

## Appendix C

### NASPO Responses Legal and Procurement Roles

State:	What is the role of legal counsel in the oversight and approval of procurements as compared to the role of procurement officers or buyers?	What issues or items do your attorneys consider as opposed to your procurement officers in the review and approval of procurements?	Does your centralized procurement office have internal legal counsel or is there an external legal services group that performs this role?	Does your procurement legal counsel perform an advisory role or an oversight role or both?	Does your centralized procurement office perform on-going contract management or is this left to the requesting agencies?	As a follow-up to this information can you please tell me if your central procurement agency serves also as a control agency. By control agency, I mean does the agency perform upfront review and approval of transactions or audits of transactions after the fact?
Arizona	The procurement officer determines whether to involve legal counsel to review procurement documents and contract, advise on determinations, decisions and disputes, provide opinions, etc. Legal counsel approves all base procurement documents like standard clauses.	The procurement officer is responsible for the business decision with legal guidance from counsel.	We have a team of three lawyers employed by Attorney General assigned to procurement. They serve our office and 120 state agencies.	Advisory .	Contract administration is a team effort. The client is responsible for day to day interaction with contractor, approval of deliverables and payment authorization. Procurement officer handles modifications, problems, disputes and other contract issues.	In Az we don't serve as central control.
Arkansas	The Attorney General lawyers	Internal counsel deals with	We have an internal legal	Our internal counsel and	We manage only the high visibility state-wide	

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	review our general T&Cs and contract language. They represent us in any court proceedings. They do not approve or review individual procurements. They have requested that they begin to review procurements over \$1M, but we are negotiating with them on that issue	protests, disbarments, specific contract issues, liaison with the AG's office, regulation writing and review, writing of advisory opinions on issues involving contract ethics issues and general interpretation of the procurement statutes.	counsel which does a more in-depth review of certain procurements, answers questions from the AG's office and prepares answers to protests and writes advisory opinions on the ethics section of our contract law, reviews and writes regulations and interprets the procurement statutes.	the AG lawyers are advisory only.	contracts. Our agencies are responsible for managing their agency specific contracts. We do provide an oversight function on all contracts/procurements but not detailed management.	
Indiana	Our legal counsel has no oversight or approval of procurements.	Our attorneys are used as guidance rather than approval of	There is no legal counsel in central procurement.	Legal is advisory	Requesting agencies manage their respective contracts. Procurement manages quantity	

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		procurements.	We have legal counsel in the agency that we can consult when needed.		purchase agreements.	
<b>Kentucky</b>	Our legal counsel reviews our standard terms and conditions, and reviews and approves any terms and conditions of "standard" agreements presented by the vendors to ensure there are no conflicts with our laws. The legal counsel also determines the outcome of all vendor protests, ensuring the procurements have	The general counsel's review is limited to areas of responsiveness and compliance with statutes and regulations. They generally do not review technical responsiveness or qualifications.	Our central procurement office does not have an internal counsel. All our procurement matters go through the general counsel for our cabinet.	Advisory more than oversight.	For statewide contracts, our central office also does the administration. For contracts we issue on behalf of only one agency, that agency does the contract administration.	Our central purchasing office performs review and approval on the front end-prior to contract award. We approve all purchases that are in excess of an agency's small purchase authority and not on an existing contract prior to the order being placed.

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	<p>been done in accordance with statutes and regulations. As a matter of policy, we also consult with the general counsel prior to disqualifying vendors from a bid whenever there is any question concerning the responsiveness of the vendor. If it is a gray area, we get the general counsel to rule first.</p>					
Louisiana	<p>At this time, legal counsel is not involved in our procurement process.</p>	<p>See above.</p>	<p>The Office of Administration has a legal counsel for consulting but we use the Attorney General for</p>		<p>The Division of Purchasing and Materials Management is the final contract management authority, but we rely on information from agencies to determine</p>	<p>Audit is a part of our responsibility. Some commodities require upfront review.</p>

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			court issues.		issues. They are the first line of contact with the contractor.	
<b>Minnesota</b>	Advise on request; sign contracts for form and execution only (latter statutory requirement likely to be eliminated)	None	Office of Attorney General formally represents. We also have attorneys on staff.	Advisory only.	Statewide commodity and service contracts managed by central procurement. Professional/technical contracts managed by individual contracting agencies.	
<b>New York</b>	Legal staff involved in many of the procurements. Briefly the role is that the procurement staff make the business decisions and assess risk and the Legal staff limit their reviews to legal issues only. Ultimately, if there is conflict, the business side		There are legal staff dedicated to the centralized procurement but organizationally, they still reside centrally with OGS Legal Services (it was not always that way, in the past, they resided with the program			

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	makes the final determination and has the final authority (and responsibility).		unit, could swing either way on that issue).			
<b>North Dakota</b>	Legal counsel is involved in our procurement process only when necessary.	See above.	An attorney from the Attorney General's Office advises and represents the State Procurement Office as needed. We do not have internal legal counsel.	Both.	The State Procurement Office is the final contract management authority, but we rely on information from agencies to determine issues. They are the first line of contact with the contractor.	The North Dakota State Procurement Office performs "assistance visits" to agencies that have delegated authority beyond the blanket delegated authority.
<b>Oklahoma</b>	Legal counsel is available should a Certified Procurement Officers (CPO) determine the need for such counsel. Legal counsel has no oversight and	Due to the training and experience of the Central Purchasing CPO's attorneys are rarely consulted, except in	Legal Counsel is internal to our Department and available to the Central Purchasing Division when the need is determined. The	Advisory when requested.	Contract Management occurs in the Central Purchasing Division as directed by the State Purchasing Director, with Contract Administration activities occurring at the using agency level.	Purchasing does both purchasing and control agency functions.

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	approval of procurement when compared to the CPO. If the CPO has a question regarding a offerors proposal; they either ask the State Purchasing Director, who has the final say regarding these matters or the Contract Manager for counsel.	conditions as mentioned above or , in the very rare circumstances, of a "Bid Protest."	2 attorneys have other Departmental responsibilities.			
<b>South Dakota</b>	Our legal counsel plays no role in oversight or approval of our procurements. Legal counsel has approved the boilerplate language in our solicitation documents and contracts, and only	Legal counsel would only look at new language that might be required in solicitations or contracts.	Our Bureau of Administration has internal legal counsel that assists the Office of Purchasing and Printing when requested.	Our legal counsel acts in an advisory role upon request.	Our centralized procurement office provides ongoing contract management for statewide contracts. Some agencies have contract management responsibilities if the contract is exclusively for them.	

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	provides legal advice when requested. Buyers prepare all solicitations which under oversight of the Purchasing Administrator.					
Utah	Legal does not review procurements.	Legal does not review procurements.	External by the Attorney General's Office. Role generally is to assist in counseling the chief procurement officer as he sits as the protest hearing officer, and then to defend decisions in the event of appeals. Also infrequent	Advisory.	Agencies.	

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			counsel regarding revisions to our standard contract terms and conditions.			
Washington	The state legal counsel is an Assistant Attorney General (AAG), they provide approval as to the T&C, and legal advise regarding protests and other matters. Buyers, have a great deal of latitude in developing responsive and responsibility criteria, specific terms and conditions and award criteria. They make the awards without AAG	see 1st question	State counsel.	Advisory role.	Both, for state level master contracts our office performs all work from development, award and contract management. For delegated procurement (nearly 70% of all purchasing dollars) the individual agency does all the work.	We do neither, the "audit" if you will for transactions occur as part of the state auditors agency review an may not occur at all if it is not part of the auditors audit plan for that agency.

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	review					
Wisconsin	Generally, the procurement specialist determines whether to involve legal counsel in a procurement. The specialist may issue the solicitation and make the award without legal review.	The specialist may request a legal interpretation of a statute or assistance with writing contract language. Legal counsel does approve boilerplate language used statewide, such as the standard terms and conditions and the basic contract form. Legal is involved with protests/appeals.	The Department of Administration has two attorneys. Both are available to assist the Bureau of Procurement.	Advisory.	The Bureau of Procurement is responsible for administering the statewide contracts we establish. The using agency is responsible for receipt and inspection of materials purchased from the contracts. Any complaints should be forwarded to the Bureau.	Wisconsin Statutes place authority and responsibility for all state purchases in the Dept. of Administration, Bureau of Procurement. The law also allows us to purchase centrally or to delegate authority to other state agencies. Agencies must obtain prior approval for nondelegated procurements from the bureau, for example, sole source procurements over \$25,000. The Bureau conducts periodic management reviews of purchasing transactions of the delegated purchasing offices.