole-sourced.

## Legislative Direction

When the Legislature directs state departments and agencies to work with contractors, agencies often use a sole source selection. One example of this arrangement is DVHA's agreement with Vermont Information Technology Leaders – a non-profit designated by the Legislature to develop and operate the state's health information exchange network.<sup>42</sup>

For some contracts, however, the reason for sole-sourcing is less clear.

### *BGS Example*

In those instances when BGS does not operate state visitor centers, the department contracts exclusively to Chambers of Commerce. The Lake Champlain Regional Chamber of Commerce received a sole source contract for \$1.2 million to operate the Williston North and South Visitor Centers from July 2012 to June 2015. It received another sole source contract for \$207,149 to operate the Georgia South Information Center and manage advertising at Georgia's north and south centers from July 2014 to June 2016.<sup>43</sup> In both cases, the chamber is able to generate revenue from advertising and other means that the State would otherwise receive.

BGS cites the legislative authority to enter into agreements with local or regional chambers of commerce as the main reason for exclusively contracting to them for these services.<sup>44</sup> The empowering language stems from 1997 legislation, which says: "The Commissioner of the Department of Buildings and General Services is authorized to enter into agreements with, and grant funds to, local or regional chambers of commerce, or both, to provide staffing and operations of state-owned welcome centers, rest areas and information centers under guidelines established and enforced by the commissioner."<sup>45</sup> A 1999 bill states that the department "is authorized to operate rest areas, information and welcome centers as state or private facilities."<sup>46</sup>

While this language gives BGS the authority to contract to chambers of commerce, it does not mandate that the department only contract to the chambers. The department, however, interprets this language as a directive to only contract to chambers when it privatizes these services. Absent competitive bids, there is no way to know whether the State is getting the best deal.

BGS also sole-sourced a \$514,000 agreement with the Bennington Chamber of Commerce to run the Bennington Welcome Center for nearly two years. In addition to the above language, 2009 legislation instructed BGS to build the Bennington Welcome Center and made clear: "It is the expectation of the

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<sup>42</sup> See: [18 V.S.A. §9352](#).

<sup>43</sup> Lake Champlain Regional Chamber of Commerce, Contract #22550 and #27216.

<sup>44</sup> See: [The Vermont Information Centers Division Annual Report](#).

<sup>45</sup> See: [Act 38 of 1997 Sec. 19e\(c\)](#).

<sup>46</sup> See: [Act 18 of 1999, Sec. 39\(3\)](#).

house and senate committees on transportation that the site will be operated by the Bennington area chamber of commerce.”<sup>47</sup>

Although this language did not mandate contracting to the Bennington Chamber of Commerce, this legislative action told BGS that it was the expectation of two committees to effectively sidestep the official contracting policy of the State, which is to competitively bid for contracted services whenever possible.

BGS did conduct cost-benefit analyses to project savings compared to using state workers, but BGS does not know whether it could have obtained a better value for these services by soliciting proposals from other vendors.<sup>48</sup> It also appears that the cost-benefit analyses do not account for lost revenue from foregone advertising and other opportunities. Furthermore, cost-benefit analyses should be re-run after contractors have a history with the State to ensure that the assumptions used for the anticipated state-run costs correspond with the actual performance of the contractor. In other words, what would it cost for the state to run the welcome center with the same number of workers working the same hours as those actually worked by the contractor?

### ***DCF Example***

DCF justified a sole source contract for management of the Vermont Children’s Trust Fund by claiming that Vermont statute directed the department to contract services to one vendor, though the statute does not stipulate contracting with this one vendor for administration of the fund.<sup>49</sup>

DCF’s \$242,400 contract with the Vermont Children’s Trust Foundation says: “(VCTF) is the organization designated through the statute to manage and provide the services being procured through this contract. No other entity has the capability or authority to provide these services.”<sup>50</sup>

The department points to session law from 1985 to substantiate the creation of the Foundation for the purpose of fundraising private funds to supplement State dollars for the Vermont Children’s Trust Fund. According to the department, AHS managed the trust fund before contracting to the Foundation in 2009. DCF plans to explore bidding this management contract.

## **Contractor Familiarity**

Numerous sole-source contracts across the agencies and departments we reviewed were awarded based on a department’s familiarity with a contractor or that contractor’s proven track record. Although such reasons rationalize a convenience, they do not justify a noncompetitive process. To the contrary, contractor familiarity may provide further justification for competitively bidding a contract.

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<sup>47</sup> See: [Act 50 of 2009, Sec. 110](#).

<sup>48</sup> Such cost-benefit analyses are not required by Bulletin 3.5, but are good practice.

<sup>49</sup> See: [33 V.S.A. Chapter 33](#).

<sup>50</sup> Vermont Children’s Trust Foundation, Contract #29065.

## *DVHA Example*

When DVHA requested a sole source contract with the Pacific Health Policy Group (PHPG) in May 2014, the Agency of Administration denied the department's request. DVHA sought to work with PHPG because its commissioner said the firm provided a "unique" knowledge base and skill set, as PHPG employed a former Vermont commissioner and deputy commissioner. The firm also employed individuals with a history working on Vermont health care reform initiatives.<sup>51</sup>

The Secretary of Administration responded: "I am not inclined to support this waiver request. The fact multiple PHPG principals were high level State officials leads me to believe a competitive bid is warranted."<sup>52</sup>

Nonetheless, two months prior, the administration allowed DVHA to sole-source contracts with PHPG at a value of \$600,000 for 1.5 years and one at \$90,000 for one year. Roughly two months after the sole source denial, DVHA was also allowed to execute a \$100,000 sole-source contract with PHPG for one year.<sup>53</sup>

The \$600,000 contract with PHPG was an extension of services from a previous two-year contract, which had expired and was valued at roughly \$1.4 million. This previous contract was also sole-sourced.<sup>54</sup>

DVHA's contract with Bailit Health Purchasing for \$1.2 million over nearly three years is for some similar services as those provided in the PHPG contract for \$90,000. The justification of contractor familiarity for this sole source request is very similar to those for the PHPG contracts.<sup>55</sup>

Additionally, DVHA has contracted with the University of Vermont (UVM) for at least seven years to provide the State with a Chief Medical Officer and Medical Director, as well as program evaluations.<sup>56</sup> The current contract was sole-sourced for \$1,792,437 over nearly 2.5 years.<sup>57</sup> According to DVHA, this contract provides an added bonus in that UVM can use these positions as faculty at its medical school, and the medical school can quickly respond to program evaluation needs. "For these reasons, putting this work out to bid would be a fruitless process," the department's commissioner wrote.<sup>58</sup>

While UVM can use the Chief Medical Officer and Medical Director as faculty, this is not the purpose of the contract, and other institutions might also be able to provide the State with qualified physicians to fill these roles. Without a competitive process, it would be difficult to verify the value of this contract. While the contract does offer a partnership with the only academic medical center in the state, reliance

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<sup>51</sup> Mark Larson to Jeb Spaulding, Bulletin 3.5 Waiver Request, 2014.

<sup>52</sup> Jeb Spaulding to Mark Larson, Re: Bulletin 3.5 Waiver Request, 2014.

<sup>53</sup> The Pacific Health Policy Group agreements referenced are Contract #26141, #26096, and #27087.

<sup>54</sup> Pacific Health Policy Group Contract #21408.

<sup>55</sup> Bailit Health Purchasing, LLC #26095.

<sup>56</sup> This contract period is based on the information in the justification for Contract #23099.

<sup>57</sup> University of Vermont Contract #23099.

<sup>58</sup> Mark Larson to Jeb Spaulding, *University of Vermont, Contract #23099, Sole Source Request*, 2012.

on UVM for program evaluations may present conflicts of interest if the university is charged with evaluating state health care programs in which the University of Vermont Medical Center (UVMCC) participates.

### ***DCF Example***

DCF also has a sole source contract with UVMCC (previously Fletcher Allen Health Care), worth \$314,080, to provide physicians and psychiatrists to the Woodside Juvenile Rehabilitation Center.<sup>59</sup> According to the memorandum appended to the DCF contract, “Fletcher Allen Health Care, Inc. successfully bid on this project previously and submitted the sole proposal received ... The contractor has been successfully providing these services to the State for over 10 years.”<sup>60</sup>

DCF issued an RFP for this contract in 2008, and department officials say that they plan to bid out this contract in the summer of 2016.

Contracting with one entity for extended periods of time could adversely affect responses to future RFPs. Creating a proposal for state projects can be time- and resource-intensive for vendors, and regularly sole-sourcing contracts to the same vendors could give potential contractors the impression that an RFP process is not truly competitive and therefore not worth submitting a proposal. This practice could inhibit potential competition and leave the State at the mercy of one provider that lacks the competitive incentive to keep costs down.

### ***BGS Example***

BGS sole-sources two contracts for servicing chillers, which are thermal management units for state buildings. BGS contracts to Carrier Corporation for \$103,092 to perform preventive maintenance on chillers for three years, and the department contracts for \$202,604 to Trane US, Inc. to service its chillers for roughly the same period. Both justifications argue that it is “essential” to work solely with technicians from the given companies to service their chillers. The justifications acknowledge that other vendors could provide these services, but BGS speculates that the markup on and assumed time added to obtain the competitors’ products would outweigh any cost savings.<sup>61</sup>

These sole source agreements are problematic for several reasons. First, the Carrier contract is not only a contract to service Carrier chillers; it also includes servicing those of Liebert, which is a brand of Emerson Network Power. Second, both vendors service products by other companies, as is evidenced by the Carrier contract and conversations with representatives from both companies. A Trane representative told the SAO that Trane services 40 chillers that belong to one of the state’s most prominent businesses, and none of those chillers are manufactured by Trane.

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<sup>59</sup> Contract # 25924 for one year is part of an ongoing arrangement between DCF and UVMCC.

<sup>60</sup> Cynthia Wolcott to Jeb Spaulding, *Sole Source Request for New Contract*, 2013.

<sup>61</sup> Trane US, Inc. Contract #24062 and Carrier Corporation Contract #23950.

Third, the contract payments are disbursed in quarterly installments for preventive maintenance, which is thoroughly outlined in the agreements. The payments are for work performed in the previous quarter. The costs should not vary unless BGS authorizes additional work outside the scope of the maintenance services in the contract. If there were a warranty issue or a problem that only the manufacturer could repair, then BGS would have an extraordinary circumstance for which to sole-source that work. The contracts' current structure would make it simple to compare proposal costs from different vendors since those costs are established upfront.

### ***Agency of Human Services Central Office Example***

This fiscal year and last fiscal year, AHSCO sole-sourced contracts with United Ways of Vermont that total about \$1.1 million. The agreements, which date back to 2005, are for building and maintaining a comprehensive health and human services database, providing after-hours emergency coverage for DCF's Economic Services Division call center, and overseeing the State's 2-1-1 call center.

The justification for this contract states: "There is no other entity capable of providing these services to AHS and a loss of this contract would result in our complete inability to offer resource, referral, and after-hours emergency coverage of our programs."<sup>62</sup>

This justification is problematic for several reasons. First, it indicates an overreliance on one contractor, as the agency states that vital services would be suddenly unavailable if the State were to end this contract. Second, no evidence was provided to support the claim that there is no vendor capable of providing these or similar services. Vermont's E-911 Board, for example, issues an RFP for similar services, and the Board compares vendor proposals to build, develop, and maintain the State's E-911 system.<sup>63</sup> Furthermore, the contract with the United Ways mentions that for the 2-1-1 call center component of the agreement, the United Ways can contract "out to another certified 2-1-1 call center" for extended coverage.<sup>64</sup>

Before FY14, AHSCO used grant agreements to obtain these services from the United Ways. The AHSCO maintained that this arrangement is characteristic of a contract and would be better suited to contract agreements. But the manner in which lines are blurred between grants and contracts in state government raises other questions that were outside the scope of this inquiry.

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## **VISION Update and Record Management**

Compiling the data and resources necessary to conduct this investigation was extremely laborious and time-consuming. At the time of this investigation, the State's accounting system (VISION) did not include a field to break out the procurement method used to award contracts. Due to the State's decentralized system of tracking contracts, our office had to work with each of the agencies and departments included in this study to obtain the necessary information. It is difficult and time-intensive to evaluate the State's

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<sup>62</sup> Justifications for Contracts #26399 and #29314.

<sup>63</sup> State of Vermont Enhanced 911 Board, *Sealed Bid Information Technology Request for Proposal*, 2014.

<sup>64</sup> Contract #29314, Attachment A, 3.

compliance with its own purchasing guidelines in the absence of a centralized tool for collecting this critical information.

Different departments and agencies track their contracts using different methods, and certain agencies don't update this information regularly. Some entities – such as BGS, AHSCO, and DCF – were able to provide a reliable file (which still required validation) that outlined the level of competition used to award individual contracts. Others could not. One reason some entities could not provide a useful file, as explained by DVHA, is that they haven't had a reason to track contracts in this way for internal administration purposes.

After considerable efforts to collect and verify the information used in this investigation (See Appendix A), we were unable to identify how frequently sole source contracts were denied by the Secretary of Administration because the State doesn't keep a record of such decisions.

The Agency of Administration plans to include a new field in the VISION accounting system to identify the procurement method used when agencies and departments input contract information. Over the next several years, the administration also plans to implement a centralized procurement system. If implemented, these changes would make it easier to perform a statewide analysis of public competition trends.

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## Conclusion

Bulletin 3.5 establishes a contracting policy and framework that emphasizes competitive bidding to ensure taxpayers receive the highest value for their dollars spent on services and materials. Accordingly, sole-source contracts ought to be reserved for “extraordinary circumstances.”<sup>65</sup> However, these noncompetitive contracts appear to be common practice.

When combining contracts at the departments and agencies included in this analysis, the sole-source selection method was among the most prevalent means by which to award a contract in FY15. The value of the 41% of contracts awarded via sole source was \$68 million, or 27% of the total contract value.<sup>66</sup> This value represents sole source contracts awarded by five agencies and departments in one year and represents only a portion of state government. The total dollar value of noncompetitive contracts across all of state government is certainly much higher, though it would be resource-intensive to extract that information without a centralized tool.

Three of the agencies and departments used a sole source selection to award the majority of their contracts; one used this method to award 45% of contracts; and the lowest sole-source frequency rate was nearly 25%. Except for BGS, the most common method for awarding a contract by the four other agencies and departments was a sole source selection.

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<sup>65</sup> Bulletin 3.5, 22.

<sup>66</sup> When including the DVHA's \$90 million contract with Fletcher Allen Health Care (now University of Vermont Medical Center) for funding graduate medical education, the amount of dollars sole-sourced climbs to \$158 million and represents 46% of the contract total.

When using dollar values to evaluate the incidence of sole-sourcing, two entities sole-sourced the majority of their contract dollars, two entities sole-sourced between 30%-40%, and BGS sole-sourced 3%. The majority of dollars contracted in FY15 were awarded by standard RFP, and BGS awarded 67% of those RFP dollars. Although BGS oversaw the greatest number of contracts and contracted dollars, the department's competitive bidding rate was the healthiest.<sup>67</sup>

While some sole-source selections were justified, many were not. Numerous memos lacked a justification for using a sole source selection, and others lacked evidence to substantiate claims. We identified memos based on erroneous information and time constraints that appeared to be of agencies' own making. Frequent amendments to contracts contravened Bulletin 3.5, and legislative directives were used to bypass the contracting policy of the State. Furthermore, familiarity with contractors often took precedence over an open and competitive process.

The SAO is encouraged by the administration's initiative to include a procurement method field in the VISION accounting system. A centralized tool will help the administration, agency heads, contract managers, and the SAO better monitor and evaluate the State's contracting practices.

The high frequency of sole source contracts across the five departments and agencies in this analysis raises serious questions about the effectiveness of the State's contract management. In that "the State prescribes to a free and open bidding process that affords all businesses equal access and opportunity to compete for state contracts for goods and services," state officials have a responsibility to the public and to Vermont businesses to make every effort to competitively bid contracts.<sup>68</sup>

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<sup>67</sup> BGS oversaw the greatest amount of contracted dollars when excluding the \$90 million federal contribution for medical education that Fletcher Allen received through DVHA.

<sup>68</sup> Howard Dean, [\*Executive Order No. 3-20\*](#), 1991.

## Appendix A: Scope and Methodology

The SAO began this project at the Agency of Administration with a review of all contracts that were active in FY15 for AOE, AHSCO, BGS, DCF, and DVHA. The administration's files only included contracts that required prior approval by the Secretary of Administration, which allowed our office to examine nearly all sole source contracts greater than \$15,000 in one place.<sup>69</sup>

To validate the files at the Agency of Administration, ensure that we had the most up-to-date documents, and to ensure we had a complete set of contracts that commenced in FY15, we worked directly with staff at each department and agency included in the review.

BGS, AHSCO, and DCF were able to provide us spreadsheet files that we validated. DVHA provided us with all AA-14 Forms for contracts that began in FY15 so that we could evaluate procurement methods. AOE organized all of their FY15 contracts so that we could review them on site. We then validated information for all sole source contracts greater than \$15,000 by reviewing all available contract documents. We also reviewed many of these documents for sole source contracts less than \$15,000. For services procured by other means, we primarily relied on records from the departments and agencies.

We then put this information into a standardized format for our frequency and dollar analyses, and we created spreadsheets to itemize the justifications for sole source contracts. By organizing the information this way, we were able to spotlight trends and conduct the analyses in this report.

The staff at each department and agency was extremely helpful during this project, and they dedicated an extraordinary amount of time to this undertaking. The SAO would like to thank each agency and department for their high level of cooperation during this project.

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<sup>69</sup> See: [the matrix at the end of Bulletin 3.5 on page 53](#).

Appendix B: Management Comments and Auditor's Responses

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*Justin Johnson, Secretary*

December 4, 2015

Vermont State Auditor Doug Hoffer  
132 State Street  
Montpelier, VT 05633-5101

Dear Auditor Hoffer,

Thank you for the opportunity to comment on your office's Non-Audit Report on Sole Source Contracts. The report raises a number of important issues related to the State of Vermont's contracting processes.

I generally agree with the observations outlined in the report and will work with Agency Secretaries and Departmental Commissioners to strengthen the oversight and review of the contracting process to ensure full compliance with the spirit and intent of Agency of Administration Bulletin 3.5.

Thank you for noting the absence of a centralized procurement system which is currently planned for inclusion in the next VISION system upgrade. I believe having a fully functional, centralized procurement system that is integrated with the State's accounting system will allow for increased oversight and transparency of all procurement activities.

I would also like to note that each sole source request is reviewed on its own merits and not in relationship to an agency or departmental total of similar or like requests.

Below, please find specific comments from Agencies and Departments related to their respective contracts that were included in this non-audit inquiry.

Sincerely,

Justin Johnson  
Secretary of Administration

Management comments from the agencies and departments involved in this investigation are organized below. The SAO's responses are in italics, and any additional comments from the agencies and departments are located below the italicized responses from the SAO.

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## **Building & General Services**

BGS Comment #1: As noted in paragraph 5, on page 5 of the report:

"BGS awarded the greatest number of contracts in FY15 because BGS includes the Office of Purchasing and Contract Administration which oversees buying of materials, equipment, commodities, and printing for ALL state agencies." With this fact in mind, and the sheer number of contracts BGS oversees, BGS' sole source rate of 23 % and represents 3% of contracted dollars is laudable.

*We agree, which is why we added a little emphasis. See the last sentence on page 6 and the conclusion.*

*"Despite BGS' oversight of the greatest amount of contracted dollars, the department had the lowest sole-source rate – only 3% of \$111 million in FY15 contracts."*

*"Although BGS oversaw the greatest number of contracts and contracted dollars, the department's competitive bidding rate was the healthiest".*

BGS Comment #2: Page 8 - Graph 4:

For consideration add a footnote to Graph 4: "All methods of sourcing are acceptable practices under Bulletin 3.5".

*We mention these methods in the overview for the report. See paragraph 3.*

BGS Comment # 3 - Last paragraph on page 9, under the heading "Timing".

Bulletin 3.5 doesn't specifically restrict "sole source" contracts to "emergency repairs", in fact, the express language says "when time is critical for performance of the required services". The Bulletin goes on to use "emergency repairs" as ONE such example of a situation where time is critical for performance. It was never intended to be the ONLY appropriate justification.

*The SAO did not state that Bulletin 3.5 language on sole sourcing due to time pertained only to "emergency repairs," but we do interpret the sole source language to mean that the timing requirement should only be used for emergencies. An emergency is defined as a situation where "time is critical," which is the language we quoted and the language used in Bulletin 3.5.*

Additional Comment: BGS agrees with the Auditor with regard to the use of sole source contracts in emergent situations. However, BGS seeks to clarify that there are situations whereby “time is critical” but it is not an “emergency”. For example: An “emergency repair” would need to be made to a structure if a large tree fell on a roof damaging the roof, and exposing the structure to the elements. Obviously, the roof needs to be repaired immediately to protect the property. There are other situations which “time is critical” that are not emergent. BGS believes that in order to complete its mission in an orderly and efficient manner, there are other “time critical” situations where a sole source contract is justified and allowed under bulletin 3.5. For instance a law or regulation change that requires prompt action / reaction/ or compliance by a date certain. Another example where “time is critical” but it is not an emergency: a routine elevator inspection reveals non-emergent, but clearly needed repairs. The needed repairs are not part of any existing service contract yet the repairs need to be made in a timely fashion so as to avoid creating an “emergent situation”. In those described circumstances, BGS believes that a sole source contract is reasonable and prudent and in the best interests of the state.

BGS Comment # 4: Page 12- Under the Heading "Amending Up".

The report states, "...contracts are sometimes sole-sourced and then amended up to significantly higher values. A BGS contract with Architecture Plus, for example, grew by 1,775% from \$ 150,000 in 2008 to \$ 2,812,350 in 2015".

This example cited above requires further exploration. It is a perfect example of "time is critical for performance" as well as other real and necessary reasons for sole source contracts.

It is important to note that Architecture Plus was hired, after a standard bid process. This was a competitive bid for specialized architectural services for "Future Plan" for the Vermont State Hospital. That competitive bid process was done in 2005 and the contract expired in 2008. Unfortunately, due to many changes in direction and delays in planning, the work that Architecture Plus was hired to do was not complete when their contract expired. The only way to "renew" the contract with Architecture Plus was to "sole source" the contract and that is the first "sole source" contract for \$ 150,000 referenced in the report.

The report references, and seemingly accepts, that conditions changed and there were "emergent circumstance" after Tropical Storm Irene however, the report doesn't acknowledge that the "Future Plan" for the Vermont State hospital changed direction prior to Tropical Storm Irene as well and that there were clearly other issues relevant to the hospital that certainly met the reasonable measure of "time is critical for performance of the required services" in ways that extend beyond an "emergency".

It simply didn't make sense to "competitively bid" these services, as the report says, "over a seven-year period" for the reasons stated above.

*As you noted, we acknowledged that circumstances changed and that there was*

*an emergency situation. However, this series of events and amendments occurred over a seven-year period. Notwithstanding all the challenges, we think there were opportunities along the way to stop and put the services out to bid. We therefore respectfully disagree.*

Additional Comment: BGS agrees that there were “opportunities along the way as the scope of the project changed.... to put the services out to bid” however, BGS respectfully disagrees that putting these services out to bid, “mid-project”, while this project changed over the course of many years, was required by Bulletin 3.5. Nor does BGS believe it would have been in the state’s best interest to put the contracted services out to bid mid-project. Bulletin 3.5 requires “Every reasonable effort should be taken to promote a competitive solicitation process when selecting a contractor. However, in extraordinary circumstances, negotiating with only one contractor may be appropriate. Examples of when a sole source contract might be appropriate include when time is critical for performance of the required services (such as emergency repairs) and / or *when only one contractor is capable of providing the needed service or product.*” (emphasis added) It is important to remember that this service contract was originally put out to bid. The extensions of the contract were done by “sole source” contract and they were appropriate for the reasons outlined below. The only reason these contracts were “amended up” was because the work for which the architects were hired was not complete. The project had been altered and directions changed numerous times based on legislative direction as well as changes in programming and financial considerations. After working on this project, literally for years, Architecture Plus (A+) was the only vendor capable of providing the needed service (continuation and completion of the “Future’s plan” for the Vermont State Hospital). The project continued to evolve, each phase and stage of the project informed the experience and skill set of the architect selected. Going out to bid to hire another architectural firm, mid-project, would have been counterproductive, expensive and not in the State’s best interest. BGS and the DMH would have had to take the time and resources to develop a new RFP, effectively stopping the project while the State went through the procurement process. Any vendor interested and capable of bidding the project would not have had the history, experience and skills that Architecture Plus brought and continued to develop over the multiple years of work on this project. Architecture Plus was performing its contractual obligations in a timely and effective manner. Why would the State seek to remove a contractor who is properly performing and serving the State? Assuming that a new vendor could properly research and prepare themselves to step into this multi-year project, those costs would surely be passed on to the State of Vermont.

*In addition to the State’s clear policy of competitively bidding contracts, Bulletin 3.5 also states: “One purpose of this Bulletin is to minimize contract amendments, especially as they relate to significant changes in the scope of services and/or contract price amount. It is generally desirable to avoid contract amendments because they emphasize negotiations between an agency and a contractor and thus can diminish the advantages of the competitive bidding process.”*

BGS Comment # 5: Page 14 under the Heading "Legislative Direction".

The Department of Buildings and General Services has concerns with interpretation of statute and the blending of different and distinct legislation and disagrees with findings on this page of the report.

1. The report references three separate legislative enactments with regard to operation of information centers. It is important to put the legislative language in context.
  - The 1997 legislation authorized BGS to enter into agreements with local and regional chambers to provide staffing and operations of STATE-OWNED WELCOME CENTERS. This enabled BGS to contract with local or regional chambers for these services specifically in State owned welcome centers.

The report points out that this language did not mandate that BGS only contract to the chambers. While that statement is technically accurate; the language does not "mandate" that BGS contract with only the chambers, that finding doesn't consider the context of the language, the intent of the legislature, or testimony given at and heard by the committees regarding the operations of the welcome centers.

2. The next legislation referenced in the report from 1999 was different and distinct from the 1997 language referenced above.
  - The 1999 language permitted BGS to operate rest areas, information and welcome centers AS STATE OR PRIVATE FACILITIES. When read in context, this language gave BGS additional authority to enter into "public-private partnerships" and similar agreements whereby an information center or welcome center could actually be off the highway system and owned and operated by a private entity

This distinction is important to note because they gave BGS distinct, but different authorities. It is also important to note that the two legislative authorities dealing with specific projects; specific to STATE-OWNED WELCOME CENTERS, both contained directives to BGS about whom BGS was authorized to contract.

3. Fifth paragraph, pg. 14 - BGS does not agree with this statement / finding:
  - "this legislative action [1997 and 2009 language re: chambers] told BGS that it was the expectation of the two committees to effectively circumvent the official contracting policy of the State, which is to competitively bid for contracted services whenever possible."
4. Last paragraph, page 14 The last paragraph of page 14 includes statements about cost-benefit analysis, lost revenue, and "cost for the state to run the welcome center with the same number of workers working the same hours as those actually worked by the contractor". There is no requirement that a "cost-benefit" analysis be

conducted prior to executing a sole-source contract. The type of analysis that is referenced in the report IS required in situations where "privatization"(3 V.S.A. Sec. 343) occurs.

In addition, the report states, "Absent competitive bids, there is no way to know whether the State is getting the best deal." First, BGS would like it noted that on these chamber contracts considerable research and effort was made to determine what would be competitive pricing for these services. While it is accurate that there wasn't a competitive bid process, that doesn't mean BGS didn't use other means to measure the cost of services.

*Re. the intent of the legislature: Is it the position of the AOA and BGS that the legislature can effectively override Bulletin 3.5 without a compelling justification? [Note: We understand that the legislature has the legal authority to do so. We are more concerned with precedent and best practices.] Was a compelling justification presented in committee? Did the administration remind the committee(s) that limiting the pool of potential contractors to the Chambers would prevent local businesses from bidding and make it impossible to know whether BGS could get the best deal?*

*BGS disagrees with our statement that the legislative language effectively asked BGS to circumvent state purchasing policy but offered no explanation. Bulletin 3.5 requires a justification for sole source contracts over a certain amount. As far as we know, the legislature offered no justification. Rather, it expressed a preference, which is not an accepted justification. If there are pertinent records available to shed more light on the matter, please forward them.*

*Re. cost-benefit analyses: We are aware that they are not required for sole source contracts. We discussed the issue in order to highlight the fact that entering sole source contracts at the request of the legislature made it difficult for BGS to ensure that taxpayers get the best value for their money. We will rewrite the paragraph to note that the analysis is not required but will still make the point.*

*BGS stated that "considerable research and effort was made to determine what would be competitive pricing for these services." Please provide the supporting documentation if available.*

Additional Comment: BGS agrees with the Auditors note above that the legislature can effectively override Bulletin 3.5. BGS's objection was to the use of the word "circumvent". A common definition for "circumvent" is to avoid unpleasantness by artfulness or deception; avoid by anticipating or outwitting. BGS doesn't believe it was the department's, or the legislature's intent to avoid the contracting process for services at information centers by the use of deception or artfulness. BGS believes, as already indicated, that the legislature has the authority to determine / restrict / identify / limit the state's contracting partners.

*The word circumvent has been replaced with the words sidestep and bypass.*

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## **Agency of Education**

AOE Comment #1: "AOE Example" at Page 10 of SAO final draft of the State Auditor's "Non-Audit Report on Sole Source Contracting"

The Statewide Professional Development Grant is a five year grant that began in 2012 and ends in May 2017. Year one (SY'12-'13) was a planning year. During the planning year AOE began training skilled and experienced educational professionals to be coaches to support LEA' s (Local Education Agencies) participating in the grant activities, pursuant to the requirements of this federal grant. By the 2014- 2015 school year, AOE had invested a significant amount of time in training and supporting the coaches. Again, based upon the federal grant requirements, AOE was "all in" with these trained/skilled vendors. This created a time urgency because AOE needed to have coaching available for a new cohort of schools in time to meet our grant requirements. It would have made no sense to go to bid and start over with new vendors, and waste two years of training and preparation. That would have impeded the State's ability to begin offering the coaching/support services for LEA's, pursuant to this federal grant award in year three (2014-2015). AOE had already signed MOU's in the Spring of 2014 to begin work with 2 cohort schools in the Fall of 2014.

Relatedly, in addition to the time urgency in year three of this grant, no other vendors were "trained up" (as noted above) and capable of providing the needed services. This fact, along with the time urgency, are both allowable reasons for engaging a sole source contract, under State Contracting Bulletin 3.5.

*Please tell us what method was used initially to contract with the coaches and provide the relevant documentation.*

This project was begun in 2012 by an employee who has since retired. According to her supervisor, three coach trainees were selected from a pool of five candidates through an application process. Training costs were covered with grant funds. When the three trainees completed training, we entered into contracts with them per the process stated in our response.

*AOE did not provide additional information or documentation to substantiate this anecdote. While we agree that hiring coaches trained by AOE made sense, we question why a competitive bidding process was not used initially. We also question why this situation was not explained fully in the four-page justification that AOE used for these contracts.*

AOE Comment #2: AOE Comment to Graph 1 and Graph 2 at Pages 6-7 of SAO final draft of the State Auditor's "Non-Audit Report on Sole Source Contracting" \_

While these graphs speak for themselves, it is worth noting that the vast majority of AOE's total contracted dollars are awarded through a competitive selection process. We understand and agree that there is a need to reconsider internal process around vendor selection considering Graph 1's findings. However, Graph 1 does not accurately reflect the fact that most tax dollars being expended by AOE for contracts are being expended as the result of a competitive vendor selection process.

*Graphs 1 and 2 each tell a critical part of the story. Graph 1 shows how frequently agencies and departments used a sole source selection, and Graph 2 shows the percent of contracted dollars agencies sole-sourced. We chose to present all of the information in two graphs since these are two distinct measures for analyzing this issue, and we did not want to cause confusion. The relevant figures are presented in tables 1 and 2 on the preceding page.*

Additional Comment: We understand the two graphs work together but felt the need to respond given what we feel is a distortion in Graph 1. First, a majority of the contracts (known as "Expense Authorizations") included in graph one were executed under our contracting plan where sole sourcing is permitted because of the low dollar value of these agreements and limited nature of the contract services (e.g., a webinar lasting a few hours, or a seminar for educators). Removing those contracts (Expense Authorizations) from the data gives a completely different picture. These expense authorization contracts are about 75% of all AOE contracts, and are all sourced per the Administration's approved contracting plan for AOE. The contracts for AOE that go through the standard state procurement procedure represent the overwhelming majority of contracted dollars expended by SOV through AOE; and, among these contracts, competitive bidding and procurement is the norm. Accordingly, and as noted already, the overwhelming majority of total public dollars paid out in these contracts (by SOV through AOE) resulted from contractor selection procured through a competitive bidding process. Graph 2 underrepresents the total dollars that are contracted through competitive bidding because Graph 2 does not explain that this graph includes monies expended through Expense Authorization Agreements.

*The fact that the EAs were approved does not change their designation as sole source contracts, which is what Graph 1 portrays. AOE's claim that "the overwhelming majority of contracted dollars" were expended via competitive bidding is clearly shown in Graph 2.*

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## **Agency of Human Services**

Please find comments below from AHS Central Office on State Auditor Doug Hoffer's Report to the Agency of Administration on Sole Source Contracts.

For SFY15 we had 28 contracts listed in the report. However, only 20 of them were Sole Source. 2 of them were listed as sole source but were categorized incorrectly. 6 of those sole source contracts were under \$500 and therefore did not justify the process of developing

an RFP or simplified bid. They were for meeting space or specialized training. Of the remaining 14 sole source contracts here is the breakdown of them,(11 are actual sole source contracts and 3 are amendments to those sole source contracts). In actuality we had only 11 Sole source contracts of appreciable value:

Ouelette and Associates - \$16,200: This was for specialized on-site training although an RFP or Simplified bid was not performed, the Project manager researched what companies could perform the training needed and it was determined that this was the only company that provided such training in-person.

Results Scorecard - \$55,000 4/15/14 & \$55,000 3/13/15 (Amendment): This sole source contract amendment was executed because we had a contract with this company through the Health Department. By leveraging the existing contract, duplicative administrative effort was minimized as we did not have to start from scratch in developing requirements because the vendor was already working on performance based measures within the state and AHS. This also presented a uniform operating and reporting platform. All that was needed was to purchase more licenses. In addition, the software was built from the RBA system which is what we are using to build our performance measures.

Vermont Legal Aid - \$1,323,909: This contract has been a long standing grant. In SFY15, we converted the agreement into a contract. VLA is the only statewide law firm of its size and unique mission in the state of Vermont than can adequately serve the number of special population clients requiring legal representation.

United Ways of Vermont 2-1-1 - \$578,767: This contract was previously a grant and was converted to a contract for SFY15. To the best of my knowledge there is no other organization in the state that is able to provide the database services and legislative and Public Service Board reports. They have developed an extensive database that connects those in need to necessary services in Vermont. The Maine organization staffs the Vermont 211 line during off hours (8pm - 8am M-Th., and 8pm Fri. - 6am Monday), but solely rely on VT211's database to provide resources for Vermonters.

Technical Assistance Collaborative (TAC) - \$5,000 6/5/14 & \$13,000 4/8/15 (Amendment): TAC is unique and well-equipped to provide services to Vermont organizations that serve the homeless. We will certainly look into doing a simplified bid next year to see if there are other organizations capable of doing this work.

Champlain College - \$5000 8/18/14 & \$15,000 1/27/15 (Amendment): They provide forensic evaluation services for our HR investigations unit. This organization is used by DHR for this same type of work and we understand they are the least expensive and most qualified in the state which is why DHR has a large (\$100,000+) contract with them. We proceeded with this standalone contract when DHR's contract was about to expire, but our investigations unit needed to proceed with the analysis of PC hardware. We will look into combining our needs with DHR's contract going forward.

McNeil, Leddy and Sheehan - \$80,000: We have engaged two contracts with this law firm for

negotiating AFSCME collective bargaining agreements. They are the same firm used by the State for negotiations with the VSEA which is why we have continued to use them. Their experience in negotiating collective bargaining agreements for the State makes them uniquely qualified for this work.

Career Networks - \$4,450 10/13/14, \$1200 12/1/14, \$1200 5/6/15: Career Networks provides all the trainings and career services to the AmeriCorps members. Although this is the organization that SerVermont has been using, we will perform a simplified bid next year.

Jim Giffin - \$14,000: Jim Giffin was the previous CFO of AHS. He recently retired and we requested a contract with him to allow us the time needed to transition to the new CFO specifically regarding Jim Giffin's previous work on several key ongoing projects such as Integrated Eligibility and the Global Commitment Waiver renewal.

*We made changes to the report based on the corrected information submitted, but we did not change the classification of the Sheriff's contract because it was awarded via a sole source selection process and should therefore be characterized as such.*

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## **Department for Children and Families**

While the Department does have some comments on findings specific to DCF, the Department acknowledges the important work and findings presented in this report. The competitive bidding process, which is aimed at ensuring taxpayers receive the highest value for their contracted services, is a fundamental state policy.

### DCF Comment #1: The Phantom Ruling p.9

PNMI programs provide residential treatment services for children with highest level needs. These contracts have been sole sourced for many years, going back to 1996. The understood justification for the sole source contract was guidance that the Department received from HCFA (Health Care Finance Administration). The Department acknowledges that after research and review of hardcopy and electronic files, it is not able to provide documentation of this communication from HCFA. The Department is currently reviewing its process for PNMI contracts in conjunction with state and federal laws and regulations regarding PNMI.

### DCF Comment #2: No Reason Provided p. 13

DCF acknowledges the finding on page 13 regarding inadequate justification provided for sole source contracts with out-of-state residential facilities that serve children. DCF contracts with these out-of-state residential facilities to provide care (akin to the care provided above by PNMI programs) for children with intensive highest-level needs who cannot be served by any residential program in-state. The Department's view is that sole source contracts for these programs that provide unique services for our children with very specific needs is appropriate. DCF does, however, agree that the cover memo for these

contracts has not adequately provided the justification needed for sole sourcing these contracts and the Department will correct that error in the future.

*The justifications should be supported with evidence that the facilities selected are actually unique. That is, are there other similar facilities that might bid if given the opportunity?*

DCF Comment #3: DCF Example p.15

The Department respectfully submits that the finding on page 15 regarding DCF were made in error. The report cites the DCF contract with the Vermont Children's Trust Foundation (VCTF) and notes that the DCF contract with VCTF states that VCTF is "the organization designated through the statute to manage and provide the services being procured through this contract. No other entity has the capability or authority to provide these services." The report challenges this representation by citing the relevant statutes found at 33 VSA chapter 33 and the lack of statutory authority to support these statements.

Please note that the session law from 1985 that created the Children's Trust Fund is the correct reference for the authority of the Secretary of the Agency of Human Services to create the VCTF as a non-profit agency to manage the fund. See Act. No. 177 (1985), §9. The relevant language of this session law can be found in the historical note to 33 V.S.A. §3306 (found in title 33 of the printed Vermont Statutes Annotated). This historical note quotes the 1985 session law:

"Eligibility for exemption from federal income tax as nonprofit charitable activity. 1985, No. 177 (Adj. Sess.), §9, provided: "It is the intent of the general assembly that the children's trust fund created by this act be organized and administered so as to be, at all times, eligible for §501(c)(3) (26 U.S.C. §501) status as a nonprofit charitable activity under the income tax laws of the United States. The secretary of the agency of human services is authorized and directed to apply immediately to the Internal Revenue Service for §501(c)(3) status for the children's trust fund."

DCF has historically interpreted the language and legislative intent of Act 177 (1985) as being clear that the non-profit agency created to "administer" the children's trust fund should be the same organization that manages the children's trust fund.

*There may be some confusion here. The contract is with the Foundation but the session language is about the Fund. Moreover, the Fund was created in the 80s but AHS didn't start contracting with the Foundation until 2009 (according to the Foundation website). If true, with whom did DCF contract with (if anyone) for the preceding 24 years? Please provide documentation if any exists.*

*We respectfully disagree about the intent of the session language. The language calls for the creation of a 501(c)(3) but does not say anything about managing or providing services. It simply says the fund shall be "organized and administered so as to be eligible...for" non-profit status (Emphasis added).*

Additional comment: We acknowledge and apologize for any confusion. It may be helpful to have some further background on the Vermont Children's Trust Foundation (VCTF) and the Children's Trust Fund. VCTF is the non-profit that was created pursuant to the 1985 session law cited in our previous response for the purpose of being able to fundraise private funds to supplement state general funds appropriated to the Children's Trust Fund by the General Assembly. Also included in the Children's Trust Fund are federal Juvenile Justice and Delinquency Prevention Act (JJDP) funds. The Children's Trust Fund is maintained by the Agency of Human Services pursuant to 33 VSA §3306. The Children and Family Council for Prevention Programs (Council) and the Agency together solicit proposals for grant awards from the Children's Trust Fund for community-based child abuse and delinquency prevention programs. Prior to 2009, the Agency managed the Children's Trust Fund. In 2009, the management of the Children's Trust Fund was transferred to VCTF through a contract. The Department acknowledges that it may be appropriate to put the management of the Children's Trust Fund out to bid and will explore that issue further. No matter who manages the Fund, VCTF will still be the private fundraising organization partner contributing to the Fund and collaborating with the Council and the Agency.

DCF Comment #4: Contractor Familiarity p.16

DCF acknowledges that the information that DCF originally provided to the Auditor's Office appears to be factually inconsistent. DCF has done further research into this issue and would like to correct its factual errors. The RFP for physician and psychiatric services was actually issued in 2008, not 2010 as originally reported. UVM/Fletcher Allen Health Care was the only responder to the 2008 proposal, and was selected. This contract was then amended in 2009 to extend the contract through September 30, 2010. This contract was awarded again to UVM/FA via simplified bid to extend through 2011. In June 2011, this contract was awarded as a sole source, approved based on the following justification, and has been sole sourced since then:

"Fletcher Allen Health Care, Inc. successfully bid on this project previously and submitted the sole proposal received. Fletcher Allen Health Care, Inc. is the only organization able to provide this service. Fletcher Allen Health Care, Inc. had high scores in each of the scoring categories (quality of contractors' experience, bidders' capacity to perform, responsiveness to RFP specs and program cost). Fletcher Allen Health Care, Inc. has an excellent past experience providing residential services to youth and has successfully administered these services for the past several years. The proposed budget and rate was reasonable and fair, and in fact, provided reductions in their budget over past years. The contractor has been successfully providing these services to the State for the past 10 years."

Similar to the finding above regarding PNMI programs, the Department is currently reviewing its process for contracting for these services.

*Thank you for the correction. We will revise the text once we receive the supporting documentation. However, the comment does not address the core*

*issue, which is the unsupported assertion in the justification that FAHC “is the only organization able to provide this service.*

Additional comment: Please see attached documentation regarding the 2008 RFP and 2011 sole source contract. We cannot find documentation of a simplified bid in 2011 – we will follow up with that documentation or a factual correction if that is appropriate. In any event, getting to the core issue, DCF acknowledges that the contract between Woodside and UVM Medical Center for physician and psychiatric services at Woodside should be put out to bid and we plan to do that soon as our current contract expires June 30, 2016.

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## **Department of Vermont Health Access**

DVHA Grants & Contracts has been making strides to streamline the contract routing process and takes the necessary steps to make every reasonable effort to utilize a competitive solicitation process. However, a sole source waiver memo is necessitated in cases where an existing contract that was originally put out to bid with a potential to renew expires due to several reasons (delayed federal approval or the elongated State review process). Additionally, Sole Source agreements under the SIM program were previously approved by the SIM Leadership Team before coming to the DVHA Business Office and a sole source waiver memo was approved by AoA during the routing process.

The \$45 million SIM Grant that was awarded to the State in 2013 requires Vermont to design and test alternative payment models on an aggressive timeline. This grant requires the State meet specific programmatic milestones each year and report on progress to the Center for Medicare and Medicaid Innovation, the awarding Federal agency. A key feature of this grant is that it is a public private partnership. Vermont uses work groups, comprised of representatives from both the private and public sector to make recommendations to a Core decision-making team, also comprised of individuals from the public and private sectors. These recommendations are related to policy planning and spending of the federal funds. These funding proposals that result in contracts are discussed in public meetings. Both the Stone Environmental contract and the Behavioral Health Network contract were discussed at work group, Steering Committee, and the Core Team meeting. All of those meetings were open to the public, and publicly warned according to Vermont's Open Meeting Law requirements.

During these meetings, discussion occurred, codified in meeting minutes that are also posted publicly, regarding the projects that are proposed and the potential vendors that would be used. Specific discussion occurred on the time sensitive nature of the work and the choice was explicitly made to recommend sole source procurement.