

State of Wisconsin\Government Accountability Board

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August 26, 2011

Joe Chrisman, Interim State Auditor
Legislative Audit Bureau
22 East Mifflin Street, Suite 500
Madison, WI 53703

Subject: Contract Sunshine Act

Dear Mr. Chrisman:

On behalf of the Government Accountability Board, I would like to thank you and your staff for the work invested in preparing the Legislative Audit Bureau's well-detailed evaluation of the Contract Sunshine Act, which the Board is responsible for administering. We appreciate the courteous and professional approach your staff brought to the audit.

The mission of the Government Accountability Board is to ensure accountability and transparency in government by administering and enforcing campaign finance, ethics and lobbying laws, as well as to enhance representative democracy by ensuring the integrity of the electoral process. To carry out this mission, the Board and its staff direct their energies toward providing impartial enforcement of the laws and fair elections. The Board is a source of information about the election process and the activities and finances of candidates for public office.

The Bureau's evaluation of the Contract Sunshine Act raises important questions about whether the G.A.B is the best fit to administer this program. The Board's staff concurs with the Bureau's recommendations that the Legislature either repeal or modify the Contract Sunshine Act so that the Department of Administration can use its resources and procurement expertise to administer the program. Staff will recommend that the Government Accountability Board endorse the Bureau's recommendations at its September 12, 2011 meeting.

Background

Contract Sunshine was created by the Legislature in 2006 after concerns arose about how a state agency awarded a particular contract to a firm with ties to a former agency official. The idea was to create a website where state agencies would provide information to the public about any contracts over \$10,000. Rather than assign responsibility for implementation to the Department of Administration or other agencies that already had the contracting information, the Act gave it to the former Ethics Board, a non-partisan state agency which had previously designed an award-winning website for public disclosure of lobbying data. The Ethics Board had no role in the development of the Contract Sunshine Act.

The Ethics Board initially created pages on its website in 2006 to collect and post contract information from agencies in whatever document formats were available. In 2007, the Legislature appropriated less than \$30,000 to build and maintain a stand-alone website for Contract Sunshine information. The Ethics Board hired a vendor to build a basic, database-driven contract reporting website for less than \$20,000, launching it in December 2007. The Legislature did not give the Ethics Board any enforcement power to make state agencies report their purchasing activities, or set up a compliance mechanism. That lack of enforcement power, and the initial limitations of the website, contributed to low levels of agency compliance with the law.

During the transition from the Ethics Board to the G.A.B., there were many tasks necessary to effect a smooth merger with the former Elections Board, which limited the agency's ability to work on the program. Additionally, 2007 Act 1, which created the G.A.B., tasked the Board and its staff with conducting a statutory review and evaluation of all formal opinions, administrative rules, orders, guidelines and internal operating procedures of the two agencies, forcing the staff to prioritize its workload to ensure compliance with these essential requirements directed by the Legislature. The review consumed a great deal of staff time. Also, the Ethics and Accountability Division staff member whose duties included Contract Sunshine left the agency in 2008 and the position was not immediately filled for budgetary reasons. A second position in the agency with related duties also remained vacant for budgetary reasons for much of FY 09.

Recent Contract Sunshine website improvements

In October 2009, responsibility for Contract Sunshine was transferred from the Board's Ethics and Accountability Division to the Administrative Services section. The Board also reallocated one FTE, who was specifically assigned to spend approximately 35 percent of his time working on Contract Sunshine administration. The administrator has spent considerable time working with the vendor to improve the website's functionality for agencies and public users, as well as to modernize its appearance.

Despite those improvements, the main obstacle to compliance has been that state agency personnel must manually enter contract information into the Contract Sunshine system. The Board staff has more recently devoted significant resources to working with the Department of Administration, the Department of Workforce Development and the UW System on modifications to allow those agencies to upload existing contract information directly to the website. However, DOA has not been able to use the upload utility.

The difficulty in developing a utility to allow agencies to upload their contracting information is that the data is in many different formats, and can vary from agency to agency. Some agencies' purchasing systems do not record all the data required by Contract Sunshine because parts of the purchasing process are handled by the Department of Administration. Designing a system that would accept and validate data in so many different formats has been cost prohibitive on the G.A.B.'s \$11,300 annual Contract Sunshine IT budget.

Compliance issues

Because the Legislature did not give the Board power to compel state agencies to comply with the Contract Sunshine Act, the G.A.B.'s recent approach has been to use public and media

pressure to encourage compliance. Staff developed a system for agencies to certify to the Board each quarter that they are in compliance with the Act. A list of agencies that have certified compliance is posted to the Contract Sunshine site so visitors can see who has and has not reported. Since the implementation of compliance certifications, the number of Contract Sunshine transactions reported by agencies has nearly tripled.

Comparisons with other states

News media and non-profit groups have examined the Contract Sunshine website's performance in recent years, and have given it mixed reviews. Generally, they compare Contract Sunshine to government spending transparency websites maintained by other states, and find Contract Sunshine lacking. The problem with these analyses is that Contract Sunshine was never intended to be a spending transparency website. In fact, the original legislation did not even include a requirement for agencies to report the name of the successful bidder for a contract, something the Ethics Board decided to include.

The other difference these state-to-state comparisons often miss is that the G.A.B. is administering a transparency program for which it is not the primary source for the data. Other states' transparency websites are usually administered by their equivalent of Wisconsin's DOA. The G.A.B.'s Director championed the idea of a DOA-managed expenditure transparency website in testimony to the Joint Committee on Audit in July 2010.

The L.A.B. report

The evaluation report contains a few points the G.A.B. staff would like to address:

- Several times throughout the report, the authors make reference to G.A.B. identifying 95 agencies subject to Contract Sunshine reporting requirements. While this was initially true, the G.A.B. later determined that only 33 agencies actually report on behalf of all agencies and UW campuses. Many Executive Branch agencies are combined under Consolidated Agency Purchasing Services and the UW System reports as one entity.
- In the section on *Report Highlights*, it states that the G.A.B. "has at various times instructed agencies to report only their transactions of \$25,000 or more...." The G.A.B. itself has never instructed agencies to report only transactions of \$25,000 and above. That was a direction of the former Ethics Board, and during the early days of the G.A.B., staff may have continued to give this guidance. However, in October 2009 following an internal review of the Contract Sunshine program we decided to enforce the \$10,000 statutory threshold.
- In the section on *Reporting, Oversight and Timeliness Concerns*, the report states that, "Not until September 2010 was DOA easily able to report purchasing transactions it completes on behalf of 12 state agencies that have had some of their purchasing duties consolidated into DOA." DOA staff was able but unwilling to use the Contract Sunshine website to report the contracts because DOA staff had to log in and log out of accounts for individual agencies to enter this information. This login issue was addressed in March 2010.

- In the section on *G.A.B.'s Oversight Efforts*, the report states in the second bullet point that, "After state agencies noted the difficulty in aggregating continuing purchases, which are regular purchases from one vendor of the same goods or service, G.A.B. instructed them in spring and summer of 2010 to report only individual *purchase orders* of \$10,000 or more." Actually, the G.A.B. directed agencies to report individual *projects* of \$10,000 or more. This is an important distinction because agencies may spend more than \$10,000 on an individual project that involves multiple purchase orders.
- In the section on *G.A.B.'s Oversight Efforts*, the report states that the G.A.B.'s "certification process is unlikely to provide the public with meaningful information." The certifications serve to answer a question which staff frequently receives from the media and public about which agencies have and have not reported transactions, as well as which agencies did not have any reportable activity. The certification process also provides an informal compliance incentive, as reported agency transactions nearly tripled since its implementation.

Conclusion

The Contract Sunshine Act was a good idea at the time that suffered from vague statutory language, a lack of financial resources, and no enforcement authority, which has resulted in less than full implementation of the law. The Legislative Audit Bureau has proposed common-sense recommendations that should result in Wisconsin residents having greater access to information about how their state government awards contracts and spends taxpayer resources. We believe the Legislative directive in 2011 Act 32 to create a state expenditure disclosure website will increase transparency, consistent with the original intent of the Contract Sunshine Act.

Thank you again for your thorough review of the Contract Sunshine Act.

Government Accountability Board



Kevin J. Kennedy
Director and General Counsel