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January 13, 2016

The Honorable John Allen, Chair
Joint Legislative Audit Committee

The Honorable Judy Burges, Vice Chair
Joint Legislative Audit Committee

Dear Representative Allen and Senator Burges:

Our Office has recently completed a 24-month followup of the Review of Selected State Practices for Information Technology Procurement regarding the implementation status of the 7 audit recommendations (including sub-parts of the recommendations) presented in the performance audit report released in November 2013 (Auditor General Report No. 13-14). As the attached grid indicates:

- 2 are in the process of being implemented; and
- 5 are not yet applicable.

According to the Arizona Department of Administration's (Department) recommendation implementation plan, all implementation steps will be completed by March 2017. Auditors will conduct an additional followup in April 2017 to assess the Department's efforts to implement the recommendations from the November 2013 performance audit report.

Sincerely,

Dale Chapman, Director
Performance Audit Division

DC:kf
Attachment

cc: Craig Brown, Director
Arizona Department of Administration

Review of Selected Practices for Information Technology Procurement

Auditor General Report No. 13-14 24-Month Follow-Up Report

Recommendation

Status/Additional Explanation

Chapter 1: Department's standard terms and conditions protect the State, but should be specialized for IT procurement

<p>1.1 The Department should develop contract templates with IT-specific terms and conditions. Specifically, the Department should:</p> <ul style="list-style-type: none"> a. Undertake a review of terms and conditions used in IT procurements by considering all the requirements in the uniform and special terms and conditions, selecting all requirements that are relevant to IT procurements, and obtaining stakeholder input on these requirements from procurement, technology, risk management, and legal personnel, as well as representatives from state agencies and the vendor community, as appropriate; b. In reviewing and considering revisions to existing terms and conditions based on stakeholder input, seek direction from the Legislature and/or Governor, as appropriate; c. Based on its review, develop and implement a specialized template of contract terms and conditions for IT procurements. In addition, the Department should consider creating and using separate templates specific to procurement of IT materials and services; 	<p>At the time of the initial followup, the Department had developed a plan to implement the recommendations under 1.1 by March 2017. As of December 2015, the Department was continuing with that plan. Auditors will evaluate plan implementation progress in April 2017.</p> <p>Implementation in process The Department reported that a review of its uniform and special terms and conditions will take place as part of a separate procurement reform process. For this recommendation, the Department opted to focus on reviewing and revising the four terms and conditions that were the subject of this IT procurement audit: intellectual property, warranty, limitation of liability, and indemnification. The Department reported that it solicited stakeholder input on these clauses, revised them, and has submitted them to the Attorney General's Office and Risk Management for a final review. The Department plans to conduct a final stakeholder meeting to introduce the four revised terms and conditions.</p> <p>Not yet applicable The Department reported that revisions made to the IT terms and conditions related to intellectual property, warranty, limitation of liability, and indemnification were not of a nature that required direction from the Legislature and/or Governor. However, the Department reported that it will seek direction from the Legislature and/or Governor regarding future revisions if it is appropriate to do so.</p> <p>Not yet applicable As explained in the status for recommendation 1.1a, the Department's review of terms and conditions is in process. The Department reported that it plans to complete development of templates specific to the procurement of IT hardware, software, and services by the end of September 2016.</p>
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Recommendation

Status/Additional Explanation

- d. Develop and implement policies and procedures to guide the regular review of the IT-specific terms and conditions included in its contract template(s). These policies and procedures should indicate how frequently the terms and conditions should be reviewed and who should participate in the review;
- e. Provide training and/or written guidance to procurement officers at SPO and the state agencies with delegated procurement authority on how to use and modify the template(s); and
- f. Negotiate terms and conditions for IT procurements, as necessary, and provide training and/or written guidance to procurement officers at SPO and the state agencies with delegated procurement authority to reduce inconsistencies in the negotiation process that can be addressed through training.

Not yet applicable

The Department updated Technical Bulletin #46 in February 2015 to provide guidance on when procurement officers may use IT-specific terms and conditions. However, as explained in the status for recommendation 1.1c, the Department has not yet developed templates with IT-specific terms and conditions or developed guidance for how frequently the templates should be reviewed or who should participate in these reviews.

Not yet applicable

The Department reported that the State Procurement Office will provide training to state agency chief procurement officers and procurement staff in early 2017 on the use of its IT procurement templates and procurement negotiations.

Not yet applicable

See the status for recommendation 1.1e.

Chapter 2: Department should further modify intellectual property terms and conditions

- 2.1 The Department should include options for intellectual property rights, as described in the FAR, in the IT-specific contract templates recommended in Chapter 1 (see Recommendation 1.1, pages 10 through 11). These options should provide flexibility to ensure that the intellectual property rights included in a particular IT solicitation are appropriate based on who pays for the IT development costs. The Department should also provide training and/or written guidance on the appropriate use of these terms and conditions.

Implementation in process

According to the Department, it reviewed its intellectual property terms and conditions in February 2015. A resulting draft of the IT-specific intellectual property terms and conditions includes options for different degrees of ownership as described in the FAR. The Department is in the process of implementing this recommendation in conjunction with recommendation 1.1. As explained in the statuses for that recommendation, the Department plans to include the revised intellectual property clauses in IT procurement-specific templates, develop guidance for how the templates should be used, and train state agency chief procurement officers and procurement staff on the use of these templates.