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OFFICE OF PROGRAM REVIEW AND AUDITS

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December 29, 2010

Mr. Rick Gillam, Chief of Audit Services
Department of General Services
Office of Audit Services
707 Third Street, Fourth Floor
West Sacramento, CA 95605

Re: Audit of DOJ Contracting Program
January 31, 2009 to December 31, 2010

Dear Mr. Gillam:

Enclosed please find our first audit report on the Department of Justice (DOJ) contracting program, procedures and related internal controls for the period January 1, 2009 to December 31, 2010. Pursuant to Department of General Services (DGS) Exemption Letter No. 52.4, dated December 24, 2008, various types of DOJ contracts under \$75,000 are exempt from DGS review and approval for the four-year period of January 1, 2009 through December 31, 2012. Under this delegation, two audits of DOJ's contracting program are required to be performed during the four-year exemption. This audit was conducted by the DOJ Office of Program Review and Audits and is the first of the two audits required under the terms of the exemption.

If you need further information or assistance on this report, please contact me at the number listed above or Keith Jung, OPRA Assistant Director, at (916) 323-6395.

Sincerely,

ORIGINAL SIGNED BY

Andrew J. Kraus III, CPA
Director

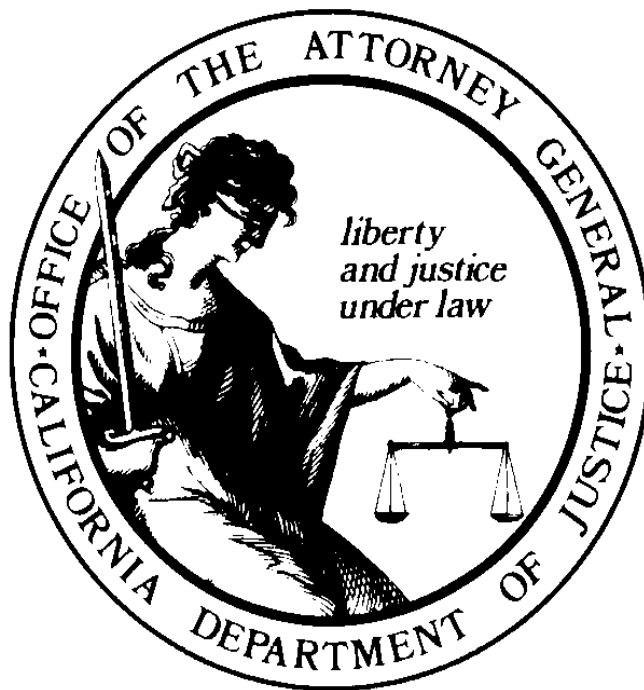
Enclosure

cc: James Humes, Chief Deputy Attorney General
William Holtz, Manager, DOJ Departmental Services

State of California Department of Justice

Audit of DOJ Contracting Program Exemption Letter No. 52.4

**Review Period:
January 1, 2009 to December 31, 2010**



**Division of Executive Programs
Office of Program Review and Audits**

TABLE OF CONTENTS

<u>SECTION</u>	<u>PAGE</u>
Summary	2
Background	3
Objectives, Scope, and Methodology	4
Conclusion	6
Views of Responsible Officials	7
Restricted Use	8
Findings and Recommendations	9
Auditee's Response	10
Evaluation of Auditee's Response	11

SUMMARY

The Department of Justice (DOJ) Office of Program Review and Audits (OPRA) has completed the audit required by the Contract Delegation from the Department of General Services (DGS). Pursuant to Exemption Letter 52.4 (dated December 24, 2008) various types of contracts under \$75,000 are exempt from DGS review and approval for the four-year period of January 1, 2009, through December 31, 2012. Under the delegation, DOJ is required to maintain an internal control system sufficient to provide reasonable assurance of compliance with State contract laws and procedures. In addition, two audits are required under the terms of the exemption. This audit is the first of the two required audits to be submitted to DGS by December 31, 2010.

OPRA's audit disclosed that the DOJ's established policies and internal controls with respect to Contract Delegation are generally adequate, except for the issue detailed in the Findings and Recommendations Section of this report ("Improper Contract with State Employee").

BACKGROUND

On December 24, 2008, the Director of DGS signed Exemption Letter No. 52.4, which granted the DOJ's request to process contracts without DGS review and approval. In brief, subject to a number of limitations, the exemption allows various types of contracts under \$75,000 to be processed without DGS review and approval during the four-year period of January 1, 2009 through December 31, 2012. As a condition of the exemption, two audits are required to be performed of DOJ's contracting program during the four-year exemption. This audit report is the first of the two audits required under the terms of the exemption: the first audit report is to be submitted to the DGS Office of Audit Services (OAS) by December 31, 2010, and the second audit report is to be submitted to the OAS by October 31, 2012).

OBJECTIVES, SCOPE, AND METHODOLOGY

The audit was conducted to determine DOJ's compliance with the terms and conditions of Exemption Letter No. 52.4 for the period January 1, 2009 to December 31, 2010. In general, the exemption requires that the DOJ maintain an adequate and effective system of internal control over contracting and that the system be sufficient to ensure compliance with the State's contracting laws, policies, and procedures.

The audit objectives were as follows:

- To determine whether the contracting program is complying with the legal requirements for exemption, especially as to oversight of the universe of contracts awarded subject to exemption.
- To determine and document the system of internal control.
- To determine whether the contracting system, if followed, can be reasonably relied upon to provide adequate internal control and produce contracts in accordance with 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 last audit.
- To determine whether appropriate corrective actions have been implemented in response to previous audit findings.

OPRA conducted the audit in accordance with the International Standards for the Professional Practice of Internal Auditing published by the Institute of Internal Auditors, and utilized the Contracting Program Audit Guide (Guide) prepared by the OAS.

The scope of this audit is specified in the Guide; and the Guide requires that the scope of the audit include, but not be limited to, the following:

- A limited review of the system of internal controls over the contracting process to gain reasonable assurance of compliance with the State's contracting laws, policies, and procedures.
- Review of a sample of contracts 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 scope of the audit focused on contracts and amendments awarded during the period January 1, 2009 through July 27, 2010. To determine compliance, OPRA reviewed policies and procedures, tested a sample of contracts, interviewed and had detailed discussions with parties involved in the contracting process, and performed other tests as deemed necessary.

CONCLUSION

Based upon the procedures performed, we have determined that, except for the issue identified in the Findings and Recommendations section, the DOJ is conducting its contracting program in compliance with the terms and conditions of its exemption. The DOJ's contracting policies and procedures are sufficient to provide reasonable assurance of compliance with the State's contracting laws, policies, and procedures for the review period of January 1, 2009 to December 31, 2010.

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 to 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.

In addition to the issue identified in the Findings and Recommendations section, we identified the following areas for improvement within the DOJ's contracting program: 1) policies and procedures need to be fully implemented to ensure the approval of contracts prior to the commencement date shown on the contracts; 2) quality assurance policies and procedures must be fully executed to assist in ensuring full compliance with the State's contracting requirements; and 3) invoiced amounts need to be verified and must agree to contractual terms, conditions, and payment provisions *prior* to authorizing payment of the billed cost. These areas for improvement were identified in the previous DGS audit findings.

Prior to the completion of our audit, we verified that appropriate actions had been or were being taken to address the above issues; therefore, they are not further discussed in this report. The next audit required under the terms of the exemption, which is due on October 31, 2012, will include follow-up work to confirm that appropriate action has been taken to ensure compliance with the State's contract requirements.

VIEWS OF RESPONSIBLE OFFICIALS

The details and findings in the report were discussed at an exit conference with DOJ Division of Administrative Support (DAS) personnel on December 6, 2010. At the exit conference, we requested a response to our findings and stated that the final audit report would incorporate the views of responsible officials. The response is included in the Auditee's Response section of the report.

RESTRICTED USE

This report is solely for the information and use of the DOJ and DGS. 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.

ORIGINAL SIGNED BY

Andrew J. Kraus III, CPA
Director
Office of Program Review and Audits

FINDINGS AND RECOMMENDATIONS

Finding: Improper Contract with California State Employee

During the audit period, DOJ entered into two separate contracts for expert witness services to assist in legal cases representing the California Department of Corrections and Rehabilitation (CDCR). The first contract was complete at the time of our review and the second contract was in process. As a result of an invoice inquiry with the expert witness related to the second contract, it was determined that the expert witness was in fact a CDCR employee at the time he was providing expert witness services. Upon this determination, the second contract was cancelled by DOJ without any payments being made. The DOJ notified both CDCR and DGS of this violation.

Public Contract Code section 10410 states:

“No officer or employee in the state civil service or other appointed state official shall engage in any employment, activity, or enterprise from which the officer or employee receives compensation or in which the officer or employee has a financial interest and which is sponsored or funded, or sponsored and funded, by any state agency or department through or by a state contract unless the employment, activity, or enterprise is required as a condition of the officer’s or employee’s regular state employment. No officer or employee in the state civil service shall contract on his or her own individual behalf as an independent contractor with any state agency to provide services or goods.”

Recommendation:

DOJ should implement additional contract review procedures to assure that contracts are not entered into with current California State employees for expert witness services.

AUDITEE'S RESPONSE

The DOJ [contracting program] concurs with the audit finding that an employee in the state civil service may not contract with any state agency, pursuant to Public Contract Code Section 10410. When the violation by the CDCR employee was found, the contract was immediately cancelled and all invoices disputed. The DOJ is not owed any money from the employee, and the CDCR has been informed that this employee may owe them money from the first contract. DOJ has informed the Department of General Services (DGS) through the contractor evaluation process that the individual is not entitled to enter into contracts with state agencies.

As part of the contract review process, DOJ staff obtains and reviews the résumés of all individuals who are prospective personal services contractors, which would include all expert witness contracts used in litigation. The résumés are reviewed to ascertain, among other things, that the individuals are not current employees in the state civil service. Furthermore, the DOJ requires contractors to certify in writing, under penalty of perjury, that they understand that they are legally bound by various laws applicable to doing business with the State of California, including Public Contracts Code section 10410. The DOJ believes that the résumé of the CDCR employee made an affirmative effort to conceal the fact that the contractor was indeed a state employee. The résumé submitted by the individual noted past employment with CDCR but failed to disclose the contractor's current status. Additionally, the contractor signed, under penalty of perjury, that they understood that a state employee may not contract with a state agency. Under these circumstances, the contracts were not a failure of internal control but an overt violation of California law.

To strengthen internal controls relative to expert witnesses, the DOJ contracting program will add language in the request form (JUS 8800) utilized in the formative stage of an expert witness contract. This change would require the Deputy Attorney General in charge of the litigation to ask the potential expert if they are currently a state employee.

As was done in the reported instance, the DOJ will continue to inform contractors of their responsibilities under California law and void all contracts where such violations occur.

EVALUATION OF AUDITEE'S RESPONSE

As part of the audit report process, OPRA provided the DOJ contracting unit with a draft report and requested a response to the audit finding. In evaluating the DOJ contracting unit's response, we have determined that their response adequately addressed the audit finding and recommendation and provided reasonable assurance that corrective action would be taken to resolve the issue.

The next audit required under the terms of the exemption, which is due on October 31, 2012, will include follow-up work to confirm that appropriate actions have been taken to ensure compliance with the State's contract requirements.