



**AUDIT OF THE
CONTRACT PROGRAM
FOR THE PERIOD JULY 1, 2008 TO JUNE 30, 2010**

Department of Developmental Services

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EXECUTIVE SUMMARY

The Department of Developmental Services' (DDS) Audit Branch conducted an audit of DDS's Contract Management Unit (CMU) for the time period of July 1, 2008 through June 30, 2010.

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

Finding 1: Negative Evaluations (Repeat)

The 33 sampled contracts included two consultant contracts which were reviewed to determine whether DDS had requested negative evaluations from the Department of General Services (DGS). It was found that DDS did not maintain documentation to show that requests were made to DGS for negative evaluations of the two consultant contracts. In addition, no documentation was maintained to show that DGS responded to requests for negative evaluations. This is not in compliance with the State Contracting Manual (SCM), Section 3.02.3(A). This issue was identified in the prior DDS contract audit.

Finding 2: No Post Evaluation (Repeat)

Within the 33 contracts sampled, two were consultant contracts. From the two consultant contracts, it was found that one contract was over the 60 day completion mark and had no post evaluation. This is not in compliance with the SCM, Section 3.02.5(A). This issue was identified in the prior DDS contract audit.

Finding 3: Contracts Approved Late (Repeat)

The review of the 33 sampled contracts revealed that two contracts were found to have been approved after the effective date; however, no justification was provided for the delay in the approval process. All contracts should be approved prior to the effective date of the contract. This is not in compliance with DGS's General Terms and Conditions, Sections 306 and 1005. This issue was identified in the prior DDS contract audit.

Finding 4: Services Provided Prior to Contract Approval/Start Date (Repeat)

A review of the initial payment invoices for each of the 33 sampled contracts found that for of two contracts, services were provided before the contracted start date or before the contract was approved. Since contracts are not valid until approved, services should not be provided before the contracted start date. This is not in compliance with the SCM, Section 4.09(A) and (D) and DGS's General Terms and Conditions, Sections 306 and 1005. This issue was identified in the prior DDS contract audit.

Finding 5: Circumventing the Advertising and Bidding Process

A sample review of 95 service orders revealed three instances in which the contracts were split into multiple transactions in order to keep the total project costs below the \$5,000. If the amount was more than \$5,000, it would require CMU to observe the competitive bidding process requirements. CMU was found to not be in compliance with the SCM, Volume 1, Chapter 5.75A.

Finding 6: Missing Standard Contract Language

A sample review of 95 service orders revealed six instances in which services were \$5,000 or more, which did not contain or reference the Standard Language contract provisions. This is not in compliance with SCM, Volume 1, Chapter 2.07.

Finding 7: Cal-Card – Purchase of Gift Cards

During the review of Cal-Card purchases, it was found that Sierra Vista Developmental Center (SVDC) had purchased gift cards from various stores. As a result, the initial sample was expanded to include all Cal-Card purchases from July 2006 until the closure of SVDC in February 2010. In the expanded sample, it was found that SVDC had purchased a total of \$46,100 in gift cards, all within fiscal years 2006-07 and 2007-08. Cal-Card purchases of “same-as-cash” items are prohibited per DDS’s Cal-Card Handbook. SVDC ceased this practice as of June 2008 and no other such purchases were found.

BACKGROUND

In order to reduce administrative costs and complete contracts in a more time efficient manner, the Department of Developmental Services (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's 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's 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's 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 33 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's 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 two contracts that contained purchases under a Master Service Agreement (MSA). These contracts were reviewed to determine whether it included MSA rates and that the scope was consistent with MSA.
- The contracts in the audit sample included seven 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 33 contracts sampled:

- Ninety-five small dollar value contracts for fiscal years 2008-09 and 2009-10 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.
- Eight months of 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 four findings. From the review of these prior findings, none of the findings were fully resolved and are reported as repeat findings in the Findings and Recommendations section. (See Findings 1, 2, 3, and 4.)

CONCLUSION

Based upon the DGS Contracting Program Audit Guide for the review period of July 1, 2008 through June 30, 2010, 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 August 8, 2011. The findings in the report were discussed at an exit conference with DDS's Contract Management Unit on August 8, 2011. At the exit conference, we stated that the final report will incorporate the views of responsible officials. The response to the audit report was sent by Pam Robison, Chief of DDS' Customer Support Section, which includes the Contract Management Unit. The response indicates agreement with the draft audit report, except for one of the two contracts identified in Finding 4.

RESTRICTED USE

This report is solely for the information and use of the Department of Developmental Services 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: Negative Evaluations (Repeat)

The 33 sampled contracts included two consultant contracts, which were reviewed to determine whether DDS requested negative evaluations from DGS. In the prior audit response, CMU stated that contract analysts would be trained to follow procedures for handling consultant contracts and that a DDS contract checklist would be revised to include reviewing for negative evaluation. However, during the audit, it was found that DDS did not maintain documentation to show that requests were made to DGS for negative evaluations for either of the consultant contracts. In addition, no documentation was maintained to show that DGS responded to any requests for negative evaluations. (See Attachment A.)

State Contracting Manual, Section 3.02.3(A) states:

“Before awarding a consulting services contract of \$5,000 or more, an agency must request a copy of any negative evaluations from DGS/OLS.”

Recommendation:

CMU should utilize the checklist that was developed as a result of a similar finding during the prior audit to ensure that negative evaluations for all consultant contracts of \$5,000 or more are kept on file. The documentation should include the DGS responses to the requests for negative evaluations.

CMU’s Response:

CMU stated that they are in agreement with the audit finding.

See Attachment I for the full text of CMU’s response to the draft audit report and Attachment J for DDS’s evaluation of CMU’s response.

Finding 2: No Post Evaluation (Repeat)

The review of 33 sampled contracts revealed that two were consultant contracts. These two consultant contracts were reviewed to determine whether DDS was performing and completing the Contract/Contractor Evaluation form, STD 4, for post evaluation of the contractors’ performance within 60 days of the completion of the contract. In the prior audit response, CMU stated that contract analysts would be trained to follow procedures for handling consultant contracts and that the STD 4 would now accompany any executed consulting contract when it is forwarded to the contract manager/program staff; however, it was found that one of the two consultant contracts was over the 60 day completion mark of the contract and had no post evaluation. (See Attachment B.)

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 should follow policies and procedures to ensure that the Contract/Contractor Evaluation form, STD 4, is prepared with 60 days of the completion of the contract. In addition, management should inform staff of their failure to follow procedures.

CMU’s Response:

CMU stated that they are in agreement with the audit finding.

See Attachment I for the full text of CMU’s response to the draft audit report and Attachment J for DDS’s evaluation of CMU’s response.

Finding 3: Contracts Approved Late (Repeat)

The review of 33 sampled contracts revealed that two contracts were found to have been approved after the effective date without justification. Although the written contracts included the scope of services to be provided and the compensation to be paid for the services, all contracts should be approved prior to the effective date of the contract. In the prior audit response, CMU stated that it will continue to review and refine their procedures to ensure contracts are processed and approved in a timely manner. (See Attachment C.)

DGS’s General Terms and Conditions, Sections 306 and 1005 state:

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

Recommendation:

CMU staff should continue to work with its customers to ensure that contract requests are submitted with sufficient lead time to meet DGS’s contract timelines. In addition, CMU should continue to review and monitor its procedures to determine if any improvements can be made to ensure contracts are processed within the DGS timelines.

CMU’s Response:

CMU stated that they are in agreement with the audit finding.

See Attachment I for the full text of CMU’s response to the draft audit report and Attachment J for DDS’s evaluation of CMU’s response.

Finding 4: Services Provided Prior to Contract Approval/Start Date (Repeat)

A review of the initial payment invoice for each of the 33 sampled contracts was performed to verify that work began after the contract was approved. It was found that for two contracts, services were either provided before the contract was approved or services were provided before the contract start date. Since the contracts are not valid until they have been approved or the start date has commenced, services should not have been provided. In the prior audit response, CMU stated that all contract analysts are trained to notify contract managers and program staff that work on the contract may not commence until it has been signed by both parties and approved by DGS. (See Attachment D.)

State Contracting Manual, 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.”

State Contracting Manual, 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, Sections 306 and 1005 state:

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

Recommendation:

CMU should also continue to monitor 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 and that the contractor should be warned not to start work before receipt of the approved contract.

CMU's Response:

CMU stated that they are not in agreement with the audit finding. CMU states that the invoice for Greenwaste Recovery, Inc. had an "Invoice date" and a "Service date" of July 1, 2008, and that the only indication of a June 2008 date was in the header next to the account number for the invoice. CMU believes this finding to be unsupported and should be eliminated as a finding as the services were provided after the contract was approved.

See Attachment I for the full text of CMU's response to the draft audit report and Attachment J for DDS's evaluation of CMU's response.

Finding 5: Circumventing the Advertising and Bidding Process

A sample review of 95 service orders revealed three instances where contracts were split in order to keep the purchase below the \$5,000 threshold which did not require competitive bidding. For purchases that are less than \$5,000, DGS does not require a department to complete a full Contract/Std 213 or require the department to go through the competitive bidding process. Contracts under \$5,000 dollars can be placed on a service order. The following are the three service orders whereby CMU circumvented the bidding process:

Three separate service orders with Gaymar Industries, Inc. to rent beds for the Sonoma Developmental Center totaling \$14,669.25. One contract should have been negotiated for the rental of beds.

Five service orders with Bi-Tech Industries totaling \$12,250 to build a greenhouse at Fairview Developmental Center. The greenhouse project was split into ground preparation, pouring cement footings, installing greenhouse, pouring cement sideway, and adding siding to the greenhouse.

Two service orders totaling \$6,500 with Ron, Vinyl & Furniture to provide handyman services at DDS headquarters. One service order was for the main office building and the other was for the office across the street. Both locations are considered headquarter offices. (See Attachment E.)

State Contracting Manual, 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.”

Recommendation:

CMU should 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.

CMU’s Response:

CMU stated that they are in agreement with the audit finding.

See Attachment I for the full text of CMU’s response to the draft audit report and Attachment J for DDS’s evaluation of CMU’s response.

Finding 6: Missing Standard Contract Language

A review of 95 service orders revealed six instances where services amounting to \$5,000 or more did not contain or reference the Standard Language contract provisions. Normally, services purchased in excess of \$5,000 are required to be included on a Std. 213; however in the six services reviewed, the services were found to be exempt from the normal contracting requirement. This was due to the services relating to emergency medical needs.

Although the use of a service order was acceptable for the services purchased, the order should have included a reference to the required standard contract language, as specified in the State Contracting Manual. (See Attachment F.)

State Contracting Manual, Volume 1, Chapter 2.07 states:

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

Recommendation:

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

CMU’s Response:

CMU stated that they are in agreement with the audit finding.

See Attachment I for the full text of CMU’s response to the draft audit report and Attachment J for DDS’s evaluation of CMU’s response.

Finding 7: Cal-Card - Purchase of Gift Cards

During the review of Cal-Card purchases, it was found that SVDC had purchased gift cards from various stores for a total of \$46,100 for Fiscal Years 2006-07 and 2007-08. For fiscal year 2006-07, it was found that \$18,700 in gift card purchases was made by SVDC. These purchases did not have sufficient supporting documentation; however the claim was paid by the State Controller's Office (CSCO). For Fiscal Year 2007-08, SVDC purchased \$27,400 in gift cards.

It was also found that the State Controller's Office (SCO) conducted an audit of the June 2008 Cal-Card purchases. SCO stated in its letter to CMU, that there was no accountability with regard to the gift cards and its use was an attempt to circumvent spending freezes in place. As a result, SCO disallowed the claim that included \$27,400 of gift card purchases. Further review indicated the SVDC was able to obtain refunds for \$20,131.90 of gift cards purchased and provided sufficient support for remaining gift card purchases. Subsequently, in November 2008, SCO approved the reimbursement of the June 2008 claim. (See Attachment H.)

The review of Cal-Card purchase during fiscal years 2008 through 2010 revealed no other purchases of gift cards.

Department of Developmental Services Cal-Card Handbook, page 14 states:

“The following cannot be purchased by CAL-Card:

...Non-financial institutions: foreign currency, money orders, traveler's checks”

Recommendation:

CMS should ensure that the purchase of gift cards are not allowed. CMS should include language in the Cal-Card Handbook to specifically prohibit the purchase of gift cards with the Cal-Card.

CMU's Response:

CMU stated that they are in agreement with the audit finding.

See Attachment I for the full text of CMU's response to the draft audit report and Attachment J for DDS's evaluation of CMU's response.

**DEPARTMENT OF DEVELOPMENTAL SERVICES
AUDIT OF CONTRACT PROGRAM
CONTRACTS WITHOUT NEGATIVE EVALUATIONS
AUDIT PERIOD JULY 1, 2008 TO JUNE 30, 2010**

	Contract Number	Sample Number	Contract Name
1	HD089040	14	Wendy Hardy Billing Consultant
2	HD099069	18	University Enterprises, Inc

**DEPARTMENT OF DEVELOPMENTAL SERVICES
AUDIT OF CONTRACT PROGRAM
CONTRACTS WITHOUT POST EVALUATIONS
AUDIT PERIOD JULY 1, 2008 TO JUNE 30, 2010**

	Contract Number	Sample Number	Contract Name
1	HD089040	14	Wendy Hardy Billing Consultant

**DEPARTMENT OF DEVELOPMENTAL SERVICES
AUDIT OF CONTRACT PROGRAM
CONTRACTS APPROVED LATE
AUDIT PERIOD JULY 1, 2008 TO JUNE 30, 2010**

	Contract Number	Sample Number	Contract Name	Effective Date of Contract	Date Contract Approved
1	HD089021	12	People First of California Inc.	7/1/2008	11/26/2008
2	HD089040	14	Wendy Hardy Billing Consultant	12/2/2008	12/5/2008

**DEPARTMENT OF DEVELOPMENTAL SERVICES
AUDIT OF CONTRACT PROGRAM
SERVICES PROVIDED PRIOR TO CONTRACT APPROVAL/START DATE
AUDIT PERIOD JULY 1, 2008 TO JUNE 30, 2010**

	Contract Number	Sample Number	Contract Name	Date Contract Approved	Service Start Date	Overpaid
1	AG089004	2	Greenwaste Recovery, Inc	6/18/08*	6/1/08	\$ 5,750.24
2	HD089021	12	People First of California Inc.	11/26/08	7/1/08	\$ 3,329.07

* Service Effective Date is 7/1/08

**DEPARTMENT OF DEVELOPMENTAL SERVICES
AUDIT OF CONTRACT PROGRAM
CIRCUMVENTING THE BIDDING PROCESS
AUDIT PERIOD JULY 1, 2008 TO JUNE 30, 2010**

	Service Order	Contractor	Purpose	Amount	Total
1	SN830121	Gaymar Industries, Inc.	Bed Rental	4,997.24	
2	SN830127	Gaymar Industries, Inc.	Bed Rental	4,999.00	
3	SN830156	Gaymar Industries, Inc.	Bed Rental	4,673.01	14,669.25
4	FV830194	Bi-Tech Construction	Greenhouse	2,500.00	
5	FV830208	Bi-Tech Construction	Greenhouse	4,500.00	
6	FV830233	Bi-Tech Construction	Greenhouse	2,000.00	
7	FV830250	Bi-Tech Construction	Greenhouse	2,500.00	
8	FV830254	Bi-Tech Construction	Greenhouse	750.00	12,250.00
9	HD930019	Ron, Vinyl & Furniture	Handyman Services	4,000.00	
10	HD930020	Ron, Vinyl & Furniture	Handyman Services	2,500.00	6,500.00

**DEPARTMENT OF DEVELOPMENTAL SERVICES
AUDIT OF CONTRACT PROGRAM
MISSING STANDARD CONTRACT LANGUAGE
AUDIT PERIOD JULY 1, 2008 TO JUNE 30, 2010**

	Service Order	Contractor	Total
1	SN930158	Sonoma Valley Hospital	5,380.98
2	PR830394	King Foot and Ankle Center	6,250.00
3	PR930617	Sierra View District Hospital	5,485.11
4	PR930468	Sierra View District Hospital	18,441.28
5	PR930458	Valley Ear, Nose, and Allergy Group	9,805.00
6	PR930375	Dale Cox, MD	6,830.00

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 this requirement)	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

* State Contracting Manual, Vol. 1

DEPARTMENT OF DEVELOPMENTAL SERVICES AUDIT OF CONTRACT PROGRAM DISALLOWED CAL-CARD PURCHASES AUDIT PERIOD JULY 1, 2008 TO JUNE 30, 2010*					
	Fiscal Year	Date	Gift Cards	Amount	Total
1	2006-07	9/20/2006	Sam's Club	3,200.00	
2		11/2/2006	Blockbuster	200.00	
3		12/6/2006	Target	1,800.00	
4		4/25/2007	Target	900.00	
5		5/4/2007	Walmart	3,000.00	
6		5/8/2007	Walmart	4,000.00	
7		6/5/2007	Michaels	2,000.00	
8		6/15/2007	All Pro Cuts	1,200.00	
9		6/19/2007	Walmart*	2,400.00	\$ 18,700.00
10	2007-08	4/18/2008	All Pro Cuts	1,200.00	
11		6/19/2008	All Pro Cuts	1,800.00	
12		6/18/2008	Blockbuster	200.00	
13		6/11/2008	Home Depot	1,000.00	
14		6/17/2008	JC Penny	2,000.00	
15		6/9/2008	Lowe's	3,000.00	
16		6/17/2008	Lowe's	2,300.00	
17		6/17/2008	Michaels	1,200.00	
18		6/9/2009	Orchard Supplies	1,000.00	
19		6/11/2008	Walmart	4,800.00	
20		6/17/2008	Walmart	8,900.00	\$ 27,400.00
			Grand Total		\$ 46,100.00

* This section of the audit was expanded to include Fiscal Year 2006-07 and 2007-08

State of California

Department of Developmental Services

M e m o r a n d u m

Date: August 24, 2011

To: Edward Yan, Manager
Department of Developmental Services
Audits Branch

From: Pamela S. Robison
Chief/ Contracts Manager
Department of Developmental Services
Customer Support Section

Subject: Response to the Draft Audit of DDS' Contracts Unit for the Period of July 1, 2008 through June 30, 2010

Thank you for the opportunity to review and comment on the draft audit report. The Customer Support Section (CSS), Contracts Management Unit's (CMU) responses to each finding and recommendation in the draft report are as follows:

FINDING 1: Negative Evaluations Documentation for Consultants (Repeat)**Recommendation:**

CMU should utilize the checklist that was developed as a result of a similar finding during the prior audit to ensure that negative evaluations for all consultant contracts of \$5,000 or more are kept on file. The documentation should include the DGS responses to the requests for negative evaluations.

Response to Finding 1:

CMU concurs with the finding and recommendation.

DDS' contract analysts are trained to check with DGS for any negative evaluations on file for consultants. DDS' Contract Checklist was revised in April 2011, to include checking for any negative evaluations on file with DGS. The response from DGS is then made part of the contract file. The revised checklist and the reminder to check for negative evaluations will be discussed at the quarterly training for contract analysts at both Headquarters and the Developmental Centers and Community Facility on September 22, 2011.

FINDING 2: No Post Evaluation (Repeat)

Recommendation:

CMU should follow policies and procedures to ensure that the Contract/Contractor Evaluation form, STD 4, is prepared with 60 days of the completion of the contract. In addition, management should inform staff of their failure to follow procedures.

Response to Finding 2:

CMU concurs with the finding and recommendation.

DDS' contract analysts are trained to remind all contract managers that they are required to complete contract evaluation form (STD 4) when a consulting contract is completed. DDS' Contract Checklist was revised in April 2011, to require the contract analyst to verify that the project representative has completed the contract evaluation form within the required time. The revised checklist and the importance of educating the contract managers/program about completing the form will be discussed at the quarterly training for contract analysts at both Headquarters and the Developmental Centers and Community Facility on September 22, 2011. A new procedure that ensures that the contract evaluation form is completed within the required time will be discussed on September 22, 2011, and implemented following the training.

In addition, a training session on contract management will be conducted for contract managers and program staff at Headquarters scheduled for October 2011. The contract management information will then be forwarded to the contract analysts at the Developmental Center and Community Facility for the training of their contract managers and program staff.

FINDING 3: Contracts approved after the Effective Date (Repeat)

CMU staff should continue to work with its customers to ensure that contract requests are submitted with sufficient lead time to meet DGS's contract timelines. In addition, CMU should continue to review and monitor its procedures to determine if any improvements can be made to ensure contracts are processed within the DGS timelines.

Response to Finding 3:

CMU concurs with the finding and recommendation.

Regarding the two contracts in question:

Wendy Hardy, Billing Consultant: The final execution of this contract was delayed three days due to the Thanksgiving Holiday.

People First of California, Inc.: This contract pertains to the legislatively mandated California Memorial Project (W&I Code, Section 4015). This project requires the Department of Mental Health (DMH), in coordination with DDS and other state agencies, to conduct and complete inventories of the records, including final burial locations of individuals who died while residing at any state hospital or developmental center. The project includes a memorial service each year at a specified location.

This was a year with a late budget which resulted in a delay in the execution of contracts. CMU will inform the Developmental Centers Division's contract manager of this audit finding to ensure that it does not reoccur in future years.

CMU is continuing to review and refine the process to ensure contracts are prepared and approved in a timely manner and to meet contract timelines as required by DGS' Administrative Order (AO) 06-05.1.

DDS contracting staff has been instructed to include the following language in the body of the STD 213: *Effective date of this contract is (date) or when approved by DGS whichever is later.* This standard language was provided to us by DGS' Office of Legal Services (OLS). At the quarterly training on September 22nd, the contracting staff at both Headquarters and the Developmental Center and Community Facility will be reminded to ensure that the contracts are approved before the effective of the contract and the standard language is included in the body of the STD 213.

FINDING 4: Services Provided Prior to Contract Approval/Start Date (Repeat)

Recommendation:

CMU should also continue to monitor 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 and that the contractor should be warned not to start work before receipt of the approved contract.

Response to Finding 4:

CMU does not concur with the finding and recommendation related to Greenwaste Recovery, Inc.

Regarding the contracts in question:

Greenwaste Recovery, Inc.: The invoice had an invoice date and service date of July 1, 2008. The contract manager coded the invoice with the contract number that was effective July 1, 2008. The Accounting Unit stated that the State Controller's Office paid the invoice based the contract effective date of July 1, 2008, and the service date of July 1, 2008. The only indication of a June date on the invoice was in the header next to the account number for the invoice. We believe this finding to be unsupported

and should be eliminated as a finding as the services were provided after the contract was approved and the invoice was paid after the contract was approved.

People First of California, Inc.: This was a year with a late budget which resulted in a delay in the execution of contracts. CMU will inform the Developmental Centers Division's contract manager of this audit finding to ensure that it does not reoccur in future years

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 and approved by DGS, if required, and the contractor has received a copy of the formally approved contract. The language stating that no work can start until a contract has been formally approved is part of DGS' General Terms and Conditions and included in all DDS contracts.

In the quarterly training on September 22nd, all contract analysts at Headquarters and the Developmental Centers and Community Facility will be instructed to continue educating the contract managers/program staff as well as contractors that no work may start until the contract is formally approved, unless it is an emergency situation. Whenever one of the facilities needs to issue an emergency contract, its contracting staff notifies CMU as soon as possible.

As part of the training for contracts managers/program staff scheduled for October 2011, they will be reminded of their responsibility to ensure the invoice does not include services that were performed prior to the effective date of the contract. They will also be instructed to indicate the date that the invoice is approved and signed.

FINDING 5: Circumventing the Advertising and Bidding Process

Recommendation:

CMU should 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.

Response to Finding 5:

CMU concurs with the finding. CMU will inform the Developmental Center Division and facility contracting staff of this finding and recommendation.

In the quarterly training on September 22nd, all contract analysts at Headquarters and the Developmental Centers and Community Facility will be instructed to continue educating the contract managers/program staff on the importance of pre-planning prior to starting projects to allow enough time to complete the bid process as required.

In the training of contract managers/program staff scheduled for October 2011, the contract staff will be provided information that will help them to pre-plan any new project. They will be instructed to monitor the expenditures for any active contract and

to notify the Contracts Unit in a timely manner if the contract needs to be amended or needs to be rebid. They will also be instructed to ensure that they submit their invoices in a timely manner.

FINDING 6: Missing Standard Contract Language

Recommendation:

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

Response to Finding 6:

CMU concurs with the finding and recommendation.

In the quarterly training on September 22nd, the contract analysts will be instructed to reference DGS' General Terms and Conditions in the body of the service order if the dollar amount exceeds \$5,000. They will also be directed to attach a copy of the General Terms and Conditions along with any other required language to the service order when it is sent to the contractor.

FINDING 7: Cal-Card - Purchase of Gift Cards

Recommendation

CMS should ensure that the purchase of gift cards is not allowed. CMS should include language in the Cal-Card Handbook to specifically prohibit the purchase of gift cards with the Cal-Card.

Response to Finding 7:

CMU concurs with the finding and recommendation.

By September 15th, the Cal-Card handbook will be revised to include language that specifically prohibits the purchase of gift cards with a Cal-Card. The revised handbook will be sent the facility cardholders and approvers to review before the quarterly training on September 22nd. At this training, they will be reminded of their responsibilities as a cardholder and approver. The approver will be instructed to make sure that each purchase has been pre-authorized and required documentation has been prepared and signed.

Thank you for the opportunity to respond to the draft findings and recommendations. Please contact me if you have further questions or need any additional information.

DEPARTMENT OF DEVELOPMENTAL SERVICES
Audit Branch's
Evaluation Of
Customer Support Sections (CSS), Contracts Managements Unit's (CMU) Response

As part of the vendor audit report process, CMU was afforded the opportunity to respond to the draft audit report and provide a written response to each finding. On August 21, 2010, CMU submitted a response to the draft audit report. In responding to the draft report, CMU agreed to findings 1, 2, 3 and 5, but disagreed with finding 4.

The response also indicates that CMU has taken steps to address the issues identified in the audit report and has updated its policy and procedure for billing.

Finding 4: Services Provided Prior to Contract Approval/Start Date (Repeat)

CMU states that the invoice for Greenwaste Recovery, Inc. had an "Invoice date" and a "Service date" of July 1, 2008, and that the only indication of a June 2008 date was in the header next to the account number for the invoice. CMU believes this finding to be unsupported and should be eliminated as a finding as the services were provided after the contract was approved. In addition, for People First of California, Inc., the late signing of the state budget resulted in a delay in the execution of contracts.

In regards to the Greenwaste Recovery invoice, a call was made to Greenwaste to confirm whether or not the services were provided in June or July 2008. Greenwaste provided additional documentation to support services were provided in June 2008 and not in July 2008. In the case of People First of California, the vendor was at risk of not being paid for services provided before the contract was signed and approved. No evidence was provided by CMU to warrant an amendment or deletion of this portion of the finding. Therefore, finding 4 remains unchanged.