

Office of Internal Audit

Chapter 40 Procurement Process Audit



November 15, 2023

Executive Summary

The Office of Internal Audit (OIA) staff have completed an audit of the procurement process used in the Department of Employee Trust Funds (ETF) procurement and contracting for services related to Chapter 40 contracting authority. The procurement process is managed by a collaboration across staff at ETF's Budget, Contract Administration, and Procurement (BCAP)¹, Office of Legal Services (OLS), and other ETF and external subject matter experts (SMEs). This audit was completed in accordance with the fiscal year 2022-2023 Biennial Audit Plan to assess the Chapter 40 procurement process for adequate documentation, transparency, and appropriate controls. Our audit work and conclusions also relied on our previous audit of the Department Terms and Conditions (DTCs) used in procurement and contracting for goods and services ([Ref. AUD | 12.08.22 | 3](#)).

Currently, ETF has 48 contracts related to its Chapter 40 procurement authority. These are for program-related services and services related to the Board's fiduciary responsibilities. They include the third-party administrator (TPA) contracts for benefit programs; the annual group health insurance contracts; as well as auditor, consulting, data, and actuarial service contracts. Our audit focused primarily on contracts procured through the Request for Proposals (RFP) process over the past several years. Our review resulted in no audit findings, as we did not identify significant concerns with the process and controls in place. However, we provided one process improvement for management's consideration to include in future contracts that may assist in monitoring vendor performance.

¹ BCAP is now in ETF's newly restructured Office of Budget and Management.

Audit Objective and Scope

Our audit was conducted in conformance with International Standards for the Professional Practice of Internal Auditing.

The audit objective was to assess the Chapter 40 procurement process for adequate documentation, transparency, and appropriate controls. The scope of our review included the procurement process for Chapter 40 contracts currently in effect or signed contracts with a future effective date. Our audit focused primarily on contracts procured through the RFP process over the past several years.

The post-award process (i.e., process of monitoring deliverables, deadlines, terms and conditions, overall vendor performance, contract amendments, and renewals) is considered outside the scope of this audit.

Background

ETF Procurement Authority

ETF has the need to procure external services to support the Wisconsin Retirement System (WRS) and the other benefit programs it is responsible for managing. ETF's procurement falls under two Wisconsin statutory authorities: Chapter 16 and Chapter 40. Chapter 16 procurements, for which procurement rules are established by Wisconsin's Department of Administration (DOA), are used for general goods and services needed for ETF operations. For contracts established under Chapter 16 authority, DOA has developed a Procurement Manual, various procurement forms, and standard terms and conditions that need to be used in contracts. Chapter 40 of Wisconsin Statutes provides ETF's governing boards with independent contractual authority. This authority is for purchasing program-related services and those services directly related to the different boards' fiduciary responsibilities. Under ETF's agreement with DOA, ETF has built their procurement procedures to closely follow DOA's Procurement Manual. However, ETF has additional discretion throughout the procurement process.

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Procurement Process

Procurements are initially approved by the various governing boards overseeing ETF's managed programs. The procurement process is managed centrally by BCAP staff with collaboration from OLS; and other ETF and external SMEs, as needed, throughout the process. The two most common forms used for Chapter 40 procurement are RFPs and Invitations to Negotiate.

RFPs, which are a form of competitive procurement used for complex services, are the primary method used. In these procurements, ETF assesses the needs for the service to be procured, provides a list of questions and requirements, and invites vendors to submit proposals of how the quality of their product or service would meet those requirements. An evaluation committee is selected to review proposals against the pre-established scoring methodology, check references, hear presentations, and deliberate on the vendors. While cost is a consideration, it is typically weighted lower in scoring than quality. The evaluation committee recommendation will then go to the respective governing board or the ETF Secretary (if delegated by the governing board) for approval to contract with the selected vendor. BCAP staff, along with OLS and other ETF SMEs, will then negotiate for the final contract.

An Invitation to Negotiate is used to invite vendors, such as the group health insurance providers, to submit proposals and negotiate with ETF for their annual contracts. For the annual health plan contracts, ETF's contracted actuary assists with the rate setting process, which incorporates any proposed Program Agreement changes and application of any program reserves (both of which are approved by the Group Insurance Board).

Results and Recommendations

Positive Results

Overall, we did not identify significant concerns with the documentation, transparency, and controls within the Chapter 40 procurement process. We found that:

- Procurement procedures are well documented.
- Each procurement is well documented for transparency of the process.
- ETF procurement and legal staff, along with ETF and external SMEs, collaborate throughout the procurement and contract negotiation to obtain the best possible services and contract terms, while protecting the business needs of ETF.

- ETF's procurement needs are monitored, and the timing of procurements are scheduled to ensure there are no gaps in vendor contracts, and thus, no gaps in service to program members.
- Surveyed ETF management involved in recent procurements did not identify concerns with the procurement process.

Process Improvement Considerations and Other Items to Note

Although we did not identify significant concerns with the Chapter 40 procurement process, we identified one process improvement suggestion for management's consideration and some procurement file access exceptions:

- Process Improvement Recommendation
We noted as part of our review that ETF includes contract performance guarantees vendors are required to meet and penalties for any failures to meet them. However, from our experience consulting on and performing audits of some of ETF's contracted TPAs, while the TPAs self-report on their achievement of these guarantees, they are not always able to provide the appropriate underlying supporting documentation for performance guarantee reporting when requested. While ETF includes penalties for not providing other data and reports timely and accurately, there are no contract penalties included for not being able to provide timely and accurate supporting documentation for performance guarantee reporting. This makes it difficult to assess that required reporting methodologies are applied and performance guarantees are truly met. We do note that ETF DTCs include an audit provision, which allows ETF to review vendor data and requires the vendors to provide the data requested. However, a penalty within the contract may encourage vendors to maintain and provide supporting documentation that is accurate and timely. This is important because performance guarantees are critical to ETF's oversight and accountability of its vendors.
 - Recommendation: ETF should consider a contract penalty for instances when requests for supporting documentation for reported performance guarantees is not timely or accurately provided.
- Procurement File Access Exceptions
We noted one instance where a page on BCAP's internal SharePoint site, which was used to temporarily house vendors' submitted proposal information, was not appropriately restricted. Management immediately corrected this when we brought it to their attention, and it appears to be an isolated instance. Therefore, no additional action is necessary. Additionally, we note that a restructuring of the ETF network folder housing procurement and contract documentation, which is

already restricted, is planned to further restrict and protect the confidentiality of documents during the procurement process.

Audit Methodology

The OIA conducted this audit by performing the following testing procedures in combination with those performed as part of our DTC audit ([Ref. AUD | 12.08.22 | 3](#)):

- Reviewing BCAP's procurement procedure and other procurement documentation.
- Reviewing a selection of procurements to ensure adequate documentation, transparency, and appropriate controls were in place and operating effectively.
- Reviewing the DOA Procurement Manual and the Institute of Internal Auditors' Practice Guide for Auditing Procurement in the Public Sector for best practices, any unmitigated potential risks, and potential procurement process improvements.
- Performing inquiries with program management about the procurement process and whether they had concerns (completed as part of the DTC audit).