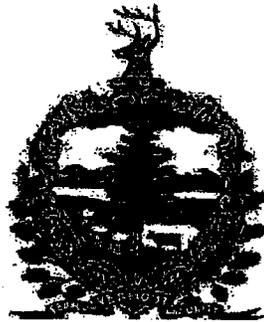


Vermont State Auditor

Douglas R. Hoffer



***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

<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).

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>

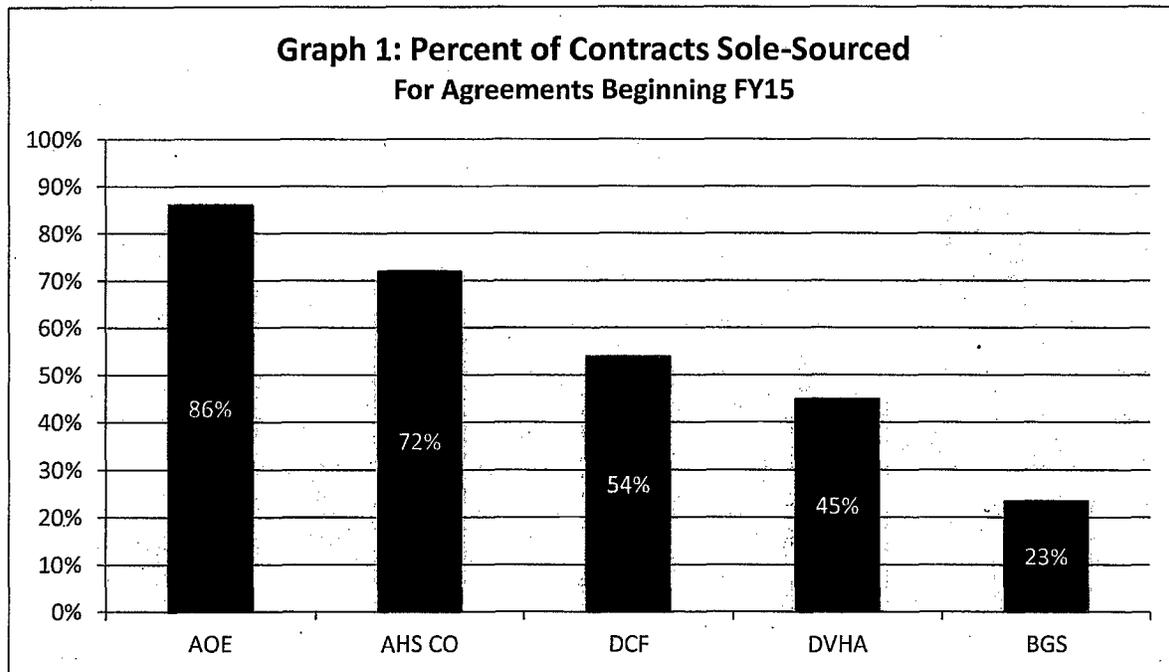
Agency / Department	Total # of Contracts	Total Value of Contracts
DCF	123	28,980,698
DVHA*	30	27,905,510
AOE	55	4,481,340
BGS	88	3,550,048
AHS CO	18	3,004,951
<b>Total</b>	<b>314</b>	<b>\$67,992,546</b>
<i>*DVHA figures in this table do not include a \$90 million contract mentioned in the text at left.</i>		

<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>

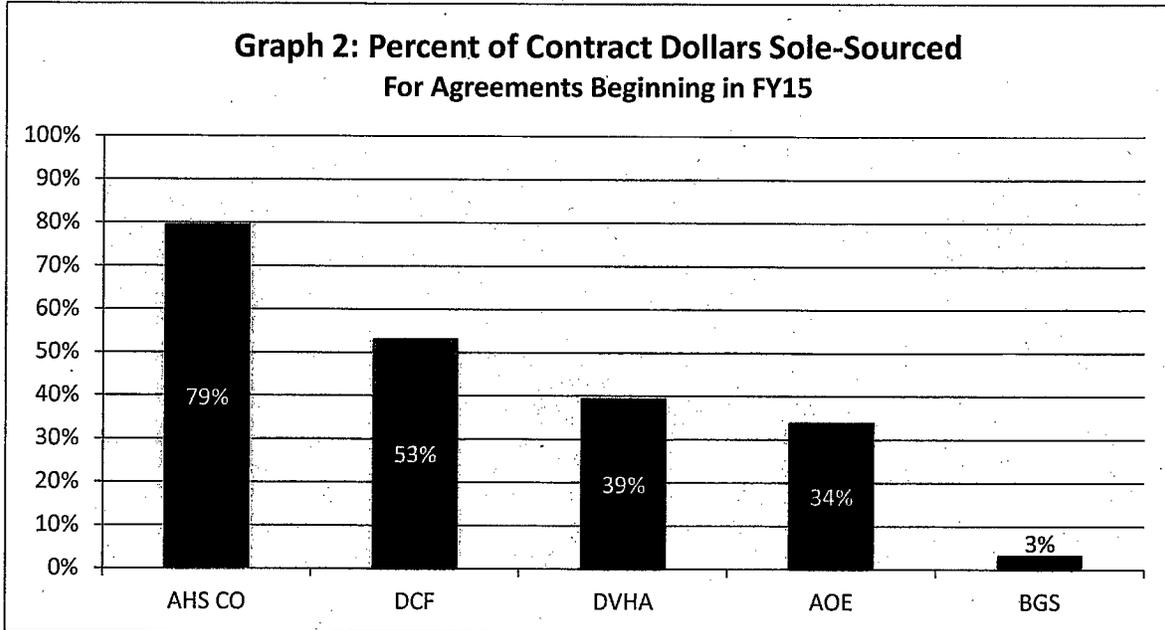
Using dollars instead of individual contracts to evaluate the incidence of sole source contracts, AHSCO had the highest utilization rate. Although AHSCO contracted the smallest dollar value of all five agencies, it sole-sourced 79% of \$3.8 million in FY15 contracts (See Graph 2). It is notable that 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.

