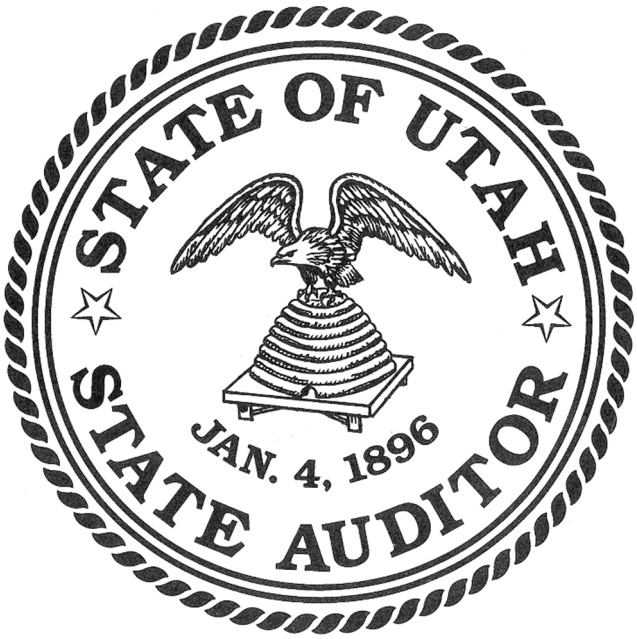
LIMITED REVIEW OF STATE EMERGENCY PROCUREMENTS AND EMERGENCY RESPONSE

Special Project
For the period March 6, 2020 to May 7, 2020

Report No. GOV-20-SP



OFFICE OF THE
STATE AUDITOR

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STATE EMERGENCY PROCUREMENTS AND EMERGENCY RESPONSE

FOR THE PERIOD MARCH 6, 2020 TO MAY 7, 2020

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OFFICE OF THE
STATE AUDITOR

REPORT NO. GOV-20-SP

September 30, 2020

Governor Gary Herbert
Utah State Capitol Building
350 North State Street, Suite 200
Salt Lake City, Utah 84114

RE: Limited review of emergency response and procurement

Dear Governor Herbert:

The Office of the State Auditor (OSA) concluded its limited review of certain actions taken by the state of Utah (State) to prepare for and respond to the COVID-19 pandemic. Our review included a high-level analysis of the State's level of preparedness prior to the pandemic and coordination in the beginning stages of the associated COVID-19 outbreak and declared emergency. We also reviewed emergency purchases that circumvented standard procurement procedures as allowed under emergency authorization conditions described in *Utah Code* 63G-6a-803. These emergency procurements occurred between March 6, 2020 and May 7, 2020.

We acknowledge the unprecedented nature of this pandemic. We recognize that decisions were made quickly in an evolving situation with many unknowns at the time. As this pandemic is ongoing, our intention was to evaluate various events and processes to identify areas wherein improvements can be made to safeguard both public health and public funds and to ensure that limited resources are used effectively. We were mindful that many State personnel were still deeply involved in the pandemic response. As such, we attempted to perform our work while minimizing unnecessary distractions and avoiding inappropriate burdens on these personnel. This extended the timeline of our audit procedures.

We designed our procedures to address the following questions:

1. Did the State's response to the pandemic demonstrate a reasonable level of preparedness and coordination among responding agencies and offices?

2. Did State personnel exercise reasonable due diligence during the emergency procurement process to ensure that prices, terms, and vendors were reasonable for the goods and services procured?

We performed the following procedures:

- We performed a high-level review of the State's emergency response protocols for infectious disease at the Utah Department of Health (UDOH) and Utah Department of Public Safety Division of Emergency Management (DEM).

- We interviewed personnel involved in the emergency response to determine how the various State agencies and offices responded and collaborated.

- We reviewed certain no-bid contracts for goods and services related to an agreement between the State and a group of private companies for reasonableness and propriety.

- We reviewed a sample of personal protective equipment (PPE) purchases for reasonableness and propriety.

- We identified and compared market prices (where possible) to the goods or services purchased to determine whether the prices paid were within a reasonable range given the circumstances at the time of purchase.

- We reviewed the emergency process to expedite payments to vendors through wire transfers for reasonableness.

Our procedures were more limited than would be necessary to express an audit opinion on compliance, on the effectiveness of the State's internal control, or any part thereof. Accordingly, we do not express such opinions. Alternatively, we have identified the procedures we performed and our observations resulting from those procedures. Had we performed additional procedures or had we made an audit of the effectiveness of the State's internal control, other matters might have come to our attention that would have been reported to you.

While some debate continues over the severity and extent of the COVID-19 pandemic, the OSA has experienced firsthand the disruption and personal suffering the pandemic has caused. Members of this audit team have experienced severe symptoms and lasting effects of the virus and understand how serious this virus can be.

We note the historic challenges to commit time, money, and other resources to prepare for "low probability, high consequence" events. A pandemic is clearly such an event.

By its nature, this review focuses on exceptions, weaknesses, and problems. This focus should not be understood to mean there are not also various strengths and accomplishments. We appreciate the courtesy and assistance extended to us by state personnel during the course of the engagement, and we look forward to a continuing professional relationship.

Sincerely,

Office of the State Auditor

Office of the State Auditor

Cc: Spencer J. Cox, Lieutenant Governor
Justin Harding, Chief of Staff to the Governor
Ron Gordon, General Counsel to the Governor
Phil Dean, Director, Governor's Office of Management and Budget
Jess Anderson, Commissioner, Public Safety
Richard Saunders, Executive Director, Department of Health
Tani Downing, Executive Director, Department of Administrative Services
Kris Hamlet, Emergency Management Division Director, Public Safety
Chris Hughes, Purchasing Director, Department of Administrative Services
Angela Dunn, State Epidemiologist, Department of Health
Kevin McCulley, Preparedness and Response Director, Department of Health

Background

During January 2020, both UDOH and DEM activated protocols to monitor the novel Coronavirus (COVID-19) outbreak and to begin coordination with various federal, State, and local entities.

In the weeks that followed, the State and the federal government began to recognize the potential magnitude of the threat and State officials mobilized their emergency responses. The State Legislature appropriated millions in State and federal funds toward the effort.

The State's responses involved the acquisition of new and untested tools. As we are still in the midst of the pandemic, it remains to be seen how successful some of these approaches may be. Our scope does not address the outcomes and efficacy of the overall response and the related purchases, only to what extent decisions appeared reasonable at the time, under the given circumstances. Nor did our scope include to what extent State action was necessary relative to possible private actions.

While there may be compelling reasons to question various State actions, it would appear that a majority of Utahns expected the State to respond to the pandemic. In addition, while a pandemic is quite different from other emergencies for which the State prepares, during the first few weeks of the declared emergency, lifting specific procurement procedures to expedite certain purchases appears appropriate, even with the benefit of hindsight.

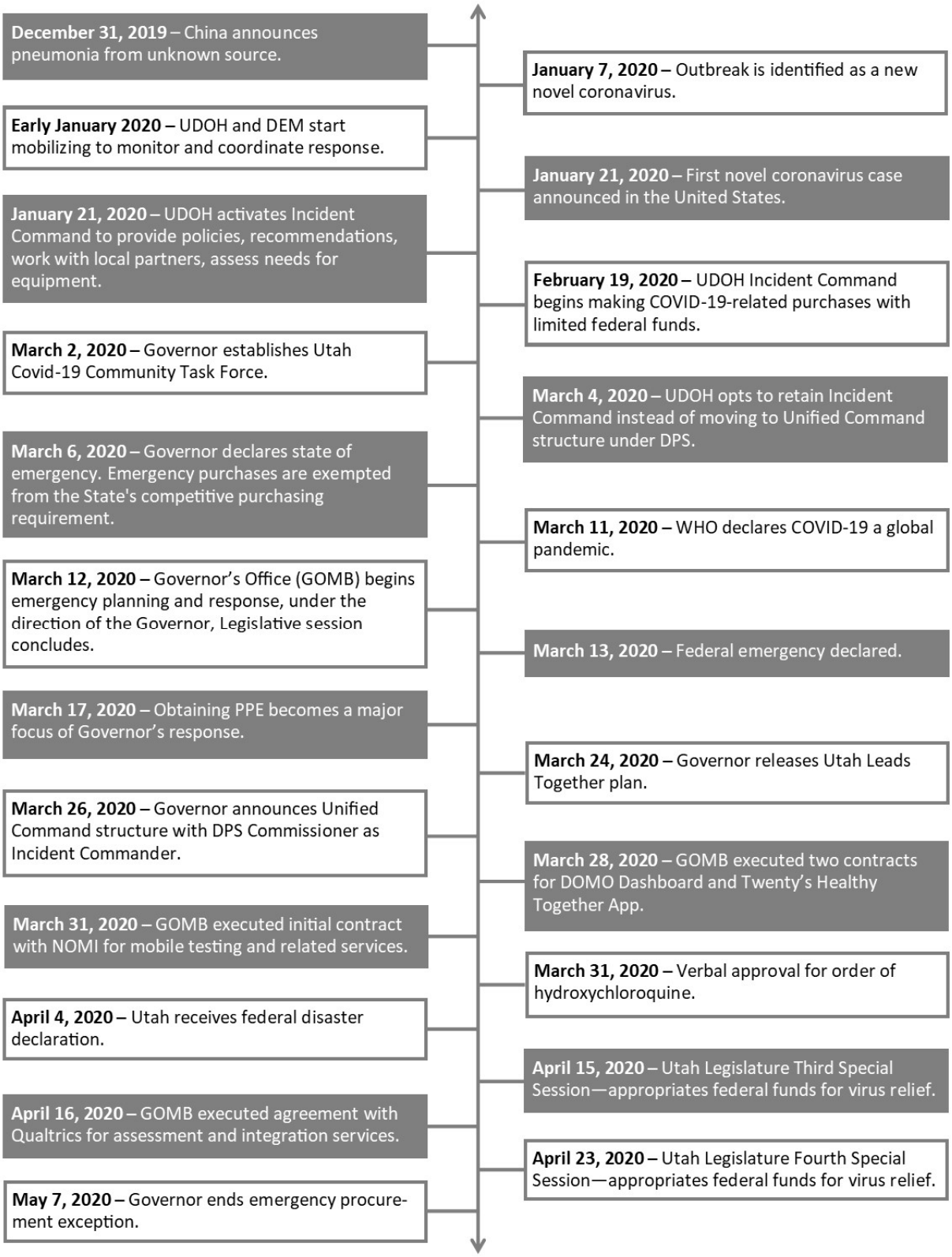

Fig. 1—Timeline of Coronavirus.

Preparation and Response Analysis

The State Legislature was in general session during January, February, and March as the threat of the COVID-19 pandemic emerged in the U.S. Certain State officials indicated that they were not able to fully focus on the emergency response until March 12, 2020, immediately after the pandemic was declared and as the legislative session ended. This highlights the important need for preparation and a state of readiness for various emergencies. UDOH had initiated its emergency response during late January and the Governor's Office had begun implementing its response during mid-March.

Both DEM and UDOH have consistently identified pandemics as a significant threat to Utah. As recently as 2019, UDOH identified pandemics as the top priority hazard to Utahns for the period 2019 through 2024.

DEM is tasked with developing the State's Emergency Operations Plan[1] (EOP). The purpose of the EOP is to identify the tasks, duties, and responsibilities, and to describe the actions and procedures required of State agencies, local governments, as well as voluntary and private sector organizations, to respond to various threats and emergencies. In line with Federal emergency planning guidance[2], the EOP does not create specific response plans to each type of emergency. Rather, its focus is on establishing a command structure that is best suited to the nature of each threat. As *Utah Code* 26-6-3 authorizes UDOH to investigate and control infectious diseases, DEM designates UDOH as the primary agency in charge of responding to infectious disease emergencies in the EOP. The EOP incorporates the concept of a unified command (UC) structure designed to allow agencies with different legal, geographic, and functional responsibilities to work together effectively without affecting individual agency authority, responsibility, or accountability. UC is frequently deployed on a localized basis to manage local emergencies, such as wildfires. UC is rarely deployed on a statewide basis; the last deployment was during the 2002 Olympics. UC is typically established when no single agency has the authority or resources to manage the incident on its own. Response to a pandemic clearly meets this criterion. The current UC structure also provides additional financial control since all expenditures over $10,000 require UC review.

In its role as the primary responding agency, UDOH developed the Infectious Disease Emergency Response Plan[3] (IDERP), which focuses on establishing the roles and responsibilities of the UDOH response groups rather than a disease specific response. UDOH has also developed specific medical-related response guidance for epidemic/pandemic diseases. Other pandemic-specific[4] planning and preparation efforts at UDOH include:

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[1] The State's Basic Plan is located at https://site.utah.gov/dps-emergency/wp-content/uploads/sites/18/2018/12/State-of-Utah-EOP-Basic-Plan-Final-2016-2020.pdf. The full plan, including emergency support functions and annexes can be obtained from DEM.
[2] https://www.fema.gov/media-library-data/1508151197225-ced8c60378c3936adb92c1a3ee6f6564/FINAL_NIMS_2017.pdf
[3] https://site.utah.gov/bemsp/wp-content/uploads/sites/34/2018/11/IDER_2018.pdf
[4] UDOH existing pandemic guidance was specific to pandemic influenza. However, the preparation and response measures are deemed comparable for this pandemic.

- Training events that address disease specific responses and emergency response and coordination. UDOH provides frequent training opportunities for local health departments, other local governments, and its internal divisions. UDOH had planned a pandemic response exercise for this year intended for all partners (State and local).

- Quarterly meetings of a coordination committee whose purpose is to integrate Utah's preparedness efforts across jurisdictions, and leverage funding streams. UDOH's internal incident command system also uses a policy advising committee during an incident. UDOH implemented such a committee when it activated its incident command.

- Links to informational resources for pandemic preparation on UDOH website.

From our high-level review, we conclude that the State did not adequately anticipate or prepare for this type of statewide, national, and global pandemic. The State's emergency response planning generally anticipates localized emergencies and responses using the command structure and functional approach described above. While DEM and UDOH mobilized their emergency response activities in accordance with those protocols, it appears that planning and preparation efforts for this type of emergency were insufficient. It also appears that, once the pandemic began, coordination and cooperation among various entities lacked cohesiveness. We note several areas where the State could improve its risk assessment, planning, and preparation efforts.

Finding 1: Despite Being Identified as a High Risk, Pandemic Preparation Was Not Reasonably Sufficient

UDOH and DEM Should Have Considered Possible PPE Shortages and Supply Chain Disruption Risks During Pandemics

The PPE shortage and supply chain breakdown presented a significant challenge across the nation. By early March 2020, UDOH and DEM determined that local health care systems only had one to two days of PPE supplies on hand. The 2007 Final Report of the Governor's Taskforce for Pandemic Influenza Preparedness (2007 Report) recommended that UDOH work with local health care systems and recommend that they stockpile PPE and other supplies. Since neither local health care systems nor UDOH had sufficient PPE stockpiles, the State felt compelled to compete for PPE on a global scale. This resulted in higher costs. We are particularly concerned that some in emergency planning positions expressed surprise about the significant disruption in the supply chain. Given the nature of a pandemic, supply chain disruptions are a significant risk that should be anticipated and mitigated, where appropriate[5]. UDOH, DEM, and other State leaders should evaluate significant risks during various types of emergencies and determine appropriate measures to mitigate those risks.

[5] The U.S. Centers for Disease Control and Prevention reported its first confirmed novel coronavirus death in the state of Washington on February 29, 2020. https://www.cdc.gov/media/releases/2020/s0229-COVID-19-first-death.html

Dashboard Data Elements, Metrics, and Other Tools Had Not Been Adequately Contemplated and Agreed Upon by Key Stakeholders

UDOH has various tools and databases to support tracking disease outbreaks, hospital capacity, and other information. In anticipation of the need for other parties, including the public, to have access to virus-related information, UDOH began working on a website and public dashboard[6]. UDOH launched the public dashboard on March 18, 2020. However, various government entities requested additional data and metrics that were not readily available or that UDOH believed it could not provide due to privacy laws. Further, UDOH did not have the resources in place to quickly visualize that data in real time in order to provide meaningful data to key stakeholders in a timely manner.

UDOH had traditional contact tracing methods in place, but had not considered implementing apps and other technology to aid in this effort. UDOH officials report this was due to a lack of funding and personnel resources.

Proper preparation for a large-scale health emergency should have included debates with key stakeholders regarding the types of tools and approaches that might be most beneficial. Also, discussions about the types of data and metrics that might be needed to address the economic and other concerns would have been valuable. Had these types of conversations taken place during the pre-pandemic planning process, some of the delays, miscommunications, and redundancy encountered during this emergency response might have been avoided. Disagreements about data needs and data privacy concerns during the midst of the pandemic might also have been avoided.

DEM Should Take More Proactive Role in Preparing for Pandemic

Although the EOP delegates infectious disease response to UDOH, a pandemic event clearly requires more than just a public health response. As the State's designated emergency management group, DEM should take a more proactive role in assessing significant risks and formulating appropriate responses to major threats, such as a pandemic.

We noted that aside from designating UDOH as the primary agency to respond to an infectious disease emergency, the EOP includes "pandemic" as one of a number of common or high-risk threats in a Hazard Cascade graphic[7]. The Hazard Cascade identifies the primary threat and then all the resulting hazards or threats. For earthquakes and terrorism, DEM includes economic implications and supply chain disruptions. In contrast, DEM identifies only "stress on the health care system" as an associated threat of a pandemic. This indicates that DEM did not adequately contemplate or prepare for major threats from a pandemic. The OSA has previously expressed concern that DEM places greater emphasis on meeting federal grant requirements than on setting strategic priorities.[8] As Utahns have learned first-hand, global supply chain shortages, acute and chronic economic implications, and significant impacts on governmental services, such as

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[6] coronavirus.utah.gov
[7] State of Utah Emergency Operations Plan 2016-2020 – Support Annex C pg. 13.
[8] See Performance Audit 18-04 A Performance Audit of The Division of Emergency Management's Budget and Performance Management Practices at https://reporting.auditor.utah.gov/servlet/servlet.FileDownload?file=0151K00000317aQQAQ

education, are all repercussions of this pandemic. We believe DEM could have identified these and other significant risks in the EOP and placed more emphasis on strategic planning to mitigate those risks. We encourage DEM to consider other areas where they can more fully prepare for the non-health-related risks of a pandemic.

State-Level Training Events Would Have Helped Prepare for Pandemic

Regular brainstorming and training events involving State officials could have better prepared the State for the COVID-19 pandemic. As noted above, UDOH had planned a pandemic response exercise for this year that was intended for State officials and others. However, it is evident that these types of events have not been held regularly. One high-level official recalled participating in tabletop scenarios only once in the past few years. This official and others indicated that while the State was prepared for the concept of a pandemic, the speed and breadth of this pandemic surprised many, and better preparation and training could have been useful. Historically, the State has placed a significantly higher priority on earthquake preparedness.

As already noted, the various stakeholders had not previously discussed and agreed upon crucial data, metrics, tools, and techniques needed to allow the various decision makers to make more informed decisions. Regular events that encouraged collaboration and communication among key stakeholders could have resulted in a better response when the pandemic occurred.

Pandemic Preparation Lacked Community Outreach Program

We noted that DEM promotes earthquake preparedness to the public through its Earthquake Program, which includes community outreach programs, publications and presentations. DEM also sponsors The Great Utah Shake Out, which is an annual statewide earthquake drill. These measures are considered reasonable since Utah is a seismically active region. However, we believe that DEM and UDOH should have promoted awareness and preparedness for a pandemic, given that pandemic is included as a significant hazard by both agencies. While Utah has had few significant earthquakes over the past 10–15 years, the nation has faced legitimate threats of pandemic multiple times during the same period[9]. However, the State has not consistently placed reasonable emphasis on pandemic education and preparedness, unlike earthquake preparedness.[10]

While we recognize the efforts and the expertise of many State employees rising to the challenges this pandemic presents, had the State reasonably assessed risks and increased training, planning and preparation efforts, the State's response could have been improved and eliminated certain rushed actions.

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[9] SARS (2002), H1N1 Swine Flu (2009), MERS (2012), West African Ebola (2014), Zika Virus (2015)
[10] For example, encouraging each Utahn to have a mask in their emergency preparedness kit might have reduced some immediate burden on PPE supplies while possibly reducing the early spread of COVID-19.

Finding 2: Unclear Chain of Command Hindered Early Emergency Response Efforts

The State's pandemic response required significant coordination and cooperation among several State agencies and offices, local governments, private sector individuals and organizations, and the federal government. However, it appears that various State agencies and officials were not always working in coordination with each other.

In accordance with the EOP, both DEM and UDOH activated their emergency response protocols in January to increase monitoring and coordination efforts. These efforts included assessing needs at the local health departments and hospitals, identifying testing and contact tracing needs, and re-assigning and training personnel to fill those needs, among other activities.

On March 2, 2020, the Governor announced the formation of the Utah Covid-19 Community Task Force (Task Force). Task Force subcommittees focused on various topics, providing advice and recommendations to the Governor. The Governor's "Utah Leads Together Plan"[11] (ULTP) designated the Governor's Office of Management and Budget (GOMB) the authority to oversee the project management structure, creation of a dashboard, and dynamic modeling to monitor daily progress on key health and economic indicators. Further, the ULTP proscribed other actions led by GOMB, such as developing a mobile app and deploying a health assessment survey. Despite being designated as the primary agency to respond to a pandemic, UDOH reports they had little involvement in the decisions to purchase the dashboard and the other services procured by GOMB discussed in Finding 3[12]. As a result, there was a lack of effective collaboration between UDOH and GOMB during the initial pandemic response.

Also, during this time, another group[13] was exploring the potential benefits of the drug hydroxy-chloroquine and the Silicon Slopes (SS) initiative to increase testing and treatment. It is apparent from email correspondence that this effort was not coordinated with the Task Force. In addition, as noted in Finding 3A, there was a lack of understanding among officials about the status of state funding for the initiative.

The Governor activated the State's UC on March 26, 2020[14], almost three weeks after the Governor issued the March emergency declaration and approximately one week after the State began its effort to procure millions of dollars of PPE. By this point, GOMB was well into the process of procuring a dashboard, a mobile app, and expanded testing services. Given its purpose, UC should have been established when it was clear there would need to be a large-scale emergency response. During this emergency response, UC probably should have been initiated when the Governor issued the emergency declaration on March 6, 2020, but no later than March

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[11] Utah Leads Together – Utah's plan for a health and economic recovery. https://gomb.utah.gov/covid-19-materials/
[12] We acknowledge there is a natural tension between entities with competing focuses, such as a primary focus on economic recovery versus a primary focus on public health. In our view, a lack of adequate pre-planning, compounded with difficulties bridging these tensions, contributed to a breakdown in communications and reasonable collaboration between various State entities and offices.
[13] On March 20, 2020, members of the legislature hosted a press conference with the SS group and various medical professionals to present the SS initiatives and potential benefits of hydroxychloroquine to the public.
[14] For comparison, we note that Salt Lake County established its UC on March 14, 2020.

13, 2020[15]. We also believe that all state entities involved in responding to the pandemic should have been incorporated into the UC structure, including the Task Force and GOMB's procurement efforts.

The delay in activating UC was due, in part, to reluctance among certain agencies and offices, particularly UDOH, to enter into UC. Reportedly, other entities also resisted being folded into UC. Earlier implementation of UC may have reduced confusion and increased coordination and cooperation among various agencies and offices. The delay increased the difficulty in bringing various entities[16] together under one coordinated chain of command and limited the ability to provide additional financial accountability and oversight for emergency purchases.

According to the Governor's Office, "the development of the Utah Unified Command led to efficiency measures including collaboration on priority/objective development, coordination of response actions, improved communication and information sharing, and maximization of personnel skills and abilities." The Lt. Governor also indicated that UC significantly improved the coordination and effectiveness of the State's emergency response.

Recommendations

We recommend that:

- The Governor present a proposal to the legislature regarding setting aside adequate emergency State funds that can be accessed for emergency use upon declaration of a state of emergency or in preparation for an imminent emergency.
- DEM be more proactive in its emergency preparation by identifying significant risks to the State and placing more emphasis on strategic planning to mitigate those risks.
- DEM, UDOH, and other officials increase the frequency of statewide brainstorming and training events to better prepare for future emergencies. Brainstorming should include discussions on data sharing, constraints on the healthcare system, approaches to contact tracing, critical supply chain constraints, etc.
- DEM and UDOH increase community outreach programs to help the public better prepare for future pandemics and other public health-related emergencies.
- The Governor use this pandemic as an opportunity to debrief operational strengths and weaknesses regarding the State's emergency response.
- The Governor direct the Commissioner of Public Safety to establish improved criteria for establishing Unified Command in a timelier manner.

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[15] The initial 2-week soft closure of Utah's public schools was announced on March 13, 2020.
[16] These entities include GOMB, UDOH, DEM, and the Governor's Task Force. We note that the Task Force was advisory and made several formal recommendations to the Governor early on regarding school closures and medical procedures. The Task Force discussed medications, PPE, testing, etc., but we found no record that it made any recommendations regarding these purchases.

Emergency Procurements

After the Governor declared a state of emergency on March 6, 2020, the Department of Administrative Services Division of Purchasing (Purchasing) issued an Emergency Procurement Declaration that allowed State agencies and offices to purchase services, equipment, and supplies that would help slow the spread of COVID-19 in Utah without going through the standard procurement process. Emergency purchases may occur if needed to avoid a lapse in a critical government service or to mitigate the negative impact on public health, safety, welfare, or property. *Utah Code* 63G-6a-803 allows for emergency purchases with as much competition as reasonably possible.

Mock training scenarios might have better prepared State personnel to engage in these types of pandemic-related purchases. Insufficient pre-planning placed the Governor's Office in the challenging position of responding to the pandemic with greater uncertainty. As a result, GOMB appeared to engage in a multipronged response, uncertain of which actions would deliver the greatest benefit. For example, a constrained UDOH dashboard resulted in GOMB deploying its own dashboard. Similarly, insufficient pre-planning of contact tracing approaches resulted in GOMB deploying multiple approaches, including a mobile tracing app. UDOH's approach appeared to be to engage traditional methods within its historic limited budget while GOMB's approach appeared to be a rapid response of multiple overlapping strategies facilitated by enhanced federal emergency funding.

Finding 3: Aspects of Contracts Initiated by Governor's Office Appear Reasonable While Various Concerns Exist

Certain purchases initiated by the Governor's Office (via GOMB) in its emergency response have been covered extensively in the media. This was due to public concerns about the lack of competitive bidding and because some of the contracts were awarded to a group of private businesses that had previously been working together to raise funds to implement treatment and testing in their own communities. We have reviewed available documentation and actions taken in an attempt to determine whether the procurement was:

1. appropriately authorized;
2. priced reasonably under the existing circumstances at the time;
3. was a reasonable purchase to address the emergency, given the available information at the time; and
4. procured using as much competition as reasonably possible.

In the process of our work, we interviewed State personnel, legislators, and private contractors. Many we spoke with indicated that they do not remember details of discussions or who was involved, particularly in relation to the purchase of medication (see Finding 3C). This uncertainty, combined with a lack of written documentation for purchases (see Finding 3B), complicated our review and increased the difficulty of drawing conclusions.

The purchases discussed in Finding 3D through 3G were made by GOMB at the direction of the Governor. Therefore, these expenditures were clearly authorized.

A. Steered Contracts to Certain Vendors Heightens Risk

In mid-March, a group of businesses associated with Silicon Slopes (SS) launched a private initiative to raise funds to increase testing capacity within Utah, obtaining and distributing medication, as well as other initiatives aimed at helping its community of businesses and employees. Reportedly, the effort to raise funds was marginally successful. During late March, this effort turned from a solely private fundraising effort into a State-funded public-private partnership.[17]

SS initiated a conference call with various State and local officials on March 12, 2020 regarding how to alleviate the potential impacts of the pandemic. SS continued to have regular discussions with various State officials regarding its private testing and medication initiatives. SS has represented that their initiative began as 100% volunteer but it quickly became clear that it was turning into a broader effort due to interest from State leaders. At a March 20, 2020 press conference, State leaders, SS representatives, and others, introduced the private initiative where they represented that the effort was funded through private donations. Then, by at least March 23, 2020, discussions about possible state and federal reimbursement had taken place. At some point, probably between March 23, 2020 and March 27, 2020, GOMB decided to utilize the SS-affiliated companies to provide these services on a statewide basis. The arrangement was formalized in a Memorandum of Agreement with all those vendors and through contracts with each participating vendor.

When the Governor announced an official partnership with SS on April 2, 2020, SS stated, "No tech company is going to make any money off of this," which we interpret to mean that suppliers would deliver goods or services at cost. However, we cannot validate that claim.

In awarding the contracts, GOMB stated it gave preference to companies based in Utah. Further, it is evident that GOMB gave preference to the SS-affiliated companies that had already begun mobilization to address the emergency on their own. The contracts discussed in Finding 3C, 3D, 3E, and 3G were to companies that were already involved in the SS private initiatives.[18] GOMB represented that it was not reasonable to expect private companies to perform these particular contracts without compensation. While we recognize the need of a local presence for testing and the benefit of prioritizing the availability of in-state supplies, this may not be a reasonable

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[17] While we used the term "State-funded", we note that federal emergency funds comprise a significant basis of that funding.

[18] The Lt. Governor reported that the Task Force made no procurement decisions and issued no procurement recommendations. However, we noted in a March 23, 2020 SS Town Hall, that SS credited the Lt. Governor and GOMB Director for "being incredible om removing barriers to get this figured out." We also note that the Governor and Lt. Governor had a relatively close relationship with SS and various of its member companies. This causes particular concerns when contracts are steered to those companies, especially at the approval of the Governor. We also note that it is possible the Governor's Office may have engaged in the sunk cost fallacy, pivoting into a contractual arrangement with certain SS-associated vendors without reconsidering other alternatives when the initial arrangements changed.

assumption for the development of certain technical solutions (dashboard, app, website, surveys, etc.).

While it is also reasonable to expect to compensate vendors for large-scale efforts, we are concerned that various high-level State officials involved with the SS discussions failed to understand the evolving nature of these public-private arrangements, believing that certain goods or services were being donated when they were really being procured under contract.

B. Lack of Documentation of Reasonable Due Diligence

GOMB determined the vendors used and negotiated the prices for those goods and services. Often, the approvals were verbal and not documented. In addition, the Governor's Office represented that, "any competitive cost analysis was done informally based on the best knowledge, experience, and judgment of respective decision-makers and advisors at that time." If written documentation exists of a competitive analysis, the Governor's Office was unable to provide it to us for this review.

State Administrative Rule R33-8-401(5) indicates that "While a standard procurement process is not required under an emergency procurement, when practicable, procurement units should seek to obtain as much competition as possible through use of phone quotes, internet quotes, limited invitations to bid, or other selection methods while avoiding harm, or risk of harm, to the public health, safety, welfare, property, or impairing the ability of a public entity to function or perform required services."

While we recognize that decisions had to be made quickly, we are concerned that the lack of documented competitive analysis for these contracts, many of which were entered into over a 2- to 3-week period, indicates that a reasonable analysis may not have taken place. Even brief contemporaneous notes, whether written or audio, of procurement considerations might have mitigated various ex post questions.

C. Purchase of Medication (Meds In Motion)

As the virus spread, some medical professionals advocated that certain medications had the possibility of reducing the severity of symptoms associated with COVID-19. There was also a belief on the part of some medical professionals that these medications might reduce the contagiousness of the disease. The State purchased $800,000 of the medication[19]. The question of the effectiveness of treatments using this medication became highly politicized.

Purchase Lacked Clear Authorization

Based on available evidence, GOMB believed that UDOH intended to purchase the medication from emergency funding. UDOH denies that they intended or authorized State funds to be used. The request to add the cost of the medication to the emergency response budget at GOMB

[19] The State purchased 20,000 regimens (enough medication for six or eight doses depending upon the medication) of chloroquine and hydroxychloroquine compounded with zinc.

was verbal, as was the purchase directive[20] from GOMB to Purchasing to approve the purchase order and process the payment. We could find no evidence, verbal or otherwise, that UDOH authorized the purchase. We also note UDOH officials told us they believed the medication would be purchased by private parties as represented in a press conference on March 20, 2020. Without written documentation of authorization (or explicit verbal authorization), it is impossible to determine exactly how this occurred. We are concerned that this purchase occurred without anyone's explicit authorization. We also noted the State lacks an effective system that allows the State Division of Purchasing to ensure purchases are properly authorized. The State later cancelled the order and received a refund.

Cost Appeared Reasonable

We attempted to establish whether the State paid a reasonable price for the medications through online research, interviews with pharmacists and similar compounding pharmacies, as well as other means. We found that, given the heightened demand for the medications and shortages in the drug supplies during that period, as well as a lack of conclusive evidence of pricing as of a certain date, it was very difficult to determine the exact cost of the medications as of the order date. However, based on available evidence, we concluded that the price charged for the medications was within a reasonable range.

Desire to Stockpile Possible Treatment Appeared Reasonable

Based on the information available at the time of the purchase, and the differing opinions among medical professionals, we believe purchasing this type of medication was reasonable given the concerns with the severity of the disease and belief of this medication's possible benefits and limited side effects. In other words, having the medication on hand even if it was not used was likely a better decision than not having the medication when it might have been desperately needed. Further, it appears that the State made efforts to ensure the intended stockpile would not negatively impact the availability of the medication to existing users.

We note that there was disagreement among multiple high-level State employees and medical professionals regarding whether to purchase this medication. The Governor's Office could have given these dissenting voices greater consideration, possibly expanding the circle of input, before making the purchase.

Some Effort Made to Perform Due Diligence

UDOH, with the assistance of the Utah Department of Commerce Division of Occupational and Professional Licensing (UDOC), attempted to determine the available supply on this medication. UDOC inquired of pharmacists via email regarding their current supply of the medication, requesting the information be sent back to UDOH. We believe it was beneficial for the State to attempt to determine available supplies prior to making any acquisition. We note that approximately 10 days elapsed between initial interest and purchase, allowing a period for

[20] A March 31, 2020 email from GOMB staff to Purchasing conveyed verbal approval from the director to purchase the medication.

review and evaluation. However, we express concern that this purchase circumvented UC as that may have detected the lack of proper authorization.

The State indicated the vendor was selected because it had a supply of the medication on-hand. The State had inquired of FEMA regarding the availability of the medication but FEMA informed the State that it would not make any of its supply of medication available to Utah. While we have some concern regarding the lack of inquiry of multiple vendors (see Finding 3B), based on nationwide supply chain limitations, we recognize the belief that purchasing from a local provider with available supply was a compelling justification versus placing an order which might never materialize in delivery.

D. Operational Dashboard (DOMO)

The State paid $2 million for the development of a dashboard to accumulate and visualize a variety of health, economic, and transportation data from various sources that would reportedly enable leaders to make informed, data driven decisions.

Purchase Prioritized Development Speed Over Alternative Development Options

Based on contract specifications, we determined that the cost of this platform was likely priced higher than other options. However, GOMB wanted the dashboard available within an extremely short time frame (days) and reportedly believed that this Utah-based vendor had the highest probability of meeting GOMB's aggressive development timeline. The agreement was signed on March 28, 2020, and the first iteration of the dashboard was available on April 6, 2020. Initially, the vendor offered a simple visualization tool to the State at no cost. However, after executing the original contract, the Governor's Office reportedly determined that the technical needs far exceeded what the vendor had volunteered. Various employees within Utah Department of Technology Services (DTS) have indicated that, per their experience, the contract price was "in the ballpark" of reasonable cost. They also indicated that the vendor has exceeded the agreed-upon hours for professional services and that they are pleased with the vendor's performance.

In addition, while various DTS and UDOH personnel indicated they had the skill set to develop this dashboard, they indicated they did not have the personnel available at that time to develop it within the required timeframe since they were already working on other priority tasks. Therefore, given the speed at which the vendor was able to provide a working product, we conclude that it was reasonable for the State to pay a higher price in order to secure an aggressive development timeline.

Integrated Dashboard Reasonable in Response to Emergency, However, Concerns Exist Regarding Redundant Dashboards

GOMB believed this dashboard was necessary to accumulate, track, and visualize data to make informed decisions. This dashboard is not a public facing tool as it contains certain sensitive health-related information and access is restricted to key stakeholders and decision makers. Data collected includes information on hospital capacity and other resources, case counts, testing data, test result times, status of supplies and resources, small area and county data, analysis of spread by industry, contact tracing data, and various economic data.

This dashboard is intended to integrate data from UDOH, Utah Department of Workforce Services, and Utah Department of Transportation. However, the main data sources flow through UDOH. UDOH already had an internal dashboard that was collecting most of the needed data. However, the existing UDOH dashboard could not be immediately used for the intended audience due to protected health information. With appropriate pre-planning, we believe this discontinuity could have been avoided. Introducing an additional dashboard resulted in duplication of development and maintenance effort and additional cost.

Some Competition Likely Considered, But Not Documented

Reportedly, GOMB briefly considered another vendor, but this is not well documented. GOMB determined outsourcing to DOMO was necessary to meet the aggressive deadlines. We verified that State agencies were consulted but did not have the resources to meet the development timeline.

E. Test Utah Mobile Testing & Associated Services (NOMI)

NOMI spearheaded a private testing initiative and contracted with several other companies[21] to deliver these services. The contracts with NOMI provided:

- Management and operation of a minimum of five mobile testing sites.
- Lab & polymerase chain reaction (PCR) analysis by certified hospital lab (run 24/7) with ability to run 3,000 tests per day.
- Coordination with partners to facilitate the workflow and capture the data related to: survey assessment, testing, lab work, and follow-up communication with respondents.
- Coordination with partners to facilitate a digital scheduling platform to maximize mobile patient testing throughput, increase State testing capacity, and drive identified individuals to the nearest testing location. The scheduling platform is integrated with mobile locations.
- Coordination with partners to provide a common interface with the Healthy Together App to provide a seamless user experience.
- A call-in support option for survey respondents.

Projected Per-Test Costs Were Reasonable, However Actual Per-Test Costs Were Unreasonable

The original 60-day contract cost $7,620,000[22]. The contract anticipated up to 3,000 tests per day, which is approximately $44 per test. This would have been a lower cost than existing test providers at the time. However, the actual tests processed per day was substantially lower than

[21] NOMI had partnered with Qualtrics for the private initiative. For various reasons, the State later determined it was advantageous to separate the Qualtrics scope of work from the NOMI contracts and reduced the price of the NOMI contract accordingly. (see Finding 3G).
[22] There are two contracts with NOMI, one for the testing sites, and one for the technology and other support services. We considered the cost of both contracts together for the purposes of this analysis since the services are integral to the State's initiative to increase testing.

projected resulting in a cost per test of over $235. This is significantly higher than other established testing services, which list their price at $125 or less per test. According to UDOH data, the public demand for tests was much lower than anticipated. During the 60-day contract period, the average number of tests per day statewide was about 3,200, with an average of about 540 daily tests at Test Utah sites. We express concern that the contract paid a flat rate for startup costs plus a flat rate per testing site. The contract contained no provision for adjustment based on the number of tests performed. We note there did not appear to be an effective plan to rapidly ramp up testing demand once test availability expanded.

According to the contract terms, NOMI could have charged $8.9 million ($1.28 million more than the amount paid). We note that after the 60-day initial contract period, the State extended the contract and testing rates increased. After the extension, the State procured a new contract at a lower cost.

Increasing Testing Capacity Was Reasonable Response to Emergency

Given the State's strategic response strategy and the advice from leaders in the medical field, the State reasonably believed that it was important to increase testing capacity significantly. Also, the NOMI contract for mobile testing may provide the State more flexibility in responding to hotspots, which is reasonable.

Efforts to Establish Other Options Not Documented

GOMB represented that they contracted with NOMI after reaching out, without success, to other testing facilities and labs to find more capacity for testing. We have only received verbal representation of this (see Finding 3B). We have no records indicating who was contacted and what capacity existed.

F. Healthy Together App and Web Portal (Twenty)

GOMB executed a one-year, $6.35 million contract for the Healthy Together app (App) effective March 28, 2020. The State has paid approximately $4 million to date on the contract. The App was intended to be an assessment and communication tool to increase public awareness and testing. One of its key features was the ability to use geolocation tracking to aid in contact tracing. Certain capabilities of the App became available within a few weeks of engagement, while the App's integration into data reporting dashboards took longer than anticipated.

Purchase Prioritized Location Tracking Functionality and Development Speed Over Alternative Development Options, Resulting in High Price

We attempted to establish a basis to determine whether the price of the App was reasonable. However, it appears that there were few other options with similar functionality widely known or available at the time. A contact tracing solution sponsored by Apple and Google would not be announced until about a month later[23]. In addition, reportedly, few companies had access to the

[23] One State official stated he contacted both Apple and Google about a contact tracing solution and they did not get back with him until after the State had already contracted with Twenty. According to their press releases, Apple and

type of location tracking agreements and software Twenty already had in place[24], which GOMB considered a key feature. Twenty agreed to develop parts of the App and have them functional within 10 days. Since leaders in the health field at the time warned of a significant increase in the number of people affected by COVID-19, GOMB deemed speed to deployment to be a priority.

We found no evidence to indicate the State performed any meaningful cost analysis to determine whether the price was reasonable[25]. We also found it likely that part of Twenty's price for development included the uncertainty of a broadly defined scope of work[26]. This broad, and changing, scope likely contributed to delays in deliverables.

Officials at DTS and UDOH have stated that the State could have likely developed an app similar to the current[27] functionality of the App for a few hundred thousand dollars. However, due to staffing limitations, development would have likely taken longer than the schedule agreed to by Twenty. It appears GOMB justified the high cost of the App based on urgency and its belief in the location tracking functionality. It is possible that the State could have identified alternatives and paid less had a meaningful cost analysis been conducted. However, we note that even in non-emergency conditions, for certain procurements, price is not necessarily the primary determining factor.

More Consideration Should Have Been Given to the Contact Tracing Approach

GOMB indicated they wanted a tool to streamline contact tracing, identify areas of outbreak, and encourage the public to protect themselves and others.

The vendor offered an iOS and Android app as well an official web portal. The mobile app would:

- allow users to share location information and receive alerts upon exposure to others who tested positive and also shared their location;
- prompt users to answer a daily symptom report;
- display areas of virus outbreak based on real-time testing data, user location data, and symptom response data; and
- direct users where to get tested.

Google's joint effort to enable contact tracing was not available to public health organizations until April 29, 2020. Further, in order to use the data provided by the Apple/Google tool, users still needed to develop or obtain an app to read the data.

[24] Reportedly, Twenty had rights to use geolocation tracking tools due to existing agreements with Google and Apple.

[25] GOMB stated they relied upon DTS for a price analysis. While a State Official with DTS had contacted Apple and Google, DTS denies that they performed any sort of cost analysis.

[26] A representative from Twenty stated that their price reflected the significant number of unknowns with the scope. This same representative stated that the price also reflected the rapid development time.

[27] The location tracking feature was turned off in July 2020.

The web portal would:

- aggregate user data and testing data;
- provide State and health officials log in access to view visualizations and reports;
- provide visualizations of real-time location check-ins of infected users and daily symptom hot spots to aid in directing testing and containment resources;
- import official test data and export raw user location and symptom data; and
- provide a communication channel between the State and the public.

Many international officials considered the concept of using smart phone technology to aid in the response strategies for a major health emergency to be reasonable. However, we question the decision to prioritize the geolocation tracking feature, which reportedly was a key factor in the significant price. In our judgment, given the historical political climate and resistance to perceived government overreach by many Utahns, it was extremely unlikely that Utahns would utilize this feature. GOMB also recognized and debated the risk of public resistance, but ultimately decided to proceed with the technology. In July 2020, the State turned off the geolocation tracking function of the App due to public concern and lack of participation. The State has also initiated the procurement of a Bluetooth proximity contact tracing function to replace the geolocation tracking function.

Under this contract, the State paid $2.75million for licensing and development costs and retains none of the intellectual property. If the State wishes to continue using the App past the initial contract period, the State must pay Twenty on an ongoing basis.

We note that GOMB supported the use of the App for contact tracing while UDOH appeared more skeptical, favoring its traditional methods. Inadequate pre-planning and inadequate communication contributed to a rushed, high-priced purchase that has not met expected public adoption and utilization.

Reasonable Documentation Lacking

It appears likely State officials made some attempt to identify other contact tracing options by contacting Google and Apple. Once GOMB decided on the geolocation tracking feature, competition appears to have been limited. We note that while the App vendor was not part of the initial SS effort, the vendor was recommended to the State by SS.

G. On-line Health Assessment, Integration (Qualtrics)

Qualtrics helped provide an online health assessment survey for the SS initiative. When the Governor's Office decided to collaborate with SS, the services Qualtrics provided were originally included in the NOMI contract dated March 31, 2020. Shortly after the contracting process, the State (GOMB, UDOH, Purchasing) determined that it was advantageous to the State to separate Qualtrics' scope of work from the NOMI contract and use the existing State Master Agreement (MSA) for the Qualtrics contract. As a result, the State reduced the NOMI contract by $362,500 for the value of the work to be done by Qualtrics for 60 days. The State then entered

into a one-year agreement with Qualtrics on April 16, 2020 for $1.245 million with another $555,000 for additional services.

Qualtrics' contract was to provide the State with:

- an online health assessment survey[28], follow up surveys, and survey dashboard;
- the engineering of a webpage for users to access their test results;
- an appointment scheduler integrated with partner testing sites;
- a system for the State to track test kits from assembly through reporting;
- assistance exporting data to Test Utah; integration with the TestUtah.com website and the Healthy Together App; and
- the ability for a user to delete identifiable information on request.

No Competitive Analysis Was Performed for Emergency Purchase

When the State separated the Qualtrics work from the NOMI contract, State officials did not appear to perform any additional competitive analysis regarding whether Qualtrics was best suited for this contract work. Qualtrics' advertised expertise consists of experience management or quality assurance software and related services. While a significant amount of the contracted services fall outside this advertised expertise, we found no consideration of other vendors. This appears to be partly due to the fact that NOMI had already begun work with Qualtrics and partly because the State had an existing MSA with Qualtrics that allowed for the contracted services.

Existing Master Service Agreement Allowed for No Additional Competition, Even Under Non-Emergency Circumstances

The State routinely enters into MSAs with vendors to provide certain goods and services at established rates. When a government organization within the State determines a need for those goods or services, it may utilize the agreement with one of those vendors and pay fees according to the established rates. The State selects those vendors through a competitive procurement governed by Utah's Procurement Code. The State's procurement from Qualtrics was through such a contract that the State awarded in September 2019[29]. Even if these services had been procured under standard procurement conditions, procurement practices would not have required additional competition due to the existing MSA.

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[28] The health assessment survey contained within the App was provided by Twenty and is not included within the Qualtrics contract. UDOH personnel report significant time and effort was necessary to streamline the various surveys. We note that had GOMB involved UDOH earlier in the development process, some of the complexities of unifying different surveys on multiple platforms might have been mitigated.

[29] We reviewed the procurement for the Qualtrics Master Service Agreement. It appears the Request for Proposal (RFP): (1) was written broadly, (2) complied with State Procurement Code, and (3) was viewed by various potential bidders or that various bidders were made aware of the RFP. While Qualtrics was the sole bidder, we note that no one filed a procurement appeal.

Purchase in Line with MSA Pricing

The State paid Qualtrics $1.245 million for a 12-month contract for the specified services. This contract is at a rate of $0.90 per capita, implying up to 1.38 million Utahns would take the survey. The fees appear to be consistent with the Qualtrics MSA. The $555,000 was a retainer for additional services beyond the contracted scope of work. UDOH has tasked Qualtrics with additional work, which has been billed against that retainer.

Based on data provided by UDOH on September 14, 2020, we note that 242,713 online surveys have been taken via Qualtrics. These surveys resulted in the testing of 73,332 individuals, of which 4,218 reported positive test results. The effective cost per completed survey was slightly more than $5. Assuming each survey taken was by a unique individual, this is an uptake rate of less than 18%. As such, GOMB assumed a much higher uptake rate than was experienced.

Finding 4: Procurement Process for Personal Protective Equipment and Supplies Appears Reasonable

As of May 20, 2020, the State had purchased approximately $74 million in COVID-19 related PPE and other supplies.[30] We reviewed the State's process for ordering and receiving emergency PPE and other supplies. Based on available documentation, it appears that the State's process included efforts to ensure reasonable competition and due diligence on the vendors and goods offered. We reviewed a sample of emergency PPE and other supplies purchases made during the period. Finally, we also reviewed the related wire transfers used to pay some vendors for the emergency purchases, as applicable, to ensure the wire transfer was properly processed and approved. We determined that purchases and related wire transfers, as applicable, were properly authorized; the cost of PPE items ordered appear reasonable when compared to current published pricing and/or the Division of Purchasing's documentation of price analysis at the time of the order; and that purchases were properly received and tracked in the State's PPE inventory system.

Recommendations

We recommend that:

- The Governor review factors that led to the perceived need for GOMB to make various emergency purchases, identifying opportunities to avoid those circumstances during future emergencies.
- The Governor ensure primary agencies[31] periodically identify possible vendors who can perform critical tasks during an emergency.

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[30] Utah Leads Together III, Utah's Plan for a Health and Economic Recovery. Prepared by the Economic Response Task Force. May 20, 2020.
[31] The EOP designates a "primary agency" to take the lead role in responding to various types of emergencies.

- During this type of emergency, the Governor ensure emergency purchases are facilitated through a unified command structure.
- Purchasers document, in a timely manner, the processes used during an emergency purchase that provide evidence of a reasonably competitive and cost effective process.
- State Division of Purchasing review Master Service Agreement practices to ensure effective competition and reasonable prices for services.
- State Division of Purchasing review the emergency procurement statutes and rules in light of a pandemic and make recommendations for improvement, including ensuring competitive practices resume at the earliest opportunity.
- State Division of Purchasing determine methods to deploy a statewide electronic purchase authorization system that documents prior approval of any procurement.
- UDOH consider whether alternatives to the App would be more cost-effective than continuing the current App contract.

Office of the Governor
JUSTIN HARDING
Chief of Staff

State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

September 29, 2020

Mr. John Dougall, State Auditor
Senate Building, Suite 310
Utah State Capitol Complex
Salt Lake City, UT 84114

Dear Mr. Dougall,

Thank you for the opportunity to respond to the limited review of certain actions taken by the State of Utah ("State") to prepare for and respond to the COVID-19 pandemic. We appreciate the professionalism of the OSA throughout the review. We agree with some of the findings and recommendations of the Office of the State Auditor ("OSA"). We note disagreements below.

PREPARATION AND RESPONSE ANALYSIS

We appreciate the review and the opportunity to learn and grow. At the same time, aspects of the limited review seem to assume that state agencies have unlimited resources to plan for and respond to emergencies. State agencies do not operate with unlimited budgets, personnel, or time, and therefore must allocate their limited resources in a manner that will best serve the residents of Utah. Limited resources and the need for resource allocation significantly impact the ability of state agencies to prepare for and respond to emergencies.

The Division of Emergency Management ("DEM") receives approximately $1.5 million annually in state funding. Over 90% of DEM funding comes from the federal government. That funding is often based on specific kinds of emergencies that are most likely to occur in Utah. As a result, the funding comes with restrictions. These factors also influence the allocation of resources for emergency planning. We agree that additional state funding would be beneficial as it would provide greater flexibility.

While emergency management planning is essential, in some instances the unique circumstances of a particular emergency create unpredictable situations that cannot be fully prepared for or anticipated by the Governor's Office or state agencies. For this reason, response flexibility is key.

Finding 1: Despite Being Identified as High Risk, Pandemic Preparation Was Not Reasonably Sufficient

UDOH and DEM Should Have Considered Possible PPE Shortages and Supply Chain Disruption Risks During Pandemics

The limited review states that because "neither local health care systems nor UDOH [Utah Department of Health] had sufficient PPE stockpiles, the state felt compelled to compete for PPE on a global scale." Stockpiling PPE is one example of limited resource allocation. The State has spent in excess of $70 million on PPE supplies during this pandemic. The current cost associated with storing the PPE is approximately $50,000 per month. In order to stockpile PPE, the state would need to similarly spend tens of millions of dollars on the product and millions of dollars in storage fees.

Furthermore, maintaining a PPE stockpile would require an ongoing multi-million dollar investment because PPE expires and needs to be replaced. Indeed, some of the materials that Utah received from the federal government had expired before it arrived in Utah (in some cases, years before it arrived in Utah) and could not be used. For example, 3M noted earlier this year that its respirators and surgical masks have a five-year shelf life. If the State were to stockpile these products, it would need to replace masks on a five-year cycle. In responding to the COVID-19 pandemic, the State spent approximately $25,000,000 on masks. Stockpiling masks alone would require this level of expenditure at least every five years plus storage fees. The higher costs associated with procuring PPE during the pandemic were likely significantly less than the costs of stockpiling PPE for decades, considering the need to monitor and constantly rotate expiring PPE. While some level of PPE reserves may be appropriate, massive state-funded stockpiling represents a sizable opportunity cost to state taxpayers, as funds spent stockpiling PPE would not be available elsewhere in the economy.

Utah, along with other states, had no choice but to compete for PPE on a global scale because the federal government placed a hold on the domestic supply chain. Though the worldwide competition for PPE presented numerous challenges, Utah was quite successful in procuring necessary supplies. In fact, at least five other states contacted Utah and requested assistance in acquiring PPE because of Utah's success.

DEM has been working on supply chain issues related to pandemics and other disasters for a number of years. The COVID-19 pandemic certainly revealed important information about how quickly and at what level the supply chain can break down. DEM and UDOH will add this information to their ongoing planning efforts.

Dashboard Data Elements, Metrics, and Other Tools Had Not Been Adequately Contemplated and Agreed Upon by Key Stakeholders

While it is impossible to know every specific data element and metric needed to respond to an emergency without the details of the specific emergency, we agree that discussions by key stakeholders about these things would be helpful.

DEM Should Take More Proactive Role in Preparing for Pandemic

DEM has included pandemics as a priority not only in the State Emergency Operations Plan, but also in the 2017 Threat and Hazard Identification and Risk Assessment report. Pandemics are also a point of emphasis in many of the state agency Continuity of Operations Plans, which DEM oversees. Even so, we acknowledge that more can be done to focus on pandemic emergencies.

The OSA noted that it "has previously expressed concern that DEM places greater emphasis on meeting federal grant requirements than on setting strategic priorities." This statement is concerning for at least two reasons. First, as noted above, over 90% of DEM funding comes from the federal government. Without those funds, DEM would have almost no resources to engage in emergency planning. Second, the grants from the federal government are based on strategic priorities. We recognize and agree that the State needs to continue to engage in independent evaluation of strategic priorities. It is also important to note that the funding Utah receives from the federal government is based on comprehensive evaluations of the kinds of emergencies most likely to occur in Utah and the likely impact of those emergencies.

State-Level Training Events Would Have Helped Prepare for Pandemic

We agree that state-level training events are helpful in preparing for emergencies. As resources permit, the State will hold training events for a variety of possible emergencies. As the limited review notes, the State had a pandemic training event planned this year.

The OSA states that "[h]istorically, the state places a higher priority on earthquake preparedness." This is accurate, and there are good reasons for that emphasis. State and federal experts have identified earthquakes as the top catastrophic threat to Utah. In fact, the state experienced a sizable earthquake during the pandemic. The State would not be serving its residents appropriately if it did not place a high priority on the top catastrophic threat. Additionally, because the federal government has identified earthquakes as a major threat, it provides funding specifically for earthquake preparedness to Utah.

Pandemic Preparation Lacked Community Outreach Program

We agree that more can be done to plan for pandemics with adequate funding, though the nature of the planning will always be different for different types of emergencies.

Finding 2: Unclear Chain of Command Hindered Early Emergency Response Efforts

We agree that better communication could have improved the State's early response to the pandemic. With the benefit of hindsight, we also agree that the Unified Command should have been activated earlier.

Recommendations

The Governor present a proposal to the legislature regarding setting aside adequate emergency State funds that can be accessed for emergency use upon declaration of a state of emergency or in preparation for an imminent emergency.

We agree with this recommendation.

DEM be more proactive in its emergency preparation by identifying significant risks to the State and placing more emphasis on strategic planning to mitigate those risks.

DEM currently engages in these efforts, and we agree that with increased funding, DEM can and should do more.

DEM, UDOH, and other officials increase the frequency of statewide brainstorming and training events to better prepare for future emergencies. Brainstorming should include discussions on data sharing, constraints on the healthcare system, approaches to contact tracing, critical supply chain constraints, etc.

We agree with this recommendation.

DEM and UDOH increase community outreach programs to help the public better prepare for future pandemics and other public health-related emergencies.

DEM and UDOH will explore ways to help the public better prepare for public health-related emergencies.

The Governor use this pandemic as an opportunity to debrief operations strengths and weaknesses regarding the State's emergency response.

Governor Herbert has been doing this since he first declared a state of emergency for COVID-19 in March 2020 and will continue to do this.

The Governor direct the Commissioner of Public Safety to establish improved criteria for establishing Unified Command in a timely manner.

We agree with this recommendation.

EMERGENCY PROCUREMENTS

Finding 3: Aspects of Contracts Initiated by Governor's Office Appear Reasonable While Various Concerns Exist

A. Steered Contracts to Certain Vendors Heightens Risk

Awarding contracts to known vendors was an intentional decision that likely saved the State a large sum of money. Some states paid tens or hundreds of millions of dollars for supplies they never received because of fraudulent practices or simple inability to deliver on the part of unknown vendors. Utah, on the other hand, received every good it purchased. Others states contacted Utah and asked for assistance in acquiring supplies because of Utah's success working with known vendors.

In footnote 18, the OSA discusses relationships between the Governor and Lt. Governor and Silicon Slopes. We want to be clear that any such relationships did not influence the award of contracts. The review of which contract should be awarded to which entities was performed by staff members who exercised independent judgment in making recommendations about contract awards.

B. Lack of Documentation of Reasonable Due Diligence

We agree that agencies should provide some documentation of reasonable due diligence.

C. Purchase of Medication (Meds in Motion)

We agree that communication surrounding the purchase of this medication was insufficient and that better communication and planning could have avoided complications associated with this purchase.

D. Operational Dashboard (DOMO)

We are reviewing these suggestions and will incorporate them in future planning efforts as appropriate.

E. Test Utah Mobile Testing & Associated Services (NOMI)

We are reviewing these suggestions and will incorporate them in future planning efforts as appropriate.

F. Healthy Together App and Web Portal (Twenty)

Originally, the geolocation tracking was a key feature. However, the state moved away from this and focused on other parts of the app functionality. The state believed other functions of the app provided more value in the state's ongoing response to COVID-19. We note that the app has been downloaded nearly 95,000 times and is being used by multiple institutions of higher education. The app has provided over 25,000 recommendations for testing, resulting in nearly 2400 positive results.

G. On-line Health Assessment, Integration (Qualtrics)

We are reviewing these suggestions and will incorporate them in future planning efforts as appropriate.

Finding 4: Procurement Process for Personal Protective Equipment and Supplies Appears Reasonable

Recommendations

The Governor review factors that led to the perceived need for GOMB to make various emergency purchases, identifying opportunities to avoid those circumstances during future emergencies.

We agree that reviewing the circumstances surrounding emergency purchases is an important part of improving the State's response to future emergencies. We do not agree that the goal should be to avoid all emergency purchases in the future. The State needs to maintain flexibility in its response in order to best serve the needs of its residents.

GOMB played a critical role in the early response to COVID-19. As noted, we agree that the Unified Command should have been activated earlier and that purchases should have been coordinated through the Unified Command. That does not necessarily mean that emergency purchases should not take place.

The Governor ensure primary agencies periodically identify possible vendors who can perform critical tasks during an emergency.

We agree with this recommendation.

During this type of emergency, the Governor ensure emergency purchases are facilitated through a unified command structure.

We agree with this recommendation.

Purchasers document, in a timely manner, the processes used during an emergency purchase that provide evidence of a reasonably competitive and cost effective process.

When an emergency situation or purchase is known, the Division of Purchasing ("Purchasing") will develop a process to send out a questionnaire to agencies to gather this information and documentation immediately from the agency. This will help agencies maintain records and information. This will also provide Purchasing with information to begin working with agencies to complete normal procurement processes.

State Division of Purchasing review Master Service Agreement practices to ensure effective competition and reasonable prices for service.

Purchasing will continue reviewing all solicitations to ensure competition requirements outlined in the Utah Procurement Code are followed. Purchasing will continue to audit its Master Service Agreements to ensure pricing is competitive.

State Division of Purchasing review the emergency procurement statutes and rules in light of a pandemic and make recommendations for improvement, including ensuring competitive practices resume at the earliest opportunity.

The emergency procurement process outlined in the Utah Procurement Code is modeled after the Model Procurement Code written by the American Bar Association. Purchasing has gathered every state's emergency procurement statutes in order to review and make recommendations for improvement in the emergency procurement process. Once a recommendation has been approved Purchasing will begin training state agencies.

State Division of Purchasing determine methods to deploy a statewide electronic purchase authorization system that documents prior approval of any procurement.

Purchasing has determined to utilize the Adobe Suite offered by the Department of Technology Services as the method to deploy a statewide electronic purchase authorization system. Purchasing uses Adobe for e-signature for its contracts and purchase orders. Purchasing will develop a recommendation for this process. With Adobe Suite, we will be able to integrate with potential other systems, and will remain flexible with which system we end up choosing.

UDOH consider whether alternatives to the app would be more cost-effective than continuing the current app contract.

The use of smartphone technology is an important part of the COVID-19 response. Using this technology effectively provides a means for individuals in Utah to easily assess their symptoms, obtain testing as needed, receive test results, receive important COVID-19

messaging, provide businesses a way to ensure employees are free of COVID-19 symptoms, and reduce investigation time for positive cases and close contacts.

Though changing course midstream in the use of this type of technology would likely create an unwanted redirection of resources and confusion among the user base, the UDOH and GOMB have considered, and will continue considering alternatives to the Healthy Together application.

Thank you again for the opportunity to respond to this limited review.

Sincerely,

Justin Harding
Chief of Staff
Office of the Governor
State of Utah