

An Evaluation

Contract Sunshine Act

Government Accountability Board

2011-2012 Joint Legislative Audit Committee Members

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Joe Chrisman
Interim State Auditor

August 31, 2011

Senator Robert Cowles and
Representative Samantha Kerkman, Co-chairpersons
Joint Legislative Audit Committee
State Capitol
Madison, Wisconsin 53702

Dear Senator Cowles and Representative Kerkman:

At the request of the Joint Legislative Audit Committee, we have completed an evaluation of the Contract Sunshine Act, which requires all state agencies to report information about contracts, requests for bids and other competitive proposals, and purchase orders totaling \$10,000 or more in a fiscal biennium to the Government Accountability Board (GAB) for posting on a publicly accessible Web site.

Only 12 state agencies reported information to GAB in fiscal year (FY) 2009-10, and 38 did so during the first four months of FY 2010-11. The posted information remains incomplete and is less than fully accurate because of limitations with the Web site's design, difficulties state agencies have had in compiling data for reporting at the level of detail required by the law, and confusion about which information must be reported. As a result, the Contract Sunshine Web site is of limited value in providing the public with clear, comprehensive, and useful information.

In 2011 Wisconsin Act 32, the Legislature directed the Department of Administration (DOA) to establish a new publicly accessible Web site that will report all executive, legislative, and judicial branch expenditures for state operations exceeding \$100. We include a recommendation that DOA report to the Joint Legislative Audit Committee in January 2012 on its efforts to implement that Web site. If it can be successfully implemented, the new Web site will surpass the Contract Sunshine Web site in scope and potential usefulness to the public, and the Legislature should then consider repealing the Contract Sunshine statutes. If the Legislature chooses to retain the Contract Sunshine statutes, we present several statutory modifications that would somewhat improve the Contract Sunshine Web site's usefulness to the public.

We appreciate the courtesy and cooperation extended to us by GAB. Its response follows the appendices.

Respectfully submitted,

Joe Chrisman
Interim State Auditor

JC/DS/ss

Report Highlights ■

Wisconsin's Contract Sunshine statutes were enacted in May 2006 to promote transparency and fiscal responsibility.

Only minimal resources have been devoted to developing and maintaining the Contract Sunshine Web site.

Reporting has increased since July 2010, but information is not always complete, accurate, timely, or useful to the public.

Additional information is needed before the Legislature considers repealing the Contract Sunshine statutes.

Wisconsin's Contract Sunshine Act requires all state agencies in the executive, legislative, and judicial branches to report their purchasing activities amounting to \$10,000 or more in a fiscal biennium to the Government Accountability Board (GAB) for posting to a publicly accessible Web site. Information must be reported within 24 hours and must include the purpose, date, and estimated amount of each reportable transaction. Statutes do not assign responsibility for ensuring compliance with reporting requirements or verifying the accuracy and completeness of the reported information, but GAB has instructed most agencies to submit written certification of their compliance every three months.

At the request of the Joint Legislative Audit Committee, we addressed concerns about compliance with the Contract Sunshine Act and the accuracy and timeliness of information posted to the Contract Sunshine Web site by:

- reviewing efforts to develop and maintain the Web site and ensure reporting compliance;
- analyzing the purchasing information reported through October 2010, as well as the difficulties state agencies have encountered in attempting to comply with the reporting requirements and efforts to improve reporting; and

- considering the future of Contract Sunshine in light of recent legislation directing the Department of Administration (DOA) to develop a new expenditure, contract, and grant information Web site.

Web Site Development

The Contract Sunshine Act predates GAB, and no funding was initially appropriated for Web site development. The work was therefore completed by staff whose primary expertise was in other areas, and initial results were of limited use to the public.

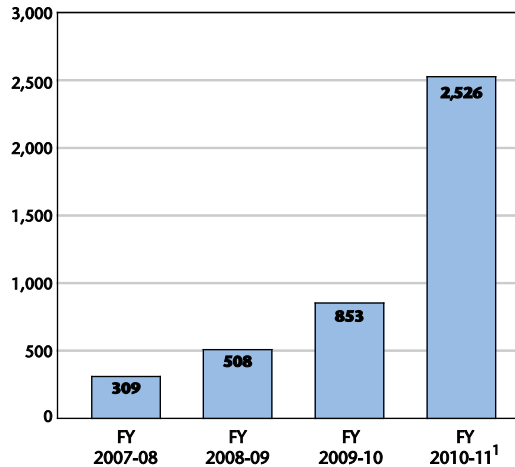
In December 2006, the Joint Committee on Finance made \$30,000 available to fund external development of the current Contract Sunshine Web site, which was launched in December 2007. GAB continues to contract with a Madison firm for Web site maintenance and is appropriated \$11,300 annually for the Web site. GAB directed a staff member to spend 35.0 percent of his time on Contract Sunshine issues beginning in October 2009.

Reporting Concerns

As of November 2010, GAB had identified 95 agencies subject to Contract Sunshine reporting requirements. Not all state agencies regularly make purchases of \$10,000 or more in a fiscal biennium, but more than 60.0 percent of all transactions posted on the Contract Sunshine Web site were reported only after we began our audit work.

Only 12 agencies reported transactions in fiscal year (FY) 2009-10, but 38 agencies reported 2,526 transactions during the first four months of FY 2010-11, as shown in Figure 1, including several large agencies that reported to the current Web site for the first time in that year. Moreover, GAB has at various times instructed agencies to report only their transactions of \$25,000 or more and to limit certain other types of reporting, both to reduce data volume while the Web site was being improved and in response to the agencies' difficulties in compiling data for reporting at the level of detail required by the Contract Sunshine Act.

Figure 1

Contract Sunshine Transactions

¹ July through October 2010.

In some instances, limitations in the Web site's design have also affected the timeliness and comprehensiveness of agency reporting. For example:

- Transactions generally cannot be transferred automatically from agencies' own purchasing systems to the Web site, but must instead be compiled and reported by agency staff.
- Until September 2010, DOA was unable to easily report the transactions of 12 agencies for which it has consolidated purchasing responsibility.
- Until April 2010, agencies were unable to report the purchases they made under statewide purchasing contracts unless DOA or GAB had first reported contract information.

GAB has conducted training, developed a manual, and begun to develop administrative rules to clarify the types of transactions state agencies are required to report and to formalize its own oversight responsibilities. Although statutes do not explicitly authorize GAB to promulgate rules for ensuring compliance with reporting requirements or assign it responsibility for oversight of the reporting process, it has since September 2010 also instructed most agencies to certify in writing either that they have complied with all reporting requirements or that they had no reportable transactions for the prior three months.

In November 2010, certification results for the first three months of FY 2010-11 were posted on the Contract Sunshine Web site. When we reviewed documentation submitted by 37 agencies the Web site indicated were fully compliant, we found that some had included comments noting they had not always complied with the 24-hour reporting deadline. Nearly two-thirds of all contracts and purchase orders reported in the first four months of FY 2010-11 were reported ten days or more after they had occurred.

Future Considerations

Although some had expected the Contract Sunshine Web site to serve as an “open checkbook” showing how state agencies spend public funds, it has been of limited value in providing the public with clear, comprehensive, and useful information.

One reason is that the Contract Sunshine Act requires state agencies to report only the estimated value of contracts, solicitations, and certain other transactions, and actual expenditures may differ significantly from these estimates. Another is that information posted on the Web site separately indicates the values of a contract and all associated purchase orders. For example, if an agency executed a \$50,000 contract and then processed \$40,000 in purchase orders against that contract, the Web site would show \$90,000 in transactions rather than no more than \$40,000 in expenditures.

In addition, the Contract Sunshine Act does not require agencies to report vendor names, although GAB has instructed them to do so, and it can be challenging for public users to locate particular transactions or to determine their purpose or the amount of a vendor’s contracts based on the Web site’s current configuration. We also found considerable overlap in the purchasing information that state agencies report to the Contract Sunshine Web site and at least nine other Web sites.

In 2011 Wisconsin Act 32, the Legislature directed DOA to establish a new publicly accessible Web site that will report all expenditures for state operations exceeding \$100. If implemented as specified, this Web site could be more useful than the Contract Sunshine Web site for public monitoring of government purchasing transactions. However, before the Legislature considers repealing Contract Sunshine statutes, it will be important to ensure that the new Web site can achieve its intended goals at a reasonable cost and in a timely manner.

Recommendations

Our report includes a recommendation that:

- ☑ DOA report to the Joint Legislative Audit Committee by January 17, 2012, on the status of its efforts to implement the new expenditure, contract, and grant information Web site required by 2011 Wisconsin Act 32, as well as projected development and maintenance costs and the reporting efforts that will be required by state agencies (*p. 32*).

After it reviews the information reported by DOA, we recommend that the Legislature either:

- ☑ repeal Contract Sunshine statutes if it determines the new expenditure, contract, and grant information Web site complies with the requirements of Act 32 and will provide the public with clear, comprehensive, and useful information; or
- ☑ modify Contract Sunshine statutes so that DOA is authorized to maintain the Contract Sunshine Web site, oversee and enforce reporting, and promulgate administrative rules related to these duties, and agencies are required to report vendor names, to report transactions on a monthly rather than a daily basis, and to report only individual purchase orders that meet or exceed the \$10,000 threshold (*p. 33*).

■ ■ ■ ■

Introduction ■

Contract Sunshine statutes require state agencies to report bid requests, contracts, and orders of \$10,000 or more.

Section 16.753, Wis. Stats., Wisconsin's Contract Sunshine statute, requires all state agencies to report each solicitation for bids or competitive sealed proposals involving a projected expenditure of \$10,000 or more; each proposed contract or order involving an expenditure of \$10,000 or more that does not involve bids or competitive sealed proposals; each order or contract for continuing purchases that will amount to \$10,000 or more in a fiscal biennium; and all change orders, including those that increase any contract or order to \$10,000 or more, to GAB within 24 hours of the initial solicitation or commencement of negotiations, or of the information becoming available. State agencies must provide:

- a brief description of the transaction's purpose;
- the name of a state agency staff member who can provide additional information;
- the solicitation's date and, if applicable, the date the contract was executed or the order was placed;
- a brief description and the date of any change order; and
- the estimated expenditures to be made under the contract or order, or the estimated expenditures during the current fiscal biennium if a contract or order is for continuing purchases.

Contract Sunshine reporting requirements apply to the Legislature, the courts, and other agencies as defined by s. 16.70(1e), Wis. Stats., including any “office, department, agency, institution of higher education, association, society, or other body in state government created or authorized to be created by the constitution or any law, which is entitled to expend moneys appropriated by law,” except for an authority.

As of November 2010, GAB had identified 95 state agencies subject to Contract Sunshine reporting requirements.

As of November 2010, GAB had identified the 95 agencies listed in Appendix 1 as subject to the Contract Sunshine Act. These agencies have generally interpreted references to an “order” in s. 16.753, Wis. Stats., to mean a purchase order. Appendix 2 explains purchase orders and other common purchasing terms. It should be noted that the State of Wisconsin Investment Board is not required to report solicitations or contracts for assistance with investment management.

Web Site Development

Enactment of Contract Sunshine predates GAB. Its predecessor, the State Ethics Board, was assigned responsibility for the Contract Sunshine Web site but was appropriated no funding for that purpose, so initial development work was completed internally by staff whose primary expertise was in other areas. When the Web site was launched in 2006, state agencies were not required to use a specific reporting format for submitting statutorily required purchasing information, and by November 2007, 31 agencies had submitted a variety of electronic documents, including spreadsheets, word processing files, and links to other Web sites the State uses to post purchasing information, such as VendorNet. Electronic information was posted alphabetically by agency, but the site was not particularly useful to the public for reviewing agencies’ transactions because data could not be sorted by purchase type or amount, or by transaction date. This original Web site remains accessible to the public.

A private firm maintains the current Web site under a contract with GAB.

In December 2006, the Joint Committee on Finance approved the Ethics Board’s request under s. 13.10, Wis. Stats., for \$30,000 to fund external development of the current Contract Sunshine Web site, which was completed in December 2007 and continues to be maintained by Sundial Software Corporation, a Madison firm. When GAB was formed in January 2008, it assumed responsibility for this Web site, which is now accessible at <http://sunshine.wi.gov/>.

State agencies are now required to submit electronic data for reported transactions in a uniform format. GAB briefly reviews and approves each reported transaction but is unable to assess its

accuracy because agencies do not submit verifying documentation and GAB does not have the staff expertise or time to review the documentation. Published information can be searched and sorted by agency, vendor, type of transaction and purchase, and amount.

In March 2010, media reports indicated poor compliance with the Contract Sunshine Act and raised concerns about the accuracy and timeliness of available information. Some state agencies indicated their ability to report was hindered because the Web site could not accept and display information associated with certain types of contracts, and agencies with significant purchasing activity indicated that reporting requires considerable staff time.

Expenditures and Staffing

As shown in Table 1, since its initial appropriation of \$30,000 in FY 2006-07, the Legislature has appropriated \$11,300 in general purpose revenue (GPR) annually to develop and maintain the current Contract Sunshine Web site. The costs to state agencies for reporting to the current Web site have not been quantified and are not included in the amounts shown.

Table 1

GPR Appropriated for the Contract Sunshine Web Site

Fiscal Year	
2006-07	\$30,000
2007-08	11,300
2008-09	11,300
2009-10	11,300
2010-11	11,300
2011-12	11,300
2012-13	11,300
Total	\$97,800

GAB has never requested additional funding for Web site development or maintenance, although its 2011-13 biennial budget request included a proposal for an additional \$100,000 in GPR to contract with a firm that would review Contract Sunshine

requirements, evaluate methods for monitoring compliance with reporting requirements, recommend improvements to administrative processes, and analyze state agencies' purchasing information systems. This proposal was not included in the Governor's biennial budget request.

As shown in Table 2, the Ethics Board and GAB spent an estimated \$143,100 to develop and maintain the Contract Sunshine Web site through FY 2010-11. Annual expenditures fluctuated in part because work was suspended in FY 2008-09 after GAB's creation. By law, GAB was required to review every rule, order, formal opinion, and all internal operating procedures of the Ethics Board and the Elections Board, a task that GAB indicated was time-consuming. During this time, GAB also addressed other projects, including developing its campaign finance information system. GAB funds payments to Sundial Software Corporation with GPR and has used both GPR and program revenue appropriated for other purposes to cover staff salary and fringe benefits costs associated with oversight of the Contract Sunshine Web site.

Table 2

Ethics Board and GAB Expenditures to Implement Contract Sunshine

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11 ¹	Total
Payments to Sundial Software Corporation	\$ 0	\$34,100	\$200	\$10,100	\$25,200	\$ 69,600
Salaries	13,300	10,700	500	11,500	15,200	51,200
Fringe Benefits	5,200	4,500	200	5,000	7,400	22,300
Total	\$18,500	\$49,300	\$900	\$26,600	\$47,800	\$143,100

¹ Estimated.

GAB directed an individual to spend 35.0 percent of his time on Contract Sunshine issues beginning in October 2009, and as shown in Table 3, staffing related to the Contract Sunshine Web site peaked in FY 2010-11 at one-half of a full-time equivalent position.

Table 3

**Staffing Levels for
Ethics Board and GAB
Contract Sunshine Activities**

Fiscal Year	Full-Time Equivalent Positions
2006-07	0.29
2007-08	0.30
2008-09	0.01
2009-10	0.36
2010-11	0.50

In evaluating Contract Sunshine, we analyzed all information that state agencies reported to the current Contract Sunshine Web site through October 2010. We interviewed GAB staff, reviewed the contract with Sundial Software Corporation, and examined other documentation related to the Web site's development and maintenance. We attempted to determine how often individuals have accessed the Web site, but this information is not tracked. In addition, we contacted the 11 state agencies listed in Appendix 3, and purchasing staff in eight other states.

■ ■ ■ ■

Reporting, Oversight, and Timeliness Concerns ■

Contract Sunshine was intended to compile a record of the State's purchasing transactions in one location and allow the public to review this information. Although reporting has improved since July 2010, the information posted on the Contract Sunshine Web site is not always complete, accurate, and timely, and its usefulness to the public is questionable. In addition, state agencies also report similar information to at least nine other purchasing information Web sites, and the resulting duplication has made it more challenging for the public to understand the State's purchasing activities.

Reporting Levels

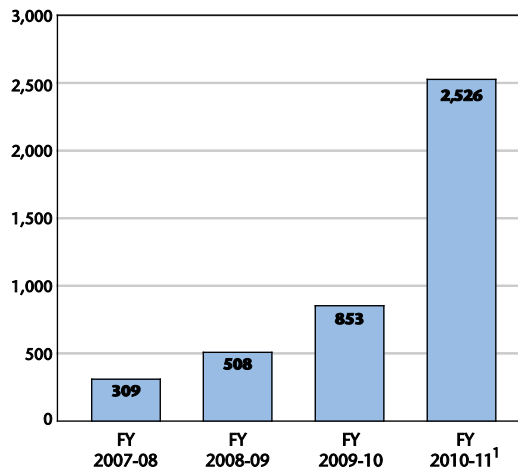
State agencies report Contract Sunshine information in various ways. Some have centralized the process, while others have delegated reporting responsibility to multiple purchasing staff. Only 1 of the 11 agencies we contacted—the Department of Children and Families—has a written plan for reporting, which includes policies for collecting and reporting information, time lines, and staff responsibilities. A written plan is particularly important for larger or decentralized agencies with purchasing staff throughout the state, because it is otherwise difficult for senior officials to ensure consistent, accurate, and timely reporting. We note for example that DOA requires agencies to develop written plans for collecting, validating, and reporting information for a Web site it maintains to show how federal funds provided by the American Recovery and Reinvestment Act (ARRA) of 2009 have been spent in Wisconsin.

More than 60.0 percent of all transactions on the Contract Sunshine Web site were reported from July through October 2010.

We reviewed all purchasing transactions reported to the current Contract Sunshine Web site from December 2007 through October 2010. As shown in Figure 2, reporting levels increased in recent years, and more than 60.0 percent of all transactions on the Web site were reported from July through October 2010, after our audit’s commencement. During this four-month period, 38 agencies reported information, compared to only 12 in FY 2009-10. Several large agencies, such as the departments of Children and Families, Health Services, Natural Resources, and Public Instruction, reported to the current Web site for the first time in FY 2010-11. Appendix 4 lists all agencies that reported before FY 2010-11 and those that did so from July through October 2010. It should be noted that some agencies that did not report any information may not have had any transactions that were statutorily required to be reported.

Figure 2

Contract Sunshine Transactions



¹ July through October 2010.

Although we did not attempt to determine the extent to which all required information was reported, the Department of Transportation indicated to us that it has not reported any information related to state highway construction projects because contracting efforts for those projects differ significantly from other contracting processes and would be difficult to report to the Contract Sunshine Web site.

Limitations with the Contract Sunshine Web site's design have hindered reporting.

We found that numerous limitations with the Web site's design have hindered state agencies from reporting as required. For example:

- 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. While the 12 agencies are responsible for reporting those purchases that they continue to manage, such as simplified bids, most of them do not fully understand their reporting responsibilities. Five of the 12 report some information, while 7 do not report any information, including 5 that believe DOA reports all required information on their behalf and 2 that are uncertain which information DOA reports.
- Not until April 2010 were agencies able to report purchases they made under statewide purchasing contracts if DOA or GAB had not first reported information about the contracts to the Web site.
- Transactions generally cannot be transferred automatically from agencies' own purchasing systems to the Contract Sunshine Web site, but must instead be compiled and reported by agency staff.

GAB has tried to resolve Web site problems as they occur, but the minimal resources devoted to Contract Sunshine have made this challenging and prevented GAB from paying Sundial Software Corporation to further develop the Web site. From summer 2008 through fall 2009, GAB suspended work on Contract Sunshine. In October 2010, it began working with DOA, the Department of Workforce Development, and the University of Wisconsin (UW) System to develop a way for agencies to electronically transfer large numbers of transactions to the Web site. The Department of Workforce Development directly transferred 153 expenditure transactions in October and November 2010, but neither DOA nor UW System was able to do so during the period we reviewed. UW System subsequently directly transferred 3,354 expenditure transactions on behalf of all UW institutions and campuses from April through June 2011.

GAB's Oversight Efforts

Some state agencies are uncertain about their Contract Sunshine reporting responsibilities.

In part because some state agencies are uncertain about their Contract Sunshine reporting responsibilities, GAB has tried to clarify which information should be reported. For example:

- Until January 2010, the Ethics Board and GAB instructed state agencies to report only transactions of \$25,000 or more, rather than the \$10,000 required by the law. They did so, in part, to reduce the volume of reporting while the Web site was being improved. In addition, it can be difficult to track simplified bids because statutes allow agencies to complete them over the telephone without written documentation until a purchase order is completed. Although GAB instructed agencies in January 2010 to begin reporting transactions of \$10,000 or more, 2 of 11 agencies we contacted indicated in September 2010 that they still reported only transactions of \$25,000 or more.
- After state agencies noted the difficulty in aggregating continuing purchases, which are regular purchases from one vendor of the same goods or service, GAB instructed them in spring and summer 2010 to report only individual purchase orders of \$10,000 or more. Among 11 state agencies we contacted, 8 follow GAB's instructions, SWIB aggregates and reports purchase orders that total \$10,000 or more for a given item during a fiscal biennium, DWD reports expenditures of goods or services associated with purchase orders of \$5,000 or more in a fiscal year, and UW System was developing a method to report expenditures at the time of our audit work.
- GAB instructed state agencies not to report 30 types of transactions, such as rent and utility payments, that the State Procurement Manual authorizes agencies to make without a purchase order. As noted, Contract Sunshine statutes require agencies to report purchasing information on orders.

From February 2010 through January 2011, GAB conducted 20 training sessions for purchasing staff in 44 state agencies. Seven of 11 agencies indicated to us that the training was useful. In May 2010, GAB provided all state agencies with a written manual explaining the Web site, including how to report information to it. Because the manual provides only limited instructions for determining whether particular solicitations, contracts, and purchase orders must be reported, 6 of 11 state agencies indicated to us that they needed additional explanations of their statutory reporting requirements.

GAB has begun to develop administrative rules to clarify the types of transactions state agencies are required to report and to formalize its role in overseeing compliance with the Contract Sunshine Act. As drafted, the rules would require agencies to provide written certification on a quarterly basis that they had accurately reported all required information. The proposed rules would also require agencies to report information that is not specified in statutes, such as vendor names. GAB's six-member governing board approved the proposed rules in August 2010, but they had not yet been submitted to the Legislature for review as of August 2011.

These efforts have raised some concerns. Although s. 19.48(1), Wis. Stats., authorizes GAB to promulgate rules for maintaining the Contract Sunshine Web site, statutes do not explicitly authorize it to promulgate rules for ensuring compliance with reporting requirements or assign it responsibility for overseeing the reporting process. GAB believes it is authorized to promulgate these rules because s. 227.11(2)(a)(intro), Wis. Stats., states that an agency may promulgate rules to interpret the provisions of any statutory provision it enforces or administers. However, we note that 2011 Wisconsin Act 21, which was enacted in May 2011, specifies that:

- a statutory provision containing a statement of legislative intent, purpose, findings, or policy does not confer rule-making authority on an agency unless that authority is explicitly conferred;
- a statutory provision describing an agency's general powers or duties does not confer rule-making authority on an agency unless that authority is explicitly conferred; and
- a statutory provision containing a specific standard, requirement, or threshold does not allow an agency to promulgate a rule that is more restrictive than that provision.

GAB has instructed most state agencies to certify compliance with Contract Sunshine reporting requirements.

Quarterly Certification Forms

Although GAB may not have the authority to ensure compliance, since September 2010 it has instructed most state agencies to certify in writing every three months either that they:

- had reported all required information for transactions completed during the prior three months and had reported it within 24 hours; or
- had no reportable transactions during the three-month period.

GAB did not ask most of the state agencies attached for administrative purposes to DOA to certify for the period from July through September 2010, nor did it ask the 12 agencies with consolidated purchasing services to certify. Instead, it instructed DOA to certify on their behalf.

In November 2010, GAB presented the certification results for the first three months of FY 2010-11 on the Contract Sunshine Web site. As indicated in Appendix 1:

- 37 state agencies were listed as having certified, including 13 with no reportable purchases;
- 21 state agencies were listed as having failed to certify, including DOA, 10 of the 12 state agencies with consolidated purchasing services, 7 agencies attached for administrative purposes to DOA, and 3 other agencies; and
- 37 state agencies, including 27 UW institutions and campuses, were not listed.

We reviewed the certification forms for all 37 state agencies listed as having certified from July through September 2010 and found that some had included comments indicating that they did not fully certify. For example:

- 4 agencies—the departments of Health Services, Justice, Transportation, and Workforce Development—indicated that they could not certify that they had always complied with the 24-hour reporting deadline;
- the Department of Transportation indicated that it had not reported any contracts related to state highway construction or engineering services, in part because of the difficulty in reporting this information; and

- the Department of Workforce Development indicated that it had not reported any solicitations or change orders.

The certification process is unlikely to provide the public with meaningful information.

Five of the 11 state agencies we contacted indicated they could not verify that the information they had reported was complete and accurate because, for example, they do not have a centralized way to track and report all information that must be reported. In addition, some agencies are unable to easily ascertain that the multiple staff authorized to report information have always done so accurately. As a result, the certification process is unlikely to provide the public with meaningful information.

Reporting Timeliness

To address concerns that state agencies have not always been timely in complying with Contract Sunshine provisions, we determined the types of transactions that were reported to the Web site and how long it took to report this information. We limited our analysis to July through October 2010 because of the Web site’s considerable problems before then and because of the limited emphasis on compliance until recently. As shown in Table 4, 1,519 of the 1,841 transactions that were reported involved contracts and purchase orders.

Table 4

**Contract Sunshine Transaction Reporting
July through October 2010¹**

	Transactions
Contracts and Purchase Orders	1,519
Expenditures ²	153
Solicitations	104
Contract Change Orders	46
Contract Renewals	19
Total	1,841

¹ Excludes 685 transactions that were reported from July through October 2010 but that did not indicate when the transactions occurred or that related to transactions from prior fiscal years.

² The Department of Workforce Development reported 153 expenditure transactions.

From July through October 2010, only 11.4 percent of transactions were reported within one day.

From July through October 2010, we found that state agencies reported only 11.4 percent of 1,841 transactions within the statutorily required period of one day, as shown in Table 5. Almost two-thirds were reported ten days or more after the transactions had occurred. Information about the dates of 153 transactions was incomplete.

Table 5
Days Elapsed Between Transactions and Reporting to the Contract Sunshine Web Site
 July through October 2010

Days	Transactions	Percentage
1 or Less	209	11.4%
2 to 9	369	20.0
10 to 29	537	29.2
30 to 59	229	12.4
60 or More	344	18.7
Unknown	153	8.3
Total	1,841	100.0%

All 11 state agencies we contacted are concerned that if they report estimated expenditures within 24 hours of an initial solicitation, vendors may not offer the lowest price. As a result, GAB has instructed agencies to report estimated expenditures only after awarding a contract. Among the 11 agencies, 8 follow GAB’s instructions; the Wisconsin Technical College System reports solicitations only after the solicitation process is completed and a contract has been awarded; DWD reports no information about solicitations or contracts; and UW System was developing a method to report expenditures at the time of our fieldwork.

Usefulness of Reported Information

Information posted on the Contract Sunshine Web site is of limited usefulness to the public.

Although some had expected the Contract Sunshine Web site to serve as an “open checkbook” showing how state agencies spend public funds, it has been of limited use in providing the public with clear, complete, and useful information. One reason is that the Contract Sunshine Act requires state agencies to report only the estimated value of solicitations, contracts, and certain other transactions, and actual expenditures may differ significantly from these estimates. For example, an agency may execute a contract

stipulating that it will pay a specified amount per ton of road salt or per hour of legal services, but it may not know how much it will actually need to purchase over the contract’s term. In addition, the reported information does not indicate over which time periods funds may be spent.

Because contracts and purchase orders accounted for more than 80 percent of the transactions reported from July through October 2010, we determined the estimated value associated with each one, as shown in Table 6. We found that 42.7 percent of the reported transactions had an estimated value from \$10,000 to \$25,000. The highest estimated value was \$35.6 million.

Table 6

**Contract and Purchase Order Information
Reported to the Contract Sunshine Web site
July through October 2010**

Estimated Value	Transactions	Estimated Amount ¹ (in millions)
More than \$100,000	360	\$202.4
\$50,001 to \$100,000	213	15.9
\$25,001 to \$50,000	219	7.9
\$10,000 to \$25,000	648	10.4
Less than \$10,000	79	0.4
Total	1,519	\$237.0

¹ Represents the estimated value of the contracts and purchase orders. We used the midpoint value for 152 transactions that each contained a range of estimated expenditures.

The Contract Sunshine Web site does not always indicate the correct estimated value of contracts and purchase orders.

Although a public user can search the information on the Contract Sunshine Web site in a number of ways, we found that the Web site does not always indicate the correct estimated value of the contracts and purchase orders associated with a state agency or specific vendor. For example:

- GAB has advised agencies to make a good-faith effort to report either a single estimated contract or purchase order amount or a range that encompasses the lowest and highest possible amounts. However, ranges can be large, and only the upper limit is posted on the Contract Sunshine Web site, without an indication that it is part of a range. To determine whether a range exists, a public

user must review the details of each transaction. In the case of the Department of Transportation's FY 2009-10 contract for road salt, reported costs ranged from \$70.0 million to \$300.0 million, so the Web site showed only the upper limit of \$300.0 million. The actual costs of this contract depend on the amount of salt used by the Department and by local governments that also purchase their road salt through this contract. The Department's actual costs were \$28.0 million. In reviewing the information reported from July through October 2010, we identified 152 contracts and purchase orders that had been reported as ranges with a cumulative low value of \$29.3 million and a cumulative high value of \$103.8 million, which is a difference of \$74.5 million.

- The Web site also reports the value of a contract and all associated purchase orders in a manner that can be confusing for public users. For example, if an agency executed a \$50,000 contract and then processed several purchase orders totaling \$40,000 against that contract, the Web site would show \$90,000 in transactions. A public user would need to review each transaction's details and understand the State's purchasing process in order to understand that, in fact, the vendor had been paid no more than \$40,000. In reviewing the information reported from July through October 2010, we identified 245 purchase orders with a total value of \$45.2 million processed against 85 contracts.
- The Contract Sunshine Web site includes duplicative information. For example, we found 19 transactions totaling \$575,000 that were reported multiple times from July through October 2010. In some instances, this occurred because DOA reported information on behalf of a state agency that has had some of its purchasing duties consolidated, and then the agency also reported the same transaction.

It can also be challenging for public users to locate particular transactions or to determine the precise purpose of a transaction. State agencies can write and report a brief description of a transaction, but public users cannot search the Web site based on these descriptions. Instead, they can sort the transactions based on more than 200 broad categories established by GAB on the basis of a system developed by the National Institute of Governmental Purchasing.

Although some categories, such as “consulting services,” are meaningful, others are vague and not likely to be useful for the public. For example, “Miscellaneous Services, No. 1” represents transactions involving 93 services ranging from archeology to painting. To summarize the purpose of contracts and purchase orders reported from July through October 2010, we combined GAB’s 200 categories as shown in Table 7.

Table 7
Contracts and Purchase Order Information Reported to the Contract Sunshine Web Site, by Purpose
 July through October 2010

Purpose	Transactions	Estimated Amount (in millions)	Percentage
Computers, Software, Supplies, and Services	432	\$ 69.5	29.3%
Medical Equipment, Supplies, and Services	43	40.3	17.0
Miscellaneous Commodities and Services ¹	164	18.1	7.6
Administrative, Financial, and Management Services	54	12.6	5.3
School and Library Equipment, Supplies, and Services	45	11.9	5.0
Communication Equipment and Services	77	10.7	4.5
Maintenance and Repair of Equipment	46	4.6	2.0
Public Works, Park Equipment, and Construction Services	62	4.2	1.8
Rental and Leasing Services	70	3.9	1.7
Other ²	229	12.4	5.2
Transactions Associated with Multiple Purposes	33	3.0	1.3
Excluded Purchase Orders and Duplicate Transactions	264	45.8	19.3
Total	1,519	\$237.0	100.0%

¹ Includes but is not limited to engineering and consulting services and production and manufacturing.

² Includes but is not limited to building equipment, hardware, and office supplies and services.

Although state agencies are not required to report vendor names or the method used to select a vendor, GAB has instructed them to report this information. However, a public user searching for amounts associated with a particular vendor may not obtain the correct information. For example:

- The Web site does not assign a unique identifier to each vendor, and vendor names are sometimes reported under different spellings.

- If a contract was awarded to multiple firms, the Web site indicates the full contract amount was awarded to each firm. From July through October 2010, 15 transactions with a total estimated value of \$130.9 million included multiple firms.
- From July through October 2010, 49 transactions with a total estimated value of \$5.4 million did not include any vendor names.

Other Purchasing Information Web Sites

Purchasing information is reported to the Contract Sunshine Web site and at least nine other Web sites.

We found considerable overlap in the purchasing information that state agencies report to the Contract Sunshine Web site and at least nine other Web sites. Maintaining multiple sources of information about the State's transactions makes it challenging for the public to determine how public funds are spent and results in duplicative reporting by agencies.

The DOA-operated VendorNet provides prospective vendors with information about procurement opportunities with the State. State procurement policies require executive branch agencies, but not legislative or judicial agencies, to report at the time of issuance certain information about formal solicitations, such as the agency's name, solicitation date, and a description of the desired goods or services. Subsequently, the names of all vendors that submitted bids or proposals must be reported, as well as the name of the selected vendor. If a transaction is for an ongoing purchase, agencies are supposed to submit their contract documents, which are displayed on VendorNet. However, contracts for one-time purchases need not be submitted. Agencies are encouraged but not required to report information on simplified bids. They are also not required to report information on sole-source transactions, which occur when only one vendor is capable of providing desired goods or services; on land purchases; or on state highway construction and state building construction projects.

Some individuals have suggested that information submitted to VendorNet should be automatically transferred to the Contract Sunshine Web site. In April 2010, DOA estimated that it would cost \$10,000 to analyze the feasibility of linking the two systems. In part because of the cost, GAB declined to pursue this option. At the July 2010 Joint Legislative Audit Committee hearing that approved our audit, DOA again discussed linking the two systems but subsequently indicated to us that doing so would be difficult because the Contract Sunshine Web site does not meet DOA's

information technology design standards. Others have suggested that Contract Sunshine information could instead be reported to VendorNet. However, this would require modifications to VendorNet, which does not currently contain information on some types of transactions that are reported to the Contract Sunshine Web site, such as purchase orders, and does not allow users to easily locate specific transactions. In addition, individuals need DOA-provided credentials for access to some VendorNet information.

In addition to VendorNet, state agencies reported purchasing information to a number of other Web sites at the time of our audit. For example:

- When an agency decides to solicit bids or proposals for goods and services, statutes require it to publish a notice in a newspaper or to post it online on a Web site designated by DOA. Because DOA's Public Notices Web site is electronically linked to VendorNet, it provides information already reported to VendorNet, such as solicitation dates and purposes. However, it also contains information about sole-source and other transactions that are not reported to VendorNet.
- DOA requires all state agencies to submit monthly reports on expenditures associated with contracts of \$25,000 or more that are funded by ARRA, and it administers a Web site that provides information on each contract, including the agency and subcontractor involved, the contract's purpose, and contract expenditures.
- To comply with the Federal Funding Accountability and Transparency Act of 2006, DOA requires all state agencies to submit monthly reports on the non-state entities to which they have subcontracted or subgranted federal awards of \$25,000 or more. DOA then submits the information to a federal Web site that lists each agency that has done so, the amount received by each non-state entity, and the purpose of each subcontract or subgrant.
- Administrative rules require DOA to publicize information about architectural, engineering, and construction work related to the design and construction of state facilities. To comply, DOA operates several Web sites, including WisBuild, to

which state agencies submit solicitation and contract information, such as project descriptions and locations, contracting firms, and estimated project costs.

- The Department of Transportation voluntarily maintains a Web site with information on its solicitations for design and construction engineering services, including project descriptions, project locations, and contracting firms.
- Several state agencies, including UW-Madison and the departments of Natural Resources and Health Services, maintain Web sites with a variety of solicitation and contract information.

Other States' Web Sites

In order to determine reporting requirements elsewhere, we contacted purchasing staff in six other midwestern states—Illinois, Indiana, Iowa, Michigan, Minnesota, and Ohio—and in Kentucky and Missouri, which both maintain Web sites that display extensive information on their state governments' purchasing activities. Like Wisconsin, these eight states typically operate multiple Web sites that provide a variety of publicly accessible information on purchasing activities. We found that:

- six of the eight states operate publicly accessible Web sites that present expenditure information, while Iowa and Ohio do not present expenditures on their Web sites;
- all eight states provide at least some contract information on a publicly accessible Web site; and
- all eight states operate a publicly accessible Web site for issuing solicitations and receiving bids from vendors, similar to Wisconsin's VendorNet.

The Web sites in all eight other states are operated by departments of administration, budget, management, or finance. In none of the eight is the purchasing Web site operated by a state agency with responsibilities similar to GAB's.

Future Considerations ■

The Contract Sunshine Web site is currently of limited value in providing the public with clear, comprehensive, and useful information.

The Contract Sunshine Web site is currently of limited value in providing the public with purchasing information that is sufficiently clear, comprehensive, and useful, not simply because some of the reported information is incomplete, inaccurate, or duplicative but because:

- the Contract Sunshine Act does not require state agencies to report some information that would be useful for public users monitoring the State's purchasing activities, such as vendor names and expenditures, but it does require them to report other information that is less useful, such as solicitations for bids, competitive sealed proposals, and purchase orders;
- some reporting requirements are insufficiently clear and cannot be enforced by GAB, which does not have purchasing expertise or the explicit authority to promulgate rules for overseeing Contract Sunshine statutes; and
- the resources devoted to the Contract Sunshine Web site's development and ongoing maintenance have been limited, and the State's information technology expertise resides in DOA, not in GAB.

In addition, meeting Contract Sunshine requirements to report the details of certain purchasing transactions within 24 hours has been challenging for some state agencies.

If implemented as specified by the Legislature, a new Web site could be more useful to the public than the Contract Sunshine Web site.

The Legislature has recently directed DOA to establish a new publicly accessible Web site that will report all expenditures for state operations exceeding \$100. If implemented as specified in 2011 Wisconsin Act 32, this new Web site could be more useful than the Contract Sunshine Web site for public monitoring of government purchasing transactions. However, before the Legislature considers repealing Contract Sunshine statutes, it will be important to ensure that the new Web site can achieve its intended goals at a reasonable cost and in a timely manner.

New Expenditure, Contract, and Grant Information Web Site

2011 Wisconsin Act 32, which was enacted in June, requires DOA to establish a new Web site that will publicly report certain information provided by all state agencies in the executive, judicial, and legislative branches, including all expenditures for state operations that exceed \$100. Searchable expenditure information is to be categorized by agency, expenditure category, amount, and payment recipient, and copies of all checks, money orders, and other similar financial instruments associated with these expenditures must be made available on the Web site. In addition, DOA must ensure that the Web site displays each contract and grant and lists the agency and purpose of the transaction, the name and address of the person receiving the grant or entering into the contract, the amount involved, and the state fund that will be used to pay for the transaction.

Table 8 compares the information that is to be reported under Contract Sunshine statutes and 2011 Wisconsin Act 32. If implemented as specified in Act 32, the new Web site will address several problems with the Contract Sunshine Web site. For example, the public is likely to find expenditure and vendor information more useful for monitoring the State's purchasing activities than the Contract Sunshine Web site's basic information on solicitations for bids and competitive sealed proposals, and the new Web site's publication of complete contracts and grant documents will allow public users to assess specific provisions. In addition, agencies will not be required to report information that is often difficult to track electronically and can be misleading to public users, such as purchase orders. However, it is important to note that the State does not have a method in place for collecting the information that is to be published on the new Web site. The Legislature had directed that this new Web site be operational by July 2013, but the Governor vetoed that provision of Act 32 and instructed DOA to instead implement it as soon as possible.

Table 8

Information that Executive, Judicial, and Legislative Branch Agencies Are Required to Report Under Contract Sunshine Statutes and 2011 Wisconsin Act 32

Contract Sunshine	2011 Wisconsin Act 32
No expenditure information ¹	All expenditures for state operations exceeding \$100
Basic information on contracts and purchase orders of \$10,000 or more	All contracts
No grant information	All grants made by state agencies ²
Basic information on solicitations for bids and competitive sealed proposals costing \$10,000 or more	Does not include information on solicitations for bids or competitive sealed proposals, which is available on VendorNet

¹ Although they are not required to report expenditures, a few state agencies have done so.

² Excluding “aids to individuals and organizations and local assistance and the payment of salaries and fringe benefits for state employees.”

DOA began to post some expenditure information in July 2011 and indicated that it plans to make more information available over time. DOA has considerable purchasing and information technology expertise and has indicated that developing the new Web site is a priority, but as of August 2011 it had not determined a method for collecting the information or the cost and amount of staff time needed to do so. Both will depend in part on how it decides to proceed.

DOA could, for example, collect information from state agencies and present it much as it does with the monthly expenditure information on ARRA-funded contracts, which it publishes at www.recovery.wisconsin.gov. Another option would be to develop an automated, centralized computer system similar to those used by Missouri and other states or to the Integrated Business Information System (IBIS). We note that DOA suspended development of IBIS in April 2008 because cost estimates had increased significantly and state agencies had expressed concerns about that project’s likelihood of success.

DOA should report to the Legislature on its efforts to implement the new Web site required by Act 32.

If it can be successfully implemented in a timely manner and at a cost the Legislature finds reasonable, the new Web site required by Act 32 will surpass the Contract Sunshine Web site in scope and potential public utility. However, before the Legislature can determine whether the public would be better served if Contract Sunshine statutes were repealed or if, with certain modifications, the Contract Sunshine Web site could be made a more effective tool for the public, it will require specific information from DOA.

☑ Recommendation

We recommend the Department of Administration report to the Joint Legislative Audit Committee by January 17, 2012, on the status of its efforts to implement the new expenditure, contract, and grant information Web site required by 2011 Wisconsin Act 32, as well as projected development and maintenance costs and the reporting efforts that will be required by state agencies.

The Future of Contract Sunshine

The Legislature should consider repealing Contract Sunshine statutes if it determines the new Web site will comply with the requirements of Act 32.

Based on the information provided by DOA, the Legislature can determine whether the new Web site complies with the requirements of Act 32 and will provide clear, comprehensive, and useful information to the public. If so, the Legislature should consider repealing Contract Sunshine statutes. However, if the Legislature does not believe the new Web site will comply with the requirements of Act 32, it could choose to modify s. 16.753, Wis. Stats., and require other operational changes that will both increase the likelihood that the Contract Sunshine Web site can become more useful to the public and ease of reporting for state agencies. For example:

- Because the State's purchasing and information technology development expertise resides more fully in DOA than GAB, the Legislature could modify s. 16.753, Wis. Stats., to designate DOA as having the authority to oversee the collection of Contract Sunshine purchasing information, enforce reporting requirements, maintain the Contract Sunshine Web site, and promulgate administrative rules to help clarify state agencies' reporting requirements.
- Because the public cannot fully assess purchasing information unless vendor names are listed for individual transactions, the Legislature could modify s. 16.753(4), Wis. Stats., to require agencies to provide vendor names when reporting contracts and purchase orders.
- Because state agencies have difficulty meeting the Contract Sunshine Act's 24-hour reporting requirement and it can work to the State's disadvantage when seeking competitive bids, the Legislature could modify s. 16.753(3), Wis. Stats., to allow reporting on a monthly basis. We note that the Legislature would have allowed agencies

60 days to report expenditures and 10 days to report contract information to the new Web site created by Act 32, but the Governor vetoed these provisions.

- Because state agencies have difficulty tracking and reporting multiple purchase orders associated with a single contract if the individual purchase orders are each for minor amounts but together total \$10,000 or more, the Legislature could modify s. 16.753(1), Wis. Stats., to require only individual purchase orders that meet or exceed the \$10,000 threshold to be reported.

Recommendation

After reviewing the information provided by the Department of Administration, we recommend the Legislature either:

- *repeal the Contract Sunshine statutes if it determines the new expenditure, contract, and grant information Web site is likely to provide the public with useful information at a reasonable cost; or*
- *modify Contract Sunshine provisions at s. 16.753, Wis. Stats., to:*
 - *provide the Department of Administration with the authority to oversee the collection of Contract Sunshine purchasing information, enforce the reporting requirements, maintain the Contract Sunshine Web site, and promulgate administrative rules related to these duties;*
 - *require state agencies to provide vendor names when reporting contracts and purchase orders;*
 - *allow state agencies to report on a monthly basis; and*
 - *require state agencies to report only individual purchase orders that meet or exceed the \$10,000 threshold.*

If GAB continues to maintain the Contract Sunshine Web site, two modifications should be made to its operations. First, the Contract Sunshine Web site should be designated a “high profile” information technology project, which will thereby become eligible for information technology planning, management, and monitoring services provided by DOA. Second, GAB’s contract with Sundial Software Corporation should be amended to include provisions related to Web site hosting and the storage of purchasing information that will ensure data remain secure. Both the Web site and the database are currently stored on computer servers owned by NaviSite, Inc., which is a Massachusetts-based firm that provides services to Sundial Software Corporation. GAB has no contractual relationship with NaviSite.

■ ■ ■ ■

Appendix 1

**State Agencies GAB Identified as Subject to the
Contract Sunshine Act**
As of November 2010

	Certification Status on the Contract Sunshine Web Site ¹
Assembly ²	Certified
Board of Commissioners of Public Lands ²	Certified
Children's Trust Fund	Not listed
Department of Administration ^{2,3}	Not Certified
<i>Board for People with Developmental Disabilities</i>	Not Certified
<i>Board on Aging and Long-Term Care</i>	Not Certified
<i>Division of Hearings and Appeals</i>	Not Certified
<i>Land Information Program²</i>	Certified
<i>National and Community Service Board</i>	Not Certified
<i>Office of Energy Independence</i>	Not Certified
<i>Office of Justice Assistance^{2,3}</i>	Certified
<i>Office of State Employment Relations</i>	Not Certified
<i>Tax Appeals Commission²</i>	Certified
<i>Women's Council</i>	Not Certified
Department of Agriculture, Trade and Consumer Protection ³	Not Certified
<i>Office of Privacy Protection</i>	Not listed
Department of Children and Families ²	Certified
Department of Commerce ³	Not Certified
Department of Corrections ²	Certified
Department of Employee Trust Funds ²	Certified
Department of Financial Institutions ³	Not Certified
Department of Health Services ²	Certified
Department of Justice ²	Certified
Department of Military Affairs ³	Not Certified
<i>Division of Emergency Management</i>	Not listed
Department of Natural Resources ²	Certified
<i>Groundwater Coordinating Council²</i>	Not listed
Department of Public Instruction ³	Not Certified
Department of Regulation and Licensing ²	Certified
Department of Revenue ³	Not Certified
Department of Tourism ³	Not Certified
<i>Arts Board²</i>	Certified
<i>Kickapoo Reserve Management Board</i>	Not Certified
<i>Lower Wisconsin Riverway Board²</i>	Certified
<i>State Fair Park Board²</i>	Certified

Certification Status on the Contract Sunshine Web Site ¹
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Department of Transportation ²	Certified
Department of Veterans Affairs ³	Not Certified
Department of Workforce Development ²	Certified
<i>Labor and Industry Review Commission</i>	Not listed
<i>Wisconsin Conservation Corps</i>	Not listed
Director of State Courts ²	Certified
Educational Communications Board ³	Not listed
Employment Relations Commission ²	Certified
Government Accountability Board	Certified
Higher Educational Aids Board ²	Certified
Historical Society ²	Certified
Homeland Security	Not listed
Legislative Audit Bureau ²	Certified
Legislative Council ²	Certified
Legislative Fiscal Bureau ²	Certified
Legislative Reference Bureau ²	Certified
Legislative Technology Services Bureau ²	Certified
Office of the Commissioner of Insurance ³	Not Certified
Office of the Governor ²	Certified
Office of the Lieutenant Governor ²	Certified
Office of the Secretary of State ²	Certified
Office of the State Public Defender ³	Not Certified
Office of the State Treasurer ²	Certified
Personnel Commission	Not listed
Public Service Commission ²	Certified
<i>Office of the Commissioner of Railroads²</i>	Certified
Senate	Certified
State of Wisconsin Investment Board ²	Certified
University of Wisconsin System	Not Certified
<i>Environmental Education Board²</i>	Not Certified
<i>Wisconsin Geological and Natural History Survey</i>	Not listed
University of Wisconsin-Baraboo/Sauk County	Not listed
University of Wisconsin-Barron County	Not listed
University of Wisconsin-Eau Claire ²	Not listed
University of Wisconsin-Extension ²	Not listed
University of Wisconsin-Fond du Lac	Not listed
University of Wisconsin-Fox Valley	Not listed
University of Wisconsin-Green Bay ²	Not listed
University of Wisconsin-La Crosse ²	Not listed

Certification Status on the Contract Sunshine Web Site ¹
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University of Wisconsin-Madison ²	Not listed
University of Wisconsin-Manitowoc	Not listed
University of Wisconsin-Marathon County	Not listed
University of Wisconsin-Marinette	Not listed
University of Wisconsin-Marshfield/Wood County	Not listed
University of Wisconsin-Milwaukee ²	Not listed
University of Wisconsin-Oshkosh ²	Not listed
University of Wisconsin-Parkside ²	Not listed
University of Wisconsin-Platteville ²	Not listed
University of Wisconsin-Richland	Not listed
University of Wisconsin-River Falls	Not listed
University of Wisconsin-Rock County	Not listed
University of Wisconsin-Sheboygan	Not listed
University of Wisconsin-Stevens Point ²	Not listed
University of Wisconsin-Stout ²	Not listed
University of Wisconsin-Superior ²	Not listed
University of Wisconsin-Washington County	Not listed
University of Wisconsin-Waukesha	Not listed
University of Wisconsin-Whitewater ²	Not listed
Wisconsin Technical College System ²	Certified
<i>Educational Approval Board</i>	Certified

¹ Agencies in *italics* are attached for administrative purposes to those under which they are listed. Certification is for the period from July through September 2010.

² Agency received a certification form from GAB for the period from July through September 2010.

³ DOA provides the agency with consolidated purchasing services.

State Agency Purchasing Terms

Purchase order

The State Procurement Manual requires state agencies to issue a purchase order before purchasing goods and services other than those specifically exempted, such as purchases that cost \$1,500 or less, purchases that cost \$5,000 or less and are made with a purchasing card, and land purchases. If an agency's budget office approves a purchase order, funds are encumbered and the agency may spend up to that amount in one or more transactions. State procurement policies indicate that although a purchase order is a contract, a separate contract can be executed to provide detailed information on a transaction's terms and conditions.

Simplified bid

When purchasing goods or services costing from \$5,001 to \$25,000, the State Procurement Manual requires state agencies to compare prices identified by staff, quotes on file, verbal quotes, or written bids for similar items from a minimum of three vendors. Typically, an agency issues a purchase order to the selected vendor. The 2011-13 Biennial Budget Act increased the maximum amount allowable for conducting simplified bids from \$25,000 to \$50,000 beginning in July 2011.

Formal solicitation

When purchasing goods or services costing more than \$25,000, the State Procurement Manual requires state agencies to solicit bids or proposals from vendors. State agencies select the winning vendor based upon factors including price and the vendor's ability to successfully provide the good or service. Typically, an agency executes a contract and issues a purchase order to the selected vendor. The 2011-13 Biennial Budget Act increased the threshold for conducting formal solicitations from \$25,001 to \$50,001 beginning in July 2011.

Mandatory statewide contract

DOA has established contracts that state agencies must use when purchasing certain goods and services, such as office supplies and maintenance and repair services. These contracts specify authorized vendors and prices. Typically, an agency issues a purchase order to the vendor.

Existing state agency contract

The State Procurement Manual permits state agencies to use a contract that has already been established by another state agency, if the contract was created through a competitive process, rather than solicit new bids or proposals. Typically, an agency issues a purchase order to the vendor.

Waiver from competitive solicitation

A state agency may request that DOA waive state procurement rules and instead allow it to make a purchase without soliciting bids or proposals in certain circumstances, such as if only one vendor is capable of providing the goods or service or there is an emergency.

Appendix 3

State Agencies We Contacted

Department of Administration

Department of Children and Families

Department of Corrections

Department of Health Services

Department of Justice

Department of Natural Resources

Department of Transportation

Department of Workforce Development

State of Wisconsin Investment Board

University of Wisconsin System

Wisconsin Technical College System

Appendix 4

**Number of Transactions Reported to the
Current Contract Sunshine Web Site**

	Before FY 2010-11	FY 2010-11 ¹	Total
Department of Transportation	1,197	764	1,961
Department of Health Services	–	305	305
Department of Veterans Affairs	127	158	285
Department of Natural Resources	–	234	234
Department of Administration	124	61	185
Department of Workforce Development	3	153	156
Department of Agriculture, Trade and Consumer Protection	40	88	128
Department of Justice	27	96	123
Director of State Courts	39	55	94
Department of Children and Families	–	77	77
Department of Revenue	–	74	74
Department of Public Instruction	–	71	71
Department of Corrections	–	59	59
Legislative Technology Services Bureau	26	17	43
Department of Employee Trust Funds	1	39	40
Government Accountability Board	31	8	39
State Fair Park Board	–	38	38
Department of Tourism	2	35	37
State Historical Society	–	26	26
Educational Communications Board	–	25	25
Department of Commerce	17	5	22
Department of Financial Institutions	10	12	22
University of Wisconsin-Eau Claire	–	22	22
Office of Justice Assistance	–	21	21
State of Wisconsin Investment Board	5	12	17
University of Wisconsin-Platteville	–	17	17
Office of the Governor	12	2	14
Public Service Commission	2	12	14
Department of Regulation and Licensing	–	14	14
Office of the Commissioner of Insurance	2	7	9
Senate	3	3	6
Legislative Reference Bureau	–	5	5
Assembly	–	3	3
Department of Military Affairs	–	3	3

	Before FY 2010-11	FY 2010-11 ¹	Total
Office of the State Treasurer	–	2	2
Higher Educational Aids Board	–	1	1
Legislative Audit Bureau	1	–	1
Legislative Council	–	1	1
University of Wisconsin System	1	–	1
Wisconsin Technical College System	–	1	1
Total	1,670	2,526	4,196

¹ July through October 2010.

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JUDGE THOMAS H. BARLAND
Chair

KEVIN J. KENNEDY
Director and General Counsel

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



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