



**AUDIT OF THE
CONTRACT PROGRAM
FOR THE PERIOD JULY 1, 2010 TO JUNE 30, 2012**

Department of Developmental Services

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EXECUTIVE SUMMARY

The Department of Developmental Services' (DDS) Audit Branch conducted an audit of DDS' Contract Management Unit (CMU) for the time period of July 1, 2010 through June 30, 2012.

The results of the audit disclosed the following findings of non-compliance:

Finding 1: Services Provided Prior to Contract Approval (Repeat)

A sample review of 42 contracts found one contractor, TheraStaff LLC., provided services before the contract was approved. Since contracts are not valid until approved, services should not be provided before the contractual start date. This is not in compliance with the State Contracting Manual (SCM), Section 4.09(A) and (D) and the Department of General Service's (DGS) General Terms and Conditions, Sections 610. This issue was identified in the two prior DDS Contract Program audits.

Finding 2: Circumventing the Advertising and Bidding Process (Repeat)

A sample review of 204 service orders revealed two instances where the same service was split into multiple service orders in order to keep the projects' costs below \$5,000; thereby circumventing the competitive bidding process requirements. This is not in compliance with SCM, Volume 1, Chapter 5.75A. This issue was identified in the prior DDS Contract Program audit.

Finding 3: Post Evaluation (Repeat)

A sample review of 42 contracts revealed the CMU failed to complete the post Contract/Contractor Evaluation form, STD 4, within the required 60 days of the completion of the contract for one consultant contract, HKA Elevator Consulting, contract number FV109035. This is not in compliance with the SCM, Section 3.02.5(A). This issue was identified in the two prior DDS Contract Program audits.

Finding 4: Missing Standard Contract Language (Repeat)

A sample review of 204 service orders revealed four instances in which services of \$5,000 or more did not contain the Standard Language contract provisions. This is not in compliance with SCM, Volume 1, Chapter 2.07. This issue was identified in the prior DDS Contract Program audit.

BACKGROUND

In order to reduce administrative costs and complete contracts in a more time efficient manner, the DDS requested an exemption from the requirement that DDS contracts be approved by the Department of General Services' (DGS) Office of Legal Services (OLS). DGS granted DDS the exemption for certain contracts. The exemption is renewed every four years.

During the period under audit, Exemption Letter 8.5 was in effect from April 1, 2009, through March 31, 2013. One requirement for maintaining the exemption is that DDS must conduct a biennial audit to determine whether DDS' Customer Support Section–Contract Management Unit (CMU) is in compliance with the Public Contract Code (PCC) and with DGS's conditions for maintaining the exemption. The Exemption Letter 8.5 granted by DGS allows DDS to be exempt from the following contracts:

- Pursuant to PCC Section 10351, contracts under \$75,000 are subject to approval from DGS per PCC Section 10335; and
- Interagency Agreements under \$75,000 per Government Code, Section 11256.

OBJECTIVE, SCOPE, AND METHODOLOGY

This required audit was conducted to determine whether DDS has complied with the requirements of the DGS Exemption Letter 8.5 for the period of April 1, 2009, through March 31, 2013.

The audit was conducted in accordance with the Standards for the Professional Practice of Internal Auditing. These standards require that audits be planned and performed to obtain reasonable assurance that the objective of the audit, as specified in the DGS's Contracting Program Audit Guide, is met. The audit considered the relevant aspects of the internal control structure to determine whether the system is sufficiently providing reasonable assurance of compliance with contracting laws and policies. Pursuant to PCC, Section 10351, a State agency must meet the following in order to obtain an exemption approval of its contracts from DGS' OLS:

- Designates an agency officer who is responsible and directly accountable for the agency's contracting program.
- Establishes written policies and procedures and a management system that will ensure the State agency's contracting activities comply with applicable provisions of law and regulations and that it has demonstrated ability to carry out these policies and procedures and implement the management system.
- Establishes a plan for ensuring that contracting personnel are adequately trained in contract administration and contract management.
- Conducts an audit of the contracting program every two years and reports to DGS as required.
- Establishes procedures for reporting to DGS and the Legislature on such contracts as the Legislature may require in the Budget Act.

The criteria used for this review was the DGS Contracting Program Audit Guide, State Contracting Manual, State Administrative Manual, State Cal-Card Agreement, and the PCC. Additionally, the Audit Guide must be used when an audit is required as a condition for an exemption approval of an agency's contracts from DGS' OLS.

The objectives of this audit as specified in the DGS Contracting Program Audit Guide are:

- To determine whether the contracting program is complying with the legal requirements for exemption, specifically as to the oversight of all awarded contracts subject to exemption.
- To determine and document the system of internal controls.

- To determine whether the contracting system, if followed, can be reasonably relied upon to provide adequate internal controls and produce contracts in accordance with the law, State policies, and the best interests of the State.
- To test the effectiveness of the internal controls through evaluation of a sample of contracts awarded since the prior audit.
- To determine whether appropriate corrective actions have been implemented in response to previous audit findings.

The scope of this audit, as specified in the DGS Contracting Program Audit Guide, requires that the audit include, but not be limited to, the following:

- Per PCC, Section 10351, a limited review of the internal controls over the contracting laws and policies to gain reasonable assurance of compliance with applicable laws and regulations.
- Review of a selection of contracts, including interagency agreements, to ensure compliance with DGS's contracting procedures and requirements.
- Review of supporting documentation to ensure timely payment and compliance with applicable payment requirements.

The procedures performed for this audit included, but were not limited to, the following:

- Reviewed the Contracting Program Audit Survey to gain an understanding of policies and procedures used by CMU. A self-survey was completed by CMU and reviewed by the auditor. Follow-up discussions were conducted to obtain clarification of procedures as needed.
- A sample of 42 contracts was selected. This sample included contracts from developmental centers and DDS headquarters of various dollar amounts, contractors and contract types.
- The sampled contracts were reviewed for the entire contracting process. Each contract was reviewed for compliance to the applicable laws and regulations. This review included: the contract request, bidding process (when applicable), awarding of the contract, contract transmittal, contract terms, and funding for the contract.
- The initial invoice for each contract was examined to determine whether the services provided were consistent with the services in the contract as well as to verify that the payment was consistent with the payment provision of the contract.
- Contracts in the audit sample that were identified as not being subject to approval by DGS' OLS were reviewed to verify the basis for exemption as well as verify that the contract was stamped "exempt."

- Contracts in the audit sample that were submitted to DGS for approval were reviewed to verify that the contracts were stamped “approved” and that amendments were submitted to DGS for approval, as required. The effectiveness of controls for the timely submission of contracts to DGS for approval was also evaluated.
- Contracts in the audit sample that were identified as meeting the criteria for DDS delegated approval were examined to determine whether the contracts complied with general contracting criteria, as required by DGS. These general contracting criteria are contained in the DGS Contracting Program Audit Guide which was used for this examination.
- The contracts in the audit sample included 12 interagency agreements. These agreements were reviewed to determine if DGS’s approval was obtained for the agreements that exceeded the delegation amount. The agreements were reviewed to ensure it contained the required financial control and competitive bidding language. In addition, the interagency agreements were examined to determine if agreements were used to circumvent contracting requirements.

In addition to the 42 contracts sampled:

- Two-hundred four small dollar value contracts for fiscal years 2010-11 and 2011-12 were reviewed to determine whether contracts were being split in order to circumvent applicable contracting criteria as well as to verify that they met the criteria for issuing a service order.
- Fifteen Cal-Card statements were randomly selected from DDS headquarters and the Developmental Centers to review Cal-Card purchases. Invoices and backup documents were examined to determine whether any of the Cal-Cards purchased were prohibited by DDS’s Cal-Card Handbook. The purchases on the Cal-Card statements were reviewed for evidence of splitting payments to circumvent purchase regulations and policies.

In addition, payments reflected on the Cal-Card invoices were reviewed to determine whether payments were made within 45 days of the invoice date, as required under the guidelines for the Cal-Card Program.

- All audit findings that were identified in the prior DDS audit of the Contract Program were reviewed to determine the degree and completeness of corrective actions taken. The prior audit contained seven findings. From the review of these prior findings, three of the findings were fully resolved and four are reported as repeat findings in the Findings and Recommendations section.

CONCLUSION

Based upon the DGS Contracting Program Audit Guide for the review period of July 1, 2010, through June 30, 2012, DDS did not comply with the items identified in the Findings and Recommendations section of this report.

Errors or irregularities may still occur and remain undetected due to inherent limitations in any internal control structure. Furthermore, projection of any evaluation of the structure in future periods is subject to the risk that procedures may become inadequate due to changes in conditions, diminished design effectiveness, or deterioration of policies and procedures. Based upon the procedures performed, there were no conditions identified that would constitute a significant deficiency in the design or operations of the internal control structure. However, our consideration of the internal control structure was limited and would not necessarily disclose all conditions.

VIEWS OF RESPONSIBLE OFFICIALS

DDS issued a draft audit report on February 21, 2013. The findings in the report were discussed at an exit conference with DDS' Contract Management Unit on February 26, 2013. At the exit conference, we stated that the final report will incorporate the views of responsible officials.

RESTRICTED USE

This report is solely for the information and use of the DDS and the Department of General Services. It is not intended and should not be used by anyone other than those specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record.

FINDINGS AND RECOMMENDATIONS

Finding 1: Services Provided Prior to Contract Approval (Repeat)

A sample review of 42 sampled contracts revealed one contractor, TheraStaff LLC., contract number FV119022, provided services before the contract was approved. Since contracts are not valid until approved, services should not have been provided before the contractual start date. The issue was due to an oversight by staff at Fairview Developmental Center (FVDC). This finding was identified in the two prior DDS contract audits. In the prior audit response, CMU stated that all contract analysts are trained to educate contract managers and program staff that no work on the contract may start until the contract has been signed by both parties, approved by DGS, and the contractor has received a copy of the formally approved contract. (See Attachment A.)

State Contracting Manual (SCM), Section 4.09(A) states:

“The basic State policy is that no contractor should start work until receiving a copy of the formally approved contract.”

SCM, Section 4.09(D) states:

“Warning to Contractors:

1. Contracts are not valid unless and until approved by DGS/OLS if such approval is required by law. See PCC Section 10335.
2. The contractor should be warned not to start work before receipt of the approved contract. The warning can be provided in the IFB or RFP, at the time of the award, or at the time the contract is sent to the contractor for signature.
3. If the contract is not approved and the contractor has begun work, the contractor may be considered to be a volunteer or the contractor may have to pursue a claim for payment by filing with the Victim Compensation and Government Claims Board. The State has no legal obligation unless and until the contract is approved.

Note: Once the contract is approved, authorized services provided by the contractor can be paid from the beginning date of the contract.”

Also, DGS's General Terms and Conditions (GTC), Sections 610 state:

"This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained."

Recommendation:

CMU must take the issue seriously and ensure that contract managers are aware of their responsibilities and that they clearly understand that services cannot be paid prior to the contract's approval. In addition, contractors should be warned not to start work before receipt of the approved contract. Accounting must not pay any contractor who starts work before the contract is approved, except in emergency situations.

Finding 2: Circumventing the Advertising and Bidding Process (Repeat)

A sample review of 204 service orders revealed two instances where the same service was split into multiple service orders in order to keep the projects' costs below the \$5,000 threshold to avoid the requirement for competitive bidding. This issue was identified in the prior DDS Contract Program audit

In the first instance, Sonoma Developmental Center (SDC) had three separate service orders of \$4,999.00 with Gene Campagna totaling \$14,997.00 to set up and provide maintenance for SDC's telephone systems at multiple locations. Though, SDC had resolved this issue by completing the competitive bidding process and having an executed contract as of July 27, 2011. The review of Gene Campagna's service orders and vendor contract file revealed the Request For Proposal (RFP) was not sent to potential contractors until eight months after the second service order was approved. CMU stated in the response to the prior audit report that contract managers were instructed during a quarterly meeting on September 2011 about the importance of pre-planning prior to starting new projects to allow sufficient time to complete the bidding process.

In the second instance, FVDC had 20 service orders with OSO Home Care totaling \$32,270.71 to provide medication mixture services for consumers at FVDC. CMU stated that separate service orders were used because the medication mixture was unique to each consumer. However, since the medication was mixed at the same facility and the service order indicated the rates for the medications were based on per unit price, FVDC should utilize the competitive bidding process for this service. (See Attachment B.)

SCM, Volume 1, Chapter 5.75A states:

"Contracts of \$5,000 or more must be advertised in the CSCR, before the contracting process begins. Contracts awarded as an NCB [non-competitively bid],

and amendments that require an NCB approval will be published in the CSCR by DGS/Procurement Division as part of the NCB approval process. No agency is required to advertise the NCB approval.”

SCM, Volume 2, Chapter 4.A.3.3. states:

“Bid opportunities must be advertised for at least 10 working days prior to the bid opening per GC 14827.2. Agencies shall not release an Invitation for Bid (IFB) prior to publication in the CSCR.”

Recommendation:

CMU/DCs must take the issue seriously and monitor service order contracts to verify that transactions are not being split in order to circumvent the competitive bidding level set at \$5,000 or more. In addition, if it appears that cost for services will be ongoing and may exceed \$4,999.00, the authorizing personnel should utilize the competitive bidding process for these services.

Finding 3: Post Evaluation (Repeat)

A sample review of 42 contracts revealed the CMU failed to complete the post Contract/Contractor Evaluation form, STD 4, within the required 60 days of the completion of the contract for one consultant contract, HKA Elevator Consulting, contract number FV109035. CMU stated that the STD 4 form was not completed timely because procedures were not followed. This issue was identified in the prior two audit reports. CMU stated in its response to the prior report that it had provided training and reminded all contract managers to complete the contract evaluation form within the required time. (See Attachment C.)

State Contracting Manual, Section 3.02.5(A) states:

“One Contract/Contractor Evaluation, form STD 4, must be prepared within 60 days of the completion of the contract.”

Recommendation:

CMU must take this issue seriously and ensure its procedures are followed. CMU must also ensure contract managers understand the importance of completing the STD 4 form within 60 days of the completion of the contract.

Finding 4: Missing Standard Contract Language (Repeat)

A sample review of 204 service orders revealed four instances in which services of \$5,000 or more did not contain the Standard Language contract provisions. CMU stated that the Standard Language was not included in the service orders because SDC staff did not follow procedures. This issue was identified in the prior audit report. CMU stated that it had instructed its contract analyst to reference DGS’

General Terms and Conditions (GTC) in the body of the service order if the dollar amount exceeds \$5,000. However, review of the four service orders over \$5,000 revealed none had references to DGS' GTC. (See Attachment D.)

State Contracting Manual, Volume 1, Chapter 2.07 states:

“The provisions noted in Table 2.2 (Attachment E) are generally required. Agencies should document non-use of clauses.”

Recommendation:

CMU must take the issue seriously and ensure that all services amounting to \$5,000 or more have the required standard contract language included in the contract. CMU must also adhere to the policies and procedures in the State Contracting Manual when contracting for goods or services.

EVALUATION OF RESPONSE

As part of the audit report process, CMU has been provided with a draft report and was requested to provide a response to each finding. CMU's response dated March 15, 2013, is provided as Appendix A. This report includes the complete text of the findings in the Findings and Recommendations section as well as a summary of the findings in the Executive Summary section.

DDS' Audit Branch has evaluated CMU's response. CMU's response addressed the audit findings and provided reasonable assurance that corrective action would be taken to resolve the issues. During the follow-up review of the next scheduled audit, the DDS Audit Branch will confirm that CMU has implemented corrective actions as identified in their response to the draft audit report.

Finding 1: Services Provided Prior to Contract Approval (Repeat)

CMU concurs with the finding and recommendation. CMU stated contract analysts at the facilities Headquarters' (HQ) have been trained the importance of educating the project representatives about their responsibilities and ensuring that the contractors do not start work before the approval date of the contract, unless it is an emergency situation.

CMU also stated that in collaboration with the Developmental Centers Division (DCD), and HQ Accounting, it has implemented a procedure that includes two levels of review of the approved invoices in addition to the project representative's review.

Finding 2: Circumventing the Advertising and Bidding Process (Repeat)

CMU concurs with the finding and recommendation. CMU has trained DDS' contract analysts on the importance of working with the project representatives to ensure that there is enough time to complete the bid process before the current contract expires or the services are needed. In addition, CMU, DCD and the facilities' Fiscal Officers will monitor the service orders to ensure that they are not circumventing the competitive bidding process.

Finding 3: Post Evaluation (Repeat)

CMU concurs with the finding and recommendation. CMU contract analysts and project representatives have been trained DDS' about the importance of completing the Contract Evaluation form (STD 4) when a consulting contract is completed. CMU revised DDS' Contract Checklist in April 2011, to require the contract analyst to verify that the project representative has completed the contract evaluation form

within the required time. Along with the additional training, CMU and DCD are implementing a tracking and monitoring procedure that ensures that the Contract Evaluation form is completed within the required time.

Finding 4: Missing Standard Contract Language (Repeat)

CMU concurs with the finding and recommendation. CMU stated the contract analysts have been trained about the need of referencing DGS' General Terms and Conditions in the body of the service order when the estimated payment for the services exceeds \$5,000 and there is no other option to pay for the service.

CMU stated the Deputy Director of DCD will send a memo to the facilities' ASDs and Fiscal Officers that conveys the seriousness of the issue and the importance of complying with the contracting rules and regulations, and provides direction to ensure compliance.

Along with the memo from the Deputy Director of DCD, the new procedures will be e-mailed to all of the facilities' ASDs, Fiscal Officers and DDS' contracting analysts by April 15, 2013. CMU stated within the next 60 days, CMU and DCD will start conducting quarterly training webinars for the DDS' contracting analysts and project representatives. In addition to the new procedures and the quarterly webinars, CMU and DCD will perform scheduled reviews of the HQ and facilities contract files to ensure that DDS' contracting program is in compliance with the contracting codes and regulations. If the review identifies compliance issues, a corrective action plan will be developed by the facility and/or HQ contracting staff and approved by CMU and DCD.

**DEPARTMENT OF DEVELOPMENTAL SERVICES
AUDIT OF CONTRACT PROGRAM
SERVICES PROVIDED PRIOR TO CONTRACT APPROVAL
AUDIT PERIOD JULY 1, 2010 TO JUNE 30, 2012**

	Contract Number	Sample Number	Contract Name	Date Contract Approved	Service Start Date	Overpaid
1	FV119022	39	Therastaff, LLC	11/17/2011	11/1/11	\$ 2,943.68

**DEPARTMENT OF DEVELOPMENTAL SERVICES
AUDIT OF CONTRACT PROGRAM
CIRCUMVENTING THE BIDDING PROCESS
AUDIT PERIOD JULY 1, 2010 TO JUNE 30, 2012**

	Service Order	Contractor	Type of Service	Amount	Total
1	SN030042	Gene Campagna	Phone System Repairs	\$ 4,999.00	
2	SN030074	Gene Campagna	Phone System Repairs	\$ 4,999.00	
3	SN030127	Gene Campagna	Phone System Repairs	\$ 4,999.00	\$ 14,997.00

1	FV030095	OSO Home Care	Admixture Services	\$ 2,289.81	
2	FV030127	OSO Home Care	Admixture Services	\$ 1,999.77	
3	FV030135	OSO Home Care	Admixture Services	\$ 709.83	
4	FV030179	OSO Home Care	Admixture Services	\$ 882.44	
5	FV030180	OSO Home Care	Admixture Services	\$ 989.28	
6	FV030195	OSO Home Care	Admixture Services	\$ 2,563.98	
7	FV030214	OSO Home Care	Admixture Services	\$ 1,989.91	
8	FV030266	OSO Home Care	Admixture Services	\$ 1,721.83	
9	FV030287	OSO Home Care	Admixture Services	\$ 1,801.26	
10	FV030289	OSO Home Care	Admixture Services	\$ 1,479.36	
11	FV130089	OSO Home Care	Admixture Services	\$ 2,938.78	
12	FV130124	OSO Home Care	Admixture Services	\$ 2,743.58	
13	FV130140	OSO Home Care	Admixture Services	\$ 227.85	
14	FV130172	OSO Home Care	Admixture Services	\$ 1,432.84	
15	FV130179	OSO Home Care	Admixture Services	\$ 821.34	
16	FV130206	OSO Home Care	Admixture Services	\$ 642.98	
17	FV130218	OSO Home Care	Admixture Services	\$ 2,652.39	
18	FV130219	OSO Home Care	Admixture Services	\$ 1,400.00	
19	FV130244	OSO Home Care	Admixture Services	\$ 763.16	
20	FV130268	OSO Home Care	Admixture Services	\$ 2,220.32	\$ 32,270.71

**DEPARTMENT OF DEVELOPMENTAL SERVICES
AUDIT OF CONTRACT PROGRAM
POST EVALUATION
AUDIT PERIOD JULY 1, 2010 TO JUNE 30, 2012**

	Contract Number	Sample Number	Contract Name
1	FV109035	37	HKA Elevator Consulting

**DEPARTMENT OF DEVELOPMENTAL SERVICES
AUDIT OF CONTRACT PROGRAM
MISSING STANDARD CONTRACT LANGUAGE
AUDIT PERIOD JULY 1, 2010 TO JUNE 30, 2012**

	Service Order	Contractor	Total
1	SN030066	Opperman & Sons	\$ 14,018.92
2	SN030067	Opperman & Sons	\$ 12,703.01
3	SN030128	Pape Machinery	\$ 6,556.29
4	SN030174	General Equipment	\$ 7,737.10

**DEPARTMENT OF DEVELOPMENTAL SERVICES
AUDIT OF CONTRACT PROGRAM
2.07 STANDARD LANGUAGE**

Table 2.2 - Contract Clauses

Contract Provisions	When Required	Law/Statute
Audit by State Auditor	All contracts over \$10,000	GC § 8546.7
Audits and access to records	For contracts subject to DVBE goals or good-faith efforts.	PCC § 10115 et seq. 2 CCR § 1896.60 et seq.
Nondiscrimination clause	All contracts	GC § 12990
Antitrust Claims	All competitively bid contracts	GC § 4550 et. seq.
Statement of Compliance	Contracts \$5,000 or over when not in bid documents	2 CCR § 8113
Americans with Disabilities Act (ADA)	All contracts	42 USC § 12101 et seq.
National Labor Relations Board Certification	All contracts	PCC § 10296
Drug-free workplace	All contracts	GC § 8350 et seq.
Progress payments	All contracts where progress payments will be made	PCC § 10346
Recycled paper	All contracts	PCC §§ 10233, 10308.5, 10354
Termination & amendments	All contracts	GC § 11010.5
Expatriate Corporations	All contracts	PCC § 10286.1
Priority hiring considerations	Contracts in excess of \$200,000	W&I §§ 11200, 11349, PCC § 10353, 2 CCR § 1896.30
Resolution of contract disputes	All service contracts should: consulting services must; Public works contracts may	PCC §§ 10240.5, 10381, 22200 et seq.
Validity	All contracts requiring DGS approval	PCC §§ 10295, 10335
Subject to availability of funds	All contracts signed before approval of budget	State and federal budgets
Four digit capability	IT contracts for systems, software, and instrumentation with imbedded chips	State Policy (DOF & DGS)
Convict/Forced Labor / or sweatshop labor	All contracts for purchase of goods or commodities. All contracts for purchase or laundering of apparel or garments.	PCC § 6108
Sweatfree Code of Conduct		
Promoting/Deterring Union organizing	Contracts of \$50,000 or more.	GC § 16645 et. seq.
Child Support Compliance	All Contracts exceeding \$100,000 (Interagency Agreements are exempt from	PCC § 7110
Non Eligible Alien certification	All Sole Proprietor Contracts	8 USC § 1621 et. seq.
Insurance Requirements	All contracts doing hazardous works	State policy
Air/Water Pollution Violation Certification	All contracts over \$10,000	GC § 4477
Domestic Partners	All contracts over \$100,000	PCC § 10295.3