

# State Procurement & Leasing of Non- Governmental Facilities for State Agencies Scoping Paper

December 12, 2016

## Management Audit Committee

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**Notice on Auditing Standards:** Scoping papers are not an auditing standards-based research product. Scoping papers are intended to provide the Management Audit Committee with a summary on a potential evaluation topic (including descriptions of basic agency, program, or procedural functions) on which to decide if a full program evaluation is required. This scoping paper was prepared with information obtained from the agency(ies) and staff listed. The information was not independently verified according to governmental auditing and evaluation standards.

If this topic moves forward to a full evaluation, the evaluation will be conducted as much as practicable according to generally accepted governmental auditing standards promulgated by the Comptroller General of the United States, as required by W.S. 28-8-107(e). Information contained in this paper, as well as all subsequent information gathered during the evaluation will be independently verified and reported according to the auditing standards.

## Introduction

In September 2016, the Management Audit Committee (Committee) directed Legislative Service Office (LSO) Program Evaluation staff to prepare a scoping paper on the State procurement process that included a review of the cost and procedures associated with leasing private facilities for State offices. Staff reviewed these processes to assist the Committee in determining if a full evaluation would be beneficial to the Legislature at this time.

## Background

In 1971, the Wyoming Legislature created the Department of Administration and Fiscal Control (DAFC) to act as a centralized agency to administer and monitor the State procurement process. Prior to 1971, the Board of State Supplies, Surplus Property Agency, Superintendent of Building and Grounds, and several other state agencies were charged with different responsibilities related to procurement, contracting, and the leasing of office facilities. This department consisted of six divisions, including the precursor to today’s procurement and leasing operations.

The 1971 legislation provided the foundation for processes that are largely in effect today. Since 1971 there have been two major changes to the state procurement process. First, in 1991, the Legislature created the Department of Administration and Information (A&I) to replace the Department of Administration and Fiscal Control. This new agency also had six divisions. Table 1, below, summarizes the evolution of the different divisions created for these agencies in 1971 and 1991.

**Table 1**

**1971 and 1991 Reorganizations of Centralized State Administrative Functions**

| Department of Administration and Fiscal Control (1971)  | Department of Administration and Information (1991)   |
|---|---|
| <ul style="list-style-type: none"> <li>▪ Budget</li> <li>▪ Purchasing and Property Control</li> <li>▪ Personnel</li> <li>▪ Centralized Accounting and Computer Services</li> <li>▪ Central Services, and</li> <li>▪ Statistical Research</li> </ul> | <ul style="list-style-type: none"> <li>▪ Procurement Services</li> <li>▪ Personnel Management</li> <li>▪ Computer Technology</li> <li>▪ Facilities Management</li> <li>▪ Economic Analysis, and</li> <li>▪ State Library</li> </ul> |

Source: Legislative Service Office summary of Wyoming statutes.

Second, in 1997, the law was amended to change the names and responsibilities of the Divisions within A&I. With this change, the

Procurement Services Division became the General Services Division.

### **Recent Legislation**

Until the passage of 2016 Wyo. Sess. Laws Ch. 105 (original Senate File 92), information and processes related to construction projects was provided through A&I. However, in accordance with W.S. 16-6-1001(a)(i)(E), reporting on capital construction has now shifted to the newly established State Construction Department, Construction Management Division. The procurement of construction services was moved under the State Construction Department, rather than the General Services Division of A&I. The new statute did not, however, create new requirements. It also transferred the School Facilities Department to the State Construction Department.

The law states that in procuring construction projects, bidders must provide a bond or other guarantee equal to 10% of the aggregate amount of the bid or contract when the bid or contract exceeds \$1,500. If the bid is less than \$25,000, it must be retained for the entire project. Anything over \$25,000 requires a bond of the full price of the contract.

## **Non-Construction Procurement and Contracting Process**

In accordance with W.S. 9-2-1016, the Department of Administration and Information (A&I), General Services Division (Division) defines procurement as all actions related to buying, purchasing, renting, leasing, or otherwise acquiring any supplies or services.

Wyoming Statutes provide three approaches and methods for procuring non-construction items: (1) competitive sealed bidding, (2) competitive negotiation, and (3) noncompetitive negotiations. Competitive sealed bidding is used to procure supplies or services exceeding \$7,500 is the standard approach. Agencies are authorized to make purchases of \$7,500 or less without following the procurement process. Table 2, on the next page, summarizes the basic conditions under which each procurement method may be pursued by an agency. In addition, A&I provided several flow charts for these processes, which can be found in **Appendix A**.

According to W.S. 9-2-1016(b)(iv), the Division is responsible for promulgating rules, adopting standard forms and procedures, and a uniform commodity classification system for supplies acquired. Most all state agencies are subject to A&I and Division rules and regulations governing procurement, management, control and disposal of supplies and services.

**Table 2**  
**Three Methods for Procuring Goods and Services**

| <b>Competitive Sealed bidding</b>   | <b>Competitive Negotiation</b>  | <b>Noncompetitive Negotiation</b>  |
|---|---|--|
| When supplies and services exceed \$7,500, and when the final product is so similar that cost of the project could be the only criteria used in evaluating a project, a competitive sealed bidding is required. | When it is determined in writing, by the administrator of the agency letting the bid, that competitive sealed bidding is not feasible or practical. | Only when competition is not feasible as determined by the administrator of the agency letting the bid in writing prior to award and the Governor or his designee approve. |

Source: Legislative Service Office summary of Department of Administration and Information documents.

**Procurement Exceptions and Allowances**

Several statutorily permitted alternative procurement processes or exceptions are afforded to agencies. Certain entities, such as the Wyoming Business Council, University of Wyoming, the Community Colleges, school districts, and the Wyoming Department of Transportation, are wholly or partially exempt from the procurement process requirements. Additionally, under W.S. 9-2-106, when an administrator (the head of the requesting entity) determines in writing that the use of a competitive sealed bidding processes is not *feasible or practical*, contracts for supplies or services may be made by competitive negotiation. If the bid is in excess of \$20,000 the Governor or his designee must approve the process.

Statewide elected officials may also engage in non-competitive bidding based on his or her determination that competition is not feasible. The final alternative to the competitive bid process is emergency purchases. If an agency needs to make a purchase due to an emergency situation, written or verbal approval from the Procurement Manager is required. All bid exception approvals are tracked by A&I through a Google-based system.

**Data Systems and Reporting**

In February 2015, A&I transitioned the bid process to an automated system known as the Bid Information Center, or Public Purchase website. Through the new systems, agencies and bidders/vendors can track the requests on-line. The approval process for a request takes up to one week on average. Once the request is approved, the bid is announced through the automated systems and vendors may apply. All bids for the current fiscal year are also listed on the A&I website.

After the Procurement Section (Procurement) within the Division has completed the review of an agency's request, a purchase order or master service agreement is entered into the State's unified accounting system, WOLFS or Wyoming Online Financial System, so appropriate payment can be made. All bids are internally tracked by Procurement through a spreadsheet.

According to information provided by A&I, 499 bids were opened between July 30, 2015 and September 15, 2016. Of those, 345 bids were awarded for an approximate total of \$126,736,247. As of the writing of this paper, there are several bids that are pending. Additionally, six bids do not have purchase orders or master service agreements established through Procurement, and three of those bids do not list award amounts. Table 3, below, illustrates the number and dollar amount of bids issued by each agency.

**Table 3**  
**Total Procurement Award Amount,**  
**with the Number of Bids and Contracts, by Agency**

| Agency                             | Total Amount | Number of Opened Bids | Number of Awarded Contracts |
|------------------------------------|--------------|-----------------------|-----------------------------|
| A&I                                | \$7,092,780  | 52                    | 33                          |
| Attorney General                   | \$797,280    | 16                    | 11                          |
| Department of Agriculture          | \$291,391    | 13                    | 8                           |
| Department of Corrections          | \$1,926,308  | 91                    | 54                          |
| Department of Family Services      | \$2,358,481  | 16                    | 15                          |
| Department of Health               | \$79,915,454 | 68                    | 54                          |
| DEQ                                | \$19,645,092 | 32                    | 30                          |
| Education                          | \$1,864,828  | 21                    | 19                          |
| ETS                                | \$1,500,000  | 4                     | 1                           |
| Game and Fish                      | \$339,890    | 6                     | 3                           |
| Governor                           | \$7,000      | 1                     | 1                           |
| Insurance Department               | \$0          | 1                     | 1                           |
| Livestock Board                    | \$12,161     | 1                     | 1                           |
| LSO                                |              | 1                     |                             |
| Military Department                | \$3,363,986  | 48                    | 36                          |
| Oil & Gas Commission               | \$2,140,587  | 8                     | 7                           |
| Professional Teaching Bd.          | \$50,000     | 1                     | 1                           |
| Real Estate Commission             | \$0          | 3                     | 2                           |
| Retirement System                  | \$1,123,550  | 5                     | 3                           |
| Secretary of State                 | \$14,082     | 3                     | 1                           |
| State Auditor                      | \$283,200    | 2                     | 1                           |
| State Engineer                     | \$21,696     | 1                     | 1                           |
| State Lands                        | \$337,815    | 12                    | 8                           |
| State Parks and Cultural Resources | \$2,594,296  | 65                    | 40                          |
| Tourism                            | \$0          | 3                     | 1                           |

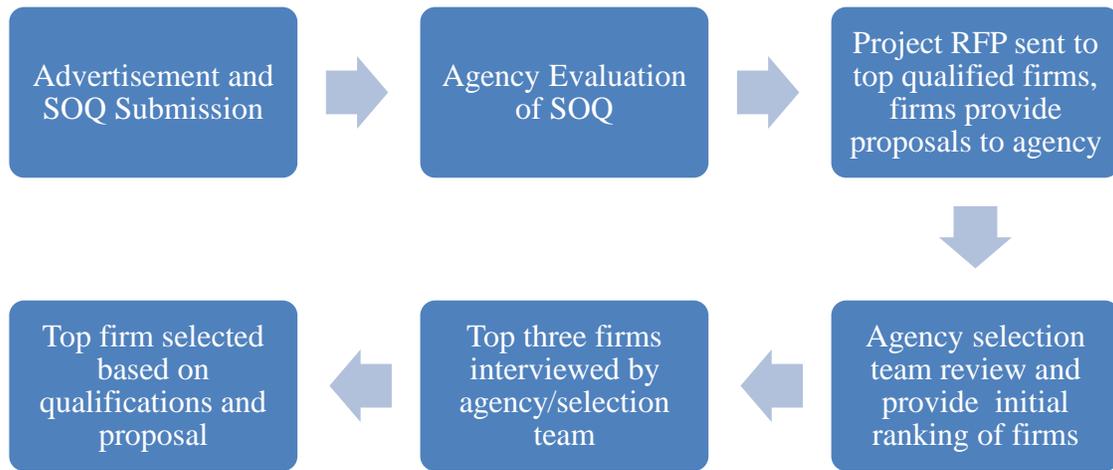
| Agency                       | Total Amount  | Number of Opened Bids | Number of Awarded Contracts |
|------------------------------|---------------|-----------------------|-----------------------------|
| Treasurer                    | \$610,836     | 3                     | 1                           |
| Water Development Commission | \$12,294      | 2                     | 2                           |
| Workforce Services           | \$433,240     | 20                    | 10                          |
| Total                        | \$126,736,247 | 499                   | 345                         |

Source: Legislative Service Office summary of Department of Administration and Information Bid Book data.

## Procurement of Professional Services

In the event that an agency must procure professional services, W.S. 9-2-1027 through 9-2-1033, known as the *Professional Architectural, Engineering and Land Surveying Services Procurement Act*, govern that process. As shown in Figure 1, below, the selection of professionals is initiated by establishing qualifications (through a statement of qualifications (SOQ)) of a professional services firm to complete a job, rather than compelled by a project bid amount.

**Figure 1**  
**Professional Services Procurement Process**



Source: Legislative Service Office summary of agency information and Wyoming statutes.

In addition to basic qualifications to perform the work on a project, the State requires that each firm also be evaluated by an agency based on statutory criteria, listed below, along with criteria listed within a project-specific RFP.

- Ability of professional personnel
- Past performance
- Willingness to meet time requirements
- Location (of the firm)

- Residency
- Current and projected work loads
- Volume of work previously awarded to the firm by the agency
- Equitable distribution of contracts among qualified firms.

## **Review of Facility Leasing Requirements for State Government Use**

Leasing of facilities for the State is governed by State Building Commission rules, authorized through W.S. 9-2-1016(b)(xix). This provision states that leasing of property is conducted on a bid and proposal basis with advertising of space needs and square footage in community or local newspapers. Contracts can only be negotiated through the non-competitive bid process if the administrator determines in writing that competitive bidding, or the lessor is a governmental agency.

### **Leasing**

In 2012, the State Legislature provided the State Building Commission with the authority to buy and lease property. Under W.S. 9-5-102, the State Building Commission is authorized to purchase or lease “suitable quarters for the administration of Wyoming Employment Security Law and to development improvements, maintain and repair the lands and buildings.”

However, there is limited statutory guidance related to the lease of facilities for State use. First, W. S.9-5-105 requires that prior to leasing any ‘land’ for State use, the State Building Commission make a determination that no other State owned property could be used for that same purpose. Second, any state agency assigned to a leased facility is required to follow the rules and regulation of the State Building Commission unless the agency elects to adopt different rules.

Under the State Building Commission’s Chapter 7 Rules, all leasing must be completed using a request for proposal (RFP). However, the rules promulgated by the State Building Commission are not applicable to the Legislative or Judicial Branches in Wyoming.

According to A&I, the Division Leasing Program (Program) is responsible for real property rentals statewide. Program staff negotiates lease agreements, maintains records and leased space information, and provides the proper documentation to A&I Accounting to prepare payment documents and assists with the preparation of bid documents. The only agencies specifically exempted from the guidelines established by the Division within its authorizing statutes are the Game and Fish Department, the

Department of Transportation, and the Wyoming Military Department.

Each RFP is advertised to include criteria such as the amount of space, location, occupancy date, and special requirements. The proposals are to be received and opened by the Purchasing Section of Division. The agency requesting the space then tours each feasible facility and makes its recommendation to the leasing manager within the Division. In addition, the Office of the Attorney General is required to approve all leases to form.

**Leased Space**

According to A&I, the current total amount of lease payments from July 1, 2016 through June 30, 2017 is \$11,513,731, and may be paid quarterly, semi-annually (in July and December each year), or annually (in July each year) depending on the lease contracts. Most leases are paid annually (\$9,917,900 or 86% of the total lease payments) and semi-annually (\$1,591,876 or 13.8% of the total lease payments). Only \$3,956 is paid quarterly.

These lease payments are encompassed by 209 contracts for leased office space, parking, storage space, and land. Table 4, below summarizes these contracts by the space leased. It should be noted that some leases are for more than a single year. As such, the annual contract amount for each contract is shown.

**Table 4**  
**State of Wyoming Annual Contract Costs, by Type of Leased Space**

| Type of Leased Space     | Annual Rent         | Square Feet    | Cost per Square Foot              | Number of Leases |
|--------------------------|---------------------|----------------|-----------------------------------|------------------|
| Office                   | \$9,545,080         | 655,269        | \$14.57                           | 156              |
| Office, Parking          | \$1,234,922         | 71,689         | \$17.23                           | 28               |
| Land                     | \$236,250           | -              | N/A                               | 1                |
| Office, Parking, Storage | \$191,133           | 126,015        | \$1.52                            | 3                |
| Office, Storage          | \$186,814           | 11,626         | \$16.07                           | 5                |
| Parking                  | \$68,900            | 164 (spaces)   | \$35<br>(per space,<br>per month) | 6                |
| Storage                  | \$34,042            | 4,099          | \$8.30                            | 7                |
| Other <sup>1</sup>       | \$16,591            | 800            | \$20.74                           | 3                |
| <b>Grand Total</b>       | <b>\$11,513,731</b> | <b>869,498</b> | <b>\$13.24</b>                    | <b>209</b>       |

Source: data provided by the Department of Administration and Information

<sup>1</sup> “Other” includes the Livestock Board, Miner’s Hospital Board, and Department of Administration and Information leases.

Several agencies hold multiple leases and multiple lease types. The number of leases by agency is shown in the Table 5, on the next page.

**Table 5**  
**Number of Leases Held, by Agency**

| Agency                                      | Number of Leases | Total Annual Rent   |
|---|------------------|---------------------|
| Adjutant General (Military Department.)     | 3                | \$256,536           |
| Administration & Information                | 6                | \$73,668            |
| Agriculture                                 | 5                | \$29,393            |
| Attorney General                            | 8                | \$255,141           |
| Audit                                       | 6                | \$35,790            |
| Board of Certified Public Accountants Board | 2                | \$8,105             |
| Board of Cosmetology                        | 1                | \$26,065            |
| Board of Geologists                         | 1                | \$22,572            |
| Board of Medicine                           | 1                | \$88,939            |
| Board of Nursing                            | 1                | \$73,723            |
| Board of Nursing Home Administrators        | 1                | \$5,701             |
| Board of Outfitters & Professional Guides   | 1                | \$24,000            |
| Board of Pharmacy                           | 1                | \$34,890            |
| Corrections                                 | 24               | \$893,622           |
| Education                                   | 4                | \$46,046            |
| Environmental Quality                       | 2                | \$192,502           |
| ETS   | 4                | \$21,733            |
| Family Services                             | 29               | \$2,587,660         |
| Fire Prevention & Electrical Safety         | 6                | \$35,289            |
| Health                                      | 25               | \$1,833,407         |
| Insurance                                   | 1                | \$207,900           |
| Livestock Board                             | 2                | \$8,600             |
| Miners Hospital Board                       | 2                | \$12,116            |
| Office of Administrative Hearings           | 1                | \$97,016            |
| Pari Mutuel Commission                      | 1                | \$9,634             |
| Professional Teaching Standards Board       | 1                | \$33,459            |
| Public Defender                             | 3                | \$82,986            |
| Public Service Commission                   | 1                | \$301,012           |
| Real Estate Commission                      | 1                | \$24,475            |
| Retirement System                           | 1                | \$229,559           |
| Revenue                                     | 9                | \$43,949            |
| School Facilities Commission                | 2                | \$9,518             |
| State Engineer                              | 21               | \$321,390           |
| State Lands & Investments                   | 5                | \$44,323            |
| State Parks & Cultural Resources            | 2                | \$186,996           |
| Water Development Commission                | 1                | \$324,420           |
| Work Force Services                         | 24               | \$3,031,598         |
| <b>Grand Total</b>                          | <b>209</b>       | <b>\$11,513,731</b> |

Source: Legislative Service Office summary of Department of Administration and Information data.

While there are no current guidelines on pricing based on square footage, the Leasing Program conducts agency surveys in order to gauge the appropriateness of leased office space. Agencies complete a questionnaire about their current office space, staff levels, and projected office needs. Although the survey does not identify the annual lease amount, the funding source for the leased space is provided.

The lease amount per square foot, varies depending on location. As shown in Table 6, below, the lowest amount per square foot can be found in Shoshoni at \$3. The highest amount per square foot is \$61, for office space leased by the Department of Audit in Woodlands, Texas. The highest in-state amount is in Jackson, Wyoming at \$23 per square foot.

**Table 6**  
**Annual Lease Amount by Location**

| <b>Town</b>  | <b>Annual Rent</b> | <b>Square Footage</b> | <b>Cost per sq. ft.</b> |
|--------------|--------------------|-----------------------|-------------------------|
| Afton        | \$51,156           | 4,071                 | \$12.57                 |
| Basin        | \$3,664            | 276                   | \$13.28                 |
| Big Piney    | \$18,280           | 1,749                 | \$10.45                 |
| Buffalo      | \$42,512           | 4,029                 | \$10.55                 |
| Casper       | \$870,672          | 62,177                | \$14.00                 |
| Cheyenne     | \$5,263,120        | 333,689               | \$15.77                 |
| Cody         | \$271,875          | 17,002                | \$15.99                 |
| Cokeville    | \$16,509           | 1,950                 | \$8.47                  |
| Diamondville | \$22,854           | 2,930                 | \$7.80                  |
| Douglas      | \$163,054          | 10,470                | \$15.57                 |
| Encampment   | \$2,659            | 300                   | \$8.86                  |
| Evanston     | \$146,293          | 10,749                | \$13.61                 |
| Evansville   | \$21,946           | 2,785                 | \$7.88                  |
| Gillette     | \$686,975          | 33,294                | \$20.63                 |
| Green River  | \$66,988           | 4,085                 | \$16.40                 |
| Greybull     | \$20,685           | 1,980                 | \$10.45                 |
| Jackson      | \$227,534          | 10,092                | \$22.55                 |
| Kemmerer     | \$16,360           | 1,450                 | \$11.28                 |
| Lander       | \$401,400          | 122,557               | \$3.28                  |
| Laramie      | \$471,503          | 24,678                | \$19.11                 |
| Lovell       | \$9,596            | 920                   | \$10.43                 |
| Lusk         | \$14,269           | 932                   | \$15.31                 |
| Lyman        | \$13,546           | 3,024                 | \$4.48                  |
| Mills        | \$158,962          | 10,784                | \$14.74                 |
| Mt. View     | \$37,979           | 2,220                 | \$17.11                 |
| Newcastle    | \$90,408           | 4,760                 | \$18.99                 |
| Pinedale     | \$56,805           | 3,454                 | \$16.45                 |

| <b>Town</b>        | <b>Annual Rent</b>  | <b>Square Footage</b> | <b>Cost per sq. ft.</b> |
|--------------------|---------------------|-----------------------|-------------------------|
| Powell             | \$87,650            | 7,320                 | \$11.97                 |
| Rawlins            | \$147,852           | 12,938                | \$11.43                 |
| Riverton           | \$208,571           | 28,153                | \$7.41                  |
| Rock Springs       | \$564,476           | 47,045                | \$12.00                 |
| Saratoga           | \$8,400             | 1,200                 | \$7.00                  |
| Sheridan           | \$620,958           | 33,717                | \$18.42                 |
| Shoshoni           | \$50,996            | 19,800                | \$2.58                  |
| Sundance           | \$52,378            | 3,292                 | \$15.91                 |
| Thermopolis        | \$30,280            | 2,243                 | \$13.50                 |
| Torrington         | \$275,030           | 18,478                | \$14.88                 |
| Wheatland          | \$190,004           | 10,378                | \$18.31                 |
| Woodlands, TX      | \$11,300            | 185                   | \$61.08                 |
| Worland            | \$98,233            | 8,342                 | \$11.78                 |
| <b>Grand Total</b> | <b>\$11,513,731</b> | <b>869,498</b>        | <b>\$13.24</b>          |

Source: Legislative Service Office summary of Department of Administration and Information data.

Note: Annual rental amounts are rounded to the nearest dollar.

### **Temporary Leased spaced**

In addition to ongoing leases, the State also leases temporary space for specific reasons. Most notably, for the Capitol Renovation Project, the State has leased several offices and parking spaces until the renovation projects are complete. Table 7, below, provides a summary of current, temporarily leased space in the State associated with the State Capitol Rehabilitation and Renovation project.

**Table 7**  
**Temporarily Leased Space**

| <b>Agency</b>                  | <b>Annual Rent</b> | <b>Square Footage</b> | <b>Cost per sq. Ft.</b> |
|--------------------------------|--------------------|-----------------------|-------------------------|
| Legislative Service Office     | \$782,743          | 50,350                | \$15.55                 |
| Statewide Elected Officials    | \$539,280          | 35,952                | \$15.00                 |
| Elected Officials Parking      | \$29,160           | 54<br>(spaces)        | \$540.00<br>(per space) |
| Dept. of Environmental Quality | \$592,480          | 37,030                | \$16.00                 |
| Dept. of Workforce Services    | \$187,424          | 11,714                | \$16.00                 |
| <b>Total</b>                   | <b>\$2,131,087</b> | <b>135,100</b>        | <b>\$15.77</b>          |

Source: Legislative Service Office summary of Department of Administration and Information State Temporary Leases document.

## **Potential Evaluation Questions**

There are specific criteria in statute governing procurement and leasing processes. However, there may be opportunity for LSO staff to evaluate the rules, policies, and procedures of A&I, the Construction Department, and the State Building Commission to ensure that statutes are being administered as intended and as efficiently and effectively as possible.

Should the Management Audit Committee determine that a full evaluation is warranted, the Committee may also consider its desire to evaluate one or both of the programs explained within this scoping paper: Procurement and/or Leasing. The questions listed below are potential example areas of interest to provide guidance and direction to the Committee and LSO staff should the Committee decided to approve a full evaluation. The Committee may add to or modify this list as it deems necessary.

### **Procurement**

1. What controls are in place to ensure that state agencies are using the procurement process as required by statute? Review bids and contracts to ensure proper processes are followed and enforced.
2. How often and under what circumstances are procurement contracts executed outside of the competitive bid process? Review procurement proposals/assignments to ensure proper processes, such as preauthorization and governor approval were followed or that exemptions were appropriately allowed.
3. How often has the procurement process been challenged and what have been the results or impacts of these challenges on procurement processes or requirements?
4. What are standard or typical timeframes for procurement to complete bid or RFP processes from beginning to end? What methods or alternate practices may assist with more timely completion of the procurement process?

### **Leasing**

5. What are industry standards or other states practices and processes to set or determine if leasing costs-per-square foot are reasonable and customary for the type of lease spaced needed by an agency?
6. What procedural safeguards and contract terms are in place to ensure fair rental practices?

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7. What are standard and reasonable practices for when and how often the state should reassess space needs and/or lease rates for non-temporary space?
8. What standards are in place and how does the agency ensure that proper maintenance is completed as necessary for leased facilities.

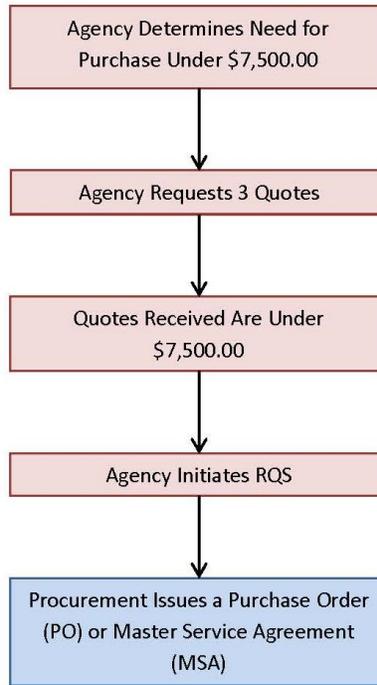
# Appendix A

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## Procurement Processes Flow Charts

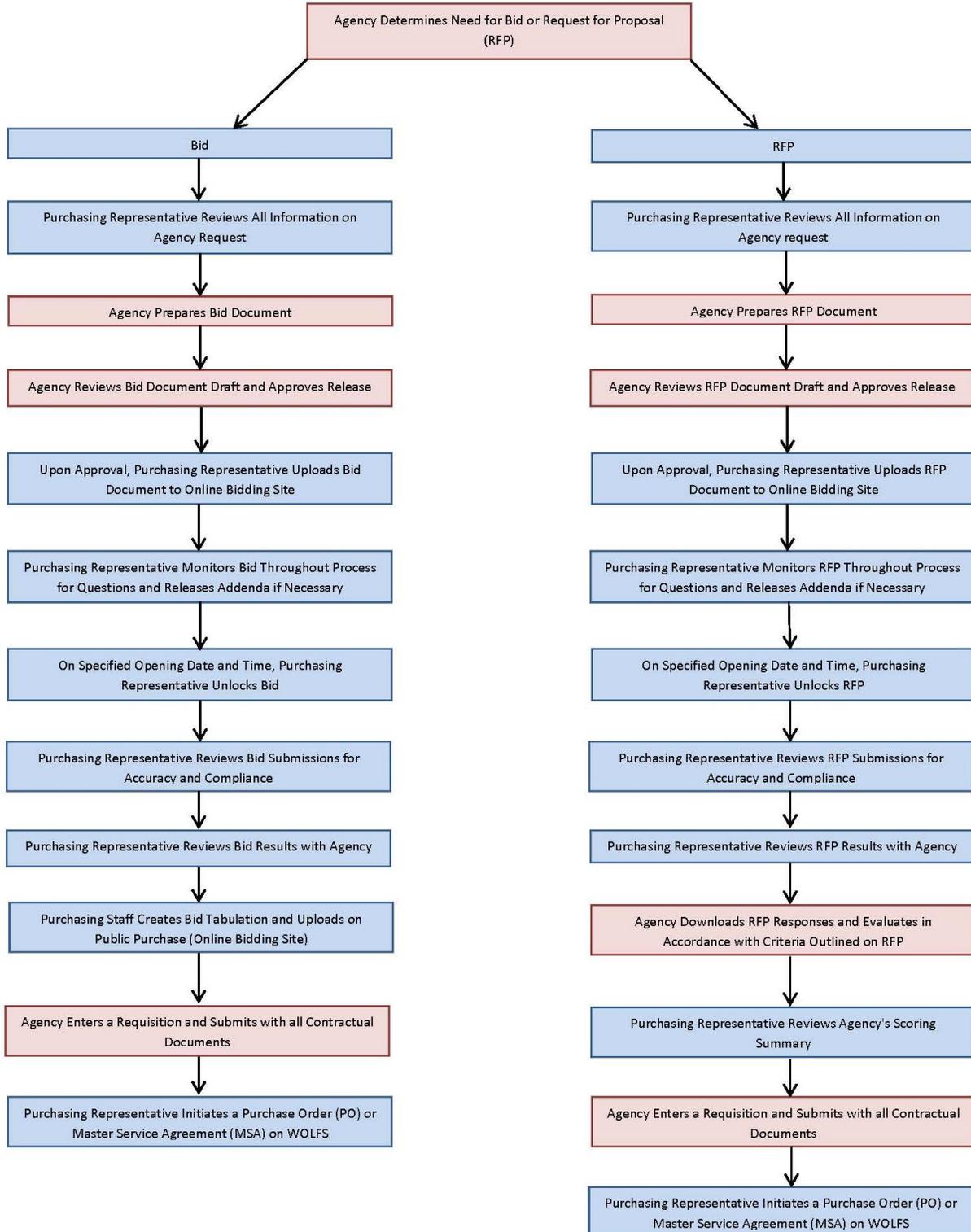
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**Figure A.1**  
**Quotes Flow Chart**



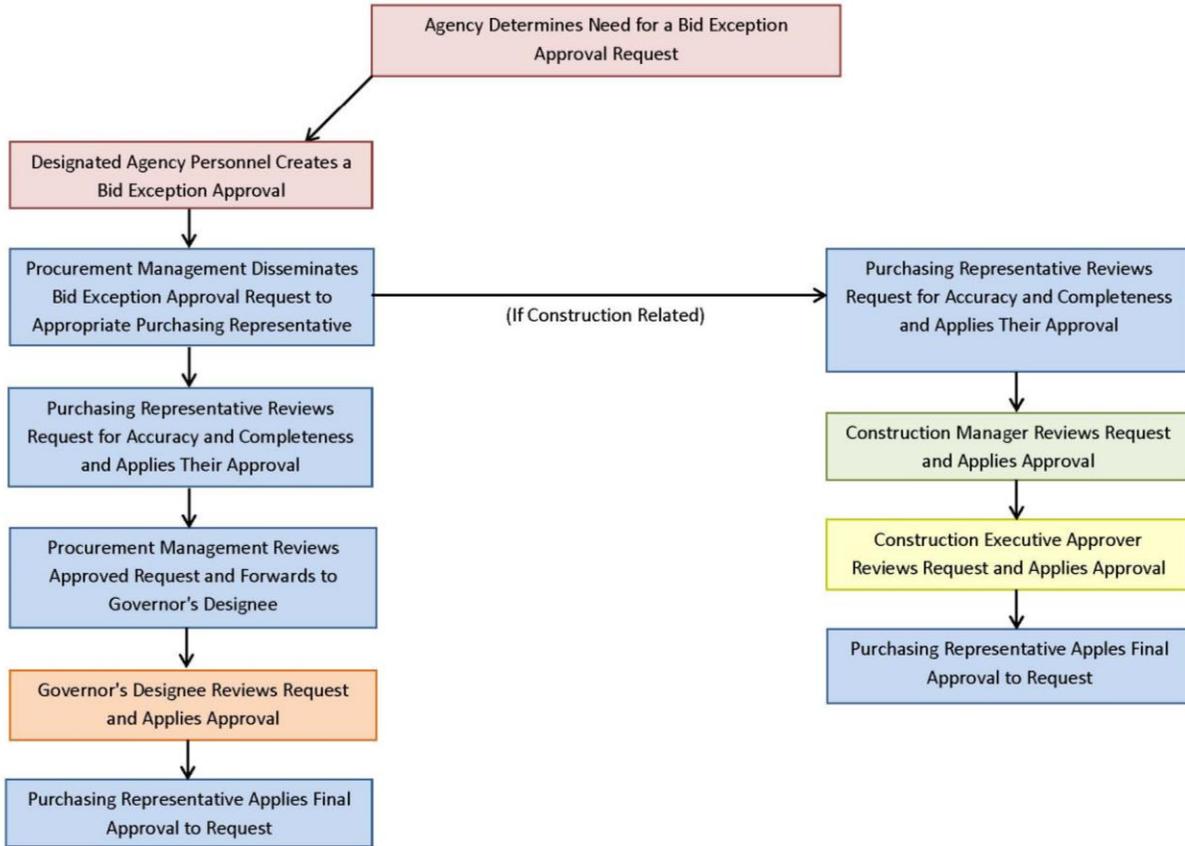
Source: Department of Administration and Information.

**Figure A.2  
 Request for Proposal Flow Chart**



Source: Department of Administration and Information.

**Figure A.3**  
**Bid Exception Approval Request Flow Chart**



Source: Department of Administration and Information.

