A G E N D A

Interim Committee to Study the State Procurement Process

Wednesday, September 21st
9:00 a.m. — 12:00 p.m.
House Committee Room 0112
State Capitol

SUMMARY FOLLOWS AGENDA

Call to Order

9:00 — Marc Carey, Colorado Legislative Council Staff, Overview of Recent Procurement-Related Legislation in Other States

9:30 — Marjorie Griek, Executive Director, Colorado Association for Recycling, Discussion on Recycling, Incentives and Procurement in Other States

10:00 — Committee Discussion on Proposed Legislation for 2006

Adjourn

Final

STAFF SUMMARY OF MEETING

STATE PROCUREMENT PROCESS

Date: 09/21/2005

Time: **09:03 AM** to **11:06 AM**

Place: HCR 0112

This Meeting was called to order by
Senator Groff

This Report was prepared by
Janis Baron

ATTENDANCE

Adams	E
Felice	X
Garcia	E*
Hanna	X
Houlihan	X
Kerr	X
Liston	X
Marshall	E*
Owen	E
Takis	X
Teck	E
Terry	E
Weissmann	X

Groff X

X = Present, E = Excused, A = Absent, * = Present after roll call

Bills Addressed:	Action Taken:
4th Meeting of State Procurement Interim Committee	-
Proposal #1 - Disclosure	-
Proposal #2 - Annual Reports	-
Proposal #3 - Large IT Projects	-
Proposal #4 - EPP Preference	-
Proposal #5 - Best Value Contracting	-

9:03 AM

Senator Groff called the meeting to order.

9:05 AM

Marc Carey, Colorado Legislative Council Staff, began his presentation on legislation in other states related to contract monitoring, outsourcing, off-shoring and disclosure. He provided the committee with Attachment A — memorandum on the subject.

There was little legislation in recent years related to contract monitoring, with the exception of Florida. A total of three bills were introduced in 2005, with one becoming law. Of note, SB05-1146 created the Commission of Efficient Government and established a centralized gate process through which all state contracts for services were to pass. Although adopted by the Florida legislature, the bill was vetoed by the Governor.

In 2005, more than 126 bill were introduced in 42 states on the topics of outsourcing, off-shoring, and disclosure. Of these, only 6 passed out of the state legislatures, with 4 becoming law. To better examine these topics, legislation was broken into categories according to geographic regions and according to policy approaches used by the states to address these topics. The greatest number of bills were introduced in the eastern U.S., with the New England states accounting for the most bills introduced. The Rocky Mountain region introduced the fewest number of bills. The most common policy approach prohibited the award of state contracts to companies that perform some or all of the work overseas.

The presentation also identified specific bills signed from the 2004 and 2005 legislative sessions.

9:16 AM

Mr. Carey finished his testimony and took questions from the committee on the specific bills discussed in his presentation.

9:28 AM

The committee recessed.

9:32 AM

The committee reconvened. Marjorie Griek, Executive Director, Colorado Association for Recycling, began her testimony and provided the committee with Attachment B. Her testimony centered around environmentally preferable purchasing (EPP). EP products can include recycled content products, energy conserving products, less toxic products, and bio-based products. EP services can include "great printers" and integrated pest management rather than regular spraying for pesticides.

The link between the environment, economy and procurement relies on procurement to be the front line of defense against pollution and wasteful practices, simpler and less costly practices, and large purchasers to drive national and global markets for "green" goods and services.

Ms. Griek provided examples of things being done in other states, most notably Utah's Department of Natural Resources and Idaho's Department of Environmental Quality and Department of Water Resources. The National Association of Counties is also engaged in greening government. She noted that Colorado lags behind other states in "greening" efforts and has no consistent policy for EPP. She referenced recent executive orders

which were enacted regarding energy performance contracting, and "greening" plans and policies.

9:56 AM

Ms. Griek took questions from the committee. Senator Hanna asked about greening efforts in other countries, including Japan and those in Europe. Ms. Griek responded that Europe is far ahead of the U.S. in its recycling efforts and in the use of EP products. She spoke about the use of garbage guardians to enforce strict recycling policies.

Mr. Houlihan asked about regulating/replacing toxic substances due to workers' exposure which may result in workers' compensation claims. Ms. Griek responded that Minnesota has implemented policies regarding the use of toxic substances in state operations in order to reduce worker exposure to such substances.

Representative Kerr asked if laws should be in place to encourage recycling rather than relying on market forces. Ms. Griek responded that statewide, Colorado does not have any conformity on trash collection and the availability of recycling. She stated that the disposal of garbage should be more expensive to discourage waste. There is a difference between waste disposal and the use of EP products. She prefers the use of incentives to drive the recycle market/industry, and believes that state use of EPP would push this market/industry.

Representative Liston asked about the waste/wreckage in Louisiana in the wake of Hurricane Katrina. What is going to happen with that waste? Is some of it salvageable? Ms. Griek responded that her organization will be participating in the cleanup but very little will be salvaged due to the toxicity of the wreckage. Representative Liston spoke of the extent to which school districts simply dispose of perfectly good desks and chairs.

Senator Takis spoke to concerns raised by Representative Kerr regarding recycling at the local level. She noted that recycling may be available in many communities but individuals may not be able to get access to the service. For example, alleys are key to trash disposal. Large recycling trucks cannot fit down alleys to pick up recycled materials like garbage trucks can, and recycled items are sometimes prohibited from being placed out front. Solutions need to be worked out at the local level to facilitate recycling efforts and minimize landfill space.

Senator Hanna asked how long aluminum and glass can be recycled. Ms. Griek responded pretty much forever.

Representative Garcia asked Ms. Griek to specifically address the steps she wants the state to take. She responded that she'd like to see the use of EPP, use of EP products, and implementation of energy/utility efficiencies.

Mr. Felice stated that Representative Kerr and Representative Garcia are not getting the answers they want. He asked Ms. Griek what she wants the committee to do relative to procurement. She responded that she wants the state to have an EPP policy in place. She referenced the executive order signed in July 2005. Mr. Felice expressed concern about establishing either an onerous or unfunded mandate by implementing EPP.

Representative Weissmann suggested that in the procurement code, preference could be given to EP products and the EPP process.

10:10 AM

The committee considered topics for proposed legislation.

Representative Weissmann proposed a bill establishing a centralized database for tracking vendor performance; there must be a mechanism for identifying/tracking good and bad vendors and a process to take bad vendors off of the vendor list. Representative Weissmann expressed frustration over the fact that they are not able to talk to the executive directors on ideas for legislation.

Representative Marshall asked how good and bad are going to be defined. Rep. Weissmann responded that he had spoken with Jeff Wells, Executive Director, Department of Personnel and Administration, about the bill concept without getting into details. Representative Weissmann used the example of a feedback form similar to that used on E-Bay. The purchaser needs to be able to evaluate the vendor and perhaps establish an appeals process for the vendor. Because departments are on their own for contracting, information needs to be shared and it should be mandated that the information is shared.

Senator Groff stated that he will be proposing a bill on disclosure, performance and monitoring, and within the performance piece, each agency would be responsible for creating an index for measuring performance. This would tie back to Representative Weissmann's idea for judging whether or not an agency was pleased with the vendor's service or product.

Representative Garcia raised the issues of how a feedback form, loss of bid credentials, and removal from the vendor list would tie in with current practice.

Representative Marshall stated that there are contracts which hold the state in hawk over a period of years which result in additional costs to the state, often times in the millions. She noted CBMS and GENESIS as prime examples of contract overruns which would not be tolerated in the private sector. Greater control must be exercised when spending tax dollars.

Senator Hanna spoke to the matter of Colorado being held hostage by vendors as a result of flimsy contracting practices. Contract reviewers should be held responsible. How do we make sure that our contracts are solid and valid, terms are clearly stated, and that we do not have to keep paying and paying?

Senator Groff responded that no one on the committee may be able to answer her questions with any specificity. His proposed bill would require greater accountability with monitoring and different benchmarks throughout the life of the contract so the agency can see if the vendor is where it is supposed to be at any point in fulfilling its contract requirements.

Senator Hanna responded by asking who is monitoring the original contract in the first place.

Rep Weissmann referenced testimony provided by the Secretary of State's Office which suggested pulling the Controller's Office and the Attorney General's Office into contract negotiations earlier in the process not just at the end.

10:18 AM

Mr. Felice commented that the contracts referenced by both Representative Marshall and Senator Hanna pertain to data processing. He noted that IT contracts are black holes, and too often deliverable benchmarks are not adequately built into the contract. IT contracts are not finite and lack the definition that a road construction contract usually has. He stated that for more centralized oversight of state procurement in IT contracts there needs to some state employee responsible for holding the contractor's feet to the fire to meet delivery deadlines of functional pieces of the contract within a finite period.

Mr. Felice also urged that legislation coming out of the committee should give preference to Colorado businesses, set up in the context of best value contracting, according to a descending order of preferences which would look at businesses that are located in Colorado, hire in Colorado, not located in Colorado but hire in Colorado, etc. The state of Colorado has an obligation to its citizenry to keep economic activity in Colorado.

Representative Kerr supported Representative Weissmann's proposal to set up a means to evaluate vendor performance, perhaps an outside review board. Success with an outside review board is based on who serves on the review board. He gave Jefferson County as an example of outside review board use.

Rep. Marshall spoke about the need for efficiency; testimony has been given on the time it takes to get a contract moving. Things don't move quickly enough. There is an opportunity to do something here. She cautioned against setting up something which may be more bureaucratic. She does not suggest more centralization or oversight, she stated that decentralization is more efficient.

Mr. Houlihan referred to suggestions made in a memorandum provided to the committee by Phil Holtmann, Contract Unit Supervisor, State Controller's Office (Attachment Y).

Senator Hanna noted that she sees Rep Weissmann's proposal as a computer program and not the creation of another agency. It would be a central repository for information that all agencies can share.

Representative Weissmann commented that as a functional matter, it is fine to incorporate his proposal into Senator Groff's more comprehensive bill. Representative Kerr concurred with the idea of a more comprehensive bill.

10:30 AM

Senator Groff proposed a bill which deals with disclosure monitoring and performance. The disclosure piece would be similar to what Illinois has done; contractors/subcontractors would be required to report when they're purchasing goods or services outside the state or U.S. In the event that they go outside the state or country, they would be required to provide a substantive explanation as to why they are doing so. Benchmarks and deliverables would be built into the contract and hit. Because Colorado has a decentralized system for procuring goods and services, there should be a person responsible for monitoring whether benchmarks and deliverables are met at the agency level. He noted that this may be the case now but this matter has not been testified to since the agencies have not come before the committee. Agencies could also have the option of using staff from either the State Controller's Office or the Attorney General's Office to perform this function. He noted incorporation of Representative Weissmann's proposal to create a database on good and bad vendors into the bill, and the incorporation of remedies for poor performance as referenced in Attachment Y. Agencies would have to create an index to meet Representative Weissmann's proposal, and there needs to be a way for the state to recoup money from a vendor when deliverables are not met and the project is not sufficiently rolled out. The bill, in total, incorporates many of the ideas testified to in Marc Carey's presentation on state procurement legislation in other states.

Mr. Houlihan asked about the feasibility of having an entity review contracts to ensure deliverables being met on an annual basis, such as the Joint Budget Committee. There was discussion about the current budget and supplemental process.

10:35 AM

Senator Hanna asked if the proposed bill would set a limit on the number of failures to meet contract deliverables/milestones a vendor would be allowed. Would there be a time when the state could say "enough is enough" and have the option to end the contract? Senator Groff stated that something like this could be put into the bill.

Representative Weissmann referred the committee to Attachment Y, and the need to incorporate the ideas from Mr. Holtmann's memorandum into Senator Groff's bill: (1) required language for contractor insurance requirements and remedies in case of poor contractor performance; and (2) required contract provisions for IT contracts and form contracts for personal services.

10:40 AM

The legislative members of the committee voted on Senator Groff's proposed bill.

BILL:	**Proposal #1 - Disclosure**	
TIME:	**10:40:32 AM**	
MOVED:	Groff	
MOTION:	Adopt Proposal #1	
SECONDED:		
		VOTE
	Adams	
	Felice	
	Garcia	Yes
	Hanna	Yes
	Houlihan	
	Kerr	Yes
	Liston	Yes
	Marshall	Yes
	Owen	Excused
	Takis	Yes
	Teck	Excused
	Terry	
	Weissmann	Yes
	Groff	Yes
Final YES: 8 **NO:** 0 **EXC:** 2 **ABS:** 0 **FINAL ACTION:** **PASS**		

10:42 AM

Senator Takis proposed a bill requiring the Office of International Trade and the Office of Economic Development to provide an annual report identifying the number of Colorado jobs lost to off-shoring and outsourcing, and to identify the amount of money lost as a result of off-shoring and outsourcing these jobs. The reports would be made available on the web sites of the respective offices and submitted to the Senate and House Business Affairs Committees.

Representative Marshall expressed some reservations about the ability to monitor both public and private sector jobs. Representative Garcia expressed some concern about the assumption that a job is lost in the state if a company chooses to outsource an activity.

Senator Takis stated that the reports could be limited to identified Colorado jobs. Representative Garcia suggested that the report may want to include how many jobs are created as a result of outsourcing and off-shoring.

10:46 AM

The legislative members of the committee voted on Senator Takis's proposed bill.

BILL:	**Proposal #2 - Annual Reports**	
TIME:	**10:53:36 AM**	
MOVED:	Takis	
MOTION:	Adoption of Proposal #2	
SECONDED:		
		VOTE
	Adams	
	Felice	
	Garcia	Yes
	Hanna	Yes
	Houlihan	
	Kerr	Yes
	Liston	Yes
	Marshall	Yes
	Owen	Excused
	Takis	Yes
	Teck	Excused
	Terry	
	Weissmann	Yes
	Groff	Yes
Final YES: 8 **NO:** 0 **EXC:** 2 **ABS:** 0 **FINAL ACTION:** **PASS**		

10:54 AM

Senator Hanna requested clarification on what jobs are included in the reports. Senator Takis responded that the reports would include all jobs (both public and private), and that Representative Garcia's request for an identification of jobs created as a result of outsourcing and off-shoring would also be part of the report. Representative Marshall expressed concern that the state has no control over jobs in the private sector.

Senator Takis referenced Senator Groff's bill on performance and asked whether it should require reporting requirements as other states are doing. She noted that the Office of Economic Development would be able to provide the basic data the committee is trying to identify, recognizing that it will be somewhat of a guessing game or estimate.

10:56 AM

Representative Weissmann raised the topic of the elected officials exemption and wondered about the advisability of setting a dollar cap for the exemption. Should we set a dollar cap or keep our hands off? Representative Kerr suggested that we keep our hands off especially since no problems have surfaced. Representative Weissmann stated that his concern is with more and more contracts being run through the Governor's Office and the potential for abuse of power. Representative Kerr noted that identifying a dollar amount may be difficult. Representative Marshall suggested using caution, stating it would be unwise to tie the hands of state officials to move forward, especially in an emergency situation. Despite the concerns around potential abuse of power, the idea may prove to be more bureaucratic.

Representative Weissmann chose not to move forward with this idea.

10:58 AM

Due to Senator Teck's absence, Senator Groff offered Senator Teck's idea for legislation on the topic of large IT projects; the bill would reinforce project management policies currently on the books. The bill also would provide enforcement authority for the Office of Information Technology to ensure compliance with these policies prior to any large IT project being approved and funded. Additionally, the bill would provide for the creation of a project manager category in the state personnel system with project management analysis to ensure that core competencies are built and maintained in state government. Additionally, the bill would provide funding to train selected project managers and for sustained training. The bill will also establish reporting requirements to the General Assembly.

The legislative members of the committee voted on Senator Teck's proposed bill.

BILL:	**Proposal #3 - Large IT Projects**	
TIME:	**11:00:05 AM**	
MOVED:	Groff	
MOTION:	Adoption of Proposal #3	
SECONDED:		
		VOTE
	Adams	
	Felice	
	Garcia	Yes
	Hanna	Yes
	Houlihan	
	Kerr	Yes
	Liston	Yes
	Marshall	Yes
	Owen	Excused
	Takis	Yes
	Teck	Excused
	Terry	
	Weissmann	Yes
	Groff	Yes
Final YES: 8 **NO:** 0 **EXC:** 2 **ABS:** 0 **FINAL ACTION:** **PASS**		

11:02 AM

Representative Weissmann proposed a bill on EPP preference. Representative Weissmann indicated he would work with the executive branch to ensure no conflict with Executive Order D 005 05 — Greening of State Government. Representative Kerr suggested a resolution first and a bill second. Representative Garcia requested a bill draft stating a resolution doesn't get you very far. Representative Weissmann requested a draft of a bill even if the committee may not go forward with a bill at its October meeting.
The legislative members of the committee voted on Representative Weissmann's proposed bill.

BILL:	**Proposal #4 - EPP Preference**	
TIME:	**11:03:55 AM**	
MOVED:	Weissmann	
MOTION:	Adoption of Proposal #4	

SECONDED:		
		VOTE
	Adams	
	Felice	
	Garcia	Yes
	Hanna	Yes
	Houlihan	
	Kerr	Yes
	Liston	Yes
	Marshall	Yes
	Owen	Excused
	Takis	Yes
	Teck	Excused
	Terry	
	Weissmann	Yes
	Groff	Yes
Final YES: 8 **NO:** 0 **EXC:** 2 **ABS:** 0 **FINAL ACTION:** **PASS**		

11:04 AM

Senator Groff stated that although he supports the concept and is interested in it, he does not want to go forward with a best value contracting bill at this time since the executive agencies were not allowed to testify before the committee. He suggested that the topic could be brought up should President Fitz-Gerald authorize a select committee during the 2006 legislative session.

Representative Garcia stated that he was sold on the concept of best value contracting and was impressed by the testimony given on the topic. He requested Senator Groff to go forward with a bill on best value contracting. To that end, Representative Garcia moved to have a bill drafted on best value contracting.

Mr. Felice stated that the EPP concept could be rolled into the Groff bill on performance contracting in addition to the best value contract concept; all things could go into the one omnibus bill. Representative Marshall responded that it may not be the best strategy to roll all topics into one bill.

11:05 AM

The legislative members of the committee voted on Representative Garcia's proposed bill.

BILL:	**Proposal #5 - Best Value Contracting**	
TIME:	**11:05:49 AM**	
MOVED:	Garcia	
MOTION:	Adoption of Proposal #5	
SECONDED:		
		VOTE
	Adams	
	Felice	
	Garcia	Yes
	Hanna	Yes
	Houlihan	

	Kerr	Yes
	Liston	No
	Marshall	Yes
	Owen	Excused
	Takis	Yes
	Teck	Excused
	Terry	
	Weissmann	Yes
	Groff	Yes
Final YES: 7 **NO:** 1 **EXC:** 2 **ABS:** 0 **FINAL ACTION: PASS**		

11:06 AM

Committee adjourned.