

COMMONWEALTH OF PENNSYLVANIA  
HOUSE OF REPRESENTATIVES

STATE GOVERNMENT COMMITTEE  
SUBCOMMITTEE ON  
GOVERNMENT OPERATIONS  
PUBLIC HEARING

STATE CAPITOL  
HARRISBURG, PA

IRVIS OFFICE BUILDING  
ROOM G-50

TUESDAY, OCTOBER 26, 2021  
5:00 P.M.

PRESENTATION ON  
COMMONWEALTH PROCUREMENT 101

BEFORE:

HONORABLE JASON ORTITAY,  
MAJORITY SUBCOMMITTEE CHAIRMAN  
HONORABLE CLINT OWLETT  
HONORABLE ISABELLA V. FITZGERALD  
HONORABLE REGINA G. YOUNG

ALSO PRESENT:

HONORABLE SETH M. GROVE, MAJORITY CHAIRMAN  
HONORABLE BENJAMIN V. SANCHEZ

\* \* \* \* \*

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TESTIFIERS

\* \* \*

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## SUBMITTED WRITTEN TESTIMONY

\* \* \*

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## P R O C E E D I N G S

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3 MAJORITY SUBCOMMITTEE CHAIRMAN ORTITAY: Good  
4 afternoon, but we're well into the evening hours, at least  
5 here in the Capitol. Welcome to another installment of  
6 happy hour from the State Government.

7 Thank you all for being here. As the people at  
8 home probably can't see, it is a packed house here in the  
9 Capitol in G-50. We have all of our fans here. I'm very  
10 excited to be here, and I hope everybody is as well sitting  
11 to my left and right.

12 Well, welcome to this public hearing of the  
13 Pennsylvania House State Government Subcommittee on  
14 Government Operations. I am Subcommittee Chairman  
15 Jason Ortitay from the 46<sup>th</sup> District.

16 This hearing today is on procurement in the  
17 Commonwealth. It will be like a procurement 101. We have  
18 our folks from DGS, PennDOT, and later, on panel 2, we have  
19 the National Association of State Procurement Officials.

20 So we have two panels. We also have some  
21 submitted written testimony, and I'll go over some  
22 housekeeping right now and then we'll go to some  
23 introductions and get rolling here.

24 We have Members and testifiers in attendance and  
25 virtually as well as the public is viewing via livestream.

1 Due to Sunshine Law requirements, if either of these  
2 platforms experience technical difficulties, we will pause  
3 the meeting in order to correct the issues.

4 For Members participating virtually, please mute  
5 your microphones. If you want to be recognized for  
6 comments, please use the "Raise Hand" function. After  
7 being recognized but prior to speaking, please turn on your  
8 camera and unmute your microphone. When you are finished,  
9 please mute your microphone.

10 With that, I will start to my left for Member  
11 introductions.

12 REPRESENTATIVE YOUNG: Hi.

13 Regina Young, Philadelphia and Delaware Counties.

14 REPRESENTATIVE FITZGERALD: Good afternoon -- or  
15 good evening.

16 Isabella Fitzgerald, representing the  
17 203<sup>rd</sup> Legislative District, Philadelphia -- West Oak Lane,  
18 East Oak Lane, and the Lower Northeast.

19 REPRESENTATIVE SANCHEZ: Good evening.

20 Ben Sanchez from the 153<sup>rd</sup> District in Montgomery  
21 County.

22 MAJORITY CHAIRMAN GROVE: Seth Grove, the  
23 196<sup>th</sup> District, York County. I'm really excited to be here  
24 to hear about procurement. I'm real excited.

25 Thank you.

1 REPRESENTATIVE OWLETT: Thank you so much.

2 Representative Owlett, the 68<sup>th</sup> Legislative  
3 District -- all of Tioga County, part of Potter, and part  
4 of Bradford County as well.

5 MAJORITY SUBCOMMITTEE CHAIRMAN ORTITAY: Well,  
6 thank you to the Members for being here tonight. I  
7 appreciate your attendance. This is an important topic.  
8 We have a lot to discuss today. We have Secretary Topper  
9 and Deputy Secretary Hess and Deputy Secretary Keiser, and  
10 we have a whole crew from PennDOT with us as well today.

11

12 PANEL 1

13 PA DEPARTMENT OF GENERAL SERVICES

14 AND

15 PA DEPARTMENT OF TRANSPORTATION

16

17 MAJORITY SUBCOMMITTEE CHAIRMAN ORTITAY: I think  
18 we're going to start with Deputy Secretary Hess in what I  
19 hope is a rousing PowerPoint presentation to really get  
20 this party started here today.

21 So with that, I will turn it over to the  
22 Deputy Secretary and to Secretary Topper for any opening  
23 remarks and their presentation.

24 DEPUTY SECRETARY HESS: Curt, anything you want  
25 to add before I take over?

1                   SECRETARY TOPPER: Yeah. Thanks, Ken.

2                   I just wanted to thank the Committee for your  
3 interest in the Procurement Code and your interest in  
4 procurement. It can be a little bit of a dry subject, but  
5 I think the experience of the private sector and then the  
6 commercial world really does underscore the fact that over  
7 the last 10 or 20 years, procurement has been increasingly  
8 recognized as a significant source of value in the function  
9 that it can add -- a tremendous amount to the bottom line  
10 of a company. And certainly Ken and his team have been  
11 doing an extraordinary job over the last 6 years of  
12 demonstrating just that, as I'm sure he'll go into to a  
13 little bit of a degree.

14                   With that, I'll hand it over to Ken, and I'm  
15 going to stay on here and hopefully chime in and answer  
16 questions. Ken?

17                   DEPUTY SECRETARY HESS: All right. Thank you,  
18 Secretary Topper.

19                   Good afternoon, Committee. Thank you for the  
20 opportunity to speak with you. And I will do my best to  
21 make this rousing, but that is a tall order. So let's get  
22 started.

23                   The Commonwealth procurement operation is founded  
24 upon the Commonwealth Procurement Code, Title 62,  
25 Section 101, which covers all expenditure of funds by

1 Commonwealth agencies. It's worth note that our code is  
2 based on the American Bar Association's recommended  
3 regulations for State and local government. It is  
4 supplemented by our Procurement Handbook, where we set our  
5 policies, procedures, and guidelines for the procurement of  
6 materials, services, construction, and so on.

7 An example of the relationship between the code  
8 and the handbook would be, for example, the PA Motor  
9 Vehicle Code -- nods to my friends and co-presenters at  
10 PennDOT -- versus a PA driver's manual. So way more in-  
11 depth on the driver's manual.

12 Also, please forgive me, but there are 40-plus  
13 chapters in the PA Code and about 100 chapters in the  
14 Procurement Handbook. So shrinking this down to a  
15 procurement 101 is going to be very high level, and I  
16 certainly hope that you'll indulge me.

17 Let's see. By the way, I guess I should ask the  
18 Committee, you all do have the PowerPoint in front of you,  
19 correct?

20 MAJORITY SUBCOMMITTEE CHAIRMAN ORTITAY: Yes. We  
21 all have printed packets with the PowerPoint in front of  
22 us.

23 DEPUTY SECRETARY HESS: Great.

24 So we are now on, let's see, slide number two  
25 entitled "Procurement Intro." And very quickly, small bid



1 procurement -- or I'm sorry, "Thresholds and Delegations."  
2 Let's talk about that first.

3           So we sort the procurement into materials and  
4 services, and then we have thresholds for small no-bid  
5 procurements at less than \$10,000. Agencies are permitted  
6 delegation up to \$100,000 for materials, \$250,000 for  
7 services, and thereafter, generally we require the agencies  
8 to come to us. And we may still delegate, given particular  
9 capabilities, but at least they have to come ask.

10           So with that being said, small no-bids, under  
11 \$10,000. Usually they are done by a P-Card if it's  
12 accepted, but agencies can issue a purchase order for those  
13 small procurements.

14           Next and probably our most popular solicitation  
15 method is request for proposal. Again, we generally  
16 conduct a competitive procurement for materials and/or  
17 services over 250,000 through our JAGGAER system. And  
18 JAGGAER is the tool that we use that helped us to make  
19 procurements paperless, much to the joy of our vendor  
20 community.

21           Awards are made to the responsible offeror who  
22 provides the greatest advantage to the purchasing agency.  
23 They are scored by committees of subject matter experts,  
24 and then selection for contract negotiations follows.

25           The next probably second most popular method is

1 an invitation for bid. It is used under \$250,000. This is  
2 your typical low-cost or low-price bid, assuming that the  
3 supplier meets the responsive and responsible criteria set  
4 in the solicitation.

5 ITQs are probably the most misunderstood of the  
6 processes we use. It is a multiple-award contract that  
7 acts as an umbrella for suppliers that share a common  
8 eligibility or common set of eligibility requirements.  
9 Agencies that can then select from those prequalified  
10 suppliers by issuing an RFQ, or a request for quotation,  
11 after the bidding -- can you still hear me?

12 MAJORITY SUBCOMMITTEE CHAIRMAN ORTITAY: Yep,  
13 you're still good.

14 DEPUTY SECRETARY HESS: Okay. Sorry. I'm  
15 getting a message saying that I'm disconnected. We'll hope  
16 that that doesn't continue.

17 Finally, there are a couple of what I'll call  
18 exceptional procurement methods, sole source. Generally if  
19 it's over \$10,000, a source justification form must be  
20 submitted to the agency approved by us and then posted for  
21 public inspection for 10 days. And usually these are very  
22 specific conditions involving patents, short-term  
23 extensions, or compatibility issues.

24 Emergency procurements, again, over \$10,000,  
25 where there is a threat to public health or public safety,

1 and they are posted generally after the procurement is done  
2 for a period of 7 days. We do generally ask agencies to  
3 collect a couple of informal bids to support their  
4 procurement, but oftentimes that is done in the middle of the  
5 night and, you know, we need a plumber right now at a  
6 prison.

7 All of our contracts are posted on eMarketplace.  
8 That's our public portal. And anything that exceeds \$5,000  
9 should be able to be found there.

10 All right. So moving on to the next slide is an  
11 overview of the procurement process. I'll quickly hit the  
12 high points here.

13 The demand or the agency notifying us of need is  
14 called an NFP, or a notice of forthcoming procurement.  
15 Generally, they will attach a draft Statement of Work or  
16 perhaps the Statement of Work from the prior contract some  
17 years ago. They submit that to the Bureau of Procurement.  
18 We make an assessment as to the proper solicitation vehicle  
19 -- RFP, RFQ, IFB -- and so notify all of the stakeholders.

20 Generally these days, we like to have a supplier  
21 forum prior to the posting of a solicitation to ensure that  
22 our requirements are up to date with current market  
23 conditions and latest technology.

24 After we have engaged with the supplier forum,  
25 then we will develop the procurement package -- the

1 Statement of Work, the evaluation criteria, cost matrices,  
2 and so on.

3           There's a BDISBO goal setting determination made  
4 for the goods or services and the region where they may be  
5 taking place. And then once the goals are set, we move on  
6 to actually advertising the solicitation.

7           So at some point between when the solicitation is  
8 posted and when it is closed, we have opportunities for  
9 questions and answers. We will sometimes have pre-proposal  
10 or goal setting conferences. Occasionally it may involve a  
11 field trip. But then at some point, we have to have the  
12 proposals. They are received and given an initial  
13 determination for responsive and responsible submittal.

14           A review is done of the technical portion. We  
15 could have either individual or group scoring as needed.  
16 There may be -- oh, I'm sorry. Actually, that's a  
17 preliminary review of the proposals. Then we do  
18 clarifications, and that's our opportunity to ask the  
19 suppliers questions about their proposals. We may have  
20 oral presentations or demonstrations.

21           At that point, the scores are finalized. And  
22 once the final scores, technical scores are in, we open the  
23 cost portion of the proposal. We may conduct a BAFO, or  
24 best and final offer, or reverse auction with the supplier  
25 or suppliers.

1           We will then do a final evaluation. We'll do a  
2 contractor selection for negotiations, conduct those  
3 negotiations, and then execute the contract.

4           Debriefings are not necessarily always automatic,  
5 but many times we'll offer the opportunity to the  
6 participating suppliers and give them the option.

7           All right. So how has that been working out for  
8 us? Now we're down to slide four.

9           Currently as you can see, we have been successful  
10 in achieving \$571 million in savings, and you can see the  
11 breakdown there by just some of the tools that we used to  
12 achieve those savings.

13           If you look at our budget, it's about \$10 million  
14 a year, and so we are actually looking at about, oh,  
15 8.4 times ROI on the investment that you are making in the  
16 Bureau of Procurement.

17           Okay. The next slide.

18           We see a number of protests, so we're sort of  
19 gauging how good a job that we have done in preparing the  
20 solicitation and its acceptance in the vendor community.

21           Here we see that over the past 10 years, we have  
22 had a total of 87 protests. Only 8 percent of those have  
23 been granted, and there was only one follow-on court case  
24 in which the Commonwealth prevailed. When you consider  
25 there's about 3,000 solicitations over that time period,

1 we're talking about a .2 percent occurrence where the  
2 vendor was able to prove that we had made a boo-boo.

3 All right. Sole-source analysis.

4 So over the past 10 years, you can see the trend  
5 line there from oldest to newest -- 506 approved sole  
6 sources. One hundred and two we rejected those sole-source  
7 requests from the agencies, about 17 percent, and really  
8 that indicates what I believe our due diligence in  
9 screening the requests from the agencies. So if you add  
10 those all up, we see about one a week.

11 Slide seven is another look at our sole-source  
12 analysis. And I want you to note the gap on the right. So  
13 here we are comparing the estimate that the agency gives to  
14 us on the value of the sole source, and then you see the  
15 actual, which is the orangish line. And in 2020 and 2021  
16 during COVID times, you actually see where there was a gap  
17 where the agencies were overestimating the value of the  
18 sole source. So keep that in mind, please.

19 All right. Going forward, we look at emergency  
20 procurements, and here, it's a pretty obvious COVID effect  
21 -- right? -- down there in the last 2 years. There were  
22 1335 total over the 10-year period. We rejected 95 of  
23 those. And so we see about 11 emergency procurement  
24 requests per month, to give you some idea of the scale.

25 At slide nine, the value of those. Now, these

1 are the estimates, and again you can see that it's very  
2 pronounced during COVID time.

3 Slide 10 is another view where we are comparing  
4 the estimate versus the actual. Here is a rather  
5 tremendous divergence between the estimates and the actual  
6 costs. And our estimates, or the agency estimates of the  
7 spend required to respond to the emergency was much higher  
8 than had been. Clearly, COVID distorted our ability to  
9 accurately gauge, in many cases, the scope of the services  
10 required.

11 So now slide 11. This is sort of the overall for  
12 the Bureau of Procurement normal procurement methodologies.  
13 So this is last fiscal year where you can see that we had  
14 1131 contracts under our control, about a billion dollars.  
15 There were about 345,000 P-Card transactions, for about  
16 213 million. And under the ITQs, there were a little over  
17 2,000 ITQ contracts in JAGGAER with a value of  
18 \$828 million.

19 There are lots of caveats that go with this  
20 slide. That \$990 million is standard contracts and  
21 soul sources. It does not include EPs. The ITQs are  
22 separate. The P-Cards are separate. This does not include  
23 agency spend except for the P-Card. It does not include  
24 PennDOT aggregate, bitume, and so there are a few  
25 exceptions here.

1           But one thing that I did want to point out, so  
2 345,000 P-Card transactions sounds like a lot. When you  
3 consider that we have 70,000 employees, give or take,  
4 200 days a year, so that's about 140 million opportunities  
5 for a P-Card transaction for some need. And 344,000  
6 transactions works out to 5 transactions per employee per  
7 year. So although it looks big, it's maybe the size of our  
8 enterprise.

9           And here is the procurement summary by spend.  
10 All in, we oversee between \$3 ½ and \$4 billion of spend a  
11 year. And many times, Legislators have asked me about PA  
12 suppliers, so we took the time to give you some data here,  
13 and about two-thirds of our total spend stays in the State.

14           Slide 13. This is a count of our awarded  
15 suppliers by fiscal year. I have rarely seen a slide that  
16 demonstrates so clearly a particular trend that in this  
17 case is good. So you talk about strategic sourcing, this  
18 is a 39-percent reduction in our supply base. However, PA  
19 suppliers maintain their market share dominance at around  
20 75 percent, so good outcomes.

21           The next slide, you'll see the BDISBO spend  
22 analysis. I think we have been very successful in driving  
23 spend to small, small diverse, disabled owned,  
24 veteran-owned businesses as you can see here. Now, this  
25 particular slide includes both our statewides and agency



1 spend.

2 All right. And then here we go to the number of  
3 suppliers. Again, another nice trend that we are getting  
4 more and more disadvantaged suppliers. That's actually a  
5 49-percent increase in our small and small diverse supplier  
6 pool.

7 And what is it costing you for this, for this  
8 service? This is the Bureau of Procurement's budget, and  
9 as you can see, we are pretty much flat around \$10 million  
10 a year. So not a whole lot of inflation there, thankfully.

11 Finally, our complement analysis. Yeah, kind of  
12 80s, 90s, but this does not mean that we are fully staffed.  
13 Currently with our complement of 90, we are carrying  
14 19 vacancies. So like everybody else, we're having some  
15 trouble filling seats.

16 COSTARS. You all are very familiar with our  
17 COSTARS program most likely. Here you can see that over  
18 the past 3 years, we eclipsed a billion dollars in spend by  
19 local procurement, public procurement units. This includes  
20 both COSTARS exclusive and statewide piggybacking  
21 opportunities.

22 And again you can see there are 35  
23 COSTARS-exclusive contracts, representing about  
24 1.2 billion, of which 800 million, give or take, stays with  
25 PA State suppliers. One hundred thirty-five of our BOP

1 statewide contracts are COSTARS enabled. They are putting  
2 another 174 million into the economy, and of that,  
3 76 million was with PA State suppliers.

4 And with our final slide, it shows you the  
5 supplier pool within COSTARS. Out of 2300 suppliers,  
6 nearly 900 small, 144 small diverse. So again, we are  
7 doing our very best to keep all manner of businesses viable  
8 in the Commonwealth.

9 That's it for me. Thank you.

10 MAJORITY SUBCOMMITTEE CHAIRMAN ORTITAY: Thank  
11 you, Deputy Secretary.

12 Secretary Topper, do you have anything to add  
13 before we go to questions?

14 SECRETARY TOPPER: No. Great job, Ken. Thank  
15 you.

16 DEPUTY SECRETARY HESS: You're welcome.

17 MAJORITY SUBCOMMITTEE CHAIRMAN ORTITAY:  
18 Deputy Secretary Keiser, do you have any comments or  
19 opening statements before we go to questions?

20 ACTING DEPUTY SECRETARY KEISER: I do have a  
21 statement that I can read in, you know, for everyone before  
22 we go to questions. I'm from PennDOT. If you want me to  
23 do that, I can start on that right now.

24 MAJORITY SUBCOMMITTEE CHAIRMAN ORTITAY: Be my  
25 guest.

1           ACTING DEPUTY SECRETARY KEISER: All right.

2 Thank you.

3           Again, it's a pleasure to be here today, and, you  
4 know, we do a lot of coordination and overlap, I would say,  
5 with the Department of General Services. But for my  
6 comments and statements here, of course we're just going to  
7 focus on the roadway and bridge side of PennDOT's business.

8           So again, most of you know we're responsible for  
9 over 40,000 miles of roadway and 25,000 bridges across the  
10 Commonwealth. A significant amount of our engineering  
11 design that's associated with these roadway and bridges are  
12 procured.

13           On an annual basis, PennDOT works with, you know,  
14 approximately 265 consultants. Our average payout is about  
15 \$550 million per year. Additionally, most of PennDOT's  
16 construction of roadway and bridges is procured. Just to  
17 put that in perspective, since the beginning of 2021,  
18 PennDOT has led over 450 highway and bridge construction  
19 projects, which have a value in excess of 1.5 billion. And  
20 by the end of 2021, PennDOT is projecting an additional  
21 100 highway and bridge projects, for an estimated total of  
22 around 550 projects with a value of about \$2 billion.

23           As a general rule, the Department of General  
24 Services is afforded policy oversight over procurement.  
25 That's under Section 301(a) of the Commonwealth Procurement

1 Code. However, certain exceptions to this general rule  
2 apply. These exceptions set forth in Section 301(c)  
3 include highway and bridges and are procured following the  
4 Commonwealth Procurement Code and policy established by  
5 PennDOT as compared to the Department of General Services.

6 Chapter 9 of the Commonwealth Procurement Code  
7 details the responsibility for the procurement of design  
8 professional services and construction by PennDOT.

9 So starting off with design professional  
10 services, they are procured based on competence and  
11 qualification under Section 905 of the Commonwealth  
12 Procurement Code; Federal Title 23, Code of Federal  
13 Regulations; and in compliance with the Brooks Act under  
14 Federal law, which requires award based on technical  
15 competency and qualification as compared to cost.

16 As far as the process to procure design  
17 professional services, PennDOT announces all advertisements  
18 for design professional services. In our Engineering and  
19 Construction Management System -- we refer to that as ECMS  
20 -- for normal selection procedures, interested consultants  
21 submit a statement of interest, which is evaluated by a  
22 selection committee. The selection committee reviews the  
23 statement of interest and identifies which consultants  
24 should be recommended for short listing, which is then  
25 published.

1           The short-listing consultants create a technical  
2 proposal, which is reviewed by the selection committee for  
3 final ranking. The final ranking is reviewed by a central  
4 office selection approval committee and, if found  
5 acceptable, approves the ranking, which is then published  
6 in the ECMS.

7           The selected consultant then finalizes the  
8 technical proposal which details their approach and submits  
9 a price proposal which details the cost for all agreement  
10 parts. Once both parties agree on the technical and price  
11 proposal, a legal agreement is created, approved, and  
12 executed.

13           On the construction side, currently there is  
14 almost 750, I should say approximately 750 highway and  
15 bridge projects currently in construction, at a total  
16 amount in excess of 6.57 billion. PennDOT has executed  
17 these approximate 750 contracts with about 160 different  
18 prime contractors. These prime contractors have  
19 subcontracted almost 2.1 billion to 875 different  
20 subcontractors.

21           Contract management includes a work order process  
22 to add or delete work based on field conditions. Work  
23 orders represent a cost increase of less than 3 percent of  
24 the original contract amounts.

25           Construction is procure-based on the lowest

1 responsive and responsible bidder under Section 512 of the  
2 Commonwealth Procurement Code. Chapter 457 of Title 67 of  
3 the Pennsylvania Code requires award based on  
4 prequalification as a determining factor of bidder  
5 responsibility.

6           The vast majority of highway and bridge  
7 construction projects are procured through a design  
8 bid/build process. However, PennDOT has established  
9 several alternative methods of project delivery, including  
10 design build and cost plus time, which we refer to as A+Bx,  
11 that evaluates bids where appropriate based on social and  
12 economic costs such as the inconvenience of travel delay  
13 experienced by the general public.

14           For normal design build processes, PennDOT  
15 announces all advertisements for construction and ECMS.  
16 PennDOT advertises projects for a minimum of 3 weeks.  
17 During this time, bidders can examine the project's plans  
18 and requirements and post any questions through ECMS, which  
19 all other bidders are able to see along with PennDOT's  
20 response to clarify the project advertisement.

21           Bidders then submit their bids through ECMS, and  
22 on a specified bid opening date, PennDOT opens bids  
23 electronically through ECMS. The apparent low bidder is  
24 then examined to determine if the bidder has satisfied the  
25 prequalification requirements.

1           Before PennDOT can award a contract to the low  
2 bidder, the bidder must satisfy various requirements and  
3 submit surety bonds and insurance. After the contract is  
4 executed, PennDOT issues a notice to proceed to the  
5 contractor to start construction on or after a specified  
6 date.

7           As mentioned, Chapter 457 of Title 67 of the  
8 Pennsylvania Code requires contractors be evaluated for the  
9 work they perform on PennDOT projects. The contractor who  
10 performs poorly can have his prequalification and ability  
11 to be awarded future work restricted up to and including  
12 suspension or debarment. This chapter defines the causes  
13 for suspension or debarment of a contractor in addition to  
14 poor performance.

15           Lastly, the Commonwealth Procurement Code  
16 provides for emergency procurement under Section 516 when  
17 there exists a threat to public health, welfare, or safety,  
18 or circumstances outside the control of the agency create  
19 an urgency of need, which does not permit the delay  
20 involved in using the more formal competitive methods.

21           Under emergency procurement conditions, PennDOT  
22 will generally solicit bids from three qualified  
23 contractors, which can be a paper or verbal quote, for  
24 contractor selection in order to expedite timely repairs.

25           So that's my formal statements, and we have a

1 team here, as you know, available to also address any  
2 questions you may have. So thank you for your time.

3 MAJORITY SUBCOMMITTEE CHAIRMAN ORTITAY: Thank  
4 you, Deputy Secretary.

5 We're going to move to questions, and I'll move  
6 to you, Representative Young.

7 REPRESENTATIVE YOUNG: Thank you so much for your  
8 testimony and the information.

9 I do have a three-part question for you. Why are  
10 the toll roads so expensive in the State of PA? What are  
11 we doing that makes our PA roads the most expensive out of  
12 our 50 States? The last part is, what are we spending the  
13 dollars on?

14 ACTING DEPUTY SECRETARY KEISER: Okay.

15 Well, yeah, first of all, I appreciate that  
16 question, and, you know, we can certainly have the  
17 Pennsylvania Turnpike Commission weigh in on that. I think  
18 it's the result of a number of different legislative issues  
19 over the years, and, you know, there are many different  
20 pieces to that puzzle. But again, that would be best  
21 addressed by the Pennsylvania Turnpike Commission.

22 REPRESENTATIVE YOUNG: Thank you.

23 MAJORITY SUBCOMMITTEE CHAIRMAN ORTITAY:  
24 Representative Owlett.

25 REPRESENTATIVE OWLETT: Thank you, Mr. Chairman.



1           And I have a couple of questions on contracts.

2           With obviously a variety of needs across the  
3 Commonwealth in different agencies, is there a variety of  
4 different contracts that are out there to meet those needs,  
5 and what are the different types of contracts that agencies  
6 use and who determines what type of contract to use? I'm  
7 not sure if this is best for DGS or PennDOT or both.

8           SECRETARY TOPPER: It sounds to me like a great  
9 DGS question.

10          Ken, why don't you jump in.

11          DEPUTY SECRETARY HESS: Okay.

12          I think that our contracts are typically tailored  
13 to the needs of the agency, but some common themes  
14 certainly run through them.

15          For example, firm fixed price---

16          MAJORITY SUBCOMMITTEE CHAIRMAN ORTITAY: Deputy  
17 Secretary, could you turn your camera on?

18          DEPUTY SECRETARY HESS: Oh. I'm very sorry.

19          MAJORITY SUBCOMMITTEE CHAIRMAN ORTITAY: We just  
20 want to make sure you're there.

21          DEPUTY SECRETARY HESS: Yep, yep, still here.

22          MAJORITY SUBCOMMITTEE CHAIRMAN ORTITAY: Thank  
23 you.

24          DEPUTY SECRETARY HESS: That's okay.

25          So firm fixed price, for example, is a type of

1 contract that we would use. That is probably the most  
2 common. It is usually deliverable-based, so the scope is  
3 defined completely from the outset either by us or in  
4 conjunction with the supplier's proposal, and so all of the  
5 aspects are, you know, deliverable or due as a requirement  
6 for a single firm fixed price.

7 Now, there's lots of variation thereafter. We  
8 can have indefinite quantity but a fixed unit price. So,  
9 you know, if we're buying bulk materials, for example, you  
10 know, rock salt is a good example of that, you know, the  
11 price is fixed per region -- I believe it is county or a  
12 grouping of counties -- but the quantity is based on a  
13 forecast that is delivered by PennDOT, for example.

14 But, yeah. And the forum of an IT contract, for  
15 example, would be completely different given all of the  
16 terms and conditions associated with cyber security,  
17 access, you know, HIPAA requirements. So in its basic  
18 content, it generally gets around requirements, quantity,  
19 and price, but the terms can be widely varying.

20 REPRESENTATIVE OWLETT: So with the different  
21 types of contracts, what are the methods, the different  
22 methods that you then use to award the different contracts,  
23 and is it always lowest bidder, or what are some of the  
24 other factors that you would apply to the situation?

25 DEPUTY SECRETARY HESS: Okay.

1           Usually -- you may have heard me mention a  
2 technical evaluation, I think. So an IFB, an invitation  
3 for bids, is low cost. There, the Commonwealth writes the  
4 specs. They are black and white. There is no negotiating  
5 those specifications. And, you know, the bidders are  
6 simply providing a price to meet those exact requirements.

7           However, in a request for proposal, we are  
8 basically saying to the vendor community, we have a  
9 problem; here is the scope of the problem or the statement  
10 of work, and we would like you to propose -- right? request  
11 for proposals -- we would like you to propose a solution.  
12 And naturally the solutions come back in all sorts of  
13 shapes and sizes within the boundaries set by the statement  
14 of work, which tend to be somewhat broader. And then it's  
15 up to us to score the technical merits of those proposals.

16           REPRESENTATIVE OWLETT: So how do you handle  
17 change orders? I had a construction business. We had  
18 change orders all the time. How do you handle---

19           DEPUTY SECRETARY HESS: I'll hand this over to  
20 PennDOT.

21           REPRESENTATIVE OWLETT: Yeah. How do you handle  
22 something that, you know, you have put out the scope of  
23 work. Say it's a plumbing issue and you go through the  
24 whole process. What do you do then, you know, when you get  
25 into the job and there's an issue and there's more work,

1 how do you make those changes? I mean, you obviously don't  
2 go out for a new proposal. Talk me through that process.

3 ACTING DEPUTY SECRETARY KEISER: Okay. Well,  
4 this is Mike again at PennDOT, so I will use the example,  
5 if you don't mind, you know, from a highway and bridge  
6 standpoint.

7 So again, a work order is, you know, obviously a  
8 needed component of contract management, but essentially,  
9 you know, it can range from a change in quantities. It can  
10 be something, you know, that was unexpected that was found,  
11 you know, for example, during excavation. But we  
12 essentially sit down with the contractor. We look at what  
13 the bid prices would have been had that work been included,  
14 you know, in the contract, and then we go from there, you  
15 know, based on, you know, what the average cost, a unit  
16 price of those would be. So it is a negotiated process,  
17 you know, before we just accept the cost from the  
18 contractor. And, you know, if we can't agree, we go  
19 through a process where we look at their time and their  
20 equipment -- a force account is what we refer to there --  
21 and try to, you know, address it in that manner.

22 So I don't know if Mr. Hess has anything he wants  
23 to add from the DGS side, but I would imagine that process  
24 works very similar, whether you're doing roadway and bridge  
25 construction or building construction.

1           SECRETARY TOPPER: Mike, I'll jump in. This is  
2 Curt Topper. Since Ken doesn't have responsibility for the  
3 construction side of DGS, I can speak to that.

4           Our change order process is quite similar to  
5 PennDOT's. It usually occurs as a result of some  
6 unforeseen conditions. From time to time, we might have an  
7 agency request a change order. They might want to change  
8 the project midstream. That doesn't happen as often, but  
9 it does happen occasionally.

10           But in that case, it's usually a process of  
11 negotiation where we sit down with the contractor on site.  
12 We understand what the change in scope looks like. There  
13 is some back and forth, you know. And then the change  
14 order has to go through an approval process, and depending  
15 on its value, it may come all the way to me before it gets  
16 approved.

17           REPRESENTATIVE OWLETT: Just really quick on the  
18 change order, how many of the projects, like, what's a  
19 percentage that has change orders, out of curiosity.

20           SECRETARY TOPPER: For DGS construction, we are  
21 under 3 percent.

22           REPRESENTATIVE OWLETT: Okay.

23           And I'm sure weather has a lot to do with it and  
24 stuff, as well with PennDOT.

25           I'm going to talk about small businesses a little

1 bit. Small business is a big part of my district. But  
2 talk a little bit about the process that a small business  
3 would go to to be eligible to contract with the State, and  
4 some of those requirements, I believe, have to do with  
5 maximum employee thresholds. And do we update those, and  
6 what is the process to update those? What's the criteria  
7 when we're thinking about updating the process to bring  
8 small businesses and more people into the opportunity to be  
9 able to contract with the State?

10 SECRETARY TOPPER: Yeah. So I can speak to that.

11 So DGS runs our Diversity, Inclusion & Small  
12 Business Opportunities program. Basically a small  
13 business, whether they are diverse or not, small businesses  
14 can come to the DGS website. They can register as a small  
15 business.

16 To be a small business, there are a couple of  
17 thresholds that we look at. One is a revenue threshold,  
18 and the amount of revenue that is allowed can vary to some  
19 degree depending on the market that the company is in.  
20 There's also an employee threshold, which is set in  
21 statute. It's currently set at 100 employees.

22 I would call the Committee's attention to  
23 Senate Bill 900, which is a bill that the Administration  
24 strongly supports that we would like to see passed, which  
25 will make some substantial changes to -- which could affect

1 that employee threshold plus a number of other items, a  
2 number of other proposals that would effectively codify the  
3 DISBO program in the State and make improvements around  
4 eligibility and the State's practice of conducting  
5 disparity studies to ensure that we continue to have  
6 success driving business to small businesses and small  
7 diverse businesses.

8 But basically you have got to, if you are a small  
9 business and you fall under those thresholds, you register  
10 with the Commonwealth, and then you become eligible to  
11 compete for a substantial portion of our procurements,  
12 which are small business set-asides, and you also become  
13 eligible to compete, even as a subcontractor, and when you  
14 work with a prime, that prime is more likely to win the  
15 business because of your participation. That is  
16 effectively how the program works.

17 REPRESENTATIVE OWLETT: Great. Thank you.

18 SECRETARY TOPPER: Thank you.

19 MAJORITY SUBCOMMITTEE CHAIRMAN ORTITAY: Chairman  
20 Grove.

21 MAJORITY CHAIRMAN GROVE: Thank you.

22 Deputy Secretary Hess, I'm going to start with  
23 you for some questions.

24 You started off with kind of doing your  
25 procurement introduction. Obviously we have procurement

1 law; we have the Procurement Code. You mentioned the  
2 Procurement Handbook, and then you mentioned something with  
3 the Bar Association. Can you restate what that is, and to  
4 be clear, does that supplement the handbook or does the  
5 handbook supplement the Bar Association?

6 DEPUTY SECRETARY HESS: It is the American Bar  
7 Association recommended regulations for State and local  
8 government, and it is a guide that State and local  
9 procurement codes can go to to provide really well thought  
10 out legal parameters, and I am under the understanding that  
11 our Procurement Code follows greatly that ABA guide.

12 MAJORITY CHAIRMAN GROVE: Okay. Gotcha. So that  
13 ABA guide, basically our Procurement Code is modeled after  
14 that, and then the next level is the handbook, and then  
15 management directives or executive orders, correct?

16 DEPUTY SECRETARY HESS: That is correct.

17 MAJORITY CHAIRMAN GROVE: Good. Okay.

18 RFPs. Obviously it's something that is being  
19 used more. I think in our emergency procurement hearing,  
20 Secretary Topper mentioned the push to try to move more  
21 towards those proposals.

22 You know, obviously we kind of get involved if  
23 maybe RFPs go bad or maybe a vendor doesn't necessarily get  
24 theirs. We have heard instances of, quote, "unfairness" in  
25 RFPs where they may be guided towards one vendor or not.



1 So can you work through the RFP process, and what  
2 guardrails does DGS have to make sure that it's an open bid  
3 and everybody can actually provide the ability to win those  
4 bids and we don't have instances where an RFP is designed  
5 to make sure someone doesn't have the capability or  
6 designed in a way that, you know, someone can't bid or  
7 isn't capable of bidding.

8 DEPUTY SECRETARY HESS: Well, RFPs represent the  
9 best-value approach to solicitation. It provides us an  
10 opportunity to gauge product performance, quality,  
11 durability, desired attributes or features, warranty,  
12 vendor training or other vendor support. Like a piece of  
13 capital equipment, it should consider the product's  
14 lifecycle and try to approximate a total cost of ownership.

15 Additionally, when we are using best-value  
16 evaluation techniques, we also can consider contractor  
17 qualifications, their personnel, their experience, their  
18 prior performance history, service, delivery, their  
19 finances. And so it's a much more comprehensive view of  
20 the suppliers that are competing, which we feel results in  
21 a much higher quality outcome.

22 As regards keeping it fair, we tend to, when we  
23 run RFPs, have a committee. That committee consists of  
24 generally multiple agencies, because remember, most of the  
25 contracts that BOP are doing are statewides. So, you know,

1 all agencies or a preponderance of agencies could use them.  
2 So we will bring in representatives or even SMEs, subject  
3 matter experts, to guide the committees in the design of  
4 the specifications and the requirements with an eye toward  
5 making them generic wherever possible.

6 We want competition. That's how we achieve these  
7 kinds of savings. And so we're very much committed to, you  
8 know, sometimes you're just plain stuck with somebody that  
9 has got a patent or a license or a trademark or things like  
10 that. But with the help of legal and with multiple  
11 viewpoints being voiced at the committees, we feel that  
12 results in a superior outcome.

13 MAJORITY CHAIRMAN GROVE: Great.

14 I want to go hit on change orders a little bit,  
15 and maybe, Mike, you can jump in, PennDOT as well.

16 Are there instances where you had entities  
17 potentially abusing the change order system? I win a low  
18 bid, and then I'm going to try to change order my way for  
19 greater profits or more money in a system. What's the  
20 process in place to prevent that from happening?

21 ACTING DEPUTY SECRETARY KEISER: All right.

22 Well, first of all, I think that's a very good  
23 question, and I would say on the PennDOT side, that process  
24 begins with verifying the quality of the bid, you know,  
25 when we open up bids. So obviously we have more than one

1 contractor that is bidding on the contract, so initially  
2 we're going to evaluate that to make sure, you know, if we  
3 have one bidder that's significantly lower than the rest,  
4 that's going to raise a lot of flags.

5 And again, I have some other experts here,  
6 Representative Grove, that may want to weigh in. But  
7 that's where it starts. And again I would say from there,  
8 you know, obviously we have inspectors out in the field, so  
9 we see what's going on there. We have inspectors in charge  
10 of the project. So, you know, obviously if there's an  
11 agreement there was an item missing or a quantity that was  
12 not right, you know, we would address that.

13 But I would say overall, again, the key is to  
14 make sure we feel we have a good bid. We'll reach out. We  
15 ask the contractors questions on how they established the  
16 price, you know. And again, I think in reality, out there  
17 in the field we had projects that we got a very good bid on  
18 compared to, say, the second, third, and fourth bidder in  
19 terms of price, and those projects went great. We were  
20 satisfied with, you know, the feedback we got from the  
21 contractor before we executed the agreement.

22 You know, we had other contracts where we had a  
23 very tight, you know, one, two, three, and four were all  
24 within a few percent of each other, and, you know, some of  
25 those projects went a little south.

1           But again, I'm just going to ask quickly if my  
2 staff has anything to add to that.

3           Okay. Yeah, I think we're good with that. So I  
4 don't know if there's any follow-up questions to that.

5           MAJORITY CHAIRMAN GROVE: No.

6           Secretary Topper, how about from DGS's side?

7           SECRETARY TOPPER: Thank you, Mr. Chairman.

8           We use almost exclusively a design-bid-build  
9 process for construction. The design process typically  
10 takes at least a year. It's quite involved. We work with  
11 the professionals that we hire in order to pull together  
12 complete construction documents. At the end of the design  
13 process, we then bid. We then conduct the bid based on  
14 those construction documents.

15           And, you know, much like PennDOT, we do pay  
16 attention to the spread of bids, you know, and when we see  
17 a real outlier, it's a red flag for us as well. You know,  
18 we only award the business, you know, to responsive and  
19 responsible offers.

20           And then, you know, if and when there are  
21 unforeseen conditions or something is discovered in the  
22 course of the construction, we also have people on site  
23 full time who are going to be aware of and are going to be  
24 able to independently assess what is found and whether a  
25 change order is needed or whether the work that the

1 contractor is claiming is new was actually contemplated in  
2 the contract.

3 We go back to those construction documents and to  
4 the contract frequently during a project, sometimes to  
5 remind the contractor that, yeah, it's in there. And  
6 ultimately we have the final say on whether a change order  
7 gets approved or disapproved, and, you know, if and when we  
8 disapprove of a change order, which does happen, you know,  
9 then the contractor is left to complete the job, and then  
10 we go through a claims process.

11 But our change order process is, you know, it's  
12 pretty robust. As I mentioned, we are under 3 percent in  
13 terms of the total value of our projects, you know, or the  
14 value of change orders as a percentage of projects. We  
15 tend to get it right.

16 MAJORITY CHAIRMAN GROVE: Yeah.

17 And then from DGS's view, once procurement is  
18 done, you wouldn't see change orders for the actual project  
19 moving forward, right? That's on the agency who is doing  
20 the project.

21 SECRETARY TOPPER: Well, no, not for  
22 construction.

23 So, you know, the Public Works deputate works a  
24 little bit differently than Procurement. We own the  
25 projects from start to finish, and the agencies, the

1 ownership of the building is transferred to the occupant  
2 once the building is completed, and once it is completed,  
3 then we get a certificate for occupancy. But until that  
4 time, we own the primary relationship with the contractors.

5 MAJORITY CHAIRMAN GROVE: Gotcha.

6 I'll think of an example of, if Agency XYZ does a  
7 procurement for, I don't know, like an auditing service --  
8 right? -- that would fall under Agency XYZ for the change  
9 orders after procurement is done.

10 SECRETARY TOPPER: Typically, yeah, that's the  
11 case.

12 MAJORITY CHAIRMAN GROVE: Okay. All right.

13 DEPUTY SECRETARY HESS: Representative Grove, if  
14 I could chime in real quick?

15 MAJORITY CHAIRMAN GROVE: Yeah.

16 DEPUTY SECRETARY HESS: From the general, you  
17 know, the general procurement side of the house, we refer  
18 to these as amendments, contract amendments as opposed to  
19 change orders, and we actually do very few of them.

20 And I would say this, that we have placed a  
21 premium on market research, that doing robust  
22 investigations with other States using third-party firms  
23 like Gartner or D&B, we look at award databases for other  
24 States and other public institutions.

25 And another key here is how finite your

1 requirements are written. Now, you can overprescribe and  
2 end up paying more perhaps, but what I think we have found  
3 is that there's a balance to try to achieve between, you  
4 know, too wide open, too prescriptive, and that when you're  
5 in that sweet spot, you end up not having nearly as many  
6 amendments by investing the time up front.

7 MAJORITY CHAIRMAN GROVE: Gotcha.

8 And Deputy Secretary Hess, you mentioned a term  
9 "responsible offer."

10 DEPUTY SECRETARY HESS: Mm-hmm.

11 MAJORITY CHAIRMAN GROVE: What is that  
12 individual? I assume you go back with all of your  
13 procurement bids and look how an individual performed. So  
14 do you score that? Do you also look at that?

15 DEPUTY SECRETARY HESS: Yes, we certainly can.

16 We tend to, that's one of the ways that you can  
17 perhaps over favor an incumbent, so we're somewhat  
18 judicious with the use of that. But initially when we open  
19 bids, we do a very quick responsive and responsible  
20 analysis. So, were the bids received on time? Did they  
21 fill out all the forms and provide all the certifications  
22 like, you know, a domestic laborer, and so on? And so then  
23 we refer to that bid as having been responsible and  
24 responsive, and then it is passed on to the committee. So  
25 that was what I was referring to with responsive and

1 responsible.

2 MAJORITY CHAIRMAN GROVE: Gotcha.

3 As far as bad actors within the realm of  
4 procurement, and maybe Deputy Secretary Hess, you can  
5 comment on this, and then Deputy Secretary Keiser, you  
6 could.

7 Disbarment and suspension. We do have House Bill  
8 1925 -- I think it is Representative Herrin's bill -- that  
9 does some updates with disbarment and suspension for  
10 individuals who have not followed through with their  
11 contracts. Do you see a need for additional statutory  
12 language to help kind of weed out bad actors and help with  
13 more disbarment suspensions in certain cases?

14 DEPUTY SECRETARY HESS: I haven't. There may be  
15 more on the construction side. I have been involved, in my  
16 7 years here, with just one suspension. And quite  
17 honestly, you know, some of the things that Lean has taught  
18 us are how to do a better job working with our suppliers to  
19 identify a root cause for nonperformance and to engage well  
20 before it becomes a situation where, you know, where  
21 termination is required.

22 And so what we found is that, kind of like with  
23 employees, progressive discipline and temporary suspensions  
24 and documented corrective actions, where PennDOT is a great  
25 example of this. We had a service provider who was not



1 complying with the performance terms. I don't want to get  
2 into specifics, but we actually suspended them for 90 days  
3 based on an on-site inspection, random on-site inspection,  
4 and then we had periodic evaluations, I think it was every  
5 30 days for 3 months, until we were certain that they  
6 brought themselves back into compliance. I mean,  
7 otherwise, then, we would have gone to, you know, a full  
8 debarment. But I do like the flexibility to be able to  
9 develop plans to modify behavior before it becomes really  
10 problematic.

11 MAJORITY CHAIRMAN GROVE: Thank you.

12 And Deputy Secretary Keiser, any comments on  
13 further needs to get rid of bad actors who may or may not  
14 have screwed up interchanges?

15 ACTING DEPUTY SECRETARY KEISER: I'm just going  
16 to talk generally, of course.

17 MAJORITY CHAIRMAN GROVE: Absolutely,  
18 Deputy Secretary.

19 ACTING DEPUTY SECRETARY KEISER: You know, we  
20 feel up front that the prequalification process helps us  
21 with that. I think where we could probably engage the  
22 General Assembly and have some conversations would be, what  
23 do you do, you know, in the middle of the stream when you  
24 have this problem? You know, what are the options for  
25 PennDOT or any other Commonwealth agency, you know, that

1 you still have the litigation side of things if you try to  
2 move forward. But I think that's probably where, you know,  
3 it's worthwhile to have some discussions, if that's  
4 helpful.

5 MAJORITY CHAIRMAN GROVE: Absolutely.

6 And the last question, Secretary Hess, coming  
7 back to you.

8 eMarketplace and Treasury's e-contract website,  
9 what's the difference between the two?

10 DEPUTY SECRETARY HESS: So Treasury are only  
11 fully-executed contracts, and they post all of the  
12 Commonwealth's contracts, even those not under the  
13 Governor's jurisdiction.

14 eMarketplace are notices of forthcoming  
15 procurement, solicitations, ITQs, then contracts.  
16 Emergency procurements are out there. Sole sources are out  
17 there. COSTARS contracts are on eMarketplace. So way more  
18 comprehensive, and Treasury seems to really want to get a  
19 full and complete grasp of everything that has made it all  
20 the way to execution.

21 MAJORITY CHAIRMAN GROVE: Gotcha. So if you're  
22 looking ahead of the game and you're looking for contracts  
23 to bid on, you go to eMarketplace. If you're looking for  
24 executed contracts, more globally, you can go to e-contract  
25 on the Treasury website, but you also have executed

1 contracts on the eMarketplace that DGS does for the  
2 Governor's jurisdiction, correct?

3 DEPUTY SECRETARY HESS: Right. And this is where  
4 we always run into problems. As Deputy Secretary Keiser  
5 mentioned, some agencies have their own authorities. Like,  
6 DEP has authority over dams and wetlands and things like  
7 that, and so they can place their own contracts. And many  
8 times, you know, folks will come to us asking questions  
9 about those.

10 Now, I believe DEP does use eMarketplace, but not  
11 every agency that has their own procurement authority does,  
12 like LCB. You're not going to see purchases for booze on  
13 eMarketplace.

14 MAJORITY CHAIRMAN GROVE: If we gave booze  
15 purchasing to DGS, could you lower the cost for consumers?

16 You don't need to answer that.

17 DEPUTY SECRETARY HESS: Thank you. I know I  
18 could lower the cost for myself.

19 MAJORITY CHAIRMAN GROVE: Right.

20 I think that does it for me. Thank you. Thank  
21 you all for testifying.

22 MAJORITY SUBCOMMITTEE CHAIRMAN ORTITAY: Just  
23 following up real quick on one of Chairman Grove's line of  
24 questioning.

25 What happens if you award a contract and the

1 vendor or the contractor goes out of business or sells or  
2 divests a portion of their business that was responsible  
3 for implementing that contract? Is there recourse? Do you  
4 do another bid? What happens?

5 SECRETARY TOPPER: So I might be able to jump in  
6 here, Ken.

7 DEPUTY SECRETARY HESS: Yes.

8 SECRETARY TOPPER: So I think the answer,  
9 Representative, is, it depends. If it's a case where a  
10 business is sold to another third party, we have standard  
11 terms and conditions that govern whether or not the  
12 contract can be assigned, and typically the Commonwealth  
13 has to approve of that contract assignment before it can be  
14 effective.

15 If a company just straight up goes out of  
16 business and they are unable to perform on the contract,  
17 then that does put us in a position where we have to  
18 effectively re-procure. We have to go back to the market  
19 and find another supplier.

20 MAJORITY SUBCOMMITTEE CHAIRMAN ORTITAY: Is that  
21 language fairly boilerplate in most of the contracts?

22 SECRETARY TOPPER: It is. That is part of the  
23 Commonwealth's standard terms and conditions. We apply  
24 standard t's and c's to every contract we write.

25 MAJORITY SUBCOMMITTEE CHAIRMAN ORTITAY: Okay.

1 Thank you.

2 I'll go to Representative Young.

3 REPRESENTATIVE YOUNG: Thank you.

4 I'm curious to find out what percentage of change  
5 orders are typically approved.

6 SECRETARY TOPPER: So---

7 REPRESENTATIVE YOUNG: Roughly.

8 SECRETARY TOPPER: Roughly, Representative, I  
9 don't have that number right in front of me on the  
10 construction side, but I'll be more than happy to find it  
11 and provide it to the Committee.

12 REPRESENTATIVE YOUNG: Thank you.

13 MAJORITY SUBCOMMITTEE CHAIRMAN ORTITAY: All  
14 right. I'm going to wrap it up with a couple of questions,  
15 and then we're going to move on. I know you guys are  
16 probably anxious to get to dinner or happy hour or  
17 whatever.

18 Yeah, it is dinnertime. Thank you,  
19 Representative. My stomach feels the same way.

20 In regards to the PA Supplier Portal, in order to  
21 do business with the Commonwealth, does a business have to  
22 be on there? Is there a central database for all suppliers  
23 and approved vendors?

24 DEPUTY SECRETARY HESS: You bet. Well, only if  
25 they want to be paid. Sorry, a little humor there.

1           Yeah. And actually, the PA Supplier Portal is  
2 managed by the Office of the Budget. The payables team  
3 within the Office of the Budget manages that; again, to  
4 ensure that suppliers do receive the compensation that they  
5 are due and in accordance with the terms and conditions  
6 that have been set in the contract.

7           And OB actually works as a very nice check and  
8 balance along with Procurement. They are a great partner,  
9 and, you know, they catch sometimes the odd mistake we  
10 might make, you know, on an address or a ZIP Code doesn't  
11 comport to a city or something like that.

12           And I will say that they have done an amazing job  
13 working with all of our suppliers in terms of getting them  
14 paid faster and more accurately via digital interaction,  
15 right? So very, very few paper invoices or statements are  
16 exchanged anymore, and I hear a lot from our suppliers that  
17 they are very grateful for that.

18           MAJORITY SUBCOMMITTEE CHAIRMAN ORTITAY: Thank  
19 you.

20           My next question, and probably my last since we  
21 need to move on here, why would a sole-source contract be  
22 rejected?

23           DEPUTY SECRETARY HESS: Well, in some cases, the  
24 three big uses are patents, short-term extensions, and like  
25 a proprietary compatibility issue.

1           Many times, there may have been a  
2 misrepresentation. I had one just not too long ago where a  
3 patent was no longer enforced, for example. And so, you  
4 know, we rejected that sole-source request and said, hey,  
5 you know, this is now open to competition and we should  
6 take fullest advantage of it.

7           MAJORITY SUBCOMMITTEE CHAIRMAN ORTITAY: All  
8 right. I lied. One last question and then we'll move on  
9 here.

10           Can you talk about P-Cards, who gets them, what's  
11 their criteria for it. I mean, I know there's a lot of  
12 transactions that occur with them, but what's kind of the  
13 criteria for someone to get a P-Card?

14           DEPUTY SECRETARY HESS: Well, that is actually  
15 assigned by the Office of the Budget, and you would  
16 probably be best to talk to them about how their financial  
17 reporting structure works between specific agencies and  
18 bureaus and the liaison that they have back to the Office  
19 of the Budget. So I'm going to defer to them in that case.

20           MAJORITY SUBCOMMITTEE CHAIRMAN ORTITAY: All  
21 right. I want to thank everyone who joined us at this  
22 wonderful hour. I appreciate your testimony.

23           To Deputy Secretary Keiser, if you have written  
24 testimony that you mentioned earlier today, could you  
25 provide that to the Committee as well?

1                   ACTING DEPUTY SECRETARY KEISER: Sure. Sure,  
2 we'll do that.

3                   MAJORITY SUBCOMMITTEE CHAIRMAN ORTITAY: All  
4 right. Thank you. I appreciate that.

5                   And thank you all. Again, I appreciate it.

6

7

PANEL 2

8

NATIONAL ASSOCIATION OF

9

STATE PROCUREMENT OFFICIALS

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11                   MAJORITY SUBCOMMITTEE CHAIRMAN ORTITAY: At this  
12 time, we're going to move on to our second panel. We have  
13 Matt Oyer, who is the Chief Learning Officer of the  
14 National Association of State Procurement Officials. That  
15 is quite the acronym. I'm glad I got it without getting  
16 tongue-tied.

17                   Matt, if you have any opening remarks, you are  
18 welcome to make them when you're ready.

19                   MR. OYER: Great, and thank you for having me.

20                   Yes, NASPO is the acronym for us, but the  
21 National Association of State Procurement Officials, so  
22 thank you for having me here.

23                   So NASPO, we are a nonprofit association that  
24 represents the 50 States, the District of Columbia, and  
25 Puerto Rico, so specifically a central procurement office



1 in each of those States. So we work with them on a number  
2 of different things, including, you know, research and  
3 trainings and networking opportunities and things like  
4 that. So it's a pleasure to be here.

5 And in terms of opening remarks, I'll just hit on  
6 a couple of things at a high level, as I was asked to do,  
7 around best practices within State procurements. And, you  
8 know, what I will say, it was great to kind of listen, you  
9 know, to the previous testimonies and the conversation  
10 here. There were some great questions there, and I  
11 certainly commend you all for talking about procurement and  
12 asking these questions. So with my remarks, I'll keep  
13 things at a high level and then certainly, you know, be  
14 available for questions.

15 So in terms of procurement, and when we talk  
16 about, you know, some of the high level things, in the  
17 written materials that I provided, I touched on a number of  
18 the different topics that were previously touched upon and  
19 some of the questions that were asked, you know, things  
20 such as, you know, best value procurement, which is in  
21 there as well. But when we talk about, you know,  
22 procurement generally and what we're looking at, I did want  
23 to start with the ABA Model Procurement Code that was  
24 actually mentioned previously.

25 So as Deputy Hess mentioned, you know, that is a

1 code that is put out there as a guide that many States have  
2 adopted, either fully or partially, and it is the basis for  
3 their State Procurement Code. So we actually in our  
4 records, you know, over 63 percent of States responding in  
5 one of our recent surveys have adopted part of that Model  
6 Procurement Code, so it serves as a foundation that is then  
7 supplemented by the State Procurement Code and procurement  
8 manuals. So I did want to touch on that briefly, you know,  
9 in terms of being a basis for the code itself.

10           You know, when we're talking about procurement  
11 and kind of the role of central procurement as having  
12 authority over the majority of the procurement within the  
13 State, you know, we're looking at a central procurement  
14 office to be able to provide that guidance and to receive  
15 or process the policies from the State throughout.

16           And as part of that, you know, one thing that was  
17 mentioned and I did want to touch on and is in the  
18 materials I sent, best-value procurement and the use of it.  
19 So the idea of low-bid procurement versus best-value  
20 procurement.

21           So we have seen on our side, as I think was  
22 mentioned earlier, increasingly over, you know, the last  
23 couple of decades, States have moved more towards  
24 best-value procurement and utilizing RFPs, requests for  
25 proposals, but essentially, you know, utilizing other

1 criteria to determine an award rather than just price.

2 So with that, with best-value procurement, you  
3 know, you are able to set criteria that are appropriate for  
4 that particular procurement you're looking at, and then  
5 having, you know, an award criteria and process as well.  
6 But I did want to mention best value there.

7 As you know and as has been discussed kind of  
8 throughout, the overall focus within procurement is  
9 something that NASPO always really hits on and tries to  
10 educate. Obviously the focus is on increasing competition,  
11 right? So all the different things that come with  
12 competition and having, you know, the process open up, or  
13 as much competition as possible.

14 So it was encouraging to hear some of the  
15 comments around different things that have been done, you  
16 know, to increase the outreach to suppliers. You know, I  
17 heard some conversation there around different things that  
18 DGS, that the central procurement office has been able to  
19 do to engage suppliers, to encourage them to respond to  
20 proposals and bids, and that is part of the outreach as  
21 well.

22 Because one thing that we have increasingly seen  
23 and increasingly advocated for is engagement of the  
24 supplier community, both for their subject matter expertise  
25 but also to engage them and educate them on doing business

1 with the State. So there's a number of different ways to  
2 do that, including expos, which I think were mentioned, but  
3 a great way, you know, to engage that community and educate  
4 them as well. So I did want to touch on that as well.

5 With the central procurement office, you know,  
6 one of the biggest things that we look at and in discussion  
7 with our members, you know, it's really about them on being  
8 looked at as professionals in their area and within the  
9 profession itself and being able to largely, you know,  
10 manage relationships and engage with the agencies that they  
11 are working with to procure things for, as well as the  
12 vendors, as I had mentioned, and being able to engage with  
13 them on developing, you know, the criteria for a  
14 solicitation and working with them throughout the process.  
15 So I wanted to mention that as well.

16 So those are some of my opening remarks. You  
17 know, I certainly have other information within the packet,  
18 and it can speak to some of the questions, that I know  
19 there were a number of topics that were touched on. But  
20 we're here as a resource, and we certainly can provide  
21 materials afterwards. So I would just kind of stop there,  
22 pause there, to see if there are any questions initially.

23 MAJORITY SUBCOMMITTEE CHAIRMAN ORTITAY: Thank  
24 you, and I know we do have some questions.

25 We'll go to Chairman Grove first.

1 MAJORITY CHAIRMAN GROVE: Thank you.

2 One of the reasons we're doing this is we really  
3 haven't opened the Procurement Code here in Pennsylvania  
4 really at all, ever. Maybe some ad hoc stuff here and  
5 there and some omnibus code bills that go along with the  
6 budget, but we really haven't done any work into it.

7 So kind of looking at the past 20 years and  
8 looking at kind of Pennsylvania compared to other States,  
9 what are some of the new innovations out there in  
10 procurement that maybe we're potentially not doing, or what  
11 are the kind of like current issue trends that we're seeing  
12 in other States that we need to pay attention to?

13 MR. OYER: Sure.

14 So I certainly can't speak to everything that  
15 Pennsylvania is doing in terms of procurement and being  
16 able to compare it. I mean, I will say that based off of  
17 reviewing portions of your Procurement Handbook and  
18 listening to the conversations today, there are a number of  
19 encouraging things you are doing; again, engaging  
20 suppliers. That has been an area that really we have  
21 advocated for, to do that appropriately and with  
22 transparency, but to engage the supplier community in a  
23 number of different ways, whether it's requests for  
24 information, pre-bid meetings, different ways to do it.  
25 And I do know that, you know, DGS in simple procurement do

1 a number of those different things as well.

2 So increasingly engaging the supplier community  
3 to leverage their expertise is a big area of growth and  
4 innovation, I would say, and it is done in a number of  
5 different ways.

6 MAJORITY CHAIRMAN GROVE: Gotcha.

7 For best value versus low bid, I know at the  
8 State level we have the capacity to do RFPs and kind of  
9 move away from those just a little bit. I know county  
10 level, we have, I think, the second most number of local  
11 governments here in the United States outside of I think  
12 Illinois. At what level are RFPs just not, you just can't  
13 do them because you just literally do not have that kind of  
14 bureaucracy or employees to actually work through those.  
15 What do you see? Do you see large cities doing them?  
16 Large counties?

17 MR. OYER: Yeah. So they have become pretty  
18 widespread, and certainly I can't speak to the breadth in  
19 terms of usage, but they have increasingly been utilized  
20 for, you know, commodities or services where it makes sense  
21 -- right? -- larger procurements in particular. But, you  
22 know, RFPs are being issued at the local level in all  
23 counties, the State, all across. It depends on the  
24 procurement, obviously, but there is that need to look at  
25 best value, other criteria -- right? -- other than price

1 and be able to utilize that to find the best potential  
2 supplier.

3 MAJORITY CHAIRMAN GROVE: Gotcha.

4 I know that Europe has been looking at, I think  
5 it's called price-plus bids for a little while. Is that  
6 kind of encompassed in a traditional RFP process we see  
7 here in the United States, or are they a little more  
8 focused on maybe moving away from price and looking at  
9 overall quality?

10 MR. OYER: Yeah. So I'm not -- I'm familiar with  
11 price plus; I can't speak to exactly the details, but I do  
12 believe it's adding in some of the similar idea of other  
13 criteria -- right? -- other evaluation criteria in addition  
14 to price. And, you know, I think looking at it, again, it  
15 depends on what you're procuring -- right? -- and where  
16 that may make sense.

17 But there are, you know, some benefits that come  
18 with best-value procurement or issuing an RFP, you know,  
19 being able to look at those different criteria to be able  
20 to award to a supplier that best meets the need. And I  
21 will say, I believe Deputy Hess touched on this, you know,  
22 the idea of an RFP being focused on finding a solution --  
23 right? -- being more open to the supplier community to be  
24 innovative and really focus on providing, you know, the  
25 service or whatever you're looking for and leveraging, you

1 know, innovation of that industry, leveraging their  
2 expertise to provide a solution for whatever procurement,  
3 you know, you're conducting.

4 MAJORITY CHAIRMAN GROVE: Thank you.

5 MAJORITY SUBCOMMITTEE CHAIRMAN ORTITAY:  
6 Representative Owlett.

7 REPRESENTATIVE OWLETT: Thank you, and thanks for  
8 joining us this evening.

9 I want to talk a little bit about COVID-19, and  
10 undoubtedly this has really affected States, and  
11 procurement especially. What are some of the challenges  
12 that States have been facing from the pandemic, and what  
13 have you been noticing as far as best practices during that  
14 time?

15 We talked a little bit about debriefing projects  
16 in the last panel, but talk a little bit about, like, what  
17 you have learned through this pandemic and the procurement  
18 process, and maybe some suggestions that you could give to  
19 this committee that we could be thinking about and  
20 processing as well.

21 MR. OYER: Yeah.

22 So, you know, throughout the pandemic, we were  
23 obviously engaging with our members, with the central  
24 procurement offices. And, you know, for each State, the  
25 central procurement office was involved in, you know,



1 procurements specific to the pandemic in different ways,  
2 right? So it's different by State in terms of their  
3 involvement.

4           One of the things, and we actually have conducted  
5 a large research study that we did over the last year where  
6 we did over 100 hours of interviews with our members, the  
7 central procurement office, and other stakeholders within  
8 States and specifically asked them about initially, in the  
9 pandemic, you know, their involvement in procuring PPE, but  
10 other things as well. And out of that, you know, and I'm  
11 certainly happy to provide that report afterwards, but some  
12 of the key recommendations that were there, the main  
13 recommendation that came out of it, it's just the  
14 involvement of procurement, involvement of the central  
15 procurement office, you know, from early on. So  
16 involvement working with, you know, to get our emergency  
17 response; working with, you know, the department  
18 responsible for emergency response from the State, and  
19 having procurement at the table. Because as we saw within  
20 the pandemic and as we continue to see, you know, there  
21 were supply chain issues. There were issues procuring PPE.  
22 There were issues with verifying and the quality of PPE and  
23 other things as well.

24           But when procurement is engaged early on, you  
25 know, they have that expertise. They understand certain

1 markets. They may not, you know, have direct knowledge of  
2 all the different markets that are out there, but they have  
3 that ability to navigate your Procurement Code. But also,  
4 you know, they have the expertise around doing market  
5 research, working with suppliers, and they should, you  
6 know, be engaged in part of that conversation working with  
7 the State's emergency operations center as well.

8 REPRESENTATIVE OWLETT: Thank you.

9 MAJORITY SUBCOMMITTEE CHAIRMAN ORTITAY: Thank  
10 you.

11 One of the questions I wanted to ask, you know,  
12 it has become apparent throughout putting questions  
13 together for this, that our committee staff does enjoy your  
14 podcast, so I wanted to mention that and get that on the  
15 record.

16 You often highlight what other States are doing  
17 in the procurement space. Can you talk to some specific  
18 best practices, maybe about, you know, weeding out bad  
19 actors or talking about audits, just anything in particular  
20 that really sticks out for you?

21 MR. OYER: Yeah.

22 So, you know, I heard a conversation earlier  
23 about supplier vetting, weeding out bad actors, and  
24 certainly there's a lot of that that had to be conducted  
25 during the pandemic and the response to it as well. You

1 know, and I think some of this was mentioned, certainly  
2 prequalified or a qualified vendors list in that process  
3 can certainly help with some of that, having criteria early  
4 on. Then it also, you know, it goes back to your  
5 solicitation -- right? -- and the criteria that is being  
6 placed within the solicitation within the RFP.

7           So there's a number of different things there in  
8 terms of kind of inferring or vetting suppliers and  
9 engaging with them. And I do think, in fact, my earlier  
10 point around engaging the supplier community, that the more  
11 there is that transparent engagement -- right? -- there are  
12 a number of different ways, pre-bid meetings, things like  
13 that, there is the ability to better engage and learn what  
14 questions to ask of that supplier community -- I have to  
15 say that, too -- which then allows you to develop a  
16 solicitation with the criteria that is needed.

17           So I do think that is important as well to  
18 understand the industry, understand suppliers so you can  
19 better engage with them. So if there are those, you know,  
20 bad actors, you may be able to identify them and, certainly  
21 through your solicitation criteria, you know, be able to  
22 build it properly.

23           MAJORITY SUBCOMMITTEE CHAIRMAN ORTITAY: All  
24 right. Thank you.

25           In one of your recent podcasts, I think it was in

1 September, NASPO interviewed the Deputy Director of  
2 Operations from Florida, and they talked about the Vendor  
3 Performance Tracking System. Can you talk a little bit  
4 more about this system and if other States are using  
5 something similar?

6 MR. OYER: Yeah. And it's encouraging to know  
7 that you are listening to the podcast. We appreciate  
8 that.

9 So, yeah, the idea of vendor performance  
10 tracking. So there are a few States that are doing this.  
11 Each State is doing it a little bit differently in terms of  
12 what they are looking at. But with Florida, in my  
13 understanding and recollection of what they are doing, it's  
14 that ability to evaluate vendors', you know, performance  
15 afterwards or after a contract is complete, or I believe  
16 even during. But having that ability to actually evaluate  
17 them based on criteria and the performance and the  
18 experience working with them.

19 So it has been done in a number of different ways  
20 I think in terms of what is out there. With Florida, I  
21 believe it's more kind of, you know, an evaluation survey  
22 almost that I think the agency, the user agency, contract  
23 administrator, or the person that is engaging with the  
24 supplier on a regular basis is able to utilize and be able  
25 to do that.

1           So there's a number of different systems or  
2 processes that are out there for it, and, you know, it's an  
3 area that I do think there has been an increasing amount of  
4 attention. I cannot speak to the amount of adoption of a  
5 formal vendor performance system or process, but I do think  
6 there has been more conversation around it.

7           MAJORITY SUBCOMMITTEE CHAIRMAN ORTITAY: Can you  
8 maybe talk about some of the really innovative and new  
9 unique things in the world of procurement that you have  
10 noticed of note that maybe other States are doing or  
11 talking about right now that might be, like, the next  
12 wave?

13           MR. OYER: Sure.

14           So there's different types of solicitation  
15 methodology that have been utilized, and what I will say  
16 with this, I mean, I think this is true whenever you talk  
17 about different types of procurement or solicitations.  
18 It's not a one-size-fits-all -- right? -- and this goes  
19 back to the conversation around low price or IFBs versus  
20 RFPs. You know, different types of methodology fit  
21 different types of procurements. They fit different types  
22 of agencies that you are procuring for.

23           So there are some different methodologies that  
24 have been utilized by States that we have highlighted  
25 through case studies and things like that. One is often

1 referred to as challenge-based procurements or  
2 challenge-based RFPs, so similar to the idea of you are  
3 seeking a solution for a problem. You are making it a  
4 little bit more open in terms of what that response from  
5 the supplier is. So you are looking then, and this has  
6 been facilitated in a number of different ways, but you are  
7 looking then to really propose a solution rather than  
8 having very strict criteria within your RFP that is really  
9 limiting what that response can be, right? So you are  
10 leaning on the supplier community to propose different  
11 types of methodology or different solutions to the problem  
12 that you have on the procurement that you are conducting.

13           So that is a bigger, you know, area, that there  
14 has been different types of innovations both within the  
15 State of Minnesota, some of the things that I know I have  
16 seen there, as well as California. The State of  
17 California, they have conducted a similar type of  
18 challenge-based, sometimes called different things, but  
19 challenge-based procurements that really facilitate but  
20 look to leverage that innovation within the supplier  
21 community.

22           Now, again, that is not a one-size-fits-all, and  
23 that certainly has to be looked at and examined for the  
24 type of procurement for the solution that you're seeking,  
25 as well as the engagement of the agency and the industry

1 that it's going to be involved in as well.

2 MAJORITY SUBCOMMITTEE CHAIRMAN ORTITAY: Thank  
3 you.

4 Chairman Grove has one final question and then  
5 we're going to wrap up.

6 MAJORITY CHAIRMAN GROVE: Thank you.

7 When we talk about procurement, we have a lot of  
8 individuals making a lot of decisions on behalf of  
9 taxpayers throughout all of our States. What are some  
10 ideas on conflict of interest, because you do have  
11 entities, and today it's, nationally everywhere, it's tough  
12 to find people for jobs currently. So we do have movement  
13 between State agencies and vendors all the time back and  
14 forth. How do States minimize that conflict of interest  
15 where we make sure individuals who may have worked for  
16 vendor A are not directing specific projects to that vendor  
17 and making sure we have an open platform or that kind of  
18 stuff? What's out there as far as within that space?

19 MR. OYER: Yeah.

20 So, you know, a lot of times this starts with  
21 having a code of ethics, you know, within the procurement  
22 office or for folks that are involved within procurement.  
23 You know, certainly when it comes to the conflict of  
24 interest, if someone is going to be involved on an RFP  
25 evaluation team, for example, you know, you would look to

1 them to disclose a conflict of interest. So in some cases,  
2 it may be a form disclosing it. Plus, you are, first off,  
3 having those people trained, you know, engaging on an  
4 evaluation team, but also having them understand, you know,  
5 either your laws, code of ethics, and, you know, having  
6 that process so that they can identify the type of conflict  
7 of interest. And then having a process for how you handle  
8 that conflict of interest so you can see if there is that  
9 issue there, so that someone who is going to be engaging on  
10 an evaluation team or handling a permit, they are  
11 identifying upfront that there may be that potential  
12 conflict and that there is a process set for addressing it.

13 MAJORITY CHAIRMAN GROVE: Gotcha.

14 Does any State -- I mean, we just moved some  
15 legislation here to create some 1-year bans on lobbying  
16 disclosure to make sure we remove, it's kind of like a  
17 cooling-off period, right? Are you aware of any of those  
18 type of cooling-off periods when it comes to individuals  
19 moving between a vendor or a few individuals moving between  
20 a vendor or a procurement office?

21 MR. OYER: Yeah.

22 So I am certainly familiar with the concept, and  
23 I have heard States discuss it. I don't have the data in  
24 front of me to know which States do it. You know, we can  
25 look back through some of our materials. But, you know, I



1 don't have the hard data that says the number of States  
2 that have that cooling-off period.

3 MAJORITY CHAIRMAN GROVE: Gotcha. Okay. Thank  
4 you.

5 MR. OYER: Thank you.

6 MAJORITY SUBCOMMITTEE CHAIRMAN ORTITAY: Matt,  
7 thanks for joining us. That's a wrap on panel 2. Thanks  
8 for spending so much time with us and sticking with us from  
9 the beginning at this hour. We appreciate it.

10 MR. OYER: Thank you.

11 MAJORITY SUBCOMMITTEE CHAIRMAN ORTITAY: All  
12 right. We also have written testimony from Tim Keller, who  
13 is the Government and Regulatory Affairs Manager for  
14 Gordian. It has been included in all the Members' packets  
15 here.

16 And I'm going to turn it over to Rep. Young for  
17 some closing remarks.

18 REPRESENTATIVE YOUNG: I want to say thank you to  
19 all the panelists who joined us today to give us more  
20 information and insight on the procurement process and the  
21 actors. So thank you, and we are enlightened by the  
22 information.

23 MAJORITY SUBCOMMITTEE CHAIRMAN ORTITAY: Thank  
24 you, Representative.

25 I want to echo that and thank all of our

1       testifiers for taking time out. I know we normally don't  
2       do hearings at this hour, although maybe we'll start a new  
3       trend. No? No; no.

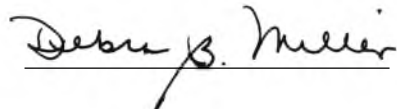
4                I certainly appreciate the Members being here  
5       tonight to ask questions. This is an important process as  
6       we look at our Procurement Code. It has been awhile since  
7       we have done anything with it. So I appreciate their  
8       patience. I appreciate staff's patience as well.

9                But with all that said, I bid everyone good  
10      night. This hearing is adjourned. Thank you.

11

12                (AT 6:33 p.m., the public hearing adjourned.)

1                   I hereby certify that the foregoing proceedings  
2 are a true and accurate transcription produced from video  
3 on the said proceedings and that this is a correct  
4 transcript of the same.

5  
6  
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