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January 24, 1983

Letter Report 273

Honorable Art Agnos
Chairman, and Members of the
Joint Legislative Audit Committee
State Capitol, Room 3151
Sacramento, California 95814

Dear Mr. Chairman and Members:

We have reviewed the Department of General Services' standardized forms for the pre- and post-evaluation of consulting services contracts. This report provides our assessment of the two forms and discusses our concerns about how the Department of General Services (department) intends to use them. The department did not revise and disseminate the forms to each state agency or department by January 1, 1983, as required by Chapter 1208, Statutes of 1982. The department has complied with the statutory requirements that stipulate the specific reporting conditions to be included on each form; however, some revisions to each form will be necessary to fulfill the intent of the legislation. We have indicated our concerns and provided specific recommendations that the department should consider before disseminating these forms to the state agencies.

BACKGROUND

The Auditor General's April 1981 report entitled "Improvements Needed in the Administration of State Contracts for Consultant Services" (P-016.2) pointed out that the system for overseeing and administering consultant contracts was insufficient.

In response to that report, the Legislature directed the State's three control agencies, the Department of General Services, the Department of Finance, and the State Personnel Board, to develop recommendations that would correct the deficiencies noted by the Auditor General and to report these recommendations to the Legislature. The Legislature then

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amended certain sections of the Government Code to impose on state agencies more stringent requirements concerning their contracting activities and specified the Department of General Services as responsible for overseeing contracts.

Chapter 1208, Statutes of 1982, enacted provisions to govern approval, evaluation, and certain requirements of consulting services contracts. This act designates the Department of General Services as the agency responsible for controlling contracts for consulting services, and it limits the roles of the State Personnel Board and the Department of Finance in reviewing and approving such contracts. As part of its responsibility for supervising all phases of this contracting process, the department is to develop a pre- and post-evaluation mechanism that includes standardized pre- and post-evaluation forms submitted to every state agency. Each state agency is to use these forms to evaluate consulting services contracts that must be submitted to the department for its approval. The pre- and post-evaluation forms are only two of the methods available to the department to fulfill its oversight responsibility. The contracting activities of state agencies are also controlled by other statutes, by regulations contained in the State Administrative Manual, by agency guidelines and internal controls, and by post-audit activities.

With certain specified exceptions, the Department of General Services must approve state agencies' consulting services contracts when these contracts exceed \$10,000. The department may exempt an agency from submitting certain classes or types of contracts under \$50,000 for approval and authorize that agency to enter into such contracts if the agency has an approved program for contract administration, the provisions of which are as follows:

1. A designated contract manager responsible and directly accountable for the agency's contracting program;
2. Established written policies and procedures and a management system to ensure that the agency's contracting activities comply with applicable laws and regulations;

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3. Procedures to audit the contracting program each year and to report to the Department of General Services as required;
4. An established plan to train contracting personnel; and
5. Established procedures for reporting as required to the Department of General Services and to the Legislature.

At least once in each three-year period, the Department of General Services must audit the contracting program of any state agency that has been granted an exemption.

The Legislature has also approved other legislation pertaining to the State's contracting procedures. For example, Chapter 1207, Statutes of 1982, imposed many of the same requirements as Chapter 1208, but with a broader application: it pertains to all service contracts not specifically exempted, instead of only those contracts for consulting services. Chapter 1207 also directed the department to prescribe a form for documenting the need for each contract and a form for evaluating the contractor's performance and the services rendered. Another act, Chapter 1057, Statutes of 1982, established standards for the use of personal service contracts as long as going outside the civil service system would lessen the cost to the State.

SCOPE AND METHODOLOGY

We reviewed the Contract Transmittal and Pre-Evaluation Form, STD 15 (Rev 12/82), and the Contract/Contractor Evaluation Form, STD 4 (Rev 12/82), provided to us by the Program and Compliance Evaluation Division of the Department of General Services. (We have included copies of each of these forms in Attachments B and C, respectively.) As part of this review, we compared the reporting requirements contained on these two forms with the specific statutory requirements prescribed by Chapter 1207 and Chapter 1208, Statutes of 1982. To assess whether the two forms are sufficiently comprehensive to achieve their respective purposes, we established a peer review committee of Auditor General's office staff who have participated in or managed audits that reviewed the contracting

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activities of state agencies. We also reviewed applicable statutes and guidelines and interviewed one person in the department's Program and Compliance Evaluation Division responsible for drafting the forms.

ANALYSIS

In the following two sections, we discuss both the Contract Transmittal and Pre-Evaluation Form and the Contract/Contractor Evaluation Form. In each section, we assess the effectiveness of the form, its proposed use, and provide our conclusions and recommendations.

Pre-Evaluation Form

The Department of General Services needs to amend its draft Contract Transmittal and Pre-Evaluation Form and to clarify when and for what purposes the form should be used. By requiring a pre-evaluation mechanism that ensures competition, documents the need for each contract, and lists the costs and benefits of each contract, the Legislature hoped to achieve greater accountability and reduce expenditures. The existing form and the restricted manner in which the department proposes to use it will not meet the Legislature's intent.

The department has drafted a standardized pre-evaluation form and is devising standards for agencies that enter into contracts. The Contract Transmittal and Pre-Evaluation Form has two separate sections. The transmittal section on the front page must be completed for all contracts not exempted; the pre-evaluation section on the reverse side must be completed when an agency requests approval of any "service contract," which according to the department, includes consulting services contracts.

Chapter 1208, Statute of 1982, added Government Code Section 14830.13 requiring state agencies that enter into consulting services contracts to document the need for each contract by providing the following information on the pre-evaluation forms:

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1. The specific problem, administrative requirement, program need, or other circumstance that the contract is intended to address and that makes the contract necessary.
2. The specific intended purpose of the contract and the services or product that will result.
3. How the agency will use the contract product and how that product will fill the need that makes the contract necessary.
4. The basis for the agency's decision that contracting is the most effective method for achieving the agency's purpose.
5. The benefit resulting from the contract and the estimated number of persons served by such a benefit.
6. The cost of the contract and the type of bidding that is planned.

Chapter 1207, Statutes of 1982, added Government Code Section 14832, which imposed all but the last two of the above requirements for all service contracts, not just contracts for consulting services. The law also requires an agency to transmit the completed Contract Transmittal and Pre-Evaluation Form to the Department of General Services.

Once the form and the standards have been formally adopted, agencies will have to submit to the department the Contract Transmittal and Pre-Evaluation Form with any proposed contract that is not exempted. According to a management analyst in the department's Program and Compliance Evaluation Division, contract officers must complete this pre-evaluation form only for contracts that require the department's approval.

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Conclusions and Recommendations

Collectively, the transmittal section and the pre-evaluation section comply with the requirements imposed by Government Code Section 14830.13 addressing consulting services contracts and Section 14832 related to all service contracts. However, the department needs to clarify when and under what circumstances an agency is to complete either or both sections of its form.

The Contract Transmittal and Pre-Evaluation Form does not meet the Legislature's intended purposes of documenting need, ensuring competition, considering cost and benefits, and assessing the merit of potential contracts. The form does not require an agency to confirm, before awarding a contract, that the contract complies with all legal and administrative requirements. For example, the form does not require an agency to acknowledge if the proposed contract was listed in the State Contracts Register, nor does it require an agency to justify a sole-source contract. Additionally, the form does not require an agency to state that it has complied with the requirements governing the use of present or previous state employees. The absence of these and other contracting requirements makes it difficult for the department to determine if an agency has adequately met pre-award requirements. Although the law does not stipulate that these requirements must be included on the form, the department should consider whether including these or other compliance statements might improve the form.

The department should reconsider how the pre-evaluation form is to be used. We understand that the department intends to require an agency to complete and submit this form in those instances when the agency is not exempted from obtaining the department's approval (e.g., large contracts over \$50,000). However, because the majority of contracts may in fact be exempt, we believe that requiring submission of this form for all contracts for services would be useful to agencies and contract officers in assuring that they properly apply the State's contracting policies. Furthermore, if the form were required for all contracts and if it were retained in an agency's permanent contract files, it would be a useful control and recording tool for post-audit review. For example, this form would assist agencies in performing their own annual internal audit to ensure that they comply with the State Administrative Manual. If agencies were required to complete and retain a form for each contract, the Department of General

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Services would have useful and important documentation for the audit it conducts every three years of contract programs that are granted exemptions according to sections 14830.9 and 14834 of the Government Code. Thus, we suggest that the department direct agencies to retain and use the form also for those contracts that are not transmitted to the department for approval.

We recognize that the Contract Transmittal and Pre-Evaluation Form provides the department with more information than the standard transmittal form previously used. We also realize that the need for contracted services is a complex matter and that the contracting agency is best able to evaluate the need for a contract. For this reason, the department, as a control agency, should not only impose upon contracting agencies a requirement to justify program needs (as included on the proposed form), but also consider whether the form might also accomplish another purpose: to provide a clear record supporting compliance with legal and administrative requirements. The form could be used to show that an agency has properly executed its own contract program or to document that an agency has consistently followed its own pre-evaluation procedures.

Post-Evaluation Form

The Department of General Services needs to amend and clarify when and for what purposes the Contract/Contractor Evaluation Form is to be used. The existing form does not provide an assessment of how well a contractor performed. It also does not provide contract administrators, when considering potential contractors, with the names of those individuals responsible for administering previous contracts with a contractor, making it difficult for contract administrators to contact those who may have worked with a particular contractor. Further, it is our understanding that the department has not yet determined if agencies will be required to submit a post evaluation of only those contracts which had been approved by the department or for all service contracts including those exempted from the department's review.

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The State Administrative Manual requires state agencies to provide the Department of General Services with an evaluation of each contractor's performance. However, agencies had not consistently complied with this regulation in the past. Chapter 1208, Statutes of 1982, added Government Code Section 14830.14 that directs each state agency to conduct a post-evaluation of each of its consulting services contracts. Chapter 1207 imposes this requirement on nearly all service contracts. The post-evaluation is to be prepared within 30 days of the contract's completion, and it must be completed on the Department of General Services' standardized form, the Contract/Contractor Evaluation Form.

Chapter 1208 requires that the Contract/Contractor Evaluation Form serve two purposes: to evaluate the contractor's performance and to evaluate the contracted-for product or services in furthering the objectives of the contracting agency. In evaluating a contractor, an agency must report on all the following:

1. Whether the product or services were completed as specified in the contract, and the reasons for and amount of any cost overruns.
2. Whether the product or services met the quality standards specified in the contract.
3. Whether the contractor fulfilled all the requirements of the contract.
4. Whether factors outside the control of the contractor made it difficult for the contractor to perform the work.
5. Other information as may be required by the Department of General Services.

Chapter 1208 further requires that an agency evaluating the contract must evaluate the contract product or services rendered in light of the specific problem, administrative requirement, program need, or other circumstances that made the contract necessary, and evaluate the agency's use of the contract product.

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A copy of each Contract/Contractor Evaluation Form must be sent to the legal office of the Department of General Services. The legal office will act as a central depository for all state agencies making evaluations of or seeking information about a contractor's record. The department will send a copy of any post-evaluation report to the director of any state agency who submits a written request. No contractor can be awarded a contract until the state agency has either reviewed a contractor evaluation form on file at the department or obtained a completed resume from each major contract participant who has not previously had a state contract.

Conclusions and Recommendations

The department has complied with the requirements imposed by Government Code Sections 14830.14 and 14833.1 that specify the information to be reported on the Contract/Contractor Evaluation Form. However, the department needs to revise this evaluation form to fulfill the intent of one of the requirements for reporting cost overruns. Since the State Controller will not pay more than the contract amount, theoretically, a contract cannot have an overrun. Therefore, the department should amend its form to require agencies to report the original contract amount, the final contract amount, and the reasons for any differences and amendments.

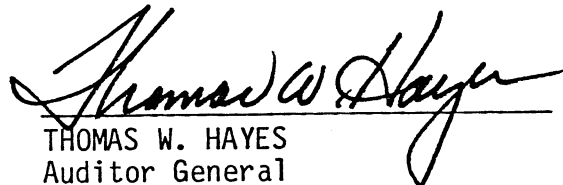
The proposed evaluation form does not require agencies to evaluate the quality of the contractor's performance. Rather, it requires agencies to report factual information that is useful, but that does not really indicate whether the contractor performed well, marginally, or unsatisfactorily. We understand this omission is by design and attempts to prevent a "blacklist" effect. However, if the department maintains this position, it should amend its Contract/Contractor Evaluation Form to require agencies to report the name of a person who can be contacted to discuss the performance of the contractor. This contact person may not necessarily be the person who completes this evaluation form.

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Although not required by statute or regulation, the department should determine if other compliance statements might improve the Contract/Contractor Evaluation Form. For example, the department may want agencies to report information that helps determine whether the agency complied with certain post-award contracting requirements, such as not permitting a contractor to commence work before the contract was formally approved. The department may also want information about modifications or amendments, if there were any, or may want information concerning progress payments or retained payments, as required by the State Administrative Manual.

We conducted this review under the authority vested in the Auditor General by Section 10500 et seq. of the California Government Code and according to generally accepted government auditing standards. We limited our review to those areas specifically contained in the audit request.

Respectfully submitted,


THOMAS W. HAYES
Auditor General

Staff: Eugene T. Potter
Audit Manager

Attachments:

- A - Response to the Auditor General's Report
Director, Department of General Services
- B - Contract Transmittal and Pre-Evaluation Form,
STD 15
- C - Contract/Contractor Evaluation Form, STD 4

3. A space will be provided on the form for an agency to indicate that it has complied with the requirements governing the use of present and previous State employees.
4. It is currently our intent that an agency justify a sole-source contract when it requests an exemption from advertising in the State Contracts Register (SAM Section 1212.6) and on the Contract Transmittal and Pre-Evaluation form. This requirement will be re-worded on the form for clarification purposes.

Contract/Contractor Evaluation, Std. Form 4

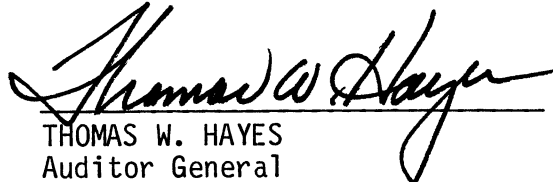
1. Agencies will be required to complete and forward to General Services a copy of this form for each contract completed, regardless of contract amount or whether the contract was previously approved by General Services. This requirement will be clarified on the form and in the State Administrative Manual.
2. The report correctly states that the form, by design, does not require agencies to indicate whether the contractor performed well, marginally or unsatisfactorily. The purpose for this is not to avoid a "black-list" effect per se, but to avoid the costly appeals and hearings that might result from such a "blacklist." However, the form will be amended to require agencies to identify a person that others may contact to discuss contractor performance.
3. The report suggests that the form require agencies to indicate whether the contractor was permitted to commence work prior to the contract approval date. In the past, this practice was controlled by policy; it is now prohibited by law. This distinction should be sufficient to prevent the State Controller from paying invoices that indicate that work commenced prior to the formal approval date.
4. The report suggest that General Services may require information on modifications or amendments to the contract on the evaluation form. Pursuant to State Administrative Manual Section 1216, when an original contract is subject to General Services' review, all amendments or modifications to that contract, with the exception of a one-time amendment that extends the time for completion one year or less, must also be approved by General Services. Agencies must explain the reason for the extension by submitting a fully executed copy with a Contract Transmittal and Pre-Evaluation, Std. Form 15 to General Services. We feel that it would be a duplication of effort to require this information on the post-evaluation form.

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Although not required by statute or regulation, the department should determine if other compliance statements might improve the Contract/Contractor Evaluation Form. For example, the department may want agencies to report information that helps determine whether the agency complied with certain post-award contracting requirements, such as not permitting a contractor to commence work before the contract was formally approved. The department may also want information about modifications or amendments, if there were any, or may want information concerning progress payments or retained payments, as required by the State Administrative Manual.

We conducted this review under the authority vested in the Auditor General by Section 10500 et seq. of the California Government Code and according to generally accepted government auditing standards. We limited our review to those areas specifically contained in the audit request.

Respectfully submitted,


THOMAS W. HAYES
Auditor General

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Director, Department of General Services
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STD 15
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5. The report suggests that General Services may desire information on progress payments or retained payments on the form. The method of payment on a contract must be specified in the body of the contract. Again, it would be a duplication of effort to require the information on the post-evaluation form.

Sincerely,

A handwritten signature in cursive script, appearing to read "W. J. Anthony".

W. J. Anthony
Director

Director of General Services: The attached contract is submitted for your approval. In support of this request, the following information is provided.

Division Bureau or Other Unit	
Date	ATTACHMENT B Contract Number

PLEASE NOTE: The pre-evaluation section on the reverse side must be completed when requesting approval of any service contract. Items 1 through 10 on the front must be completed on all transmittals.

1. Name of Contractor	2. Contractor I.D. No. (if required by SAM Sect. 1241.1)
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3. Digest of Contract (Work to be performed, amount to be paid, term). Include significant dates, special or unusual terms and conditions.

4. Reason for contract (identify special problem, administrative requirement, program need or other circumstance making the contract necessary).

5. Is this a renewal of a previous contract or service? Yes No

6. Summary of bids: A. List bidders and amounts bid.
 B. Explain:
 1. Award of contract if to other than low bidder or if bids were not obtained.
 2. If no bids obtained, basis for concluding reasonableness of contract rate or price.
 3.

7. Was this contract awarded to a minority or woman-owned business as defined in SAM Sec. 1204.1? Yes No

8. Was this contract awarded to a small business as defined in SAM Section ? Yes No

Authorized Department Signature

Title

PRE-EVALUATION SECTION - Must be completed when requesting approval of any service contract.

1. Justification for Contract (Check one)

- This contract is to be executed to achieve cost savings pursuant to SAM Section _____. The State Personnel Board has been so notified.
- This contract is to be executed pursuant to SAM Section _____. Justification for the contract is described below.

2. Describe the service or final product which will result, its benefit and the estimated number of persons served by such a benefit.

3. How will the agency use the contract product, and how will the use eliminate the need which makes the contract necessary?

4. Why is contracting the most effective method of achieving the agency's purpose?

5. What bidding method was used to select the vendor?

- Request for Proposal
- Invitation for Bid
- Other, Explain -- Use attachments if necessary _____

6. Document efforts made to determine why personnel in your agency or in other state agencies cannot provide this work. List which civil service classes were considered, names of departments contacted, and explain why the departments cannot provide the requested services.

Department

Contractor Name and Address

Division

Description of Service/Product Provided

Is the product being utilized?

No, if not explain Yes, If yes, explain how the product or service met the special problem, administrative requirement, or program need which made the contract necessary.

Were the services/product provided as specified in the contract? Yes No

Did the contractor fulfill all the requirements of the contract? Yes No

Identify any factors, including those outside the control of the contractor which compromised contract performance. Specify amounts and reasons for any cost-overruns.

Did the services/products meet the quality standards specified in the contract?
If not, explain.

Name and Title of Evaluator

Signature

Telephone Number

Date

DEPARTMENT OF GENERAL SERVICES



January 13, 1983

Thomas W. Hayes
Auditor General
660 J Street, Suite 300
Sacramento, CA 95814

Dear Mr. Hayes:

Subject: Standardized Forms for Pre- and Post-evaluation of
Contracts for Services

Thank you for the opportunity to review and comment on your draft report concerning the draft forms for the pre- and post-evaluation of contracts for services. We have carefully reviewed the report and found the conclusions and recommendations to be helpful and informative. The following outlines our comments and the specific changes we will make to the forms and/or the State Administrative Manual in response to your recommendations:

Pre-Evaluation and Contract Transmittal, Std. Form 15

1. The report suggests that General Services should amend and clarify when and for what purposes the form is to be used. Agencies will be required to complete the front side of the form for all contracts, regardless of contract amount or whether the contract must be submitted to General Services for review. For contracts subject to General Services' approval, a copy of the form will accompany the contract. In all cases, agencies will be required to retain copies of the forms in their files.

Additionally, on all contracts for services (including contracts for consulting services as defined by Government Code Section 14830.1) agencies will be required to complete the reverse side of the form.

These requirements will be clarified on the form and in the State Administrative Manual.

2. The report recommends that agencies be required to indicate if the contract was advertised in the California State Contracts Register. State Administrative Manual Section 1212.6 requires (with specified exceptions) State agencies to provide proof of publication of the contract in the Contracts Register at the time a contract is submitted to General Services. If such proof is not available, a Request for Exemption from Contract Advertising, Std. Form 821 must be submitted. The form will be amended to reflect these requirements.