

**Department of Administration**

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**An Analysis of the  
Materials Management  
Division's Review and  
Approval of  
Professional and  
Technical Contracts**

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**December 2002**



*Admin*  
**MINNESOTA**

Department of Administration

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# INTRODUCTION

The Minnesota Department of Administration oversees the review and approval process for state professional/technical contracts.<sup>1</sup> The Management Analysis Division was asked to assist the department in identifying possible improvements to the contract review and approval process by examining the challenges inherent in Administration's oversight role. Management Analysis was also asked to identify opportunities for increasing the efficiency and effectiveness of the contract review and approval process.

Management Analysis assisted the department by

- Interviewing staff and leadership from the Department of Administration, contract coordinators from a variety of state agencies, agency heads, legislators, and other stakeholders;
- Documenting and analyzing the interview results and related material;
- Identifying options for procedural or policy improvements to the contracting process;
- Presenting the improvement options to a sample of stakeholders, and assessing and analyzing stakeholder responses; and
- Preparing a final report with recommendations.

The project took place between September 1 and December 15, 2002.

It should be noted that the Office of the Legislative Auditor (OLA) was also conducting a simultaneous review of "State Contracting for Professional/Technical Services." The OLA's review was quite broad and examined several questions in detail. Namely, the OLA review examined overall state expenditures for professional/technical services, the extent to which certain state agencies have complied with select state laws, how well certain agencies managed professional/technical service contracts, and how well the Department of Administration has overseen the contract review and approval process. Management Analysis' review focused on opportunities to improve the department's contract review and approval process. The OLA's report was not completed prior to the publication of this report.

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<sup>1</sup> Minn. Stat. 16C.08 defines "professional and technical services" to mean services that are intellectual in character, including consultation, analysis, evaluation, prediction, planning, programming, or recommendation, and result in the production of a report or the completion of a task. Professional or technical contracts do not include the provision of supplies or materials except by the provision of professional or technical services.

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# METHODS

The department was interested in hearing a diverse array of perspectives on the Materials Management Division's (MMD's) approach to the professional and technical contract review and approval process. The Management Analysis Division interviewed 34 people between Sept. 1 and Nov. 1, 2002. The interviewees included MMD staff, the Department of Administration commissioner and deputy commissioner, other agency commissioners or their designees, agency contract coordinators, a representative from the Attorney General's Office, legislators and legislative staff. A list of the interviewees and the interview questions are included in the Appendices.

In addition to the interviews, MAD reviewed a variety of related background materials including, but not limited to,

- State statutes and rules pertaining to state contracting;
- The "State Contracting" manual, developed by MMD;
- Samples of agency memoranda and communications with agencies regarding professional and technical contracts on subjects such as, "Organizational Conflicts of Interest," "Department of Administration Policy Related to when Professional/Technical Contracts are Necessary," and "Delegation of Contracting Authority;"
- An evaluation of state professional and technical contracting, published by the Office of the Legislative Auditor in 1992;
- Performance data pertaining to MMD's review and approval of pre-contract certifications and final contracts (data on total number reviewed and approved, statistics on "turnaround" times, percentage of "rush" reviews completed, etc.);
- The "Project Charter" for the "Contracting Process Review Project" (as originally proposed by MMD in July, 2002);
- MMD Website postings and other information pertaining to state contracting, including those related to the "Contract Management Academy Project" and the process for Administration to grant waivers to the "Moratorium on Consultant Contracts;"
- Local newspaper articles regarding state contracting; and
- Professional journals and publications regarding the strategic management of regulatory functions.

Finally, select MMD staff, contract coordinators, and other stakeholders reviewed this report's findings and preliminary conclusions prior to the final preparation of this report and its recommendations. The purpose of the stakeholder review was to test the accuracy of the findings and obtain preliminary feedback on the conclusions and recommendations.

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# FINDINGS

Management Analysis interviewed a wide range of staff and stakeholders in order to gather perspectives on the policy and procedural aspects of the professional and technical contract review and approval process, and to identify options for improving the efficiency and effectiveness of the process.

The interviewees had varying degrees of direct knowledge of and experience with MMD’s contract review and approval process. For example, MMD staff and most contract coordinators tended to comment in depth about specific logistics of the process while legislators and legislative staff, for example, tended to comment on the principles or themes that are debated on a policy level.

MMD’s contract review serves a variety of agencies, large and small, and involves contracting for services ranging from multimillion-dollar, multiyear, information technology projects to single-event meeting facilitations. State contracts also span a vast array of topical areas, such as state prison food services, transportation system designers, architects, health professionals, and actuaries. In light of this, it should be understood that the findings do not necessarily apply to all situations.

Interviewees were asked to comment on the value of the review and approval process, aspects of the process that work well, and aspects that need improvement. They were also asked for their ideas on options for making improvements. Their responses are summarized below:

## **The value of the review and approval process**

Interviewees were asked to describe, in their own words, what they believed to be the public value of a having a formal review of professional and technical contracts. The following provides a summary of their perspectives on that question:

- Legislators and their staff were most expansive on the public value of the MMD review. Legislators said that they value having someone in the Executive Branch who can say “no” to agencies whose contracting practices may stray from statutorily prescribed standards. They acknowledged that a centralized review process may add time and cost to state contracting processes, but said that the review is important because the process incorporates many diverse interests and uncovers problems when those interests are not easily reconciled. Legislators and staff said that they understand and accept the healthy tension between the agencies and MMD and stressed that a check and balance is needed to assure that the contracting process is open and fair and to avoid “cozy relationships” between vendors and state agencies. Additionally, they said, independent oversight can help assure that other statewide interests are also served (for example, reducing legal and financial exposure risks and enhancing the expertise of the state workforce rather than hiring “permanent consultants”).

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- MMD staff described the value of the process in much the same way the legislators did. They often referred to their statutory duties and said that their job is to protect taxpayer interests by getting the best contract value for state dollars.
  - Contract coordinators generally agreed with the legislators and MMD staff on the value or purposes of the review. They stressed the importance of MMD having an *independent* review process to assure agency practices meet the applicable legal standards. Small agencies, especially those with little contract experience and without dedicated staff for conducting contract reviews, are particularly happy to have MMD offer support and provide compliance reviews.
  - Some legislators said that they would like to rely on the department as a central source of information and advice on state contracting. For example, they would like it to provide data on contracting dollars spent, value realized, and the implications of increasing or reducing the use of professional and technical contracts. This store of expertise, they said, would allow the state to more effectively share contracting knowledge across agencies, identify opportunities to innovate, and promote the use of good judgment in state contracting.
  - Most agency heads and contract coordinators acknowledged the need for oversight, and some expressed appreciation for the department's renewed efforts to cultivate an effective working relationship between the agencies and MMD. However, some agency heads tended to see MMD's oversight as redundant and wished that MMD would place more emphasis on support. They said that their most pressing needs are to secure contracts for complex and expensive projects that both protect the state from legal and financial exposure risk and deliver the desired results. Moreover, they stressed that while agencies may have varying degrees of expertise in state contracting requirements, MMD should not second-guess agencies' business knowledge and expertise.

## **Aspects of the process that are currently working well**

The interviewees identified several areas of the contract review and approval process that are working well:

- In interviews for this project, MMD staff conveyed a thorough knowledge of state contracting practices. They reported a strong sense of personal responsibility and accountability for certifications and contracts that they approve by personal signature. MMD staff also report strong support from the director and assistant director of the division.
- Interviewees generally agree that MMD is efficient in its reviews. Data from MMD's tracking of professional and technical contracts show that for fiscal year 2002, 3,142 contracts were approved by MMD. The average number of working days to approve those contracts was 2.72, with approximately 29 percent being turned around the same day that they were received. MMD staff point out that the operation is very small and that the review requires very few handoffs. Most of

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the contract coordinators and some agency heads reported that the turnaround was especially good in rush cases and that while the new array of expedited options (i.e., master contracts and master rosters) add complexity, the tools provide agencies more options. Finally, most contract coordinators reported that MMD's process for contract review was much faster and sometimes more efficient than their own internal contract development and review process.

- Interviewees generally agreed that MMD has maintained a degree of independence, and most reported that MMD effectively serves the purpose of a “second set of eyes.” Coordinators commonly said that MMD is willing to “take the heat” when the agency coordinator questions his or her own agency's contracting practices but is facing internal pressure to approve the contracts. MMD staff said that they understand this dynamic and that they have been willing to take the “blame” when it is necessary to assure compliance.
- Contract coordinators also said that MMD does, in fact, catch errors in the agency process. Some of the errors are relatively minor, but some reportedly pose significant legal and financial exposure risks.
- Most contract coordinators and some agency heads reported that MMD is flexible and willing to engage in problem solving with agencies. One agency head told a story of how the agency was seeking to save some money on a contract and that MMD objected on the grounds that the agency's plan would not comply with state contracting statutes. The initial reaction of the agency head was that MMD was being “picky and obstinate” but later found that MMD provided helpful explanations for its position and offered reasonable alternatives to the agency's original plan. In the end, the agency head reported that MMD helped the agency better understand MMD's role and its importance, as well as helped the agency to save money in a way that met the interests of both the agency and the state.
- Nearly all contract coordinators reported that MMD staff are approachable and that the one-on-one support they provide is outstanding. Nearly all coordinators also thought the manual represents an improvement in written communications on contracting requirements and applaud MMD for convening the contract coordinators' group on a regular basis. Those who use the Website found it to be thorough and useful, saying, for example, that they could find any form they needed – in its most current form – simply by going to the Website. The training provided by MMD for agency coordinators and staff is also seen as an important service that should be continued.

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## **Aspects of the process that could be improved**

The interviewees also identified aspects of the review and approval process that could be improved. In some cases the suggestions applied to the internal processes of individual agencies. In other cases they applied to processes primarily within the department or in the way the department interacts with the agencies.

### **Improvements within agencies**

Contract coordinators commented in detail on the need to improve their own agencies' internal processes for contract review and approval:

- Several agency contract coordinators reported that project managers, supervisors, and division directors needed to be continually reminded of the professional and technical contracting provisions, the purpose of the provisions, and the procedural implications for internal agency staff. The manual, Website, and training services provided by MMD were said to have been helpful but not sufficient in promoting agency understanding and proficiency in professional and technical contracting procedures. Most contract coordinators reported a need to expand their own orientation and training efforts for internal agency and project managers. Above all, they expressed the desire for agency staff to start their contracting processes early and to ask for help.
- Many contract coordinators said their own commissioners and senior staff need to reinforce the importance of agency compliance with professional and technical contracting provisions. It was reported that those agencies that have top-level support and a culture of compliance with contracting provisions have very few problems, internally or in coordinating with MMD.

### **Improvements within the department and MMD**

Some of the suggestions focused on issues that were believed to be within the Department of Administration's scope of control:

- The department must "get its house in order" by more effectively integrating its regulatory role and its support to agencies. Some MMD staff said that department leadership is placing too much emphasis on speed, efficiency, and customer service. While MMD staff acknowledged the important role they play in helping agencies understand the purpose of and process for the professional and technical contract review, they stressed that they must also play the role of enforcer when agency contracting practices do not square with contracting provisions in statute. They were concerned that placing primary emphasis on "customer service" (without defining what customer service means in the unique context of MMD's oversight function) may constrain and ultimately undermine MMD's independent oversight role.
- Contract coordinators and MMD staff said that MMD should improve perceptions of MMD and its process, especially among agency heads. Suggestions included promoting MMD performance data on turnaround times and efficiency measures

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to combat attitudes and beliefs that MMD is slow and bureaucratic, making special efforts to educate agency leaders and legislators on the purpose and process for MMD's review, and taking other steps to better understand agency staff experiences and demands in the professional and technical contract areas.

- Contract coordinators generally agreed that MMD must build on the success of the written manual on professional and technical contracting procedures. Several contract coordinators stressed that MMD must keep agencies posted on changes and do that in writing. Moreover, it was suggested that non-time-sensitive changes to the manual be made at predictable times (once or twice per year) and that the contract coordinators' group review the changes and provide feedback prior to the changes being made final.
- Some contract coordinators and some MMD staff suggested that MMD needs to achieve greater consistency in its interpretation of procedural requirements. For example, one MMD staff person reported that contract coordinators were hearing differing interpretations on data privacy and other statutory requirements related to the development of professional and technical contracts. It was also suggested that all MMD staff that work on professional and technical contracts take the trainings offered by MMD, critique the training, and refine it to assure consistency in the advice provided to agencies.
- Some interviewees suggested that MMD could expand its service offerings to agencies. It was noted that the "contract management academy" (to help agencies manage contracts once they are signed) is a good beginning. They also envisioned that MMD more actively assist agencies in
  - Preparing requests for proposals;
  - Navigating state procedural requirements;
  - Negotiating contact terms;
  - Offering strategies for limiting legal and financial exposure risks; and
  - Creating a central source of state contracting information and advice; and sharing effective contracting practices across state agencies.

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## Other observations and suggestions for improvement

### Delegation of Administration's contracting duties

A generic memorandum of understanding (MOU) has been developed to define which aspects of the department's authority may be delegated to an individual agency designee. It is intended to be "a means for greater contracting flexibility for agencies, in exchange for performance measures indicating that the contract process remains efficient and in conformance with state laws specifying the best value and open, fair and competitive solicitation, evaluation and award."<sup>2</sup> Three agencies currently have individually customized MOUs in place. The standard MOU appears to have many strengths, including the following:

- It clearly articulates the department's authority in professional and technical contracting.
- It defines the scope of the delegation and specifies exclusions such as "master contracts, single source contracts, and certification forms."
- It requires specific qualifications for those individuals eligible for delegation and clarifies the process for appointment.
- It includes a "performance-based" component requiring that the delegate agency process contract documents within 45 days and report missed deadlines to the agency head and the commissioner of Administration.
- Allows the department to individually customize each MOU to best address the needs and performance management issues on an agency-specific basis.

Interviewees expressed a variety of perspectives on delegation and the use of the MOUs:

- Department leaders, and at least one agency head, said that the MOU is a helpful tool that can be used to clarify roles and responsibilities, to promote flexibility and accountability in the review process, and to create and maintain positive working relationships.
- Legislators and department leadership stressed that the department cannot abdicate its statutory oversight responsibilities and that there must be consequences for agencies that do not comply with statutory contracting provisions. It was noted that since Administration cannot exact penalties, as many other regulatory agencies can, it must use its authority wisely, including the withdrawal of any delegations that fail.
- The agency heads of larger agencies tended to see MMD's compliance role as a "speed bump" in the contracting process. They questioned the necessity of MMD's compliance review and tended to have greater interest in obtaining delegations from the department for the review and approval of professional and technical contracts. One agency said that its current delegation was a crucial step toward better mutual respect and that future efforts should build on that accomplishment.

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<sup>2</sup> Memorandum from David Fisher, Commissioner of Administration, to Cabinet Agency Heads. Dated, April 25, 2001.

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- Contract coordinators and MMD staff were the most outspoken critics of the MOU process. Many people said that extensive delegations would greatly diminish the independent aspect of the review process in return for very little actual gain in efficiency. Some described the delegation process as an abdication of the department’s authority and a dangerous precedent for circumventing an independent review of state agency contracting practices. Many also highlighted the idea that widespread delegations would limit MMD’s monitoring role to “back-end” audits, and they questioned the value of finding contracting compliance problems after the fact, rather than catching problems before contracts are negotiated and signed.
  - Even when the MOU was discussed as a way to generally clarify the shared responsibilities of agencies and the department – entirely separate from the delegation concept – the idea was rejected by contract coordinators and MMD staff as unnecessarily formal and complicated. Most contract coordinators stressed their preference for the existing arrangements they have with MMD, which they characterized as flexible and effective. Contract coordinators reported that the existing manual documents the roles and responsibilities between MMD and the agencies and that further tailoring those roles and responsibilities to individual agencies would create more confusion and acrimony that it would resolve.
  - MMD staff noted that very few of the agencies that expressed an initial interest in delegation have actually decided to pursue it. And they were concerned that the department might continue to “push” delegations as a way to demonstrate its willingness to be flexible, even if agencies are not enthusiastic or ready to accept delegation.
  - Smaller agencies were not interested in delegation. Instead, they preferred having MMD review their contracting procedures to assure their practices comply with state statute. Additionally, they voiced a strong need for additional training, guidance, and support from MMD.

### **Concerns about the Office of Technology review**

Several contract coordinators encouraged MMD to continue to improve coordination with the Office of Technology (OT) in the contract review process. Recent MMD efforts to improve coordination with OT were applauded. However, the OT process was criticized for being slow, and some people believed that MMD takes criticism because it is so closely associated with the OT review. Moreover, most of the contract coordinators said that the review adds little value and that its basic purpose is not clear. Some contract coordinators recommended that a review, similar to this review of MMD, be done for the OT review process. Such a review would be essential before drawing conclusions about the OT review based on the interviewees’ concerns.

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## **MMD staffing**

One individual in MMD conducts most of the professional and technical contract reviews. On one hand, interviewees said this has the potential advantage of promoting efficiency and consistency by simplifying the review process and reducing the need for “hand-offs.” They said it could also promote consistency in interpretation or at least reduce the need to communicate and coordinate interpretations among multiple reviewers. On the other hand, they said that entrusting the process to only one individual has the potential disadvantage of allowing long-standing and familiar relationships to develop between the reviewer and the agencies, which may diminish impartiality. They also said if the individual is suddenly unavailable to do the job, it could be disruptive to the review process. It was suggested that this person’s workload be shared among more staff, that a succession plan be developed, and that MMD promote consistency in its interpretations and approach.

## **Workload and staff productivity**

MMD staff decide multiple-thousand and million-dollar state expenditures, they process high volumes of paperwork, advise agency personnel and respond to a constant stream of questions every day. The margin for down time is virtually zero, resulting in potential processing delays every time key MMD staff take scheduled vacation leaves. Severely constrained resources, increased workloads resulting from new review requirements (for example, the moratorium on state contracting), and the prospect of increased privatization of state operations raises serious questions about the ability of MMD to continue to handle increasing workloads as it has in the past.

## **Redundancy and procedural inefficiencies**

A number of suggestions were offered to continue efforts to reduce redundancy and procedural inefficiencies in statute. For example, it was suggested that the department continue to work with the agencies and other stakeholders to

- Eliminate the five-day human resources posting requirement designed to assure that no state employee is available and eligible to perform the work before it goes to a vendor. Larger agencies reported posting hundreds of work orders each year, to no avail.
- Reduce reporting requirements. Several interviewees said that state law requires that agencies generate a lot of reports on contracting that no one reads.
- Raise dollar limits on contacts that must be approved by Administration. Currently contracts of \$5,000 or more are subject to the provisions on Minn. Stat. 16C.08. No one suggested a preferred dollar amount, but several said that even doubling the amount would reduce the workload significantly, without posing a major risk to taxpayer interests.

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# CONCLUSIONS

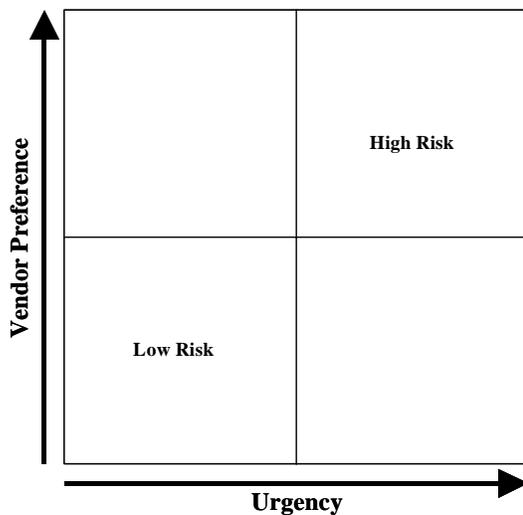
The purpose of this study was to examine the challenges inherent in Administration’s oversight role and to identify opportunities for increasing the efficiency and effectiveness of the professional and technical contract review and approval process. Management Analysis drew the following conclusions from the interview findings and a review of the other materials listed in the methods section of this report.

## Efficiency

MMD’s review of certifications and contracts is efficient. Only one of the 34 interviewees stressed the need to increase the speed and efficiency of the review process. Data from MMD’s tracking of professional and technical contracts show that for FY 2002, 3,142 contracts were approved by MMD. The average number of days to approve those contracts was 2.72, with approximately 29 percent being turned around the same day that they were received.

A review of the data, in fact, might raise the question as to whether MMD’s review is *too* fast. Given the volume of documents being reviewed and the relatively small staff dedicated to this function, one might conclude that the reviews are only superficial or that staff are triaging the documents and reviewing some more closely than others.

MMD has developed a process for providing “rush reviews,” and agencies report that the rush process works very well. It is helpful to have a prioritizing system, and it could be developed further. For example, the rush prioritizing simply distinguishes between those documents that are urgent and those that are not. Other criteria and methods might be developed for distinguishing those contracts that pose a higher risk for noncompliance.



For example, the MMD review often goes smoothly in cases where an agency has plenty of lead-time and no preconceived notion of which contractor is best suited for the work. On the other hand, the review is most likely to signal a problem when either the agency has a preferred contractor in mind, or there is a heightened sense of urgency, or both. Using this finding, a matrix like the one shown here can be used to estimate the relative “compliance risk” of various individual contracts.

The other two quadrants also represent a certain degree of risk. The upper left quadrant represents the risk that the agency may not use the opportunity time affords to carefully define what is needed, write specifications

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broadly enough to encourage multiple proposals, and to actively seek competitive proposals. The risk in the lower right quadrant is that – due to the perceived urgency – specifications are not carefully defined and communicated, and little effort is made to publicize the request for proposals or to provide sufficient time for thoughtful responses.

### **Effectiveness**

Conclusions about effectiveness depend, first and foremost, on the purpose or intentions of the work being evaluated. As the findings show, opinions vary about which aspects of the review are most important, how MMD should approach its work, and what aspects should be emphasized and improved. Some general themes, however, did emerge from the findings:

- Of all the groups interviewed, agency heads were the least clear and consistent in their understanding of MMD’s roles and responsibilities. Legislators, MMD staff, and the contract coordinators with whom MMD works most closely tend to agree on and support MMD’s roles and responsibilities. Agency heads, on the other hand, were more inclined to question the value of MMD’s review, describe preferred roles that are beyond MMD’s current capacities, or to express uncertainty as to what MMD is or should be doing. Agency program managers and other staff with direct responsibility for contract development were also reported to have a limited knowledge of MMD and the state’s contracting requirements. This understanding gap is especially troubling, given the important role that agency heads and managers play in setting expectations and shaping the agencies’ contract practices.
- Agency heads in particular as well as agency managers and staff need guidance in plain language that familiarizes them with the state’s professional and technical contracting requirements. It is most important that agency leaders and staff know how to effectively use their own agencies’ contract development process and the technical support available from MMD.
- While the MOU and delegation process appear to some as an attractive option, it has little support among contract coordinators and MMD staff. The strength of the concerns raised by those who work most closely with the contract review and approval process raises serious questions as to the feasibility of future delegations.
- MMD and the agencies have shared responsibilities in assuring that state professional and technical contracting complies with state law. The distinctions in responsibilities, however, are not entirely clear. For example, agencies determine a contract is necessary for a variety of reasons, and will enter into contracts under a variety of agency-specific authorizations. MMD must also determine that a contract is “necessary to the achievement of [the agency’s] statutory responsibilities” (Minn. Stat. 16C.08, subd. 3). These overlapping responsibilities create confusion, disagreement, and a sense of duplicity in the review process.
- The lack of agreement as to how MMD should balance its regulatory function with its educational and technical assistance function is being manifested in wide-ranging disagreements about customer service, the value of MMD’s services, and the very nature of Administration’s statutory powers and duties. These

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disagreements have strained relationships within the executive branch and have resulted in unflattering investigative style media coverage.

- Even if the roles are clear and adequately understood, disagreements between MMD and the agencies are natural and inevitable. The agencies' interests are driven by their unique missions, legislative directives, and constantly changing stakeholder expectations. The broader statewide interests, codified in statute, drive MMD's interests. While these two sets of interests are largely complementary, they can and do conflict from time to time. When they do conflict, the department's judgment is often questioned. It is not clear that the department has a consistent and transparent process for making its judgments, or that the judgments result in a formal record that can be used to inform future policy and practice in the review and approval of professional and technical contracts.

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# RECOMMENDATIONS

This report addresses a wide variety of issues, many of them outside the direct control of the Department of Administration or beyond its resources to achieve. Because of this, the recommendations focus on those efforts deemed by Management Analysis and MMD's stakeholders to be the most necessary and doable. It is also important to note that the contract review and approval process has been subject to several reviews over the past several years and improvements are being made on an ongoing basis. The following recommendations are made with that in mind and in the spirit of offering ideas and options as the department seeks to continually enhance its efficiency and effectiveness.

The recommendations focus on three general areas: promoting internal consistency and transparency, promoting awareness and acceptance of MMD's review, and supporting agency proficiency in state contracting practices.

## **Promoting internal consistency and transparency**

The findings of this study point to several aspects of the department's internal communications and operations that could be improved. In particular the department should work with its materials management division to make the review processes more consistent, predictable, and transparent. The following recommendations expand on these themes:

### **Establish an internal department understanding of the MMD review**

MMD staff and department leadership should jointly establish an internal understanding of the department's specific authority and responsibilities in the contracting area. This may include

- Analyzing Minn. Stat. 16C.08 to identify those areas of law that are most susceptible to conflicting interpretations.
- Clarifying distinctions in law, policy, and practice to help more firmly define requirements and expectations of MMD and other agencies, and to reduce the reported confusion, disagreements, and sense of redundancy in the process.
- Defining the support services provided by the department (manual, training, Website resources, one-on-one phone support, etc.) and making the customer service objectives and performance measures for these functions explicit.

### **Examine the Office of Technology's contract review process**

While it was recognized the MMD and OT have distinct review requirements, they both apply to professional and technical contracts and are housed in the Department of Administration. Several contract coordinators recommended that a study of the OT review process, similar to this review of MMD, be done and that recommendations for improvement be implemented.

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### **Continue efforts to promote consistency in interpretations and review procedures**

MMD's contracting manual has been significantly improved and published electronically in recent years. The division can build on that success and promote greater consistency and transparency in the contracting policies and procedures by

- Making non-time-sensitive changes to the manual at predictable times (once or twice per year) and by having the contract coordinators' group review the changes and provide feedback prior to the changes being made final.
- Systematically developing interpretations of data privacy and other statutory requirements related to the development of professional and technical contracts. These interpretations should be documented and reviewed by contract coordinators and others prior to their being made final.
- Having all MMD staff that work on professional and technical contracts take the trainings offered by MMD, evaluate the training content, and refine it to assure consistency in the advice provided to agencies.
- Establishing criteria for prioritizing the documents for review and making the criteria known to the agencies. Criteria, including degree of urgency, as well as other factors, might be specified and used to focus MMD's limited resources on the contracts posing the greatest risk of noncompliance. The more clear and transparent the criteria, and the more directly related it is to actual risk, the more it will reinforce voluntary efforts on the part of the agencies to implement best practices in developing professional and technical contracts.

### **Reconcile the diverse opinions as to the value and utility of an MOU process**

This report found that the MOU has many potential strengths. However, the comments of many of the respondents suggest that at best, the MOU has a serious "image problem," especially among contract coordinators and MMD staff. At worst, the MOU is likely to undermine the value and benefits of an independent review of state agencies' professional and technical contracting.

Specifically, the department should

- Request recommendations from MMD staff and the contract coordinators on ways to strengthen the criteria for determining which agencies are good candidates for delegation.
- Include measures for monitoring other objectives of the delegation. For example, if the delegation is intended to increase the proficiency of agency managers in contract development, the MOU might include measures relating to training or knowledge and experience of agency staff.
- Address MMD's and contract coordinators' concerns about agency accountability by reviewing and possibly revising the "monitoring" sections of the generic MOU relating to delegation of contracting authority.

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- Clarify the conditions in which an MOU will be withdrawn. While the conditions for retaining a delegation are included in the contract, and the contract provides that “either party may cancel this MOU at any time, with or without cause,” other portions of the contract state, “In the event of recurring failure the Department of Administration will work with the delegate to bring the program into compliance.” The threshold for withdrawing a delegation should be clear.

### **Anticipate conflict and document controversial decisions**

The department must anticipate and plan for conflict with agencies under its review. The differing demands and pressures of the agencies and the department create the conditions for strong differences of opinion. The department needs an established procedure for how conflicts will be addressed. This process should be written and shared with agencies. The department should document controversial decisions so that the criteria and rationale for the decision are explicit and applied rationally. By rule (Minn. Rules 1230.1150) decisions involving the suspension or debarment of vendors and would-be vendors may be appealed from the director of MMD to the commissioner of Administration. By policy, rejections of contract moratorium waivers may also be appealed. Perhaps this more formal process would also be appropriate for agencies in other situations when a procurement-related decision moves from MMD to the commissioner’s office. Minimally, it would create a clear paper trail with respect to responsibility for controversial decisions and would make all parties more intentional with respect to any issues they take above MMD for an executive decision.

### **Promote awareness and acceptance of MMD’s role**

The department should promote a shared understanding of agency and department interests and responsibilities in professional and technical contracts during the upcoming gubernatorial transition period. The following recommendations are intended to improve the effectiveness of the contract review process by promoting a greater understanding and acceptance of the process by the multiple parties involved.

#### **Continue to publish MMD efficiency measures and performance data**

MMD could improve perceptions of the review process, especially among agency heads and managers by continuing to publish its ongoing count of the total number of contracts approved by agency, the number of days required for review (including same day reviews), and the number of rejections. This data is helpful in combating attitudes that MMD is slow and bureaucratic. It may also use customer service data, including testimonials, which may present a more realistic and favorable picture of the state contract development process.

#### **Develop an action plan for promoting broader understanding of MMD’s role**

Other actions could be taken to create an enduring positive image of MMD in the minds of agency heads and program managers. By working closely with department leadership, MMD should develop a plan for promoting broader understanding and acceptance of MMD’s role among agency heads and agency staff. This may also help reinforce any new internal agreements about MMD’s role and the approaches it will use.

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### **Make special efforts to educate new agency heads**

As the new governor appoints new agency leaders, the commissioner of Administration should make a special effort to educate other agency heads about state government professional and technical contracting, including the department's role and authority in this area. Visits to individual agencies by the commissioner and MMD staff might be used to, among other things,

- Review the agency's contracting history and discuss contracting plans for the near future.
- Increase agency participation in MMD or agency training sessions, contract coordinators' meetings, use of MMD's manual and Website resources, and one-on-one support.

### **Support agency proficiency in state contract development**

MMD's effectiveness is largely dependent on the contracting proficiency of state agencies. If agencies are knowledgeable and highly skilled in state contracting, it is reasonable to expect that MMD's review will be less time intensive, because it will require less consultation and support. Moreover, the documents that MMD receives are more likely to conform to state requirements, helping MMD achieve its mission of preventing noncompliant state contracting practices. The following recommendations are aimed at supporting agency contracting proficiency:

#### **Expand and promote MMD support to the agencies**

Recognizing that current resources are severely constrained, MMD could expand targeted service offerings to agencies. The "contract management academy," designed to help agencies manage contracts once they are signed, is a good beginning. MMD could also more actively explore its ability to assist agencies in

- Preparing requests for proposals;
- Navigating state procedural requirements;
- Negotiating contract terms;
- Offering strategies for limiting legal and financial exposure risks; and
- Sharing effective contracting practices across state agencies.

#### **Focus technical assistance and agency support efforts**

Agencies tended to have widely differing views of the kind of support they needed from MMD. For example, heads of larger agencies often thought they needed very little, if any, technical assistance from MMD, or they needed assistance that is not currently available. Smaller agencies voiced the strongest need for additional training, assistance, and guidance from MMD. The department should focus its technical assistance resources where they are most valued and have the greatest potential for increasing agency proficiency in state contracting requirements. Specifically, MMD should consider

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- Assigning specific MMD staff to certain agencies, or using periodic meetings like those suggested above, to create agency-specific agreements about how the department and the agency might work together most effectively. For example, some agencies may plan to increase their contracting for a special project or to privatize elements of the agency's work. MMD might work with the agency to create a work plan that would clarify mutual expectations, help expedite the review process, and assure that the agency and MMD are working effectively to process the contract documents.
  - Encouraging agency heads to develop an agency-specific plan for promoting program-level awareness of and proficiency in state professional and technical contracting methods. A generic plan might be developed, with the assistance of the contract coordinators group, that could be tailored to each agency's needs.
  - Exploring the possibility of providing extra support services to those agencies that need it and are willing to pay for it. For example, a group of smaller agencies might be willing to pool their resources to jointly hire a contract coordinator. Staff in MMD might offer to meet that need via an MOU or an interagency agreement. If the services are provided for a fee, the revenue could offset state general funds or be used to further expand MMD's technical assistance or support roles.

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# Summary

MMD is reasonably fast and efficient in its review and approval of state contracting documents and has an effective working relationship with the contract coordinators in each agency. Most of the interviewees in this study reported that MMD's greatest strengths are its efficiency, its expert knowledge of state contracting requirements, and its ability to be an independent reviewer. Recommended improvements in the contract review process are primarily oriented toward promoting greater consistency and transparency in MMD's methods; promoting broader understanding and acceptance of state contracting requirements, especially among state agency heads and managers; and in supporting agency efforts to increase their own proficiency in state contract development. As state contracting practices continue to face heightened scrutiny and as agencies may further explore privatization of state functions, the demands on the contracting review and approval process may increase. There may be a unique window of opportunity to educate and partner with agency heads and their agencies as the transition to a new administration begins.

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# APPENDICES

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# MMD Interview Questions

**Interview by Ryan Church**  
*November, 2002*

## **Possible Questions:**

1. Please tell me about your job (knowledge, and/or experience) relating to state professional/technical contracts.
2. In your own words, what is the purpose and/or value of the professional/technical contract review and approval process? [I might ask the respondent to complete the statement, “The review and approval of professional/technical contracts is important because \_\_\_\_\_ .]
3. What aspects (policy or process) of contract review and approval work well? (Present “boiler-plate” policy and procedure description; ask about MAPS?)
4. What aspects (policy or process) of contract review and approval need improvement? Where is the greatest opportunity for improvement? Any specific suggestions as to how the improvement could be made? Are there any obstacles to implementing the improvements?
5. The Commissioner of Administration and some agencies have expressed interest in delegating authority for professional/technical contract review and approval to the agency level. What do you see as the advantages and disadvantages (policy or process) of delegating this authority?
6. What do you wish you could do better in the contract review and approval process? What do you wish your agency could do better? Why isn’t that already happening?
7. What do you wish others (state agencies, MMD, legislature, etc.) could do better in the contract review and approval process? (Do you find the guidance available via contracting manual, MMD Website, training, and one-on-one assistance to be helpful? How might it be improved?)
8. What would be the best finding or outcome of this report you can imagine?
9. What would be the worst finding or outcome of this report you can imagine?
10. Anything to add? Others I should talk to?

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# List of Interviewees:

Sen. Richard Cohen	(DFL), Chair, State Government and Economic Development Budget Division
Sen. David Knutson	(R), Assistant Minority Leader
Rep. Phyllis Kahn	(DFL), Member, Governmental Operations and Veterans Affairs Policy
Rep. Phil Krinke	(R), Chair, Governmental Operations and Veterans Affairs Policy
David Fisher	Commissioner of Administration
George M. McCormick	Senate Counsel Staff
Helen Roberts	House Fiscal Analyst
Mark Shepard	House Research, Legislative Analyst
Al Becicka	MMD
Dennis Benson	Deputy Commissioner of Corrections
Jim Bernstein	Commissioner of Commerce
Laura Bishop	Assistant Commissioner of Administration
Kirsten Cecil	Deputy Commissioner of Administration
Jim Cownie	MnDOT
Dennis Erickson	Assistant Commissioner of DHS
Paul Erickson	Director of Amateur Sports Commission
Mike Fratto	Economic Security
Bev Gausmen	DHS
Betsy Hayes	MMD
Sandy Hogen	CFL
Barb Jolly	MMD
Gerald Joyce	MMD
Bruce Lemke	Office of Technology
Linda Lynch	Amateur Sports Commission
Debbie Milla	Medical Practice Board
Patty Nolte	Attorney General's Office
Heather Pickett	MMD
Shelby Richardson	Corrections
Doug Spanier	Agriculture
Paul Stembler	Assistant Director of MMD
Laurie Stream	PCA
Janet Weber	Public Safety
Doug Weiszhaar	Acting Commissioner of MnDot
Barb Yates	Deputy Commissioner of CFL