

REPORT DIGEST

MANAGEMENT AUDIT OF

THE DEPARTMENT OF CENTRAL MANAGEMENT SERVICES'

2008 JOINT PROCUREMENTS OF BULK ROCK SALT

Released: June 2009



State of Illinois
Office of the Auditor General

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SYNOPSIS

On December 11, 2008, the Legislative Audit Commission adopted Resolution Number 138 directing the Auditor General to conduct a management audit of the Department of Central Management Services' joint purchasing procurements of bulk rock salt in 2008.

Auditors concluded that some actions taken by CMS for the 2008 joint procurement of bulk rock salt were not in accordance with the Illinois Procurement Code and CMS' administrative rules.

- CMS allowed one vendor (Cargill) to **significantly** change the terms and conditions of its bid **after** the bid opening. The price per ton bid by Cargill was significantly lower than those bid by the other vendors. Changing these terms reduced the potential amount of salt the vendor would be required to provide pool participants by approximately **300,000 tons or \$16.5 million**. Other bidders were not afforded the opportunity to change their terms and conditions.
- A public record of the bid opening was not contained in the procurement files for the first solicitation.
- For the second solicitation there was no written determination in the procurement files regarding decisions to allocate salt alternatives.

CMS did not hold vendors to some requirements contained in the terms and conditions of the Invitations for Bid. These included submitting proof of stockpiling and performance bonds.

CMS should consider changes to the procurement process including:

- Issuing the joint procurement Invitation for Bid earlier.
- Changing the basis of award.
- Changing guaranteed percentage requirements.
- Extending the deadlines for stockpiling.
- Holding a bidder's conference.
- Requiring bid bonds and reviewing performance bond requirements.
- Reviewing delivery requirements and times.
- Reviewing the liquidated damages provisions.

CMS also needs to improve its communications with local government participants by providing full disclosure of terms and conditions, providing accurate information in communications and memos, and giving local governments adequate time to make decisions.

REPORT CONCLUSIONS

The Department of Central Management Services (CMS) administers the Joint Purchasing Program for the State. The purpose of the Joint Purchasing Program is to allow units of local government to participate in State negotiated contracts, and thereby take advantage of State contract pricing which should result in procurement savings to local governments.

On June 20, 2008, CMS issued its first solicitation for bids for the 2008 joint procurement of bulk rock salt for State agencies and other local governmental units. The bids were opened July 16, 2008. Unlike in previous years, some parts of the State did not receive bids, while other participants experienced **significant** increases in their bid price. Parts of the State that did not receive bids included local governments, Illinois Department of Transportation locations, and Illinois State Toll Highway Authority locations in Cook, Lake, McHenry, and Boone counties. The Statewide average price for the first solicitation was \$67.63 per ton. However, bid prices ranged from a low of \$46.78 per ton for St. Clair County to \$140.61 per ton for Effingham County.

A second solicitation was issued by CMS on July 25, 2008, and bids were opened on August 12, 2008. Although more locations received bids for salt, the prices averaged \$117.29 per ton and ranged from a low of \$96.18 to a high of \$168.03 per ton. There were also still locations in McHenry County and Lake County that did not receive bids. CMS eventually procured \$8.6 million of rock salt through an emergency purchase for these remaining locations at a price of \$138.52 per ton.

In addition to CMS' procurements, the Illinois Department of Transportation (IDOT) and the Illinois State Toll Highway Authority (ISTHA) each issued emergency purchases. IDOT, through two emergency procurements, purchased an additional \$9.6 million of rock salt at \$138.52 per ton. ISTHA through two more emergency procurements purchased an additional \$2.8 million of rock salt at \$138.52 and \$151.52 per ton.

CMS' 2007 joint procurement of bulk rock salt totaled \$57 million. In all, the 2008 CMS joint procurements and emergency purchases entered into by CMS, IDOT, and ISTHA resulted in nearly \$129 million in contracts with salt vendors or a **126 percent increase** over the previous year. The average price per ton increased from \$41.06 for 2007 to \$67.63 for the first solicitation in 2008 or a 65 percent increase.

Some actions taken by CMS for the 2008 joint procurement of bulk rock salt were not in accordance with the Illinois Procurement Code and CMS' administrative rules.

- CMS allowed one vendor (Cargill) to **significantly** change the terms and conditions of its bid **after** the bid opening, which is not allowable under the Illinois Procurement Code (30 ILCS 500/20-10). Cargill won a large amount of bids (over 1 million tons) and expressed concern that it might be unable to meet its obligations. CMS reduced the maximum amount of rock salt a State or local entity could purchase from Cargill from 130 percent in the Cargill contract terms, to 100 percent, in effect giving up claim to 30 percent of the most reasonably priced salt in the State. We determined that changing these terms reduced the potential amount of salt the vendor would be required to provide pool participants by approximately **300,000 tons or \$16.5 million**. CMS also changed ordering and delivery guidelines and extended stockpiling dates for Cargill. Other bidders were not afforded the opportunity to change their terms and conditions.
- A public record of the bid opening, as is required by the Illinois Procurement Code and CMS' administrative rules (30 ILCS 500/20-10(d) and 44 Ill. Adm. Code 1.2010(i)), was not contained in the procurement files for the first solicitation.
- For the second solicitation there was no written determination in the procurement files regarding decisions to allocate salt alternatives. Because there was more demand than supply for one offer, CMS had to allocate the product to participants. The salt alternative was allocated so that IDOT locations received 100 percent of their requested amounts while local government participants received approximately 27 percent of their requested amounts. There was nothing in the procurement files to show the basis of the award, the methodology used to determine the allocation, or who made this decision.

CMS did not hold vendors to some requirements contained in the terms and conditions of the Invitations for Bid (IFB). These included:

- Proof of stockpiling was not submitted as required by the IFB terms and conditions.
- Bonds were not submitted to secure the three contracts issued under the second solicitation as was required by the IFB terms and conditions. As a result, a total of \$16,586,206 in contracts

was not secured with performance bonds putting the State and local governments at risk of non-performance.

CMS did not adequately protect the financial interest of at least two local governments during the second solicitation process. By the time CMS was informing local governments of their price per ton as a result of the second solicitation, CMS was aware of the \$138.52 per ton price offer pursuant to its emergency procurement. At least one local community (Deerfield) rejected its bid of \$143.82 per ton for enhanced salt received for the second solicitation and procured salt through the CMS emergency purchase. By doing this it saved the community approximately \$10,600. However, we identified two other local governments in McHenry County (city of Woodstock and the McHenry County Highway Department) that also could have rejected their bids received under the second solicitation and received better pricing through the emergency purchase. Procuring salt through the emergency purchase could have saved these communities a total of \$137,544.

Through our review of CMS' 2008 joint procurement, we identified several changes CMS should consider.

- Issuing the joint procurement Invitation for Bid earlier and monitoring when other states are issuing their invitations for bid in order to avoid going out for bid after the supply has been committed to other states.
- Changing the basis of award to consider aggregating smaller counties and dividing larger counties in order to encourage bidding.
- Changing guaranteed percentage requirements.
- Extending the deadlines for stockpiling and reviewing the percentage requirements.
- Holding a bidder's conference to speak with potential vendors in order to identify any potential problems prior to bidding and to review significant changes from the prior year's IFB.
- Requiring bid bonds in order to guarantee that a potential bidder will proceed with the contract and reviewing performance bond requirements to ensure they are sufficient to protect the State's interest.
- Reviewing delivery requirements and delivery times to allow more flexibility or other possible changes.

- Reviewing the liquidated damages for delivery and out of specifications to determine if these are appropriate and set at levels sufficient to protect the State and pool participants without discouraging competition.
- Issuing a multi-year contract or adding more aggressive renewal provisions.
- Adding a fuel adjustment clause with escalation and de-escalation provisions.
- Establishing delivery points with optional pick-up for local communities.

Other states that we surveyed also experienced problems in obtaining rock salt for the 2008-2009 winter season. Most states experienced areas with no bids and/or substantially increased prices resulting in some states rejecting bids for locations and counties. There are many factors that affect pricing from state to state, and even within this State, including supply and demand, contract terms, and transportation costs among others. Recognizing that there are many factors that impact comparability of prices paid by various states, Illinois paid slightly more on average per ton than other states we surveyed.

We surveyed non-participants including some that had participated in the CMS joint procurement in the past. The amount paid by non-participants we surveyed varied greatly just as it did for those that participated in the joint procurement. Some non-participants surveyed simply did not purchase salt this year. Non-participants suggested CMS do the following to improve the procurement process:

- Aggregate communities.
- Go out for bids earlier.
- Provide a quicker response to deliveries of salt when ordered.
- Not award contracts unless all counties are given ample time to submit requests.
- Level the playing field regarding pricing and delivery charges.
- Tell participants when they are not in the joint procurement.

CMS needs to improve its communications with local government participants by providing full disclosure of terms and conditions, providing accurate information in communications and memos, and giving local governments adequate time to make decisions. CMS did not provide the full terms and conditions of the Invitation for Bid to participants. CMS

also provided terms to local governmental participants in memos, then changed these terms. CMS gave local government participants very short timeframes to make decisions related to commitments for the procurement. Some local governments we contacted were not aware they could participate in the joint procurement (city of Carthage), while others claimed that they thought they were participating (village of Camp Point) or that CMS had lost or misplaced their requests to participate (city of Charleston).

BACKGROUND

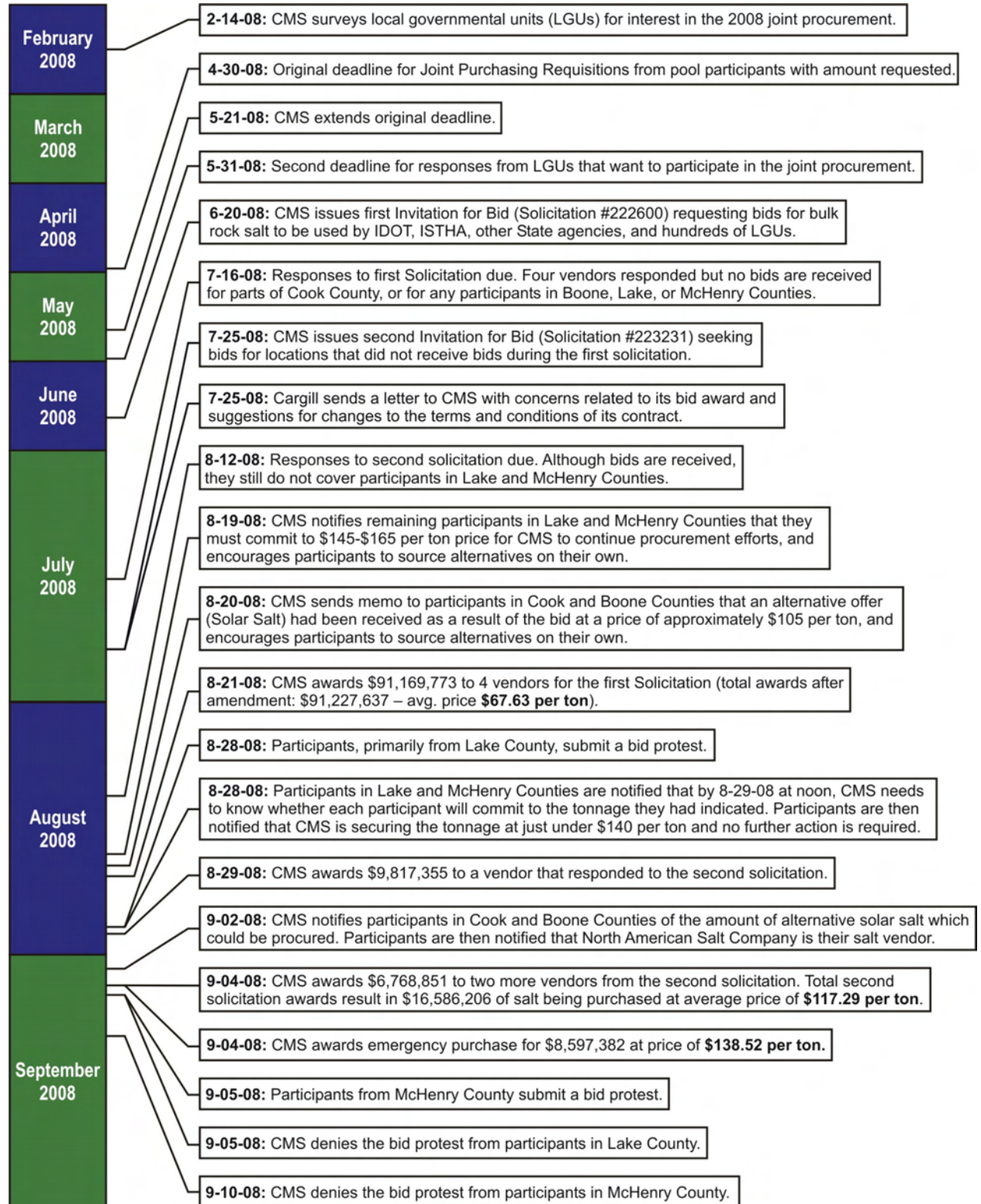
On June 20, 2008, CMS issued its first solicitation for bids for the 2008 joint procurement of bulk rock salt for State agencies and other local governmental units. The bids were opened July 16, 2008. Unlike in previous years, some parts of the State did not receive bids, while other participants experienced significant increases in their bid price. Parts of the State that did not receive bids included local governments, Illinois Department of Transportation locations, and Illinois State Toll Highway Authority locations in Cook, Lake, McHenry, and Boone counties. The Statewide average price for the first solicitation was \$67.63 per ton. However, bid prices ranged from a low of \$46.78 per ton for St. Clair County to \$140.61 per ton for Effingham County.

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A second solicitation was issued by CMS on July 25, 2008 and bids were opened on August 12, 2008. Although more locations received bids for salt, the prices averaged \$117.29 per ton and ranged from a low of \$96.18 to a high of \$168.03. There were also still locations in McHenry County and Lake County that did not receive bids. CMS eventually procured \$8.6 million of rock salt through an emergency purchase for these remaining locations at a price of \$138.52 per ton. Digest Exhibit 1 shows a timeline of the procurement process for CMS' 2008 joint procurements of bulk rock salt.

In addition to CMS' procurements, the Illinois Department of Transportation (IDOT) and the Illinois State Toll Highway Authority (ISTHA) each issued emergency purchases. IDOT, through two emergency procurements, purchased an additional \$9.6 million of rock salt at \$138.52 per ton. ISTHA, through two more emergency procurements, purchased an additional \$2.8 million of rock salt at \$138.52 and \$151.52 per ton. In all, the 2008 CMS joint procurements and emergency purchases entered into by CMS, IDOT, and ISTHA resulted in nearly \$129 million in contracts with salt companies or a **126 percent increase** over the previous year. CMS' 2007 joint procurement of bulk rock salt totaled \$57 million. (pages 4-6)

Digest Exhibit 1
TIMELINE OF 2008 JOINT PROCUREMENTS OF BULK ROCK SALT



Source: OAG analysis of CMS information.

2008 BULK ROCK SALT JOINT PROCUREMENT

CMS was responsible for preparing the Invitations for Bid documents, receiving bids, opening the bids, determining the lowest bid, and awarding and signing the contracts for the 2008 joint procurement of bulk rock salt.

First Solicitation (#222600)

On June 20, 2008, CMS solicited bids for bulk rock salt for 630 joint participants. These 630 participants included a total of 762 locations throughout the State. These locations included local governmental units (616 locations), the Illinois Department of Transportation (119 locations), the Illinois State Toll Highway Authority (15 locations), and other State agencies (12 locations). The first solicitation included 892 bid lines for these 762 locations because some locations requested initial and seasonal delivery separately. In total the first solicitation requested a total of over 1.8 million tons of rock salt. The majority of the salt requested was for local governmental units (57%).

Bids were opened on July 16, 2008. Of the 1.8 million tons of salt requested, 74.48 percent of the tonnage was awarded. The first solicitation resulted in four vendors receiving contracts for a total of \$91 million for 1,348,829 tons of rock salt with a weighted average price of \$67.63 per ton. The weighted average price paid for the first solicitation in 2008 represents a 65 percent increase over the previous year's weighted average price of \$41.06 per ton.

Digest Exhibit 2 shows the winning bid price for the first solicitation and vendor for each county. As is shown in the Exhibit, the prices ranged from a low of \$46.78 per ton in St. Clair County to a high of \$140.61 per ton in Effingham County.

Second Solicitation (#223231)

According to our analysis, 191 bid lines did not receive bids for a total of 462,197 tons of salt in the 2008 first solicitation. On July 25, 2008, CMS issued a second Invitation for Bid for the locations that did not receive bids. Bids for the second solicitation were due August 12, 2008. The second solicitation resulted in three vendors receiving contracts for a total of \$16,586,206 with an average price of \$117.29 per ton. Of the 191 bid lines in the second solicitation, 100 bid lines involving 96 locations did not receive a bid again.

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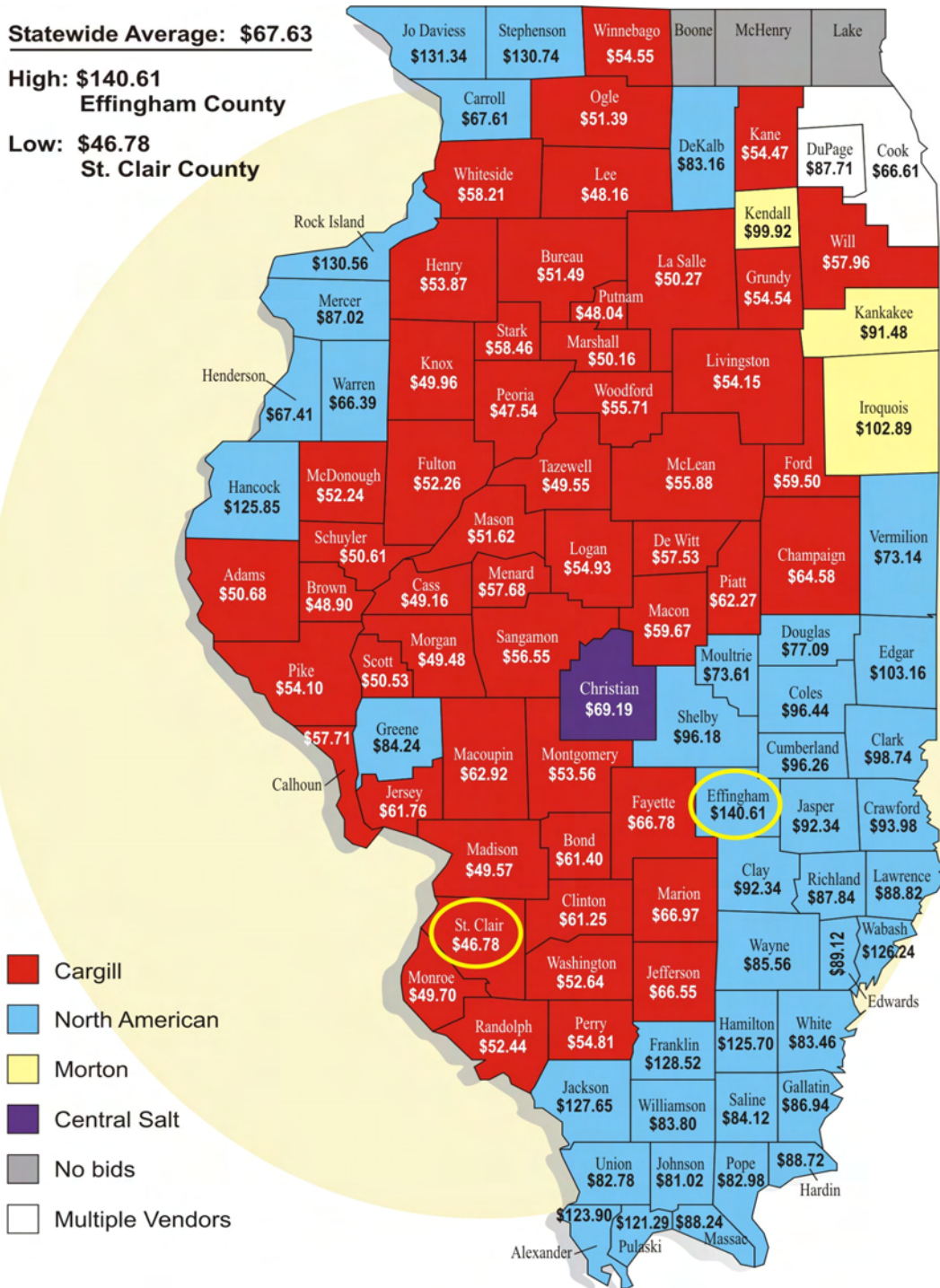
The second solicitation resulted in three vendors receiving contracts for a total of \$16,586,206 with an average price of \$117.29 per ton.

Digest Exhibit 2
WINNING BIDDER AND PRICE BY COUNTY
 (First solicitation only)

Statewide Average: \$67.63

High: \$140.61
Effingham County

Low: \$46.78
St. Clair County



Notes: Cook County was awarded by locations and did not receive bids for all locations. The average for Cook County represents a weighted average for those locations that received bids for all vendors. DuPage County was awarded by location and the average represents a weighted average for all locations and all vendors. The Statewide average also represents a weighted average.

Source: OAG analysis of bids for solicitation #222600.

Emergency Purchase (#223393)

After two solicitations, locations in Lake and McHenry counties still had not received bids. These participants were notified August 15, 2008, that no bids had been received for their locations. CMS awarded an emergency purchase to International Salt Company on September 4, 2008, for the purchase of 62,066 tons of rock salt for locations in Lake and McHenry counties for \$8,597,382 or \$138.52 per ton.

Summary of Solicitations

Digest Exhibit 3 shows an overview of all three of the CMS solicitations that were part of the 2008 joint procurement of rock salt. In all, the three CMS solicitations resulted in more than 1.5 million tons of rock salt with an average price per ton of \$75. (pages 9-17)

Digest Exhibit 3 SUMMARY OF CMS' SOLICITATIONS RELATED TO THE 2008 JOINT PROCUREMENT OF BULK ROCK SALT				
	First Solicitation (#222600)	Second Solicitation (#223231)	Emergency Purchase (#223393)	Total
Number of Vendors	4	3	1	5
Tons Awarded	1,348,829	141,415	62,066	1,552,310
Total Contract \$	\$91,227,637	\$16,586,206	\$8,597,382	\$116,411,225
Average Price/Ton	\$67.63	\$117.29	\$138.52	\$74.99
Source: OAG analysis of CMS awards for solicitations #222600, #223231, and #223393.				

**COMPLIANCE WITH STATE LAWS AND
AGENCY RULES**

We found that CMS did not comply with some requirements in the Illinois Procurement Code and its administrative rules. These included changing the terms and conditions of the Invitation for Bid after bids were opened for the first solicitation, keeping a record of the bid opening in the procurement files for the first solicitation, and having a written determination of the basis of award for the second solicitation.

Changes to Terms and Conditions After Bid Opening

CMS allowed one vendor (Cargill) to significantly change the terms and conditions of its bid after the bid opening, which is not allowable under the Illinois Procurement Code (30 ILCS 500/20-10).

Other bidders were not afforded the opportunity to change their terms and conditions.

Cargill won the majority of bids for the State totaling approximately 1.3 million tons of salt at the 130 percent maximum.

The CMS 2008 joint procurement of bulk rock salt Invitation for Bid contained a min/max provision of 70/130. This means that the purchaser (State or local government pool participants) agreed to purchase at least 70 percent of the amount bid but reserved the right to purchase up to 130 percent of the amount bid. When bids for the first solicitation were opened on July 16, 2008, Cargill won the majority of bids for the State totaling approximately 1.3 million tons of salt at the 130 percent maximum. The price per ton bid by Cargill was significantly lower than those bid by the other vendors. On July 25, 2008, Cargill officials, through an e-mail and letter to CMS officials, expressed concern regarding the tonnage that they were awarded and stated that it may be difficult to succeed unless CMS and Cargill work together to reach a compromise on the final contract.

When we contacted Cargill, officials stated that they were concerned that they could not meet the awarded commitment. From CMS e-mails, Cargill's concern was being able to fulfill the 130 percent requirement for the total tonnage as well as the potential for delivery damages. Cargill's July 25, 2008, letter lists the issues of most concern as the January 1st inventory requirement, the 130 percent maximum, and late delivery penalty implications. Cargill also made recommendations to CMS that would give them a "greater comfortable (sic) level as it pertained to the tonnage." These recommendations included changing the maximum tonnage supplied to 1 million tons. Cargill also stated that it would be "willing to supply salt to areas where the State received no-bids," with the understanding that tons designated for no bid areas would be subtracted from the 1 million overall tonnage. Cargill also recommended extending stockpiling dates and wanted the State to waive all late delivery penalties.

Quantities and Guaranteed Purchases Revised

CMS changed the maximum in the Cargill contract terms to 100 percent, in effect giving up claim to 30 percent of the most reasonably priced salt in the State.

One of the changes CMS made to the terms and conditions of the Cargill contract was revising the maximum amount that could be purchased under the contract. CMS changed the maximum in the Cargill contract terms to 100 percent, in effect giving up claim to 30 percent of the most reasonably priced salt in the State. Cargill was awarded 1,000,919 tons of salt for the first solicitation. We determined that changing these terms reduced the potential amount of salt the vendor would be required to provide pool participants by approximately **300,000 tons or \$16.5 million.**

During the previous year's solicitation, a different salt vendor (North American Salt) won the majority of bids for a similar amount

(1,051,809 tons) according to CMS' IllinoisBID system. However, no changes were made to the terms and conditions of the Invitation for Bid in 2007. Had CMS held Cargill to the original terms of its bid, this salt could have potentially been used by entities that did not receive bids. According to correspondence between Cargill and CMS, Cargill was willing to provide salt to the areas with no bids but wanted the total tonnage for the contract limited. CMS neither held Cargill to the original terms of the Invitation for Bid nor was able to utilize Cargill to obtain salt for areas of the State that did not receive bids.

Ordering and Delivery Dates Revised

CMS changed the ordering and delivery dates in the Invitation for Bid to extend delivery dates for Cargill by approximately six weeks. The Invitation for Bid and the contracts with other vendors required that State agencies and local governmental units could purchase up to 50 percent of their estimated order requirements prior to **October 31, 2008**. Cargill's contract terms changed this date to **December 15, 2008**.

Stockpiling Requirements Revised

CMS also extended stockpiling requirements from the original terms contained in the Invitation for Bid giving Cargill approximately three additional months to meet the 100 percent requirement. The Invitation for Bid required vendors to have stockpiles of rock salt in Illinois or near its boundaries in sufficient quantities to satisfy 100 percent of the contractual requirements by **December 1, 2008, and January 1, 2009**, depending on the location in the State. Cargill's contract terms were changed so that 100 percent of the amount was not required to be stockpiled until **March 1, 2009**.

Liquidated Damages

Seasonal ordering guidelines affected the application of delivery timelines and assessment of liquidated damages. Cargill was also given a longer timeline for ordering compared to the Invitation for Bid and other bidders. The Invitation for Bid and all contracts including Cargill's included ordering guidelines. However, Cargill's contract terms added new provisions for ordering guidelines, and because the ordering guidelines were extended, liquidated damages could not be assessed beyond those parameters. A provision was also added to Cargill's contract that allowed CMS to mitigate application of liquidated damages imposed against the vendor, in the event of orders exceeding the maximum percentages.

CMS changed the ordering and delivery dates in the Invitation for Bid to extend delivery dates for Cargill by approximately six weeks.

CMS also extended stockpiling requirements from the original terms contained in the Invitation for Bid.

Procurement Code and Administrative Rules Requirements

Making changes to terms and conditions of an Invitation for Bid after bids are opened is not allowable under the Illinois Procurement Code or CMS' administrative rules. The Code requires bids to be *"unconditionally accepted without alteration or correction, except as authorized in this Code"* (30 ILCS 500/20-10(e)). Provisions for correction or withdrawal of bids require that *"After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the State or fair competition shall be permitted"* (30 ILCS 500/20-10(f)).

CMS' administrative rules (44 Ill. Adm. Code 1) also contain provisions similar to those found in the Code. Section 1.2010 (n) Competitive Sealed Bidding states that, *"The contract resulting from this process shall reflect the awarded requirements and no material changes shall be made except in compliance with the requirements of the Code and this Part...."* The statute and CMS rules only permit correction or withdrawal of bids after opening under very limited circumstances, such as a mistake, that are not present here. There was no evidence in the procurement file that Cargill ever made any formal claim that it had made a mistake in its bid. Therefore, no changes should have been made to the terms and conditions.

A public record of the bid opening, as is required by the Illinois Procurement Code and CMS' administrative rules, was not contained in the procurement files for the first solicitation.

Record of Bid Opening

A public record of the bid opening, as is required by the Illinois Procurement Code and CMS' administrative rules (30 ILCS 500/20-10(d) and 44 Ill. Adm. Code 1.2010(i)), was not contained in the procurement files for the first solicitation. The bid opening record is required to show the name of each bidder, the bid price, and the name of the witness present at the opening.

According to CMS officials, bids are date stamped and a log is kept of the bid opening record. Because this document did not exist, we could not determine if all bids were received prior to opening and whether the opening was witnessed by a State employee as is required.

Second Solicitation Basis of Allocation

In order to encourage bids, the second solicitation allowed potential vendors to offer an approved salt alternative. One of the vendor's alternatives was accepted by CMS; however, the bid was a lump sum of 95,000 tons which required CMS to determine the allocation to

pool participants. According to CMS officials, pool participants were first surveyed to determine if the alternative was acceptable. Because there was more demand than supply for the offer, CMS had to allocate the product. The salt alternative was allocated so that IDOT locations received 100 percent of their requested amounts while local participants received approximately 27 percent of their requested amounts. The procurement files for the second solicitation did not contain a written determination regarding the basis of the award, including how this allocation was determined, the methodology used, and who made these decisions. (pages 26-33)

The procurement files did not contain a written determination regarding the basis of the award, including how this allocation was determined, the methodology used, and who made these decisions.

COMPLIANCE WITH TERMS AND CONDITIONS

We reviewed the procurements to determine if CMS and the vendors complied with the terms and conditions of the Invitations for Bid. There were terms and conditions that CMS did not hold the vendor to performing. CMS did not receive evidence of stockpiling as was required. Vendor sales reports also were not filed in a timely manner. CMS also did not force vendors to file performance bonds as part of the second solicitation as was required by the Invitation for Bid.

Emergency Purchase

CMS could have saved two local governments in McHenry County over \$137,000 by rejecting bids received for the second solicitation and procuring salt for these entities through the emergency purchase. The award notice of emergency procurement was published September 4, 2008, the same day the second solicitation's final award was published. The emergency purchase contract offered salt at a price of \$138.52 per ton; the two local governments, McHenry County Highway Department and the city of Woodstock, paid \$148.94 per ton. (pages 33-37)

CMS could have saved two local governments in McHenry County over \$137,000.

TIMELINESS OF SOLICITATIONS

CMS has used the same general cycle over the past three years to conduct its joint procurement of bulk rock salt. We reviewed the CMS joint procurements for bulk rock salt for the past three years to determine if the 2008 joint procurement was solicited later than usual. As is shown in Digest Exhibit 4, the date of first offer for the Invitation to Bid was almost identical for the 2006 and 2007 procurements as it was for 2008.

The 2009 CMS joint procurement of bulk rock salt was issued on April 30, 2009, with a bid opening date of May 21, 2009. Although CMS issued their joint procurement Invitation for Bid for bulk rock salt earlier

than in previous years, other states such as Wisconsin, Minnesota, Ohio, and Iowa opened bids for rock salt for the upcoming year prior to Illinois opening bids. (pages 37-38)

Digest Exhibit 4 COMPARISON OF CMS JOINT PROCUREMENTS OF BULK ROCK SALT Calendar Years 2006 - 2008			
	2006	2007	2008
Date First Offered	June 22, 2006	June 21, 2007	June 20, 2008
Date Bids Due	July 19, 2006	July 17, 2007	July 16, 2008
Notice of Award	August 18, 2006	September 12, 2007	August 21, 2008
Number of Bidders	6	5	4
Total Tons of Salt	1.39 million tons	1.34 million tons	1.35 million tons
Total Contract \$	\$52,963,802	\$57,018,000	\$91,227,637
Average Price/Ton	\$39.79	\$41.06	\$67.63
Source: Solicitation #219461, #221774, #222600, and summaries of contract information.			

CHANGES TO THE PROCUREMENT PROCESS

We reviewed the terms and conditions of the 2008 CMS joint procurement to identify potential changes that could be made. We surveyed other states about their practices for procuring salt. We also spoke with vendors to get their perspective as to whether certain requirements of the CMS joint procurement process have an effect on bidding certain locations and the bid price. On March 23, 2009, auditors met with CMS officials to discuss audit issues identified during fieldwork and possible changes to the procurement process. Below is a list of suggested changes that CMS should consider.

- **Timing** – CMS should issue the Invitation for Bid earlier and also monitor when other states are issuing their invitations for bid in order to avoid going out for bid after the supply has been committed to others.
- **Basis of Award** – CMS should consider combining smaller counties and dividing larger counties in order to encourage bidding.
- **Guaranteed Percentages** – CMS should consider whether the minimum and maximum requirements are a deterrent to bidding and should consider the feasibility of changing these to a smaller range to lessen the risks to vendors.

- **Stockpiling Requirements** – CMS should review the deadlines and percentage requirements for stockpiling to determine if extending these deadlines or changing the percentage requirements would encourage bidding or better pricing.
- **Bidder's Conference** – CMS may want to consider holding a bidder's conference to speak with all potential vendors in order to identify any potential problems prior to bidding or to review significant changes from the prior year's IFB.
- **Bid and Performance Bonds** – CMS should consider requiring bid bonds in order to ensure that vendors honor their bids. CMS should also review the 20 percent performance bond requirement to ensure that it is sufficient to protect the State's interest.
- **Delivery Requirements** – CMS should review ordering and delivery requirements to determine if changes are needed. CMS should also review the flexibility of delivery times for possible changes.
- **Liquidated Damages** – CMS should review the liquidated damages provisions for delivery and out of specifications to determine if these are appropriate and set at levels sufficient to protect the State and pool participants without discouraging competition.
- **Multi-Year Contracts** – CMS should consider entering into multiple year contracts or more aggressive renewal provisions that allow the State to control the renewal process.
- **Fuel Adjustment Clauses** – CMS should consider adding a fuel adjustment clause to the Invitation for Bid for bulk rock salt. This may also include provisions for escalation (price increase) and de-escalation (price decrease) in the price of fuel.
- **Establishing Delivery Points with Optional Pick-up for Local Governmental Units or Bidding Transportation Separately** – CMS should consider provisions for optional pick-up by participants or establishing general delivery points or requiring additional stockpile locations of vendors. (pages 38-43)

OTHER STATES

We surveyed other Midwestern states to determine their rock salt procurement practices. We contacted Iowa, Ohio, Wisconsin, Indiana, and

Missouri. Of the five states contacted, Iowa, Ohio, and Wisconsin have a program for jointly procuring rock salt for use on roads and highways. Missouri's procurement was only for the Missouri Department of Transportation (MODOT) locations; however, the solicitation includes a form for vendors to complete regarding whether they are willing to provide salt to local governments at the same price offered to MODOT. Indiana's reverse auction was primarily for the Indiana Department of Transportation, but also included some correctional facilities. Like Illinois, Wisconsin and Ohio have statutory programs allowing joint purchasing of supplies such as rock salt.

In addition to Illinois, many other Midwestern states experienced sharp increases in the cost of rock salt. Some states either had areas that did not receive bids (Ohio and Wisconsin) or rejected bids (Iowa and Missouri) because of the price. The Ohio Department of Transportation (ODOT) recently investigated the price increases in its 2008 procurement of rock salt. The investigation concluded that the 2008 letting results significantly departed from ODOT's historical experiences in terms of lower competition and higher prices.

Other States Comparisons

Although there are many factors that make comparisons between states difficult, Illinois paid slightly more than other states we surveyed. The experience in Illinois for 2008 was not unique, however, and every state in the Midwest that we surveyed experienced a significant increase in the price of rock salt. Although in some cases we received limited information from these states' officials, we were able to obtain the contracts and summarize information to make comparisons. Digest Exhibit 5 compares the rock salt procurements and contracts of Illinois and these other states. (pages 46-52)

Digest Exhibit 5 2008-2009 ROCK SALT CONTRACTS BY STATE Comparison of Procurement Dates, Amount, and Pricing					
State	Date First Offered	Bid Opening Date	Tons of Salt Awarded	Total Dollars	Average Price Per Ton
Illinois	June 20, 2008	July 16, 2008	1,348,829	\$91,227,637	\$67.63
Indiana	April 28, 2008	May 16, 2008	408,105	\$23,401,452	\$57.34
Iowa	April 30, 2008	May 21, 2008	323,915	\$19,973,008	\$61.66
Missouri	May 12, 2008	May 29, 2008	281,405	\$15,091,864	\$53.63
Ohio	Unknown	August 21, 2008	487,860	\$30,476,614	\$62.47
Wisconsin	Renewed and June 27, 2008	Renewed and July 15, 2008	679,110	\$32,537,754	\$47.91

Source: OAG survey of other states.

NON-PARTICIPANTS

We selected a judgmental sample of entities that did not participate in CMS' joint procurement and surveyed them to determine the price they paid for salt for the 2008 winter season. These included local governments that had participated in the joint procurement in the past and some that had never participated. Out of the 25 localities we surveyed, 17 provided responses. The localities that responded included six villages, three township road districts, four county highway departments, one park district, and three cities. Suggestions made by non-participants included:

- CMS should aggregate communities and go out for bids earlier.
- One local government stated that it has a small storage site, and it would like a quicker response to deliveries of salt when ordered.
- One local government stated that it doesn't think contracts should be awarded unless all counties are given ample time to submit requests, and that the playing field should be leveled regarding pricing and delivery charges.
- One local government wished it had been told it was not in the joint procurement before it was time to buy salt. (pages 52-55)

COMMUNICATION WITH LOCAL GOVERNMENT PARTICIPANTS

CMS needs to improve its communications with local government participants by providing full disclosure of terms and conditions, providing accurate information in communications and memos, and giving local governments adequate time to make decisions.

CMS did not provide the full terms and conditions of the Invitation for Bid to participants. Only the general or major terms were provided to participants for the 2008 joint procurement. In order to make an informed decision, potential participants needed to see the complete and detailed terms that will be included in the Invitation for Bid and contracts they will be using. There were instances of CMS providing terms to local governmental participants in memos and then changing these terms. For instance:

CMS needs to improve its communications with local government participants by providing full disclosure of terms and conditions, providing accurate information in communications and memos, and giving local governments adequate time to make decisions.

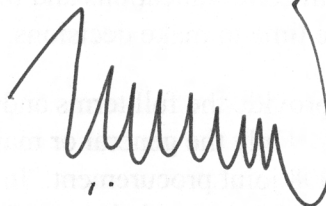
- The February 14, 2008 survey for participation stated that the vendor would agree to furnish not less than 130 percent of the amount requested. For the majority of participants, this was changed to 100 percent when CMS revised the terms and conditions of Cargill's contract.
- On August 20, 2008 CMS notified joint participants in a memo that an alternative offer had been received that would meet approximately 48 percent of their need. Our analysis shows that only approximately 27 percent of the initial requests were supplied.

CMS gave local government participants very short timeframes to make decisions related to commitments for the procurement. In some instances local participants were given only a day to reply regarding whether they would commit to a certain price and what if any additional tonnage would be needed. Although CMS may have been operating under short timeframes with salt vendors, asking joint participants to agree to increases of 50 percent or more in a 24 hour period does not allow adequate time for notification of city councils or county boards.

Some local governments we contacted were not aware they could participate while others claimed that they thought they were participating or that CMS had lost or misplaced their requests to participate. (pages 56-58)

RECOMMENDATIONS

The audit report contains eight recommendations to the Department of Central Management Services. The Department generally agreed with the recommendations. Appendix E to the audit report contains the Department of Central Management Services' responses.



WILLIAM G. HOLLAND
Auditor General

WGH/MSP
June 2009