

**DEPARTMENT OF PERSONNEL  
FY 2013-14 JOINT BUDGET COMMITTEE HEARING AGENDA**

**Wednesday, January 2, 2013  
9:00 am – 12:00 noon**

**9:00-9:20      INTRODUCTIONS AND OPENING COMMENTS**

**9:20-9:25      QUESTIONS COMMON TO ALL DEPARTMENTS**

1. The JBC occasionally hears complaints that base personal services reductions to capture vacancy savings result in more vacancy savings as managers reduce staff to absorb the reduction and then still experience turnover. Some departments refer to this as the "death spiral." Has your department experienced this problem? How does your department attempt to minimize and avoid the "death spiral?"

**9:25-9:40      DEPARTMENT OVERVIEW**

2. Please update us on the number of claims that are settled or paid out by the Department on the State's behalf on federal civil rights cases.
3. Please provide an update on the CUBS collection system.
4. Under statute, what types of debt is Central Collections solely allowed to collect and what types of debt do they have flexibility in collecting?
5. Have you told municipalities they cannot use private in-state companies to collect debt?
6. What is Central Collections success rate on collections?

**9:40-10:20      COMPENSATION COMMON POLICIES**

7. When was the last time state employees received pay raises?
8. Provide some history on how the number of distinct job classes in the State Personnel System has changed over time. What are the advantages and disadvantages of consolidating job classes? Would consolidating job classes save money?
9. Please summarize the findings of the Annual Compensation Survey Report. In particular, what are the findings with regard to benefits beyond employee pay?
10. How much vacancy savings did departments experience in FY 2011-12? Why is trying to get this figure so problematic?
11. How much flexibility do managers have to organize their offices in the most efficient and effective way to get the work done (e.g. increasing or decreasing the number of employees or changing the

job classes employed)? Is this type of flexibility given to managers in a consistent manner? What incentives do we provide managers to optimize the composition of their staff?

12. Explain how the State Personnel System adapts if prevailing market compensation decreases for a job classification.
13. How often does prevailing compensation drop in the private sector, necessitating the need for "saved pay" scenarios?

**For PERA**

14. The JBC staff briefing contained charts projecting the funded ratio and amortization period for PERA's state division. Please describe the process used to arrive at these projections. How do the projections account for fluctuations in the economy?
15. Please provide an update on the status of the lawsuit regarding S.B. 10-001 that reduced PERA benefits. What are the three factors the appeals court asked the district court to further consider?

**10:20-10:30 BREAK**

**10:30-10:50 LEGISLATIVE AUDIO TAPE DIGITIZATION AND R-4 PRESERVATION OF HISTORICAL RECORDS AT THE COLORADO STATE ARCHIVES**

16. Please identify additional resource needs related to resolving the audio tape playback machine failure issue, through repair or replacement.
17. How long have the playback machines been broken? How often do people come in and ask for playback of those records? What does the department do when people request access to these records?
18. Are there alternative sources of funding to repair these machines and digitize the audio records rather than through General Fund?
19. Have there been any state audits related to this issue that previously brought it to light? Has this issue been addressed by other committees? Why hasn't the department brought this forward to the General Assembly in the past? Has the department previously requested funding for this project? Is this beyond the scope of the Department? Should State Archives be located elsewhere such as with the State Librarian or the Secretary of State?
20. How often have legislative audio tapes been accessed? For what purpose are they accessed? Are there grants available through the State Historical Society and State Historical Fund for this? Has a needs assessment been done that could be submitted with a grant request from the State Historical Society? Should the General Assembly run legislation to include historical records for State Historical Society Fund grants?
21. What is the legal liability of not maintaining the records?

22. Is the JBC the committee that should address this issue with legislation or is there another committee, including the Committee on Legal Services or the Executive Committee, that is better positioned to deal with it?

**10:50-11:10 R-1 CENTRAL CONTRACTS UNIT RESOURCES**

23. Can the Department provide a more detailed plan related to a contract monitoring system that includes but is not limited to objectives and performance measures?
24. Should the Committee fund the request, either in the Long Bill with General Fund as requested or through a separate bill for the purpose of cash-funding the CCU, will the Department provide annual timeliness and workload data related to high-risk reviews, contracts training provided to state agencies, and contract monitoring data?
25. What does the Department think about operating and funding the training aspect of the CCU through a partnership with the Training Services program?
26. Does the Department have additional thoughts related to cash funding the CCU? Does the Department have additional thoughts related to splitting out distinct program lines for the CCU?
27. Is there a definition of high risk contracts?
28. Would a cash-funding approach mean reappropriated funds from one agency to another? What is the role of the State Controller versus the Attorney General for contracts oversight and review? How does the high-risk contract process work? Has there been an audit of this program?
29. Are departments required to use the Central Contracts Unit in the State Controller's Office for high-risk contracts? Do state agencies avoid using the Central Contracts Unit due to the time it takes to get a high-risk contract through the review process? If so, how does the Department address that issue? Is the Central Contracts Unit and the State Controller inhibiting the business and efficiency of state government in its approach to contracts?
30. Is this a problem that is more at the state agency purchasing level as opposed to the CCU? How much of it is CCU and how much of it is state agencies' purchasing services? Have state agencies been audited to see where the problem actually lies?
31. Why can't the CCU be funded through the Statewide Indirect Cost Plan? Why isn't there enough money to do the review if the State Controller has been provided funding to do this? What would be the specific source of fees that are being proposed by staff?
32. Has a LEAN approach been applied to this issue? What does the customer service survey cited in the interim supplemental request say or suggest about contracts and the contracts process? Has the whole question of a centralized versus decentralized contracts system been considered as a part of an audit? What are the impediments that are slowing down the contract review process? How can they be fixed so that the process is more effective?

**11:10-11:20 ADDRESS CONFIDENTIALITY PROGRAM FUNDING**

33. Does the Department have an explanation for the large increase in participants from FY 11-12 to FY 12-13? What is the collection rate on the current surcharge? These fees diminish defenders ability to pay restitution.
34. Do offenders pay or have the means to pay the surcharge while incarcerated? What are the collection rates for incarcerated offenders? What are the collection rates for offenders on probation? What are the percentages of participants who are in the program due to particular crimes and by district or county court cases or any other breakdowns that define the participants in the program and the crimes that cause them to be in the program?

**11:20-11:40 OPERATING COMMON POLICY REQUESTS INCLUDING CP-1 CAPITOL COMPLEX BUILDING UPGRADE AND CP-2 EMPLOYEE ENGAGEMENT SURVEY AND STATE FLEET MANAGEMENT**

35. What is the emergency generator for LSB in the Capitol Complex projects list?
36. What does the Department think about staff's suggestion to place the Employee Engagement Survey within the State Agency Service subdivision within the Division of Human Resources rather than in Risk Management?
37. What does the Department think about funding the biennial Employee Engagement Survey within existing appropriations in the Division of Human Resources?
38. How useful was the last employee survey that was conducted? How far down to work centers can this be targeted? Can a certain phone center be compared to another?
39. Why is the department waiting so long to submit a request for fleet vehicles? Why did they not submit a base request that could be adjusted later by a budget amendment rather than withholding the whole request?

**11:40-11:55 R-2 TAX DOCUMENT PROCESSING PIPELINE EFFICIENCIES AND R-3 RESOURCES FOR COFRS II EPROCUREMENT**

40. Would consolidating the two funds as recommended by staff cause a problem with commingling of federal or any other type of funds?
41. What is the Department's opinion about consolidating the two funds into one as suggested by staff?

**11:55-12:00 RECOVERY COMPLIANCE AUDIT**

42. Please discuss the Department's response to the Recovery Compliance Audit final report.

**ADDENDUM: OTHER QUESTIONS FOR WHICH SOLELY WRITTEN RESPONSES ARE REQUESTED**

1. The Joint Budget Committee has recently reviewed the State Auditor's Office *Annual Report of Audit Recommendations Not Fully Implemented* (October 2012). If this report identifies any recommendations for the Department that have not yet been fully implemented and that fall within the following categories, please provide an update on the implementation status and the reason for any delay.
  - a. Financial audit recommendations classified as material weaknesses or significant deficiencies.
  - b. Financial, information technology, and performance audit recommendations that have been outstanding for three or more years.

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1. The JBC occasionally hears complaints that base personal services reductions to capture vacancy savings result in more vacancy savings as managers reduce staff to absorb the reduction and then still experience turnover. Some departments refer to this as the "death spiral." Has your department experienced this problem? How does your department attempt to minimize and avoid the "death spiral?"

*Response: The Department of Personnel & Administration has experienced the problem known as the "death spiral," but it cannot attribute the "death spiral" to any single action in isolation. Though personal services reductions play a role in the "death spiral," the Department believes the "death spiral" begins and is perpetuated by other factors including the generally-increasing cost of doing business through personal services contracts and the propensity to appropriate the range minimum for new FTE. The Department would note that personal services reductions are generally applied in an "across the board" fashion, which can contribute to the "death spiral" in that those personal services lines that will be fully spent (or those that are planned to be fully spent) may have to postpone or forego hiring decisions to accommodate the cuts.*

**9:25-9:40      DEPARTMENT OVERVIEW**

2. Please update us on the number of claims that are settled or paid out by the Department on the State's behalf on federal civil rights cases.

*Response: The following information contains the number of claims and the amount paid by the Department on the State's behalf for federal civil rights cases, by fiscal year:*

1. *FY 2010-11: 4 claims, \$1,124,568 paid*
2. *FY 2011-12: 11 claims, \$1,991,809 paid*
3. *FY 2012-13 year-to-date: 8 claims, \$1,140,909 paid*

3. Please provide an update on the CUBS collection system.

*Response: Central Collection Services (CCS) is working on a number of projects relating to the CUBS collection system, including:*

- 1) *Obtaining Social Security Numbers for old accounts in the system so they can be included in the tax offset program. This will help increase recoveries on these old accounts significantly;*
- 2) *Ultimate Analytics, which will allow CCS to "scrub" accounts upon assignment to determine the collectability of accounts, ensure the most up-to-date demographic information is included, and ensure the appropriate resources are used to collect a given account. This will help CCS be much more efficient and effective at using the letter series to its*

*best advantage by working accounts that are more likely to be collected, and using available resources for the other accounts;*

- 3) *CU Archive to move old Cancelled and Paid In Full accounts to a different area of the system to speed up the overall processing and allow concentration on the appropriate accounts;*
- 4) *CU Scheduler to automate the scheduling of many processes that run at a set time each day, including those that run after hours, to ensure continuity and consistency;*
- 5) *Custom programming to/for:*
  - a) *Inventory Reports to provide accurate and complete information to client agencies;*
  - b) *Match CDLE posting to ensure that CCS records match CDLE records, in regards to the new TOPS federal offset program;*
  - c) *Ability to post pay-directs, adjustments and cancellations received through the new Ecliptics on-line access portal for clients;*
  - d) *Ability to post the funds received from Gaming and Pari-Mutuel winnings;*
  - e) *You've Got Claims (YGC) interface (between CCS and private counsel) to allow a daily file transfer with the attorneys to notify each other of any activity on accounts assigned to private counsel;*
  - f) *Latitude interface to allow a daily file transfer to the current private collection agency under contract;*
  - g) *Daily Transaction File to download the file in Excel format to automate much of the handling of those accounts;*
  - h) *Card file to auto-post incoming payments from credit card transactions directly into the system.*

4. Under statute, what types of debt is Central Collections solely allowed to collect and what types of debt do they have flexibility in collecting?

*Response: Central Collections Services (CCS) utilizes contracts with private collection agencies and private counsel to collect and/or litigate debts on behalf of the state. CCS is statutorily required to assign accounts to private collection agencies after 180 days if no payments are made or promised, although it does have the flexibility to assign accounts to them sooner, or to assign accounts to private counsel for litigation if appropriate.*

*All State agencies, unless they have a waiver or statutory exemption, are required to send accounts to CCS for collection, so CCS collects all types of debts for a wide variety of State agencies. CCS also contracts with Political Subdivisions to collect on their behalf, although they are not required to send accounts.*

*There are a number of state agencies, including some parts of the Judicial Department and Institutions of Higher Education, who are statutorily exempt from assigning accounts to CCS, yet who choose to continue sending accounts for collection.*

*CCS has been engaged in a number of Lean initiatives to make it more attractive and efficient for those State agencies that currently outsource their collection activities to reconsider utilizing CCS. Given the fact that CCS has developed a more robust collection service (through the development of these programs) it is the Department's belief that agencies who currently outsource their collections efforts would receive more value by using DPA's CCS. CCS fully supports the State's efforts to maximize efficiencies and effectiveness through centralization of activities and eliminate duplication of efforts.*

5. Have you told municipalities they cannot use private in-state companies to collect debt?

*Response: No, CCS does not regulate municipalities and whether or which private collection agencies they may contract with.*

6. What is Central Collections success rate on collections?

*Response: The collections rate for the CCS is 31%.*

## **9:40-10:20    COMPENSATION COMMON POLICIES**

7. When was the last time state employees received pay raises?

*Response: The last time State employees received pay raises as a result of funding the Salary Survey and/or Performance-based Pay appropriations was FY 2008-09.*

8. Provide some history on how the number of distinct job classes in the State Personnel System has changed over time. What are the advantages and disadvantages of consolidating job classes? Would consolidating job classes save money?

*Response: The State Personnel System revamped its job evaluation system beginning in about 1993. At that time, there were 1,287 separate job classes. Through a phased job evaluation system study, jobs were eventually consolidated into common classes and six occupational groups with the number reduced to:*

- 1) 951 in 1996;*
- 2) 923 in 1998;*
- 3) 714 in 1999;*
- 4) 517 job classes in the current framework*

*The advantage of consolidating job classes is that it groups jobs by similar types of duties, which provides consistency in pay and pay decisions for similar work performed. It also provides more flexibility in reassigning routine duties without requiring a formal position reallocation. If managed well, broader classes can be used to address variations in the labor market that reflect "hot skills" for short durations. For example, the system maintenance study on the information technology and application program classes resulted in a recommendation for collapsing levels and developing broader pay ranges. This was a result of recruitment and retention issues and business needs, such as the need for employees with specific skill sets to lead short or long-term projects. The skill sets may change based on the industry or business needs. The new broad ranges will allow agencies to provide base compensation or temporary non-base premiums to employees filling critical job needs at any given time.*

*The disadvantage of consolidating job classes into broad classes is that the industry and market influence on specific jobs may not be accurately reflected, especially if the range of pay is too narrow to encompass compensation values for all jobs assigned to the class. For example, within the Professional Engineer class there are a variety of disciplines included as survey benchmarks: mechanical, civil, environmental, electrical, hydraulic, and design. The labor market demand for any one of those engineering fields may increase or decrease at any time based on current industry needs. The Department monitors the compensation trends for each of the fields to ensure there are no extreme differences that would suggest breaking out the jobs into separate classes to provide an accurate target for prevailing market compensation. Another example is the General Professional (GP) class series; approximately 17 separate jobs in the GP III level are currently benchmarked against the market. The result is an aggregate market rate that may be relatively high for some jobs assigned to the class and low for others.*



*Due to the fact that a number of different types of jobs can be aggregated into a single class, unnecessary compression of those classes into broader categories may limit the State’s ability to standardize pay structures and decisions. In addition, aggregating more classes into fewer ranges would require broader ranges that might allow too much “room” for a particular class to expand. Conversely, a broader range might allow a hiring entity the ability to hire well below market for a particular position.*

9. Please summarize the findings of the Annual Compensation Survey Report. In particular, what are the findings with regard to benefits beyond employee pay?

*Response: Overall, findings from the benchmark comparisons of the State’s actual salaries to the market median salaries indicate the State is 9.2 percent below market in aggregate. To augment this analysis from a budgetary perspective, the Department has also estimated that the State would need to increase the salary base by 7.2 percent to achieve the prevailing market compensation. The State’s midpoints were also found to be 2.1 percent below market on average. These represent the overall average differences for all benchmark comparisons.*

*Three years ago, improvements to the annual compensation survey resulted in an improved means for measuring the prevailing market by providing a direct comparison of the State’s actual salaries and salary range midpoints to market actual salaries and midpoints. As a result, individual benchmark comparisons indicate significant differences in the State’s salaries and salary range midpoints in relationship to market for specific job classes. Thus, the Department redesigned the pay structure. Details are contained in Appendix C of the Annual Compensation report and these findings are highlighted in Table C2 below.*

<b>Table C2 - Median Salary Comparisons</b>		
<b>Number of State Benchmarks Above/Below Market</b>		
<b>Percentage Difference</b>	<b># Above Market</b>	<b># Under Market</b>
<b>20% or greater</b>	<b>6</b>	<b>42</b>
<b>7.5% to 20%</b>	<b>17</b>	<b>51</b>
<b>Within +/- 7.5%</b>	<b>58</b>	

*For medical benefits, the State’s medical plan options provide typical and prevailing coverage that includes inpatient care, office visits, psychiatric care, substance abuse programs, prescription drugs, outpatient surgery, home health care and hospice, well baby care, annual physical, nurse line, maternity management, chiropractic, first-dollar preventive care, chronic disease management, and pre-tax flexible spending accounts. The State has, on average, higher deductibles for network services and lower out-of-pocket maximums. In general, state employees have lower co-pay amounts for prescriptions both for pharmacy and mail-order services.*

*In general, the State’s total premium rates for all tiers are higher than the market, likely due to an older workforce (Colorado 2010 Census shows a median workforce age of 35.8 in comparison of the median State of Colorado age of 47.1) and coverage in all 64 counties within Colorado. Older age may be associated with higher utilization of health care services, resulting in higher medical costs. With the support from the General Assembly, the Governor’s office, and DPA, the State reached the prevailing market employer share of contributions for FY 2012-13. In addition, some of the funding reserve from the State’s benefit program was used to supplement the premium contribution for the state employees.*

*For Dental benefits, in FY 2012-13, the Department enhanced its dental programs by expanding the network to allow better access to in-network services to employees, particularly employees in rural areas. Combining both plan option (Basic and Plus), the State overall weighted average total premiums are comparable with the market. However, current*

*state dental contribution levels are not up to the market prevailing levels, resulting in higher employee contribution across all tiers.*

*In terms of benefit coverage, the State's dental plan options provide typical and prevailing coverage that includes diagnostic and preventive services; basic services such as restorations, periodontal treatment, root canal therapy, and extractions; and major services such as crowns, bridges, and dentures, and orthodontia.*

*For Life Insurance and Accidental Death & Dismemberment (AD&D), State's current benefits in life and AD&D insurances remain stable as reported by MSEC. The most common practice (96% of large employers offering a policy) is for the employer to pay 100 percent of the premium costs for the plan. The State provides 100 percent state-paid basic life insurance and AD&D of \$50,000 to all employees at a cost of \$9.18 per month per employee (State pays 100%). The most common practice reported in the market in terms of the amount of insurance offered is a multiplier of one times the annual salary equating to approximately \$65,000, which is higher than the State's current basic life coverage of \$50,000.*

*For Short-Term Disability Insurance (STD), the State's STD benefit is comparable with the market, with State employees having to use their leave accrual to cover the first 30 days.*

*For Long-Term Disability Insurance (LTD), the State does not provide Long Term Disability insurance as a benefit, i.e., salary contribution plan for total disability, but it does offer it as an employee funded option. In addition, the State, through the Defined Benefit (DB) program with the Public Employees Retirement Association (PERA) has a LTD benefit program for vested employees (employees with five years or more of PERA service).*

*For Retirement Benefits, State employees do not pay into Social Security. DPA compared the retirement benefits from the perspectives of how employers contribute into employee's retirement plans. While the benefit value, i.e., future retirement benefit value to retirees, is a key measurement of benefits, the Department acknowledges that such comparison should be done by actuary consultants in the future. Overall, the State pays 10.15% toward an employee's PERA pension plan in addition to 3.6% Amortization Equalization Disbursement (AED in FY 2013-14).*

10. How much vacancy savings did departments experience in FY 2011-12? Why is trying to get this figure so problematic?

*Response: The Department is not able to track vacancy savings for departments throughout the State. Estimating vacancy savings has been problematic due to lack of detailed information due, primarily, to the inability of the current centralized system (Colorado Payroll Personnel System or CPPS) to track the required fields. In order to assess vacancy savings, the Department would need the following information from State agencies for each vacant position to compile a valid estimate:*

- a. Vacant position class level;*
- b. Separated employee's pay;*
- c. Length of vacancy;*
- d. Staff member(s) filling in for the vacant position, job level, pay, and length of time filling in;*
- e. Overtime compensation incurred due to existing staff members filling in for the position;*
- f. Payout to separated employee;*
- g. Recruitment cost to fill the vacant position; and*
- h. Training or succession planning cost to fill the vacant position.*

*The Department is currently working with its CPPS contractor to augment the capabilities of its current payroll system.*

*Due to the fact that these discussions are ongoing, the Department cannot definitively say whether or not the changes to the current system will allow it to track vacancy savings for the institutions that use the system.*

11. How much flexibility do managers have to organize their offices in the most efficient and effective way to get the work done (e.g. increasing or decreasing the number of employees or changing the job classes employed)? Is this type of flexibility given to managers in a consistent manner? What incentives do we provide managers to optimize the composition of their staff?

*Response: The Department of Personnel & Administration acknowledges that there are growing demands for State services while the funding available to meet those demands is under increasing pressure. To that end, it behooves the State to adopt the policies necessary to offer the maximum flexibility for its managers to adapt their units to the ever-changing public sector environment. The State Personnel System does not provide a direct incentive for managers to organize their offices, except to the extent efficiencies gained within their office can, at their manager's discretion, be used to further the goals of the program within the confines of their statutory authority and appropriated limits. In addition, the Department took a critical step in allowing managers the ability to streamline their operations when it worked with the General Assembly to pass the Talent Agenda, which eliminated the practice of bumping from the State Personnel statute and rules. This somewhat archaic practice created a considerable administrative burden and did not allow managers to take decisive action to shape their work units. The Department is working on rule changes to implement Amendment S.*

12. Explain how the State Personnel System adapts if prevailing market compensation decreases for a job classification.

*Response: If the labor market indicates a consistent and stable trend resulting in a decrease in the compensable value of a job over time, the Department will determine whether the change necessitates a recommendation for a downward adjustment of the affected class and potentially other related classes. If a change, either up or down, in prevailing market compensation is indicated, the Department applies compensation industry standards to determine whether individual class adjustments are appropriate, including the magnitude of the difference; stability of the difference over time; consistency in the labor market used for comparison; historical pay relationship trends internally and externally; documented recruitment and retention (turnover) difficulties; and overall trends in market pay practices.*

*The Department uses a threshold of +/- 7.5% (the midpoint of the generally accepted range for deviation from salary), plus or minus, as a target for maintaining a competitive position relative to market compensation. The current compensation plan for the State Personnel System consists of a pay grid with 2.5% difference between pay grades, which does not provide a compensable difference. The new midpoint differentials in the proposed pay structures range from 7.5% to 15% depending on the occupational group. As a result, adjustments to a job or job class should only be recommended when market changes are significant enough to justify an adjustment to a higher or lower pay grade. In the event an employee's position is placed in a lower pay range/grade as a result of market findings, individual position reallocation, or system maintenance studies, causing an employee's current base pay to fall above the new range maximum, the employee's base salary can be sustained (saved pay status) for up to three years (C.R.S. §24-50-104 (1) (e)).*

13. How often does prevailing compensation drop in the private sector, necessitating the need for "saved pay" scenarios?

*Response: A drop in prevailing compensation in the private sector is not the only factor in determining range movements*

*that would cause a saved pay situation. In its analysis of prevailing compensation, the Department takes a number of factors into consideration including the public and private sector pay practices. In general, and as described in the response to question 12, there must be a demonstrated and consistent downward trend in the market for the Department to consider a downward range adjustment. In general, and in accordance with industry standards, the Department does not update the full complement of job class ranges on an annual basis. Instead, the ranges are analyzed and considered for movement on a three to five year cycle unless substantial changes in the market require an independent analysis. Given all of this, the Department cannot tie a downward adjustment that causes a saved pay situation directly to a drop in prevailing compensation in the private sector.*

*For this year's submission, the Department has incorporated a number of range adjustments into its total compensation package. The analysis and subsequent change in the ranges was driven by an updated market comparison philosophy that was adopted three years ago. The analysis that accompanied this revised methodology indicated that a number of changes to the State's job class structure were required including the adjustment of ranges, the elimination of classes, and the disaggregation of jobs into separate classes.*

**For PERA**

14. The JBC staff briefing contained charts projecting the funded ratio and amortization period for PERA's state division. Please describe the process used to arrive at these projections. How do the projections account for fluctuations in the economy?

*Response: PERA will provide a response to this question.*

15. Please provide an update on the status of the lawsuit regarding S.B. 10-001 that reduced PERA benefits. What are the three factors the appeals court asked the district court to further consider?

*Response: PERA will provide a response to this question.*

**10:20-10:30 BREAK**

**10:30-10:50 LEGISLATIVE AUDIO TAPE DIGITIZATION AND R-4 PRESERVATION OF HISTORICAL RECORDS AT THE COLORADO STATE ARCHIVES**

16. Please identify additional resource needs related to resolving the audio tape playback machine failure issue, through repair or replacement.

*Response: The Department has already repaired two of the Dictaphone 4000 machines at a cost of \$10,000 (\$5,000 each). This gives the Department two working machines for the 1973 – 1981 series. The Department anticipates that the reconditioning of the Magnasync/Moviola machines for the 1982-1998 series will also cost \$5,000 per machine and the Archives program anticipates fixing all three of its Magnasync/Moviola machines. However, as of this date, the proposed vendor has not been successful in finding a solution to restore the time code generators on these machines. The time code generators allow the archivist to access specific dates and times on the audio series. If the time code generators are not working, the archivist will have to listen to much of the audio in real time, which is extremely inefficient. If the time code generators cannot be repaired, but the machines continue to work, the Department can still provide information to the public though it will take longer to obtain the data from this series. The Department will also need two reconditioned (no longer available new) DDS2 4mm data drives for the 1998-2001 audio series at a cost of \$150 - \$300 each and depending on availability. The total funding required to repair all existing equipment for the legislative audio series from 1973 –*

*2001 is \$15,600, which does not include the cost of the two Dictaphone 4000s that have already been repaired.*

17. How long have the playback machines been broken? How often do people come in and ask for playback of those records? What does the department do when people request access to these records?

*Response: Between April and October of 2012, the Department experienced complete mechanical breakdown of all Dictaphone 4000 & 5000 playback machines that serve the 1973 – 1981 record series. Repair and restoration of one machine was completed in October 2012, therefore the Department currently has one fully functioning Dictaphone 4000. The Department has purchased two other Dictaphone 4000 machines and plans to restore one and use the other for parts. The Magnasync/Moviola machines, which serve the 1982-1998 record series, began to fail intermittently approximately two years ago. The Department has three machines, each of which need to be repaired. While each machine works, the time code generators and playback heads on these machines need to be reconditioned. The legislative series from 1998 – 2001 are saved on digital data storage files. This is proprietary software that runs on Windows 3.1 and the playback for this series currently works. However, because the format is proprietary and the company no longer provides this technology, this series is the least stable.*

*The Department estimates that the average FY 2011-12 audio playback has been four customer requests per week averaging a total record time of 6 ½ hours per week.*

*Currently, the Department is able to provide access to all legislative audio tapes. With respect to individual requests, and due to the fragile nature of the early recordings, direct public access to the tapes is no longer allowed under Department policy. Early recordings are transferred by a trained audio archivist to ensure proper care and use of delicate and rare materials. All requests are transferred on an as needed basis to digital format and saved on a CD. A second CD is archived for future use, and another copy saved to an internal hard drive.*

18. Are there alternative sources of funding to repair these machines and digitize the audio records rather than through General Fund?

*Response: Currently, the Department is looking at grant opportunities as a method to funding the machine repairs as well as for digitization of the audio records. However, in many instances in which the Department has identified a potential grant, the total amount available has been so little or the restrictions on the funding so considerable that it does not make sense for the Department to pursue the funding. For example, many grants require that the records transferred to digital format be available to all individuals at no charge. Another grant only applies to the preservation of music. The Department, however, continues to look for other grant funding sources that apply to the preservation of legislative audio. The Department has recently identified a potential grant with the Council of State Archivists that may provide up to \$100,000 of funding and will be working to obtain this grant.*

19. Have there been any state audits related to this issue that previously brought it to light? Has this issue been addressed by other committees? Why hasn't the department brought this forward to the General Assembly in the past? Has the department previously requested funding for this project? Is this beyond the scope of the Department? Should State Archives be located elsewhere such as with the State Librarian or the Secretary of State?

*Response: The Office of the State Auditor made a recommendation to the Department in 2009 that it develop a plan and a schedule for the "timely conversion of all remaining State agencies from a paper cataloging system to an electronic cataloging system, as resources allow."*

*In FY 2001-02, the Department identified the need to identify records that are in serious danger of loss or deterioration in an effort to begin the process of converting the information to electronic storage for reference purposes. This objective was identified in the program crosswalk for that year.*

*The Department has submitted a number of requests, beginning in FY 2005-06, to address the need to transition the State's records from hard copies to digital formats. Due to budgetary constraints and other projects with higher priority, these funding requests were not passed along to the Joint Budget Committee for consideration.*

*The Department brought concerns about the integrity of the legislative audio series to the Committee on Legal Services most recently on December 14, 2011 and again on October 3, 2012. The Department believes that it has made persistent attempts to alert concerned parties of the issues surrounding the preservation of all archival material. Previous requests for funding to address these issues have not made it through the approval process due to the scarcity of resources and the prioritization of other needs.*

*The Department has the longest relationship with these materials and has significant knowledge and background concerning the issues. Because the Department deals with centralized State services, the location of the State Archives within DPA is logical. However, the Department does not have the resources to complete this project within current staffing. At an estimated 500,000 hours of audio, it would take 2 FTE working 40 hours a week 125 years to digitize the audio series, if the digitization requires real-time recording. While other states (such as Illinois) have located the state archivist within the Secretary of State's Office, the Department does not believe that the transfer of the archivist to another entity will solve the issues with the legislative audio series. The Department is working towards creating partnerships with similar entities, such as the Secretary of State, Supreme Court Library, Historical Society, and State Library to discover redundancies and joint solutions efficiencies.*

20. How often have legislative audio tapes been accessed? For what purpose are they accessed? Are there grants available through the State Historical Society and State Historical Fund for this? Has a needs assessment been done that could be submitted with a grant request from the State Historical Society? Should the General Assembly run legislation to include historical records for State Historical Society Fund grants?

*Response: The volume of material being accessed is directly related to how current the materials are, and if a current issue is based on historic legislative action. When this particular audio collection was being created, the Department experienced a high level of customer usage. Waiting lists for listening rooms were common, but as the materials have become dated, their use has lessened to an average of four requests per week averaging 6 ½ hours of recordings. This would amount to approximately 200 to 250 annual requests for a total of 350 to 400 hours audio.*

*The legislative audio series is generally accessed to discover legislative intent and precedent for statutory interpretation.*

*Unfortunately, grants through History Colorado and the State Historical Fund are not applicable to this type of restoration and preservation. Colorado Revised Statutes Section 12-47.1-1201(1)(a) through (d) outlines the requirements necessary to obtain a grant from the SHS. It may be possible to obtain a grant to conduct a needs assessment, although there is no guarantee of award and the timeline for this would further delay addressing an urgent need to preserve the legislative audio tapes.*

*The Department has not completed a needs assessment for this project, although this would be the most likely use of a grant from History Colorado, as noted above. The Department agrees that conducting a needs assessment would be the*

*most prudent action in this case, and we fully intend on pursuing this action, even though it has the potential to delay the transition of the legislative audio series from an outdated and proprietary format to a universal digital format.*

*The Department believes that legislation could be pursued to include this project, as well as the preservation of other historical documents, within the scope of the State Historical Society Fund. The Department further believes that the opinions of the preservation community should be obtained prior to undertaking legislative action.*

21. What is the legal liability of not maintaining the records?

*Response: The Department is not aware of any legal liabilities if the records are not maintained. The Department is seeking advice from the Attorney General's Office on this subject. The Department does note that if the records are not adequately maintained, years of legislative history could be lost to all Colorado citizens. Finally, if the records are lost, it will be extremely difficult to establish legislative intent or statutory precedent for legal actions that might be affected by such.*

22. Is the JBC the committee that should address this issue with legislation or is there another committee, including the Committee on Legal Services or the Executive Committee, that is better positioned to deal with it?

*Response: The Department believes that either the Joint Budget Committee or the Committee on Legal Services could appropriately propose legislation, depending on the issues addressed by the bill.*

#### **10:50-11:10 R-1 CENTRAL CONTRACTS UNIT RESOURCES**

23. Can the Department provide a more detailed plan related to a contract monitoring system that includes but is not limited to objectives and performance measures?

*Response: Yes, the Department can provide such a plan. However, preparing a complete plan will take more time than this response format supports. It should be noted that such a plan would need to be constructed on assumptions of adequate FTE and funding resources. It cannot be accomplished under existing resources because those resources do not support taking the preventative measures (template drafting, training, and on site monitoring).*

24. Should the Committee fund the request, either in the Long Bill with General Fund as requested or through a separate bill for the purpose of cash-funding the CCU, will the Department provide annual timeliness and workload data related to high-risk reviews, contracts training provided to state agencies, and contract monitoring data?

*Response: Yes, the Office of the State Controller will track those statistics and provide them to the Committee. It should be noted that recording, analyzing, and reporting on those performance measures is currently not done adequately because it takes too much time away from the essential activities of contract review and approval.*

25. What does the Department think about operating and funding the training aspect of the CCU through a partnership with the Training Services program?

*Response: The Department is open to that approach but it believes there are significant challenges to it being effective and efficient for the following reasons. First, the members of the CCU are all attorneys by education, training, and profession, while none of the Statewide Training and Development Center staff hold those qualifications. There would*

*need to be significant effort by the CCU to develop and communicate a training curriculum to Statewide Training and Development Center staff. In addition, the most important part of such training is providing State agencies with practical exercises in application of the concepts delivered. It is unlikely that the Statewide Training and Development Center staff would be qualified to assist agencies in applying their specific conditions to the concepts under training. Significant professional judgment must be applied to the contractual, legal, and accounting requirements that determine compliance.*

26. Does the Department have additional thoughts related to cash funding the CCU? Does the Department have additional thoughts related to splitting out distinct program lines for the CCU?

*Response: Because of the significant overhead related to building, implementing, and maintaining a cash funded billing model for agencies as small as the Office of the State Controller, the Department believes that the General Assembly has funded the OSC through the appropriate fund sources including indirect cost recoveries and procurement card rebates that are backstopped by General Funds. Also, the Department is concerned that there is no funding source provided to State agencies for this activity. The fee would need to be paid for out of existing Operating line item appropriations and could be a hardship for certain agencies with a high volume of contracts. In addition, the fee would need to be directly related to the number and amount of time spent assessing contracts related to specific General Fund, cash fund, or federal fund activities/functions. This workload could also vary greatly from year to year making fee setting difficult to manage and frustrating to the State agencies that require the service.*

*Unless significant additional resources are provided, the Department believes that splitting out program lines in the Office of the State Controller would limit its ability to effectively manage this activity. Currently, if additional resources were to become available in the OSC, management would be able to redirect those resources to where they are needed – including the CCU. If CCU or other activities in the OSC were split into distinct program lines then cross sectional support would not be an option. In a very small office like the OSC, segregating into distinct program lines will make it even more difficult to manage workload related to vacancies.*

27. Is there a definition of high risk contracts?

*Response: There is a set of conditions that define high risk contracts, but there is not and cannot be a simple definition of high risk. The delegation letters define certain contracts as high risk including: settlements, new accounting systems, voluntary separation incentive agreements, debt issuance and financing agreements, energy performance contracts, and information technology agreements. The State agencies use a checklist developed by the OSC to determine when combinations of attributes result in a high risk contract. In addition, the position that has been granted the State Controller's signature authority (through a delegation) must apply professional judgment to determine that a contract should be routed to the OSC. The Department has attached a copy of a sample delegation letter and a copy of the risk assessment checklist that defines how agencies determine what must be routed to the OSC.*

28. Would a cash-funding approach mean reappropriated funds from one agency to another? What is the role of the State Controller versus the Attorney General for contracts oversight and review? How does the high-risk contract process work? Has there been an audit of this program?

*Response: Yes, cash funding the CCU would most likely mean receiving reappropriated funds from other State agencies. However, there is an alternative under which the successful contractor responding to an RFP would be required to pay for the State consulting services that supported their contract. Such a fee would need to be authorized in statute and would likely encounter resistance from the vendor community. However, it could potentially motivate vendors to avoid unacceptable requests such as asking the State to indemnify the vendor. In addition, it's worth noting that a fee would be required to perform the review process, which is implicit to the cash funding process. Under basic economic models,*



*increasing the cost of doing business (for State agencies or for vendors) provides a disincentive to carry out whatever action to which the fee is attached. Although contracts that automatically meet the definition of high risk would still be sent to the CCU for review, it is possible that charging a fee for contract reviews may provide an incentive for agencies to execute more contracts with “undetermined risk” in-house, without consultation with the Central Contracts Unit - this would primarily apply to those contracts where the risk assessment is at the discretion of the agency. This could potentially increase risk to the State that would otherwise have been mitigated by review from the CCU.*

*The Attorney General serves as the State Controller’s counsel for contracts. Final approval authority for contracts resides with the State Controller, not with the Attorney General. The CCU is delegated by the State Controller to request AG consultation or opinions for legal compliance matters. Although it is within the State Controller’s purview to do so, the State Controller is not aware of any instance where the OSC has declined to follow the advice or opinion provided by the Attorney General. Historically, the Attorney General has not expressed an interest in being the final approval authority for contracts. For certain contracts, such as debt issuance, the Attorney General issues a separate opinion on the legality of the issuance; in those instances, the Attorney General’s delegate is a signatory to the contract before final approval by the State Controller or State Controller’s delegate.*

*State agencies are mostly delegated to sign for the State Controller. They are not delegated when they don’t have adequate expertise or sufficient staffing. From time to time, certain agencies decline to request or accept delegation because they don’t have the staffing or expertise. An agency with delegated authority over contracts is required to assess the risk of that contract based upon certain standards outlined by the State Controller’s Office. If the delegated agency believes that the contract does not meet the threshold for a high risk contract, they have the ability to sign the contract without Controller’s Office review. If they do believe the contract meets the criteria for a high risk contract, the document is then sent to the Controller’s Office where its review is prioritized relative to all other requests for review. All high risk contracts must be sent to the State Controller’s Office for review, however any delegate may, at their discretion, submit a contract for review if, for any reason, they are concerned about the risk posed to the State as a result of the provisions of the contract. Regardless of whether or not a contract is high risk, many agencies submit contracts to the Office of the State Controller near the scheduled start date of the contract, which puts significant pressure to program staff to review and sign the contract so that work may begin on time.*

*There has not been a general or program audit of the CCU since the OSC/CCU implemented the increased delegation and risk based approach to contract routing.*

29. Are departments required to use the Central Contracts Unit in the State Controller's Office for high-risk contracts? Do state agencies avoid using the Central Contracts Unit due to the time it takes to get a high-risk contract through the review process? If so, how does the Department address that issue? Is the Central Contracts Unit and the State Controller inhibiting the business and efficiency of state government in its approach to contracts?

*Response: Yes, if a contract meets the definition of high risk, agencies are required to send the contract to the CCU for review. However, the process for determining if a contract is high-risk is partially dependent on the judgment of the State agency in completing the risk assessment checklist, so they have some control over what goes to the OSC when a contract is of “undetermined risk.”*

*The State Controller’s Office cannot adequately assess whether or not agencies avoid using the Central Contracts Unit, because it does not have adequate resources to perform a risk analysis audit of contracts that are signed by State agencies. In addition and due to the nature of the contracts reviewed by the State Controller’s Office, it is difficult to discern those contracts that have been submitted for review because they are high risk by definition, and those that are submitted for*

*review because of the questionable nature of the risk associated therewith.*

*There is an inherent difficulty in addressing issues with the contract review process with all concerned parties. From the Office of the State Controller's perspective, the current system is set up to allow State agencies maximum flexibility to address their contracting needs while at the same time providing adequate controls to protect against unnecessary risk to the State. In this system, the State Controller's Office has allowed each Department the ability to determine which contracts are high risk, which ones aren't, and which contracts merit additional review by the CCU due to the questionable nature of the risk involved. To that end, the State Controller cannot control every aspect of the process that determines whether or not a contract is reviewed by the CCU and, by extension, cannot guaranty absolute compliance with the rules and procedures set forth in the each agency's delegation agreements. In some ways, the shortcomings of this system can be addressed through additional training and oversight for the delegates to make sure they understand the requirements of the delegation agreements, and the particulars of the contracts their departments are developing and intend to sign with external vendors. In other ways, the shortcomings of this process can be due to time constraints or pressure from program staff to execute contracts that involve work that must be carried out immediately to satisfy the statutory obligations of the various programs. Regardless of why the process may not yield the optimal outcome, it is clear to the Department that the additional resources requested are the first step in addressing issues that involve all parties.*

*The Department does not believe that the CCU and the State Controller's approach to contracts is inhibiting the business and efficiency of the State's contracting process. Currently, and on an annual basis, 92% of the State's 10,000 contracts are executed exclusively at delegated agencies. Of that amount 2,500 are personal services contracts over \$100,000 – and the delegated agencies manage 68% of those. By definition, the high risk contracts that come to the OSC contain provisions or Statements of Work that are unusual or push the boundaries of acceptable legal interpretations or contracting practices. The CCU and State Controller's policy to closely review these high risk contracts is viewed by the Department and the State Controller's AG representative as appropriate and necessary risk mitigation for the State.*

30. Is this a problem that is more at the state agency purchasing level as opposed to the CCU? How much of it is CCU and how much of it is state agencies' purchasing services? Have state agencies been audited to see where the problem actually lies?

*Response: No, the problem has not been disproportionately associated with one level or another; there are multiple problems affecting this complex arrangement of delegations and high risk referrals to the OSC. However the OSC does know that the CCU is constantly in crisis mode approving hard copy and walk in contracts close to deadline rather than doing the activities that would mitigate the crisis mode. Those activities include providing training and monitoring for the delegated agencies, template drafting, and a greater focus on reviewing contracts before they go to contractors/vendors. In addition, certain large contractors and local governments have several levels of review that extend the time for contract approval.*

*The State agency procurement/contracting staff have widely varying expertise, significantly different commitment to the Statewide view of risk analysis, and varying levels of pressure from their senior management and program staff. Due to these variations, it is difficult to pinpoint the exact root of the issue with respect to the entire contracting process. The Department believes that addressing the resource concerns at the Office of the State Controller is a first and crucial step towards rectifying this situation. Once these resources are in place, it will be easier for the Department to identify opportunities for improvement at other agencies.*

*To the Department's knowledge there has not been a statewide audit of the contracting function to determine where the problem lies. It is the Department's view that such an audit would not identify a single or a few sources of the problem. Rather, we expect the complexity of the problem would result in a wide variety of recommendations by the auditor.*

31. Why can't the CCU be funded through the Statewide Indirect Cost Plan? Why isn't there enough money to do the review if the State Controller has been provided funding to do this? What would be the specific source of fees that are being proposed by staff?

*Response: The CCU is and can be funded from the indirect cost recoveries made available by the Statewide Indirect Cost Plan. Like other sections in the OSC, the CCU is also cash funded from Procurement Card rebates. The indirect cost recoveries can be a tenuous funding source because the OSC is the last agency in the last department of the distribution chain. When the SWCAP pool declines unexpectedly or the JBC elects to use more indirect cost recoveries elsewhere, the OSC needs to be funded by other mechanisms.*

*The OSC has implemented several changes such as the risk-based model and increased delegations to address the consistently increasing volume and complexity of State contracts. However, the limits of those efficiencies have been reached, and the growing volume and complexity of contracts has left the OSC without the necessary FTE and the necessary funding for the contract review process. In addition, the risk based approach has resulted in the population of contracts coming to the OSC needing more effort per contract on average.*

*The Department does not have a recommendation for a fee type, and would defer to JBC staff to comment on a proposed source.*

32. Has a LEAN approach been applied to this issue? What does the customer service survey cited in the interim supplemental request say or suggest about contracts and the contracts process? Has the whole question of a centralized versus decentralized contracts system been considered as a part of an audit? What are the impediments that are slowing down the contract review process? How can they be fixed so that the process is more effective?

*Response: The Department and the OSC have met with the State's Lean consultants about optimizing the CCU processes as a Lean project. However, after hearing a description of the conditions inherent in the contracting process, the consultants determined that the process would not yield significant improvement under the application of Lean principles. This is due to the fact that the goals and objectives of each State agency could not be adequately addressed by one streamlined function. The Lean process works best when processes or functions are (or can be) consolidated and subject to the same goals and objectives. Currently, a number of departments are engaged in individual Lean projects that involve the contracting function. The Department intends to review the processes enacted by these projects, identify best practices, and employ them Statewide to the extent possible. The Department has considered attempting a Lean project for its own for contracts processes, but that is not workable as long as the CCU is unable to contribute resources due to inadequate staffing.*

*The following table shows the ranking received by the CCU in the Department's Customer Service survey:*

<i>Very Favorable</i>	<i>Favorable</i>	<i>Neutral</i>	<i>Unfavorable</i>	<i>Very Unfavorable</i>
<i>8</i>	<i>22</i>	<i>45</i>	<i>16</i>	<i>9</i>

*The Customer Service survey yielded 36 written comment responses. Five were positive and 31 were negative. Of the 31, 22 comments include the concept of lack of timeliness.*

*Informative comments included:*

*“Wait times for contract review results have been 3-6 months long. While the end product is top notch, the time delay is excessive.”*

*“Lack of resources and training. Too hard to get a contract approved. No flexibility for agency size and mission challenges.”*

*“Staffing capacity in the Contracts Unit seems to be an issue for the amount of work. Generally, time is an issue. Advice and guidance provided is excellent. Sometimes requests receive a grumpy reply. I know my inquires may be too broad or indirect but that is why I am asking, I don't know and need guidance.”*

*“My biggest complaint here has to do with the time it takes to get contracts reviewed and approved. If the State controller is going to perform this level of review and scrutiny, additional staff should be allocated to get through the workload. I get the impression the attorney group is buried with contracts to review. Fortunately the interim PO process is in place or procured services would bring our process to a halt. Overall, procurement is grossly inefficient. RFPs are incredibly time consuming and then if a contract requires OSC approval, additional months are added to the process. Delegate to agencies or staff to handle the volume.”*

*To the Department’s knowledge, the centralization versus decentralization models have not been considered as part of an audit. The Department believes that complete centralization and decentralization are extremes that should be avoided, and that a truly effective process centralizes those functions where doing so produces synergies and leave decentralized those processes that require specialized programmatic knowledge.*

*The Department believes the following are factors:*

- 1) Lack of adequate staffing to support the large number of delegations and to review the residual high risk contracts;*
- 2) CCU being constantly trapped in the “must review now” cycle rather than directing efforts to the preventative services such as pre-reviews and template drafting;*
- 3) Inadequate and untrained staff at the State agency contracting units;*
- 4) Turnover of staffing in the CCU and in delegated agencies;*
- 5) State agencies ability to identify those contracts that they should handle in house and those that they should send to the Office of the State Controller for review;*
- 6) Lack of trust between many of the State parties to the contracts that stems from unfounded blame shifting resulting from problems with the contracting process;*
- 7) Vendors’ attorneys include provisions in contracts that shift risks to the State and include terms that significantly limit the vendors’ liability. Agencies have noted that there is an increasing number of vendors that insist on the vendor’s terms and conditions; and*
- 8) Contracting entities, particularly local governments, have complex contract approval processes that slow down the contracting process. The OSC has not had the resources to develop a standard intergovernmental agreement and negotiate its acceptance with local governments.*

*All of the impediments require outreach from the CCU to State agencies. That cannot be accomplished until the CCU is adequately staffed.*

## **11:10-11:20 ADDRESS CONFIDENTIALITY PROGRAM FUNDING**

33. Does the Department have an explanation for the large increase in participants from FY 11-12 to FY

12-13? What is the collection rate on the current surcharge? These fees diminish defenders ability to pay restitution.

**Response:** In FY 2010-11, the Address Confidentiality Program (ACP) was awarded a State VALE grant. The primary goals and objectives of the grant focused on the expansion of the program’s services into underserved areas. As a result of effective implementation, the program’s enrollment increased considerably in subsequent years.

The Department of Personnel & Administration consulted with the Judicial Department to get an estimate of the collection rate for offenders. At the present time, the Judicial Department estimates that the collection rate is between 50 and 65 percent.

34. Do offenders pay or have the means to pay the surcharge while incarcerated? What are the collection rates for incarcerated offenders? What are the collection rates for offenders on probation? What are the percentages of participants who are in the program due to particular crimes and by district or county court cases or any other breakdowns that define the participants in the program and the crimes that cause them to be in the program?

**Response:** The Department of Personnel & Administration consulted with the Judicial Department for its response to this question. Many offenders establish payment plans to address the amount of fees and costs that are levied against them as a result of their convictions. Even though they are allowed to make payments while they are incarcerated, their ability to do so is limited for obvious reasons. Unfortunately, the collection rates for incarcerated individuals and those on probation is not tracked at this time, therefore no additional information can be provided.

Currently, the only breakdown of the enrolled participants is the type of crime that necessitated their participation in the program and whether or not they were the primary victim or a secondary victim. The Department is working with the Judicial Department to develop more robust reporting statistics for the served population. The following table shows the breakdown of program participants as of December 2012.

<b>Summary of Address Confidentiality Program Statistics</b>		
<b>Victim of:</b>	<b># of Primary Victims</b>	<b># of Secondary Victims</b>
Domestic Violence - Threats or Fear	342	767
Domestic Violence & Stalking	250	65
Domestic Violence & Sexual Assault	23	5
Sexual Assault - Threats or Fear	10	2
Sexual Assault & Stalking	4	1
Stalking	47	39
Domestic Violence, Sexual Assault, and Stalking	35	4
Non-victim participants (e.g. new child or spouse)	0	71
<b>Total</b>	<b>711</b>	<b>954</b>

**11:20-11:40 OPERATING COMMON POLICY REQUESTS INCLUDING CP-1 CAPITOL COMPLEX BUILDING UPGRADE AND CP-2 EMPLOYEE ENGAGEMENT SURVEY AND STATE FLEET MANAGEMENT**

35. What is the emergency generator for LSB in the Capitol Complex projects list?

*Response: The emergency generator for LSB would be used as an emergency backup for life-safety systems that do not have any redundancy built in at the current time. Those systems include: Fire water pump; Emergency egress lighting; Elevators for Fire Dept access; Fire Alarm panel; and Security Systems. In addition, the LSB does not have the electrical infrastructure in place to support the additional emergency generator and a number of systems, including the main electrical switch gear & automatic transfer switch (ATS), would need to be replaced or reconfigured to accommodate those needs.*

*It should also be noted that the LSB also houses the I.T. servers and infrastructure for the Legislative body. If a total power loss to the building were to occur, computer systems for the Capitol and LSB would be down until power is restored.*

36. What does the Department think about staff's suggestion to place the Employee Engagement Survey within the State Agency Service subdivision within the Division of Human Resources rather than in Risk Management?

*Response: Placing the Employee Engagement Survey (EES) within State Agency Services is logical and manageable. In requesting that the Employee Engagement Survey be placed within the Liability common policy, the Department believed that allocating the cost to the agencies that will benefit from the survey was appropriate and mitigated the General Fund impact of the request. One entity is needed to ensure there is consistent communication, follow-up and action planning created by all agencies participating in the Employee Engagement Survey. Since the State Agency Services already manages the employee relations aspect of human resources, it fits within the team's expertise and scope of work to be the lead unit within DHR.*

37. What does the Department think about funding the biennial Employee Engagement Survey within existing appropriations in the Division of Human Resources?

*Response: During the course of the past couple years, the Department of Personnel & Administration's Division of Human Resources has experienced an unusually high level of turnover. Due to the process that must be undertaken to fill these positions, as well as other factors, the savings that resulted from these vacancies created the opportunity for the Department to fund a portion of the engagement survey out of its existing resources. Currently, the Department is making every attempt possible to fully staff the various needs of the Division of Human Resources so that a number of other opportunities, such as a potential consolidation of HR-related functions, might be addressed in the short- to medium-term. If the Department were required to fund the entirety of the engagement survey out of its existing resources, it would not be able to fill the positions that must be filled to be able to carry out its statutory obligations.*

38. How useful was the last employee survey that was conducted? How far down to work centers can this be targeted? Can a certain phone center be compared to another?

*Response: The Division of Human Resources recently (October 2012) conducted a follow-up survey and meeting with Agency HR Directors to follow-up on the Engagement Survey released October 2011. Ninety percent reported that they have taken action on their Agency results, most by reporting out the results, many by creating engagement committees,*

*conducting town halls, action plans, etc. to show ongoing work towards being the Employer of Choice. The HR Director's meeting in October was dedicated to discussing best practices in how to continue to communicate, take action and ensure all employees are aware of actions being implemented.*

*With regard to the question regarding the Department's ability to mine the data to the work unit level, the survey does not break down the results by types of jobs. However, it does break down results by tenure, position (management, etc), but it does not provide a breakdown by individual units in an agency. In addition, the Employee Engagement Survey does not go down to the work group level because the information provided is expected to be anonymous. Surveys such as this offer better insight into the employees' work-life when results are anonymous and feedback cannot adversely impact the employee.*

39. Why is the department waiting so long to submit a request for fleet vehicles? Why did they not submit a base request that could be adjusted later by a budget amendment rather than withholding the whole request?

*Response: The submission of the vehicle replacement request has been delayed due to a reconsideration of the Executive Branch's policy of replacing vehicles with alternative fuel vehicles. During the normal submission process, the Department revisited its methodology and determined that a number of vehicles could be replaced with alternative fuel vehicles that would have otherwise been replaced with gasoline- or diesel-only vehicles. The process of streamlining this request while conforming to the budgetary and operational constraints of the program has delayed the submission of the vehicle replacement decision item. The Department fully intends to submit the vehicle replacement request and funding true-up as a supplemental and budget amendment during the current legislative session.*

#### **11:40-11:55 R-2 TAX DOCUMENT PROCESSING PIPELINE EFFICIENCIES AND R-3 RESOURCES FOR COFRS II EPROCUREMENT**

40. Would consolidating the two funds as recommended by staff cause a problem with commingling of federal or any other type of funds?

*Response: No – the consolidation of the two funds will not pose a problem with respect to the commingling of federal funds. The source of funding for the supplier database fund is a \$40 per year vendor registration fee. For the eProcurement fund, the source of funding is a rebate that is generated by the volume of expenditures on cooperative agreements.*

41. What is the Department's opinion about consolidating the two funds into one as suggested by staff?

*Response: The Department supports the consolidation of the two funds because the actions that generate the revenue for each fund are part of the same process. This will allow for an efficient and seamless end-to-end procurement process from the financial perspective.*

#### **11:55-12:00 RECOVERY COMPLIANCE AUDIT**

42. Please discuss the Department's response to the Recovery Compliance Audit final report.

*Response: Please see the attached letter and documents regarding the Recovery Compliance Audit report.*

#### **ADDENDUM: OTHER QUESTIONS FOR WHICH SOLELY WRITTEN RESPONSES ARE REQUESTED**

1. The Joint Budget Committee has recently reviewed the State Auditor's Office *Annual Report of Audit Recommendations Not Fully Implemented* (October 2012). If this report identifies any recommendations for the Department that have not yet been fully implemented and that fall within the following categories, please provide an update on the implementation status and the reason for any delay.

a. Financial audit recommendations classified as material weaknesses or significant deficiencies.

*Response: None of the outstanding audit recommendations to DPA in the report were classified as a material weaknesses or significant deficiencies.*

b. Financial, information technology, and performance audit recommendations that have been outstanding for three or more years.

*Response: None of the outstanding audit recommendations to DPA in the report have been outstanding for three or more years.*



## **Department of Personnel & Administration**

### **JBC Hearing**

**January 2, 2013**

#### **List of the Department's Speakers**

**Primary Presenters:**

Kathy Nesbitt, Executive Director

Jennifer Okes, Deputy Executive Director

*Presenters as Necessary:*

Kristin Rozansky, Chief Operations Officer – Executive Director's Office

Larry Friedberg, State Architect – State Architect's Office

Deborah Layton-Root, Director – Division of Human Resources

Dana Shea-Reid, Director – State Personnel Board

Scott Madsen, Director – Division of Central Services

David McDermott, State Controller – Office of the State Controller

Carol Pfarr, Director – Purchasing, Collections, and eProcurement

Matt Azer, Director – Office of Administrative Courts

**DEPARTMENT OF PERSONNEL  
FY 2013-14 JOINT BUDGET COMMITTEE HEARING  
PUBLIC EMPLOYEES' RETIREMENT ASSOCIATION (PERA)**

**COMPENSATION COMMON POLICIES Responses**

**Wednesday, January 2, 2013  
9:40 am – 10:20 am**

**For PERA**

14. The JBC staff briefing contained charts projecting the funded ratio and amortization period for PERA's state division. Please describe the process used to arrive at these projections. How do the projections account for fluctuations in the economy?

**PERA's Response:**

Every year, as of December 31, Colorado PERA's actuaries perform an actuarial valuation of the system's trusts to assess their funded status. This process, based upon Actuarial Standards of Practice as determined by the Actuarial Standards Board, incorporates an assessment of both assets and the current and future liabilities of the trusts. These standards of practice contain guidelines for setting reasonable assumptions concerning mortality, disability rates, withdrawal rates, rate of payroll growth, rate of inflation, and other assumptions used in calculating the liabilities of each trust. In order to perform projections of the future funded status of the trusts, the actuaries simulate annual valuations for 30 years based upon these economic and demographic assumptions being met. Because the investment return assumption (the discount rate) is the most powerful factor in assessing the funded status of a defined benefit plan, the actuaries report these projections using multiple rates. These calculations are done using a range of investment return assumptions from 6.5 percent to 9.5 percent, and this information, called a sensitivity analysis, is published in our *Comprehensive Annual Financial Report (CAFR)*.

A rigorous process has been used by the PERA Board to adopt the economic assumptions under the guidance provided by Actuarial Standard of Practice (ASOP) No. 27, *Selection of Economic Assumptions for Measuring Pension Obligations*, as prescribed by Actuarial Standards Board.

The PERA Board's investment consultant, Hewitt EnnisKnupp, provides 10-year forecasts of asset class returns on types of assets such as stocks, bonds, private equity, real estate, commodities. The consultant also provides information on the correlations of a particular asset class to other asset classes. The PERA Board's actuary, Cavanaugh MacDonald, performs stochastic (random/probabilistic) simulation models using this economic data with other economic variables to provide a range of future investment returns over a 40-year period using Colorado PERA's targeted asset allocation, including expected investment expenses. These ranges are used to produce assumptions regarding future inflation, productivity, and real rates of return for asset classes above inflation.

Under the “Building Block Method,” the assumed inflation rate is combined with the assumed real rate of return (after investment expenses) to form the overall investment rate assumption. The process includes an assessment of expected asset class returns as well as expected risk. The statistical probabilities associated with economic cycles are contained within the investment consultant’s and the actuary’s models.

The analysis provided to the PERA Board in October 2012 yielded a median or expected future return of 8.74 percent, net of investment expenses. Also in 2012, the Board included in their analysis a review of a new model (called General Economic and Market Simulator – or GEMS) that is designed to dynamically forecast macroeconomic variables to predict asset class returns. The firm Buck Consultants was engaged to provide this analysis. The GEMS analysis produced an expected rate of return of 8.26 percent net of expenses over a 40-year period. With the addition of this methodology to further inform their decision making, the PERA Board voted to maintain the current long-term investment rate of return assumption at 8.0 percent.

15. Please provide an update on the status of the lawsuit regarding S.B. 10-001 that reduced PERA benefits. What are the three factors the appeals court asked the district court to further consider?

**PERA’s Response:**

Shortly after SB 10-001 was signed into law, a class-action lawsuit was filed in Denver District Court challenging the constitutionality of portions of the bill. The plaintiffs allege that the provision of SB 10-001 that modifies the annual increase payable to existing Colorado PERA retirees, is unconstitutional.

In June of 2011, the District Court ruled in PERA’s favor dismissing Plaintiffs claims in their entirety. The plaintiffs appealed the decision to the Colorado Court of Appeals.

In October of this year, the Court of Appeals remanded the case to the District Court for further review with instructions as to the applicable law.

The Court of Appeals held that when benefits are reduced, the proper legal test is set forth in the case of *In re Estate of DeWitt*, 54 P.3d 849 (Colo. 2002). In *DeWitt*, the Colorado Supreme Court extensively cited and followed United States Supreme Court precedent holding that there is a three-pronged test to determine whether there is a violation of the Contract Clause. The first step in assessing an alleged Contract Clause violation is to determine whether there is a contractual relationship where a vested right is established. Second, if there is a vested contractual right, the court must determine whether a change in the law impairs that contractual relationship and whether the impairment is substantial. Under *DeWitt*, the inquiry continues if a change in the law results in substantial impairment to a vested contract right. The third prong of the analysis is whether the reduction in the benefit was reasonable and necessary. In other words, even if SB 10-001 substantially impaired a contract right, it is constitutional if the Legislature’s modification of the cost of living adjustment was reasonable and necessary to address the legitimate public purpose of ensuring the long-term sustainability of PERA.

The District Court's decision rejected the Plaintiffs claims based upon failure to establish a contractual relationship. The Court of Appeals reversed that determination and remanded with directions to analyze prongs two and three. On Wednesday, November 21, 2012, Colorado PERA and the State of Colorado filed an appeal with the Colorado Supreme Court.

Plaintiffs also filed their appeal with the Colorado Supreme Court objecting to the legal standard adopted by the Court of Appeals. The Colorado Supreme Court has not yet announced whether or not this case will be heard.

# STATE CONTROLLER POLICY

## REVIEW AND APPROVAL OF STATE CONTRACTS

### DELEGATED AGENCIES

- 1) **Delegation.** Agencies may review and approve State Contracts using a risk-based approach with the approval of the State Controller as set forth in the State Controller's delegation letter. The State Controller will provide agency controllers of approved Agencies the requirements the State Controller delegate shall follow when using the risk-based approach.
- 2) **Risk Categorization.** All contracts shall be categorized as either high-risk or low-risk. Attached to this policy is a list of certain types of contracts classified by the State Controller as **automatic low-risk** and **automatic high-risk**. Contracts included in such list do not require a risk analysis. Agencies shall review contracts not included in such list (**undetermined-risk**) and determine whether they are low-risk or high-risk in accordance with the attached risk review guidelines.
- 3) **Signature Requirements.** Once a contract has been properly categorized as either high-risk or low-risk, the following review, approval, and signature requirements apply:
  - a. **Low-Risk Contracts** – Do not require State Controller review and approval and the agency/institution controller or other delegate may sign them (see list on next page).
  - b. **High-Risk Contracts** - Require review and approval by, and the signature of, the State Controller (see list on next page).
- 4) **Routing.** Please see OSC Policy entitled "*Routing of Contracts*".

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**David J. McDermott, CPA**  
**State Controller**

# STATE CONTROLLER POLICY

## AUTOMATIC HIGH AND LOW RISK CONTRACTS

### 1) Automatic Low Risk Contracts:

- a. **Amendments** that meet at least one of the following criteria (all other reasons for an amendment require completion of a risk assessment). Such criteria are:
  - i. Extend the expiration or termination date by one year or less,
  - ii. Rate increases consistent with the terms of the original contract,
  - iii. Amendments that do not change the scope of the original contract,
  - iv. Re-statement of amendments – incorporates amendments and original contract (NOTE: a restatement cannot be used if the contract has expired),
  - v. Making changes required by and consistent with State law, or
  - vi. Amendments that reduce the scope and the cost within the contract terms and rates.
- b. **Interagency Agreements** using the Office of the State Controller's (OSC) model contract. Amendments to interagency agreements using the OSC's model amendment are also low risk.
- c. **Modification Tools.** Options, change orders, funding letters, and task orders that are consistent with the original contract and in compliance with the State Controller's policy entitled "*Modifications of Contracts*".
- d. **Phase I Waived** contracts for which Agencies have received written State Controller authorization to use following approval under OSC Policy entitled "*Phase I Waivers*".
- e. **OSC Approved.** Other Agency contract templates previously approved and authorized in writing by the State Controller that are not part of the Phase I waiver program.
- f. **Statewide Pre-Approved.** All other statewide standard pre-approved contract forms, such as Office of the State Architect capital construction and controlled maintenance work authorizations, change orders, supplements, code reviews, and architect and engineering base agreements.

### 2) Automatic High Risk Contracts: NOTE: the State Controller may provide specific delegation to an Agency or IHE for the following contracts depending on Agency or IHE expertise in the particular subject matter.

- a. **Contingency** contracts defined in CRS §24-17-203;
- b. **COPS** (Certificates of Participation);
- c. **Dangerous Activities.** Contracts involving dangerous activities;
- d. **Debt Collection.** Contracts associated with debt collection services;
- e. **Employee Voluntary Separation Agreements.** (classified and non-classified)
- f. **Energy Performance** contracts under CRS §§24-30-2003;
- g. **Federal Government.** All intergovernmental contracts with agencies of the federal government unless on an unchanged OSC model contract;
- h. **Financing by Third Parties.** All transactions involving third party financing;
- i. **Financial Systems.** Contracts for the acquisition of new or replacement of existing financial systems;
- j. **Legal Issues.** Contracts with technical legal issues requiring an opinion from the Office of the Attorney General.
- k. **Lease Purchase** contracts (except for Higher Education);
- l. **Limitations of Liability.** Contracts containing provisions limiting liability, including limits on actions for which they are liable, the dollar amount of damages, the types of damages, the source of damage payments, or some combination thereof.
- m. **Hazardous Materials.** Contracts involving the handling, removal, treatment, movement, installation, and disposal of hazardous materials, but not the discovery, analysis, study, and review of them.
- n. **Information Technology.** Information Technology goods and services contracts and amendments to such contracts;
- o. **Master Contracts** by DPA for the entire State, such as RTD Eco Pass Program;

## STATE CONTROLLER POLICY

- p. **Master Task Order** contracts;
- q. **Native Americans**. Contracts with native American tribes;
- r. **Outsource** contracts as defined in Fiscal Rule 3-1;
- s. **Price Agreements**. Statewide price agreements;
- t. **Prisons**. Contracts concerning the operation of prisons; and
- u. **Settlement Agreements**. Includes all settlement agreements between the State and individuals and also between the State and contractors; and
- v. **Water Rights**. Contracts involving the purchase or sale of water rights. This does not apply to: i) the purchase or sale of water rights and/or shares of stock in: an irrigation district, a water district, a mutual ditch company, a water company, or similar entities included as part of or associated with the purchase or sale of real property, or ii) participation in substitute water supply plans or in plans for augmentation, or iii) the purchase or sale of fully consumable water.

# STATE CONTROLLER POLICY

## RISK ASSESSMENT FORM

Contract Routing No. \_\_\_\_\_

### Overall Risk Assessment

**Agencies shall complete a Risk Assessment Narrative and at a minimum answer the first three questions below. Agencies should use all of the Risk Assessment Questions for assistance in completing the narrative,**

### Risk Assessment Questions

1) **What** are the risks outside of those listed herein?

2) **How** does the Contract or the Agency address all attendant risks?

3) **Controller Comfort:** Does the Contract have unusual provisions or is it one with which the Agency is unfamiliar?   
Yes or  No. If Yes, explain why: \_\_\_\_\_ . After explanation, is the Controller comfortable signing the Contract?   
Yes or  No.

4) **Financial Impact**

a. Dollar amount? \$ \_\_\_\_\_

b. Explain any significant financial impact beyond dollar amount?

5) **Contract Document**

a. Explain any Special Provisions modification and authority for the modification:

b. Explain any changes to the General Provisions:

c. Is the Statement of Work clear enough so that the State can monitor performance, identify non-performance, and take appropriate action for non-performance?  Yes or  No. Explain why:

6) **Nature of Project**

a. Is project/contract complexity an issue  Yes or  No. Explain why:

b. If IT/Software or new technology is involved – describe its impact:

c. If new contractor with no proven history of performance is involved – describe impact:

d. If a new project and/or lack of experience with type of project is involved – describe impact: \_\_\_\_\_ :

e. Does work involve hazardous substances or activities – describe impact and related insurance issues:

f. Discuss any Federal privacy requirements and issues:

g. If a lease with build out/construction is involved – describe impact:

7) **Conclusion:**  High Risk or  Low Risk.

**Why?:** \_\_\_\_\_

8) **Risk Assessment was completed by \_\_\_\_\_ and approved by \_\_\_\_\_**



# Delegation of State Controller’s Contract Signature Authority

## AGREEMENT BETWEEN

## THE STATE CONTROLLER

and

**PRIMARY DELEGATE NAME** and Other Authorized Delegates  
**DEPARTMENT OF...(DEPT NAME)**

**Effective: (Date)**

### I. AUTHORITY

§24-30-202(2) Colorado Revised Statutes (CRS) allows the State Controller to designate individuals to sign and approve state contracts for the State Controller. The Office of the State Controller (OSC) has reviewed and approved the request from the **Agency Name**; hereinafter referred to as the “agency,” for delegated State Controller contract signature authority.

### II. SCOPE OF DELEGATION

Any contract signed and approved for the State Controller by the agency prior to the effective date of this delegation, containing the signature of a previously designated person, is a valid contract.

Any contract signed and approved for the State Controller after the effective date of the delegation is valid only if the contract is approved by the primary delegate or other delegate as designated in this agreement.

Any previous delegations of State Controller’s Contract Signature Authority for the agency are now revoked.

This delegation is personal to the agency controller or other delegate. The agency controller or other delegate may not further delegate the contracts approval authority within the agency or department.

This delegation does not affect any other delegations from State Purchasing, Division of Human Resources, and Office of the State Architect.

#### A. Individual Delegations

i. **NAME** is designated to sign, as the primary delegate for the State Controller, all types of contracts that are not included in the exceptions listed below that are also either automatic low risk contracts or contracts the primary delegate concludes are low-risk after analysis using the OSC risk assessment form.

ii. **NAME** is designated to sign, as a sub-delegate for the State Controller, all types of contracts that are not included in the exceptions listed below that are also either automatic low risk contracts or are contracts the sub-delegate concludes are low-risk after analysis using the OSC risk assessment form.

## **B. Period of Delegation**

This delegation is valid for three years from the effective date of this agreement; thereafter, the OSC and the agency will review the agency's contract processes and performance and the OSC will determine whether to continue the delegation.

## **C. Exceptions**

The types of state contracts and situations listed below shall always be submitted to the OSC for review and approval:

- i.** Debt collection services
- ii.** Acquisition of new or replacement financial systems
- iii.** Voluntary separation agreements
- iv.** Settlement agreements: All settlement agreements, whether between the State and individuals or the State and contractors
- v.** Statutory Violations: The delegate may not approve commitment vouchers when a disbursement is made in violation of CRS §24-30-202(2) or (3)
- vi.** Fiscal Rule Waivers: The delegate is not authorized to waive a State Fiscal Rule

## **D. Other Required Signatures and Approvals**

State Controller delegates are reminded that under State Statutes and Fiscal Rule 3-1, certain types of contracts require review and approval by other central approvers. State Controller delegation does not negate the necessity of obtaining required reviews and approvals by other central approvers.

## **E. Contract Legal Review**

The agency may, at its option, obtain informal legal review by the agency's contract attorney for all high-risk contracts before obtaining the contractor's signature. The Office of the Attorney General may also formally review high-risk contracts at the request of the OSC.

## **III. DELEGATED RESPONSIBILITY**

The delegated responsibility from the State Controller includes the following:

**A. Compliance with Statutes, Fiscal Rules, and Policies** As a delegate, the agency controller acts for the State Controller, and is responsible for ensuring compliance with all applicable statutes, rules, policies and procedures. For the approval of contracts, the agency controller must ensure compliance with CRS §24-30-202 (1) and (3) (State Controller Authority), and Fiscal Rule §2-2 (Commitment Vouchers), Fiscal Rule §3-1 (State Contracts), and OSC Policies.

## **B. Review of Contracts**

The statutes, rules, and policies require that prior to executing a contract, the controller delegate ensures the:

**i. Expenditure:**

- a) Is reasonable and necessary
- b) Is authorized by the appropriation to which it will be charged
- c) Does not exceed the unencumbered balance of the appropriation
- d) Complies with all constitutional and statutory law, Fiscal Rules and State Controller Policies
- e) Is encumbered

**ii. Prices or Rates** are fair and reasonable and in accordance with State law and administrative rules

**iii. Form and Content** of the contract are sufficient and appropriate for the parties and subject matter under applicable State and Federal laws, Fiscal Rules, and State Controller Policies; and

**iv. Risk Assessment** tool for approving contracts included in State Controller's Policy has been completed, and a risk analysis performed.

**C. Inter-Agency Agreements**

An "Inter-Agency Agreement" may only be signed by the State Controller's delegate at the state agency or institution which is disbursing the funds. If no one at the disbursing agency or institution has been delegated signature authority for the State Controller, the "Inter-Agency Agreement" shall be routed to the OSC for review and approval.

**D. Phase I Waived Contracts**

If the agency has approved any currently valid Phase I Contracts, the agency controller shall keep a list of such contracts which sets forth the names of the individuals responsible for performing the "Pre-Approved Form Contract" review in accordance with the "Routing Waiver Guidelines" on behalf of the agency before approval by the agency controller.

**E. Approval and Signature**

After review, the State expenditure contracts shall be approved or disapproved. Approvals shall be evidenced by the signature of the agency controller or sub-delegate on contracts. Contract signature pages shall be in accordance with the OSC Policy entitled *Signature Page – Form Of*.

**F. Other Requirements for Delegation**

By signing this Agreement the agency controller agrees as follows:

- i. Contracts Completeness Checklist** - the agency shall use the OSC's contracts completeness checklist (or an agency-specific modified version thereof) in reviewing all contracts.
- ii. Contracts Database** - the agency shall log all its contracts into CMS, including all modifications (task orders, amendments, funding letters, option letters, and change orders). Each new document shall be assigned a unique CMS number, even if it modifies another. The agency may maintain a contracts database or log in addition to, but not in lieu of, CMS.
- iii. Annual Training** – Each fiscal year the agency controller and any sub-delegates shall each attend at least three training sessions at the Colorado Contracts Improvement Team (CCIT), the Colorado Financial Managers Association (CFMA), or other relevant contracts training.

- iv. Procurement User Group** – the agency shall establish a Procurement User Group consisting of agency-wide personnel responsible for purchasing and contracting activities. This group will function as a means for purchasing and contract personnel to come together to identify common procurement issues, share solutions to those issues, receive training, and share information.
- v. Procurement and Contracts Staff** - the agency controller shall notify the OSC of major changes to the staffing in contracts and procurement units. This delegation is based on the existing staff in the contracts, procurement and program activities. The OSC may revise this delegation based on changes to this staffing.
- vi. No Dual Signature** - the primary delegate or any sub-delegate may not sign contracts on behalf of both the agency and the State Controller.
- vii. No Delegates Available** - if the primary and sub-delegate are not available, and the agency requires approval by the State Controller, the agency shall send the contract to the State Controller’s Office.
- viii. Monitoring** - by accepting this delegation, the agency consents to the Office of the State Controller, with assistance from other agencies and institutions of higher education, to conduct monitoring, peer reviews, and reviews of its internal controls and procedures relating to state contract processing, approving, accounting, monitoring, and management.

**IV. REMEDIES**

The State Controller may void this agreement and assume responsibility for the approval of contracts at anytime if the State Controller determines the agency controller is not adequately performing the requirements and responsibilities of this delegation agreement.

**V. SIGNATURES**

On the indicated date, the following agree to all provisions of this agreement:

**A. Primary Delegate:**

<hr style="border: none; border-top: 1px solid black; margin-bottom: 5px;"/> <b style="color: red;">Name</b>	<hr style="border: none; border-top: 1px solid black; margin-bottom: 5px;"/> <b>Date</b>
--	--

**B. Other Authorized Delegates:**

<hr style="border: none; border-top: 1px solid black; margin-bottom: 5px;"/> <b style="color: red;">Name</b>	<hr style="border: none; border-top: 1px solid black; margin-bottom: 5px;"/> <b>Date</b>
<hr style="border: none; border-top: 1px solid black; margin-bottom: 5px;"/> <b style="color: red;">Name</b>	<hr style="border: none; border-top: 1px solid black; margin-bottom: 5px;"/> <b>Date</b>

**C. State Controller Signature:**

<hr style="border: none; border-top: 1px solid black; margin-bottom: 5px;"/> David J. McDermott, CPA	<hr style="border: none; border-top: 1px solid black; margin-bottom: 5px;"/> <b>Date</b>
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# State of Colorado



**John W. Hickenlooper**  
*Governor*

**Kathy Nesbitt**  
*Executive Director*

**Jennifer Okes**  
*Deputy Executive Director*

**David J. McDermott**  
*State Controller*

## DPA

**Department of Personnel  
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December 14, 2012

Dianne E. Ray, State Auditor,  
Representative Cindy Acree, Chair Legislative Audit Committee, and  
Senator Pat Steadman, Chair Joint Budget Committee  
200 East 14th Avenue  
Denver, Colorado 80203

Dear Auditor Ray, Representative Acree, and Senator Steadman:

I am issuing this letter to summarize the recovery audit that was conducted by Balance Risk LLC (Recovery Auditor). I previously sent the Recovery Auditor's final report to you on October 5, 2012. This letter includes highlights of the recovery audit and summarizes the statute, audit scope, findings, limitations of recovery audits, and the Recovery Auditor's recommendations. Attachments include detail of the distribution of the recovered amount (Attachment A), further detail on the unique challenges associated with recovery audits in Colorado (Attachment B), the State Controller's responses to the Recovery Auditor's recommendations (Attachment C), and Department of Revenue's responses to the Recovery Auditor's Report (Attachment D).

### **Highlights of the Recovery Audit**

The recovery audit conducted by the Recover Auditor was designed to identify improper payments. Highlights of the recovery audit include:

- **Payment Analysis scope:**
  - Approximately 5.1 million transactions for payments totaling \$25.3 billion.
  - Fiscal Years 2008 through 2010
  - All state agencies except institutions of higher education and a portion of the Department of Health Care Policy and Financing that is already subject to a separate recovery audit.
- **Other Areas of Audit:**
  - Statement Review – Recovery Auditor sent 2,200 statement letters to vendors to identify credits that were owed but had not been paid to the State.
  - Contract Review – Recovery Auditor reviewed a sample of about 90 contracts totaling \$487 million.

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- Unclaimed Property Review – Recovery Auditor reviewed expired warrant data from the State Treasurer's Unclaimed Property Office to determine whether the State issued payment to a vendor and also sent an expired warrant to Unclaimed Property related to the same payment (a duplicate payment).
- Telecommunication Audit – Abilita, a subcontractor of the Recovery Auditor reviewed one year of invoices for telecommunication services ordered by the Colorado Department of Transportation, Regions 1 and 6.
- Timing
  - Recovery Auditor signed a contract with the State acting by and through the Department of Personnel & Administration Office of the State Controller on August 22, 2011 and submitted its final and only invoice on November 26, 2012.
  - For the 15-month period, most of this time was spent on data preparation, with the remaining time spent on identifying improper payments and collecting the improper payments from the vendors.
- Resources Devoted to the Recovery Audit and Related Program Implementation
  - Recovery Auditor devoted 15 months of the principal's time, and several months of at least five other individuals on the team.
  - Office of the State Controller devoted several months time of the Statewide Audit Manager, the Recovery Audit Specialist, Deputy State Controller, and the State Controller.
  - Controllers at every state department devoted at least several days and many department staff members devoted several weeks of their time to the audit.
  - The Recovery Auditor identified improper payments at five agencies, but only three agencies submitted claims for administrative costs. Under the statute, only departments that had recoveries could submit claims for administrative costs. Only two departments received a reimbursement for administrative costs because improper payments at one department were funded by federal agencies that required the entire amount to be returned.
- Results
  - The Recovery Auditor initially identified 51 potential improper payments for a total of \$214,635. This amount is included in the Recovery Auditor's Report.
  - Of this amount, approximately 78% of the claims were not improper payments because the State departments applied the overpayments to the vendor's next invoice or the vendor had already repaid the State.
  - After investigation by the Recovery Auditor, with the assistance of the department controllers, there were 10 improper payments recovered for a total of \$13,023.65. There is one pending collection for \$750.00. The recovered total represents a very small portion of the \$25.3 billion total transactions subject to the recovery audit.
  - In accordance with CRS §24-30-203.5(5) and (7), the disposition of total amount recovered amount of \$13,023.65 is as follows:
    - \$7,198.08 returned to Federal agencies
    - \$961.22 contingency fee paid to the Recovery Auditor, equal to the contingency fee of 16.5% in the contract multiplied by \$5,825.57, the net amount of \$13,023.65 recovered less \$7,198.08 returned to Federal agencies that do not allow a recovery audit fee to be deducted from improper payments,
    - \$780.47 administrative costs submitted by Department of Public Health and Environment (\$620.00) and Department of Agriculture (\$160.47).

- \$1,255.21 Highway Users Trust Fund (HUTF)—a constitutionally created fund required under the statute to be returned to the Department of Public Safety.
  - \$727.90 gifts, grants, and donations that are restricted and are required to be returned to the Department of Public Health and Environment.
  - \$2,100.77 remaining will be returned to the General Fund.
  - No portion of the recovered amounts was retained by the Office of the State Controller.
  - A summary of the distribution is included in Attachment A.
- o Lessons Learned
- In monetary terms, the costs of this recovery audit far exceeded the amounts recovered.
  - Based on the time devoted to the recovery audit since the passage of the statute, the Office of the State Controller alone had costs of about \$130,000 to manage the recovery audit that well exceeded the amount recovered of \$13,023.65. Departments also incurred costs to review potential claims that were well in excess of the amount recovered.
  - In programmatic terms and within the limitations of the current financial system, the recovery audit demonstrated that the State's internal controls are very effective in correcting duplicate payments.
  - Recovery Audits are not designed to be and cannot function as eligibility audits for State programs or benefits. That process requires a much higher level of resources and more focused approach to auditing.
  - Most of the 10 improper payments were the result of departments paying the same invoice twice because the invoice number was entered incorrectly or not entered at all. This weakness will be addressed in COFRS Modernization.
  - Recovery Auditor was required to analyze all data, even though payments that were federally funded generally did not allow the Recovery Auditor to collect its fee.
  - Recovery Auditor was compensated solely from the contingency fee and so was motivated to focus on areas with the greatest potential for improper payments. This did not always align with the Office of the State Controller's objective to also identify weaknesses in internal control.
  - Recovery audit activities are built on the premise that expenditures are tied to invoices (a traditional accounts payable concept). However, only about a third of the State's payments reviewed (in dollars) fall into this category; the remainder are non-exchange formula-based transactions such as grant distributions.

### **Recovery Audit Statute**

CRS §24-30-203.5 requires the Office of the State Controller to manage recovery audits and contract for recovery audits every three years, beginning July 1, 2011, to recoup improper payments, such as duplicate payments by state agencies. The Office of the State Controller entered into a contract with the Colorado firm, Balance Risk LLC, to conduct the audit on July 11, 2011.

According to statute, the contractor is paid on a contingency fee basis (the contractor receives a fee only on amounts recovered). At the completion of the audit cycle, all state moneys recovered, less the contingency fee and actual administrative costs related to the recovery audit, are to be transferred to the general fund except moneys that are constitutionally specified, or originally received by the State as a fiduciary, or as gifts,



grants, donations, or custodial funds. In these cases, funds must be returned to fund from which the improper payment was made. Additionally, all federal moneys recovered must be reimbursed to the federal government in accordance with federal regulations.

Improper payments include duplicate payments, payments resulting from an invoice or pricing error, failure to apply applicable discounts or rebates, and payments to a recipient who does not meet the eligibility requirements for receiving payment.

### **Contract between State of Colorado and the Recovery Auditor**

The contract provided for a 16.5% contingency fee. The Recovery Auditor was required to review several areas to identify improper payments including conducting a comprehensive review of the state's payment data, soliciting vendor accounts receivable statements for open credits, reviewing vendor compliance with State price agreements and performance requirements, reviewing contracts, and reviewing telecom charges for missing refunds and discounts. The scope of the contractor's review was for Fiscal Years 2008 through 2010 and included all state agencies except institutions of higher education and a portion of the Department of Health Care Policy and Financing that was already subject to a separate recovery audit. The contract included an audit of telecom charges, and the Recovery Auditor's subcontractor conducted a review of telecom charges at regions 1 and 6 at the Colorado Department of Transportation (CDOT). The subcontractor identified \$3,802 of savings and submitted an invoice for \$1,331 (35% telecom fee). CDOT is in the process of verifying the savings reported.

### **Audit Findings**

Of the \$25.3 billion transactions subject to review, the Recovery Auditor identified 51 potential duplicate payments totaling \$214,635. After investigation by the Recovery Auditor, with the assistance of State department controllers, there were 10 confirmed improper payments for a total of \$13,023.65. This represents a small portion of the amount of the total transactions audited of \$25.3 billion. The majority of the potential improper payments had already been applied to the vendor's next invoice or the vendor had already repaid the State

Most of the 10 instances of improper payments were due to departments paying the same invoice twice. COFRS contains an edit to prevent payment to the same vendor for the same invoice number. The edit is intended to help prevent duplicate payments; however COFRS will only flag the duplicate if the invoice number is an exact match. For most of these improper payments, either the invoice number was entered incorrectly or not entered at all. To address this situation, the State Controller will require departments to enter invoice numbers where provided by vendors as part of the COFRS Modernization.

### **Challenges with Recovery Audits in Colorado**

As noted in the Recovery Auditor's report, there were significant limitations to this recovery audit. These limitations concerned data issues primarily arising from the State's 20-year old financial system (COFRS), government transactions which are mostly non-exchange transactions and do not involve an invoice, and federal laws which generally prohibit payment of a recovery audit fee. These are further explained in Attachment B.

## Recommendations

The Recovery Auditor included the following recommendations:

- Address accounts payable system inadequacies and process issues.
- Improve access to accounts payable data.
- Improve productivity of the accounts payable process.
- Establish standards for communication and accountability for material aged open items.
- Increase visibility and frequency of the recovery audit process.
- Change management and control.

Please see the Recovery Auditor's Report for further detail on these recommendations. The State Controller's Response to the Recovery Audit recommendations are included in Attachment C.

## Overall Assessment

Overall, the costs of this recovery audit far exceeded the benefits. For several reasons, we believe future the recovery audits required by statute will yield similar results. The recovery audit demonstrated that improper payments in Colorado are limited by the 1) financial controls instituted by the State departments that help ensure improper payments are minimized, particularly for typical and routine accounts payable-type activities, 2) budgetary controls implemented by State departments to avoid improper payments in an environment of scarce funds, and 3) annual financial audit including a review of internal controls and performance audits conducted by the State Auditor. Moreover, it is inefficient and cumbersome to extract data from the State's existing COFRS financial system, adding a unique complexity to the process of performing recovery audits in Colorado. Even with the implementation of a new accounting system, however, we believe future recovery audits are unlikely to find significant amounts of improper payments.

Sincerely yours,

David J. McDermott, CPA  
Colorado State Controller

Cc:

Joint Budget Committee Members  
Senator Pat Steadman, Chair  
Representative Claire Levy, Vice-Chair  
Senator Mary Hodge  
Senator Kent Lambert  
Representative Crisanta Duran  
Representative Cheri Gerou

Legislative Audit Committee Members  
Representative Cindy Acree, Chair  
Representative Angela Williams, Vice-Chair  
Senator Lucia Guzman

Dianne E. Ray,  
Senator Pat Steadman, and  
Representative Cindy Acree  
December 14, 2012

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Representative James Kerr  
Senator Steve King  
Senator Scott Renfroe  
Representative Su Ryden  
Senator Lois Tochtrop

## **Limitations of Recovery Audits**

As noted in the Recovery Auditor's report, there were significant limitations with this recovery audit. These limitations concerned data issues, government transactions, and federal laws, and are further explained below.

### **Data Issues**

- **20-year Old Financial System.** COFRS contains a complex payment structure designed on decades-old technology. For example, for every payment processed there are a minimum of 6 associated accounting transaction lines on 3 separate transaction, and each transaction line contains up to 95 separate data fields. For this recovery audit, the Office of the State Controller pulled more than 47 million transaction lines and provided this data to the Recovery Auditor. An extraction and transmission of COFRS data of this volume had never before been attempted, and limitations of available database tools required developing new techniques to parse the requests in to manageable portions. Further, the data was filtered to mask data protected under the Colorado Open Records Act and HIPAA. Additionally, a separate data extraction was conducted to compile data related to Department of Health Care Policy and Financing to exclude transactions that were already subject to a separate recovery audit. The entire extract process required extensive programming including about 162 manual and automated steps to produce nearly 600 individual output files which took about 300 hours of staff time (about two months) to complete. The extraction process occurred and was performed by staff at the Office of the State Controller in the middle of the State's statutorily mandated financial statement preparation.
- **Invoice Numbers.** Traditional recovery audit data analytics rely on invoice number and date as two critical fields to perform duplicate payment analysis. However, as we will discuss in more detail below under Government Transactions, not all transactions had an invoice number. Additionally, the invoice field is an optional field in COFRS. Therefore, the Recovery Auditor excluded transactions without an invoice number from its analysis.
- **Vendor Numbers.** Unique vendor numbers are also needed to conduct recovery audit-related analytics. Each vendor in COFRS has a unique identification number, however in some cases these vendor numbers are SSNs and EINs which are needed to meet IRS 1099 reporting requirements where a summary of payments issued by the State is mailed to each vendor annually. This information is not released to any person or entity outside State employment, and it is limited to the greatest extent possible within State employment. In order to secure this protected information, the State Controller provided only a portion of the vendor number, as is commonly done with bank account numbers. The decision to limit the vendor number information was based on an assessment of both the risk of disclosure and the magnitude of the consequences resulting from a potential breach of

protected information. Because of the volume of the data the Recovery Auditor uses a system that requires transmission of the data over the public internet. While the data was encrypted in transmission, the Recovery Auditor did not provide an audit report of its system controls to secure protected data once the data was received. According to the Recovery Auditor, additional work was required to create a usable vendor file to conduct its analysis because of the partially masked vendor numbers. However, at the time the State Controller made the decision to mask a portion of the SSNs and EINs, the Recovery Auditor agreed that a portion of the vendor number would adequately meet the recovery audit needs.

- **Vendor Adjustments.** In general, when a vendor receives a check from the State, the funds are immediately deposited into the vendor's bank account. If at a later date the vendor or the State determines that the payment amount was incorrect (the State accidentally paid more than the amount due) the vendor typically adjusts their next invoice to the State by any over-or-under payments. For efficiency purposes, the State often records the net amount of the invoice, rather than recording a separate entry for the adjustment. However, for recovery audit purposes, the full transaction trail is needed, particularly when using data analytics. Without the full trail, more false-positives were identified that required the Recovery Auditor to conduct additional analysis to determine whether the vendor actually owed the State money. While a complete trail is helpful for recovery audits, it is often not cost-effective for the agencies to record the adjustment, particularly in cases where the expense was allocated to various programs, appropriations, and funds.
- **Warrant Header Data.** Header data from the actual warrant that is issued to a vendor is not critical information for financial operations and therefore is not retained directly in COFRS. Instead, the information is saved into files and archived by the Governor's Office of Information Technology (OIT), but generally not used or accessed. However, for recovery audit purposes the header data contains detail needed to conduct the analysis. OIT was able to locate and provide a majority (92%) of the data. The Recovery Auditor excluded the remaining 8% from its review.
- **Telecom.** The recovery audit also included a review of telecommunication services, such as determining if the State was receiving applicable discounts or paying for unnecessary or unused services. In order to conduct a meaningful review, the Recovery Auditor needs to review recent telecom contracts and services. However, the statutory scope of the audit was for Fiscal Years 2008 through 2010, which in some cases involves reviewing data that is more than three years old. This may be reasonable for typical accounts payable-type activities but not for telecom services. Therefore, the Recovery Auditor reviewed only current telecom activity.

## **Government Transactions**

## Attachment B

A majority of the State's disbursements are non-exchange transactions in which payments are made without receipt of a benefit, such as a good or service. For example, non-exchange expenditures are generally either formula-based payments (funds are allocated based on statute or other governing guidance; basically a pass through of funds, such as allocations to school districts) or grant payments (funds are provided to an outside entity to accomplish a defined goal for the benefit of the recipient). In these cases, the State does not receive an invoice.

Traditional recovery audit activities are built on the premise that expenditures are tied to invoices (a traditional accounts payable concept). However, only about a third of the State's payment activities fall into this category; the remainder are non-exchange transactions. Specifically, of the 5.1 million transaction lines reviewed totaling \$25.3 billion, about 1.2 million transaction lines (24%) did not have an invoice number which represents about \$16 billion or 64% of the total payments subject to review. A majority of these related to the Colorado Department of Education for payments to school districts that receive formula-based payments, and therefore, it is expected that no invoice numbers would be available. To prevent duplicate payments when invoice numbers are not available, the Department of Education has implemented alternative controls including reconciliation processes and extensive audit procedures.

### **Federal Law**

Federal law requires that all federal dollars recovered by states, must be returned to the federal government unless the State receives approval to retain the funds. In accordance with statute, the State's Recovery Auditor is paid on a contingency fee basis (i.e., the fee is based on a percentage of the duplicate payments that the Recovery Auditor identifies and recovers). However, if the Recovery Auditor identifies a duplicate payment involving federal funds and the State does not receive approval from the federal agency to retain all or a portion of the funds, the Recovery Auditor does not received a fee. In fact, five of the ten duplicate payments that the Recovery Auditor identified involved federal funds that the State was not authorized to retain, and therefore, the Recovery Auditor did not receive a fee for it efforts.

Colorado statute requires the Recovery Auditor to review all funds. However, this requirement combined with federal law creates a significant gap in equity in which the Recovery Auditor bears the entire cost of identifying duplicate payments involving federal funds and yet does not receive compensation unless the federal government agency grants approval.