CALIFORNIA STATE AUDITOR

Bureau of State Audits

Implementation of State Auditor's Recommendations

Audits Released in January 2009 Through December 2010

Special Report to
Senate Budget and Fiscal Review Subcommittee #5—Corrections, Public Safety and the Judiciary

SPECIAL REPORT

March 2011 Report 2011-406 S5

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March 7, 2011 2011-406 S5

The Honorable Loni Hancock, Chair
Senate Budget and Fiscal Review Subcommittee No. 5
State Capitol
Sacramento, California 95814

Dear Senator Hancock:

The State Auditor's Office presents this special report for the Senate Budget and Fiscal Review Subcommittee No. 5—Corrections, Public Safety and the Judiciary. The report summarizes the audits and investigations we issued during the previous two years that are within this subcommittee's purview. Additionally, the report includes the major findings and recommendations, along with the corrective actions auditees reportedly have taken to implement our recommendations. To facilitate the use of the report, we have included a table that summarizes the status of each agency's implementation efforts based on its most recent response.

This information is also available in a special report that is organized by policy areas that generally correspond to the Assembly and Senate standing committees. This special policy area report includes a table that identifies monetary values that auditees could realize if they implemented our recommendations, and is available on our Web site at www.bsa.ca.gov. Finally, we notify auditees of the release of these special reports.

Our audit efforts bring the greatest returns when the auditee acts upon our findings and recommendations. This report is one vehicle to ensure that the State's policy makers and managers are aware of the status of corrective action agencies and departments report they have taken. Further, we believe the State's budget process is a good opportunity for the Legislature to explore these issues and, to the extent necessary, reinforce the need for corrective action.

Respectfully submitted,

Elaine M. Howle

ELAINE M. HOWLE, CPA
State Auditor

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Introduction

This report summarizes the major findings and recommendations from audit and investigative reports we issued from January 2009 through December 2010, that relate to agencies and departments under the purview of the Senate Budget and Fiscal Review Subcommittee No. 5—Corrections, Public Safety and the Judiciary. The purpose of this report is to identify what actions, if any, these auditees have taken in response to our findings and recommendations. We have placed this symbol ➲ in the margin of the auditee action to identify areas of concern or issues that we believe an auditee has not adequately addressed.

For this report, we have relied upon periodic written responses prepared by auditees to determine whether corrective action has been taken. The State Auditor's Office (office) policy requests that the auditee provide a written response to the audit findings and recommendations before the audit report is initially issued publicly. As a follow-up, state law requires the auditee to respond at least three times subsequently: at 60 days, six months, and one year after the public release of the audit report. However, we may request an auditee to provide a response beyond one year or we may initiate a follow-up audit if deemed necessary.

We report all instances of substantiated improper governmental activities resulting from our investigative activities to the cognizant state department for corrective action. These departments are required to report the status of their corrective actions every 30 days until all such actions are complete.

Unless otherwise noted, we have not performed any type of review or validation of the corrective actions reported by the auditees. All corrective actions noted in this report were based on responses received by our office as of January 2011. The table below summarizes the number of recommendations along with the status of each agency's implementation efforts based on its most recent response related to audit reports the office issued from January 2009 through December 2010. Because an audit report and subsequent recommendations may cross over several departments, they may be accounted for on this table more than one time. For instance, the Dymally-Alatorre Bilingual Services Act report, 2010-106, is reflected under the California Emergency Management Agency, Department of Corrections and Rehabilitation, Employment Development Department, Department of Justice, and State Personnel Board.

Table
Recommendation Status Summary

	FOLLOW-UP RESPONSE				STATUS OF RECOMMENDATION				
	INITIAL RESPONSE	60-DAY	SIX-MONTH	ONE-YEAR	FULLY IMPLEMENTED	PARTIALLY IMPLEMENTED	PENDING	NO ACTION TAKEN	PAGE NUMBERS
California Emergency Management Agency									
Recovery Act Funds Letter Report 2009-119.4			●		3	1			3
Dymally-Alatorre Bilingual Services Act Report 2010-106	●					1	1		7
California Prison Health Care Services									
Investigations Report I2008-0805				●	1				19
IT Goods and Services Report 2008-501				●	3				21
Operations and Management Report 2009-107.1				●		1			25
Three Strikes Law and Health Care Costs Report 2009-107.2			●			1	3		33

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	FOLLOW-UP RESPONSE				STATUS OF RECOMMENDATION				
	INITIAL RESPONSE	60-DAY	SIX-MONTH	ONE-YEAR	FULLY IMPLEMENTED	PARTIALLY IMPLEMENTED	PENDING	NO ACTION TAKEN	PAGE NUMBERS
Corrections and Rehabilitation, Department of									
Investigations Report I2009-1 [I2007-0891]				●	1				41
Investigations Report I2009-0702				●	1	1			43
Investigations Report I2008-0805				●	1				19
Operations and Management Report 2009-107.1				●		2	2		25
Dymally-Alatorre Bilingual Services Act Report 2010-106	●						3		7
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Investigations Report I2009-1 [I2008-0699]			●		2				45
Dymally-Alatorre Bilingual Services Act Report 2010-106	●					1	1		7
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Dymally-Alatorre Bilingual Services Act Report 2010-106	●				1	2	2		7

California Emergency Management Agency

Despite Receiving $136 Million in Recovery Act Funds in June 2009, It Only Recently Began Awarding These Funds and Lacks Plans to Monitor Their Use

LETTER REPORT NUMBER 2009-119.4, MAY 2010

California Emergency Management Agency's response as of December 2010

The Joint Legislative Audit Committee requested that the Bureau of State Audits conduct a review of California's preparedness to receive and administer American Recovery and Reinvestment Act of 2009 (Recovery Act) funds. Using selection criteria contained in the audit request, we chose to review the preparedness of the California Emergency Management Agency (Cal EMA) to receive and administer the Recovery Act funds provided by the U.S. Department of Justice for its Edward Byrne Memorial Justice Assistance Grant Program (JAG Program). On February 17, 2009, the federal government enacted the Recovery Act to preserve and create jobs; promote economic recovery; assist those most affected by the recession; invest in transportation, environmental protection, and other infrastructure; and stabilize state and local government budgets. The Recovery Act also states that authorized funds should be spent to achieve its purposes as quickly as possible, consistent with prudent management. Based on our analysis, we believe that Cal EMA is moderately prepared to administer its Recovery Act JAG Program award.

Finding #1: Cal EMA only recently began to award subgrants.

Cal EMA only recently began awarding Recovery Act JAG Program funds, about 12 months after the passage of the Recovery Act and eight months after the U.S. Department of Justice awarded it $136 million. As of February 22, 2010, Cal EMA had signed agreements for, and thereby awarded, only four subgrants, totaling almost $4 million, or about 3 percent of its Recovery Act JAG Program grant. According to Cal EMA's records, by March 11, 2010—approximately three weeks later—Cal EMA had awarded additional subgrants, totaling $31 million, to 52 more subrecipients for a total of $35 million, or 26 percent of its Recovery Act grant. Under the Recovery Act JAG Program, payments are made to subrecipients to reimburse them for costs of providing program services. Cal EMA reported that it has not made any payments to these subrecipients but, according to its accounting records, has spent $104,000 in Recovery Act JAG Program funds for administrative costs.

According to the director of Grants Management, the awards of Recovery Act JAG Program subgrants have moved at a good pace. The director stated that the Recovery Act requires Cal EMA to create multiple new programs. He further stated that Cal EMA gave priority to those new programs, especially to the two largest ones, which comprise 66 percent of its total Recovery Act JAG Program funds. Additionally, the director indicated that it released requests for applications (RFAs) for these two largest programs to potential subrecipients in October and November 2009, and it released RFAs for all but one of the remaining programs by February 2010. He also stated that Cal EMA granted multiple extensions to potential subrecipients for submitting their applications for the two largest new programs.

During a January 28, 2010, Senate Budget and Fiscal Review Committee hearing, the director of Grants Management testified on the status of the Recovery Act JAG Program subgrants. According to the director, his goal was to have all subgrants, except those related to one program, approved and signed by April 15, 2010. He also indicated that Cal EMA would not begin to disburse Recovery Act JAG Program funds until the third or fourth quarter of fiscal year 2009–10 and that significant disbursements most likely would not begin until the second and third quarters of fiscal year 2010–11. As a result, these substantial disbursements will not occur until about 1.5 years after the passage of the Recovery Act and more than one year after Cal EMA received the Recovery Act JAG Program grant.

We recommended that, as soon as possible, Cal EMA execute subgrant agreements with subrecipients so California can more fully realize the benefits of the Recovery Act funds.

Cal EMA's Action: Corrective action taken.

Cal EMA reported that as of June 30, 2010, it had executed all 229 JAG Program agreements supported by Recovery Act funds. Cal EMA indicated that it distributed Recovery Act funds as follows: $33.4 million for law enforcement programs, $10.4 million for prosecution and court programs, $150,000 for prevention and education programs, $44.6 million for corrections and community corrections to reduce the likelihood of recidivism, $44.5 million for drug treatment and enforcement programs, $1.5 million for crime victim and witness programs, and $1.1 million for administrative costs.

Finding #2: Cal EMA needs to improve its monitoring of subrecipients' use of Recovery Act JAG Program funds.

Under the terms of its grant agreement with the U.S. Department of Justice, Cal EMA must monitor Recovery Act JAG Program funds in accordance with, among other governing requirements, all federal statutes, regulations, and the U.S. Office of Management and Budget (OMB) Circular A 133, to provide reasonable assurance that subrecipients comply with specific program requirements. In addition, the grant agreement states that, upon request, Cal EMA will provide documentation of its policies and procedures for meeting the monitoring requirements. However, although it provided monitoring planning documents that were general in nature, it was unable to provide policies and procedures or plans that would result in the required monitoring specific to Recovery Act JAG Program subrecipients.

To ensure that it meets the monitoring requirements of the Recovery Act JAG Program, we recommended that Cal EMA plan its monitoring activities to provide reasonable assurance that its subrecipients administer federal awards in accordance with laws, regulations, and the provisions of contracts or agreements.

Cal EMA's Action: Corrective action taken.

Cal EMA provided a monitoring plan for all its grant subrecipients that involves a risk-based approach that contains the following four key components: subrecipients are monitored during the term of the grant award; monitoring efforts focus on the areas of the most significant risk to the agency; all findings are addressed through appropriate corrective action; and ongoing financial and administrative training and technical assistance is provided to subrecipients. According to its monitoring plan, specific to Recovery Act funds, Cal EMA randomly selects subrecipients to receive extended scope reviews through the risk assessment process. Additionally, the plan indicates that all subrecipients receiving Recovery Act funds will receive a limited scope review within six months after the award is granted. This review may lead to an extended scope field review if needed to assure subrecipient compliance.

Finding #3: Cal EMA could not demonstrate it has determined the number of program staff it needs to monitor Recovery Act subrecipients.

Although the workload for subrecipient monitoring will increase significantly as a result of the 226 Recovery Act JAG Program subgrants that will be awarded during fiscal year 2009–10, Cal EMA could not demonstrate that it has adequately identified the number of program staff needed to monitor the use of those funds. The chief of the Public Safety Branch indicated that Cal EMA has acknowledged that the $592,000 of Recovery Act JAG Program funds appropriated by the Legislature to pay its administrative costs for fiscal year 2009–10 will not provide enough funds to accomplish the monitoring the branch would like to achieve. Cal EMA submitted a budget change proposal seeking to use interest earned on its Recovery Act JAG Program funds—$800,000 for fiscal year 2010–11 and $800,000 for fiscal year 2011–12—to administer the Recovery Act JAG Program and it believes that these amounts will be adequate to manage the subgrants. However, the Legislative Analyst's Office found that Cal EMA had not provided sufficient workload information to justify the requested funding and recommended the Legislature reduce the requested funding to the fiscal year 2009–10 level

of $592,000. Moreover, the documents Cal EMA provided us did not clearly identify the workload associated with managing the subgrants or how the additional funds it requested met its needs for managing the additional workload.

We recommended that to plan its monitoring activities properly, Cal EMA identify the workload associated with monitoring its Recovery Act JAG Program subrecipients and the workload standards necessary to determine the number of program staff needed.

Cal EMA's Action: Partial corrective action taken.

Cal EMA reported that its goal is to monitor all 229 Recovery Act subrecipients through site visits by June 30, 2011, and reported it had completed onsite monitoring for 84 of the 229 subrecipients as of December 13, 2010. It also provided its estimate of the number of work hours needed to conduct at least one site visit during the grant period for each subrecipient. The estimate identified that it needed 8.62 personnel years to perform this work. In addition, Cal EMA reported that it hired a retired annuitant to assist existing staff in conducting site visits. However, Cal EMA pointed out that it is limited to spending $592,000 each fiscal year on state operations to administer the Recovery Act projects and it intends to stay within that amount. Cal EMA also stated that it does not have eight staff who are dedicated 100 percent to the Recovery Act funded projects, but rather several program and monitoring staff who administer and monitor other federal- and state-funded projects as well.

Finding #4: Cal EMA misreported the administrative costs it charged to the Recovery Act JAG Program.

Cal EMA failed to consistently report to federal agencies the administrative costs it charged to its Recovery Act JAG Program award. Cal EMA has divided the reporting responsibilities for two reports between the Fiscal Services Division (quarterly expenditure reports to the U.S. Department of Justice) and the Public Safety Branch (quarterly progress reports to the federal Recovery Accountability and Transparency Board (Accountability Board)). Although the Fiscal Services Division reported $104,000 in administrative costs as of December 31, 2009, the Public Safety Branch reported to the Accountability Board that Cal EMA did not spend any Recovery Act JAG Program funds for the same period. The Fiscal Services Division provided accounting reports to support the expenditures it reported. The records the Public Safety Branch offered as support for the report were project time reporting records that showed no staff time charged to the Recovery Act JAG Program activities. However, these project records were from October 2008 through December 2008, one year before the reporting period. We questioned the federal funds program manager regarding the accuracy of the time period covered in the project time reporting records she provided, and she responded that no time was charged to the accounting codes used to collect administrative costs related to the Recovery Act JAG Program award.

We recommended that Cal EMA develop the necessary procedures to ensure that it accurately meets its Recovery Act reporting requirements.

Cal EMA's Action: Corrective action taken.

Cal EMA provided revised procedures for meeting Recovery Act reporting requirements and for increasing communication among staff regarding federal reporting requirements.

Dymally-Alatorre Bilingual Services Act

State Agencies Do Not Fully Comply With the Act, and Local Governments Could Do More to Address Their Clients' Needs

REPORT NUMBER 2010-106, NOVEMBER 2010

Responses from 11 audited state agencies as of November 2010 and three local agencies as of December 2010

The Joint Legislative Audit Committee (audit committee) asked the Bureau of State Audits to determine whether state and local agencies comply with the Dymally-Alatorre Bilingual Services Act (Act). The Act is intended to ensure that individuals who do not speak or write English or whose primary language is not English, referred to in our report as limited-English-proficient (LEP) clients, are not prevented from using public services because of language barriers. For a sample of state and local agencies, the audit committee asked us to determine the procedures and practices that the agencies use to identify the need for language assistance, to evaluate whether these processes accurately identify actual need, and to determine the effectiveness of the methods that the agencies use to monitor their own compliance with the Act. We selected a sample of 10 state agencies for our review, and we surveyed 25 counties and cities throughout the State. The audit committee also asked us to review the policies and procedures used by the State Personnel Board (Personnel Board) to monitor and enforce state agencies' compliance with the Act.

Finding #1: The Personnel Board does not inform all state agencies about their responsibilities under the Act.

The Personnel Board is not meeting the Act's requirement that it inform all state agencies of their duties under the Act. The Act requires the Personnel Board to notify state agencies of such responsibilities, including the need to conduct a language survey at each of their field offices by October 1 of each even-numbered year to identify languages other than English that 5 percent or more of the state agencies' LEP clients (substantial LEP populations) speak. In its efforts to meet this requirement, the Personnel Board created a master list to identify and track the agencies that were potentially required to comply with the Act during the 2008 biennial language survey and the 2009 biennial implementation plan cycle (2008–09 biennial reporting cycle). One of the sources for its master list is a report of state entities that it creates from a file it receives from the State Controller's Office. However, the Personnel Board's chief information officer explained that the Personnel Board is unsure of the parameters that determine which entities that file includes. He asserted that the file would include all major agencies but that some smaller boards or commissions might be omitted. We identified at least nine entities that the Personnel Board should have informed about their responsibilities under the Act but did not.

Audit Highlights . . .

Our review of state and local agencies' compliance with the Dymally-Alatorre Bilingual Services Act (Act) revealed that the State Personnel Board (Personnel Board):

» *Has not effectively implemented key recommendations from our 1999 report.*

» *Is not meeting most of its responsibilities under the Act, including:*

- *Informing state agencies of their responsibilities and ensuring they assess their clients' language needs.*
- *Evaluating compliance with the Act and ordering deficient state agencies to take corrective action.*
- *Ensuring complaints are resolved timely.*

» *Further, our review of 10 state agencies' compliance with the Act revealed the following:*

- *Nine conducted required language surveys, yet four reported erroneous results and two could not adequately support their results.*
- *None had adequate procedures in place to determine compliance with requirements for translation of certain written materials.*
- *Some are not maximizing opportunities to reduce their bilingual services costs by leveraging existing California Multiple Award Schedules or the Personnel Board's contracts.*

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Moreover, our survey of administrators and department managers in 25 cities and counties throughout California disclosed the following:

- *Some are not fully addressing their clients' bilingual needs.*
- *Several have not translated materials explaining their services.*
- *Many are not aware of the Act and do not have formal policies for providing bilingual services.*

To ensure that all state agencies subject to the Act are aware of their potential responsibilities to provide bilingual services, we recommended that the Personnel Board improve its processes to identify and inform all such state agencies of the Act's requirements.

Personnel Board's Action: Pending.

The Personnel Board concurs with this recommendation and stated that it has obtained the Department of Finance's Uniform Codes Manual to create a comprehensive state agency listing. In addition, the Personnel Board reported that its bilingual services program's processes will also include procedures to ensure that all newly created state agencies are properly notified and contacted with regard to both language surveys and implementation plans.

Finding #2: The Personnel Board does not sufficiently monitor state agencies' participation in language surveys.

The Personnel Board does not always ensure that state agencies conduct language surveys to identify their clients' language needs. The Personnel Board identified 151 state agencies as potentially subject to the Act in 2008; however, only 58 of these agencies conducted language surveys. Further, the Personnel Board's records also indicate that three of the 58 agencies did not follow through and submit implementation plans after completing their language surveys. Records also show that 33 of the 151 state agencies did not take part in the surveys, even though the Personnel Board did not exempt them from doing so. Finally, the Personnel Board exempted the remaining 60 agencies from participating in the 2008 biennial language survey, but the Personnel Board did not always adhere to the Act's exemption criteria when granting these exemptions. If the Personnel Board does not make certain that state agencies conduct language surveys and prepare implementation plans, or if the Personnel Board inappropriately grants exemptions, it is not ensuring that state agencies that provide services to the public are aware of and address the language needs of their LEP clients. The Personnel Board's bilingual services program manager acknowledged that the Personnel Board does not have formal procedures for following up with state agencies that do not submit language surveys or implementation plans, and also agreed that the Personnel Board's exemption process needs improvement.

We recommended that the Personnel Board make certain that every state agency required to comply with the Act conducts language surveys and submits implementation plans unless the Personnel Board exempts them from these requirements. The Personnel Board should also ensure that it adheres to the specific criteria contained in the Act when exempting agencies from conducting language surveys or preparing implementation plans.

Personnel Board's Action: Partial corrective action taken.

The Personnel Board concurs with this recommendation and stated that its bilingual services program's processes will include procedures to ensure that all newly created state agencies are properly notified and contacted with regard to both language

surveys and implementation plans. The Personnel Board also indicated that it has incorporated accurate exemption language as specified in the Act into the forms for the language survey and implementation plan. Finally, the Personnel Board reported that its bilingual services program has instituted a tracking mechanism and review process for each exemption approval to reduce the risk of error.

Finding #3: The Personnel Board does not require state agencies to submit key information.

The Personnel Board does not require state agencies to submit critical information that it needs to assess whether the agencies are meeting all of their responsibilities to serve their LEP clients. The Personnel Board receives state agencies' language survey results and implementation plans electronically through an online system that it has designed for this purpose. However, the Personnel Board does not require state agencies to identify their deficiencies in providing translated written materials, to provide detailed descriptions of how they plan to address any deficiencies in written materials or staffing, or to identify when they will remedy any noted deficiencies. Because the Personnel Board does not solicit all required information from state agencies, it cannot fulfill its monitoring and enforcement responsibilities.

The Personnel Board's bilingual services program manager agreed that the limited information the Personnel Board collects inhibits its ability to monitor and enforce state agencies' compliance with the Act. She also said that the Personnel Board does not adequately review agencies' implementation plans or conduct other formal monitoring activities to evaluate whether the state agencies are complying with the Act's staffing and written materials requirements. Additionally, she acknowledged that the Personnel Board does not order agencies to make changes to their implementation plans or to provide periodic progress reports on their efforts to comply with the Act, and it does not otherwise order state agencies to comply with the Act. Finally, she told us that the bilingual services unit currently has only four staff, which she asserts is not enough to address all of the Personnel Board's responsibilities under the Act.

We recommended that the Personnel Board require state agencies to provide all of the information required by the Act. For example, the Personnel Board should ensure that state agencies identify their deficiencies in staffing and translated written materials and that the state agencies' implementation plans detail sufficiently how and when they plan to address these deficiencies.

In addition, we recommended that the Personnel Board assess the adequacy of state agencies' language surveys and implementation plans. If it determines that implementation plans do not address deficiencies in staffing or written materials adequately, the Personnel Board should order the agencies to revise or supplement their plans accordingly. The Personnel Board should also require state agencies to report to it every six months on their progress in addressing their deficiencies. If the Personnel Board determines that state agencies have not made reasonable progress toward complying with the Act, we recommended that it consider ordering them to comply with the Act. These actions could include ordering state agency officials to appear before the Personnel Board to explain why their agencies have not complied. If these actions or its other efforts to enforce the Act are ineffective, the Personnel Board should consider asking a court to issue writs of mandate under Section 1085 of the Code of Civil Procedure, to require agencies to perform their duties.

Finally, we recommended that the Personnel Board seek enough additional staff to fulfill its obligations under the Act, or seek changes to the Act that would reduce its responsibilities and make them commensurate with its staffing levels.

Personnel Board's Action: Partial corrective action taken.

The Personnel Board concurs with these recommendations and reported that it has revised its forms to capture all of the information required by the Act. In addition, the Personnel Board stated that if it determines that state agencies' implementation plans do not adequately address deficiencies,

its bilingual services program staff will follow up with the agencies to supplement their plans. The Personnel Board also indicated that it has revised its bilingual services program's procedures to incorporate a six-month progress report by deficient agencies. Further, the Personnel Board agreed that its five-member board should order noncompliant agencies to appear before the board to explain their noncompliance, and stated that its bilingual services program revised its procedures accordingly. The Personnel Board also indicated that it will consider additional appropriate measures to enforce compliance. Finally, the Personnel Board stated that it will consider options such as legislative changes and/or budget change proposals to increase staffing.

Finding #4: The Personnel Board generally does not ensure that language access complaints are resolved.

In identifying other practices the Personnel Board uses to monitor state agencies' compliance with the Act, the bilingual services program manager stated that the Personnel Board implemented a toll-free complaint line with mailbox options for the top 12 languages other than English reportedly encountered by state agencies. At that time, it sent both a memorandum informing state agencies of the complaint line and posters for the agencies to display in their field offices. The posters display a message in all 12 languages that informs clients of their right to receive services and information in their native languages and that directs them to call the Personnel Board's complaint line if state agencies do not meet the clients' language needs.

The Personnel Board intends its complaint process to ensure that clients' issues are directed to the appropriate government agency for resolution; consequently, in most cases the Personnel Board forwards the complaints to relevant state agencies for them to resolve. However, it generally does not follow up with the responsible state agencies to ensure that language access complaints are resolved; therefore, the Personnel Board does not have assurance that state agencies are addressing the language needs of these clients. In one instance, an individual repeatedly called the Personnel Board's complaint line over a period of nearly three weeks to report that he had not received language assistance from a state agency. If the Personnel Board had followed up with the agency to ensure that it resolved the initial complaint, the Personnel Board might have eliminated the need for this individual to make subsequent calls.

We recommended that the Personnel Board follow up with the responsible state agencies to ensure that the agencies resolve the language access complaints it receives in a timely manner.

Personnel Board's Action: Corrective action taken.

The Personnel Board revised the bilingual services program's procedures to incorporate additional fields to its tracking system to capture the date that a complaint was resolved and how it was resolved.

Finding #5: The Personnel Board's biennial report lacks substance.

The Act requires the Personnel Board to identify significant problems or deficiencies and propose solutions where warranted in its reports to the Legislature. We reviewed the most recent report, which the Personnel Board issued in March 2010, and we found that it does not clearly identify whether state agencies have the number of qualified bilingual staff in public contact positions that is sufficient to serve the agencies' substantial populations of LEP clients. As in the case of staffing deficiencies, the Personnel Board's March 2010 report also does not clearly address whether state agencies are meeting the Act's requirements for translating written materials. In addition, the Personnel Board's March 2010 report does not identify specific agencies that may not be complying with the Act. For example, it states that 13 state agencies accounted for 90 percent of the reported bilingual position deficiencies, but it does not identify these agencies by name. Further, although state agencies often have field offices located throughout the State, the report does not show these deficiencies by field office.

We recommended that the Personnel Board improve the content of its biennial report to the Legislature to identify problems more clearly and to propose solutions where warranted. Specifically, the report should clearly indicate whether state agencies have true staffing deficiencies or deficiencies in translated materials. In addition, the report should identify any agencies that are not complying with the Act and should present key survey and implementation plan results by state agency and field office to better inform policymakers and the public about the language needs of residents in certain areas of the State and about state agencies' available resources to meet those needs.

Personnel Board's Action: Pending.

The Personnel Board concurs with this recommendation and stated that it will revise the format and content of future biennial reports to reflect more comprehensive and meaningful data.

Finding #6: State agencies do not fully comply with the Act.

Although nine of the 10 agencies we reviewed conducted language surveys in 2008, four reported erroneous survey results for one or more of their local offices, and two did not have sufficient documentation to support their survey results. If agencies use inaccurate survey data or do not retain documentation supporting their survey results, they compromise their ability to evaluate their potential need for additional bilingual staff and to identify written materials they need to translate. The tenth agency we reviewed, the California Emergency Management Agency (Emergency Management), failed to conduct the 2008 biennial language survey. Additionally, only one of the state agencies we reviewed formally analyzed its survey results to determine whether the use of other available options, in addition to qualified bilingual staff in public contact positions, was serving the language needs of its clients, as the Act requires. None of the state agencies we reviewed had adequate procedures in place to determine whether they met the Act's requirements to translate certain written materials for their substantial LEP populations. Furthermore, most of the state agencies we reviewed have not developed plans to address their deficiencies in staffing and translated written materials.

To ensure that they meet their constituents' language needs, we recommended that state agencies do the following:

- Make certain that they accurately assess and report their clients' language needs to the Personnel Board.
- Analyze formally their language survey results and consider other available bilingual resources to determine their true staffing deficiencies.
- Establish procedures to identify the written materials that the Act requires them to translate into other languages and ensure that such materials are translated or made accessible to the agencies' LEP clients.
- Develop detailed corrective action plans describing how and when the state agencies will address their staffing and written materials deficiencies. In addition, they should submit these corrective action plans to the Personnel Board as part of the state agencies' overall implementation plans.

Emergency Management's Action: Partial corrective action taken.

Emergency Management stated that it will participate in the language survey that is held every even-numbered year, and will submit its language survey results to the Personnel Board by the due date. Emergency Management conducted its 2010 biennial language survey and submitted the results to the Personnel Board in October 2010. Based on its language survey results, Emergency Management indicated that it was able to determine which divisions may require the services of a bilingual employee within a specific program. Emergency Management also asserted that it will

ensure that translated written materials in the appropriate languages are made accessible for its LEP clients. In addition, Emergency Management stated that it is in the process of updating its bilingual services policy, which includes creating a bilingual services handbook that explains the responsibilities and requirements of the Act. Finally, Emergency Management reported that it is in the process of developing an implementation plan showing the corrective actions to be taken to ensure there are no staffing or translated written materials deficiencies, and it will submit this implementation plan to the Personnel Board by the October 2011 due date.

California Highway Patrol's Action: Pending.

The California Highway Patrol (Highway Patrol) stated that it will continue to assess its clients' language needs and to report accurate information to the Personnel Board. In addition, it will continue to enhance and formalize methods of analyzing language survey results and monitoring bilingual staff deficiencies. Highway Patrol also asserted that it will develop a list of documents that are required to be translated and compare this list to existing translations to identify any remaining translated material needs. Finally, Highway Patrol stated that it will submit to the Personnel Board corrective action plans that address any staffing and written materials deficiencies by April 2011.

Department of Corrections and Rehabilitation's Action: Pending.

The Department of Corrections and Rehabilitation (Corrections) agreed that there are deficiencies with regard to compliance with the Act, and stated that it will evaluate the deficiencies identified in our audit further and take corrective action. Corrections stated that it would address our specific recommendations in a corrective action plan at 60-day, six-month, and one-year intervals.

Department of Food and Agriculture's Action: Partial corrective action taken.

The Department of Food and Agriculture (Food and Agriculture) reported that it enhanced its training processes and provided education and guidance for all language survey reporting assistants prior to the commencement of its 2010 biennial language survey. In addition, its bilingual services program coordinator worked closely with its reporting assistants to ensure that they have a better understanding of their role and responsibilities, and are following the appropriate standards and procedures in tallying LEP contacts. Further, at the conclusion of the 2010 biennial language survey, its bilingual services program coordinator reviewed all the tally sheets from every participating division to make sure that the information gathered and reported will yield accurate survey results. In addition, Food and Agriculture stated that it has engaged in a dialogue with the Personnel Board and other state agencies to collaboratively share ideas, efforts, and resources to address the requirements of the Act. Finally, Food and Agriculture reported that its equal employment opportunity officer recently invited other equal employment opportunity professionals to form a collaborative group that will discuss and work together in defining and implementing the provisions of the Act.

Department of Housing and Community Development's Action: Partial corrective action taken.

The Department of Housing and Community Development (Housing) reported that beginning with the 2010 biennial language survey, it assigned responsibility for the survey to its equal employment opportunity officer, who also serves as its bilingual services program coordinator. This individual is responsible for coordinating, implementing, and overseeing the language survey, analyzing completed survey tally sheets, reporting the results of the analysis to the Personnel Board, and maintaining sufficient documentation. Housing also indicated that it will continue to formally analyze its language survey results, including considering other available options for bilingual services in determining staffing deficiencies. In addition, Housing indicated that by June 2011, it will begin to formally document such analyses. Housing also stated that by June 2011 it will confer with the Personnel Board and other Act-compliant departments to identify best practices for determining which written materials need to be translated. Furthermore, Housing indicated that it will develop procedures for identifying written materials to be translated, create a list of written materials that require translation,

and establish dates for the translation and distribution of written materials by June 2012. However, we believe that Housing should develop these procedures much earlier so that its LEP clients have access to this information sooner. In fact, we believe that Housing should develop these procedures and describe how and when it will address any written materials deficiencies in its next biennial implementation plan, which is due in October 2011. Housing also reported that by June 2011, it will submit a memorandum to the Personnel Board informing it that a detailed corrective action plan relative to staffing deficiencies is not required because its 2010 biennial language survey revealed that Housing no longer has staffing deficiencies. Finally, Housing indicated that by June 2011 it will also prepare and submit to the Personnel Board a detailed corrective action plan that describes how and when it will address its written deficiencies. As noted above, Housing will need to develop procedures for identifying materials requiring translation before it will be in a position to develop a detailed corrective action plan for addressing any written materials deficiencies.

Department of Justice's Action: Partial corrective action taken.

The Department of Justice (Justice) reported that it has recently appointed a new bilingual services program coordinator to monitor the program, the biennial language survey, and the subsequent implementation plan. Justice also indicated that it has adopted and implemented new procedures that provide a higher level of quality control regarding reviewing and analyzing the language survey data in order to avoid future reporting errors. In addition, Justice stated that it carefully analyzed its 2008 biennial language survey results and determined that its true staffing deficiencies were significantly less than originally reported. Justice indicated that these findings were included in an implementation plan follow-up report it submitted to the Personnel Board. Furthermore, Justice reported that it has made draft revisions to the bilingual services program portion of its administrative manual to detail the procedures used to identify written materials that require translation under the Act. Finally, Justice stated that the implementation plan follow-up report that it submitted to the Personnel Board in August 2010 included a corrective action plan to address the deficiencies of the 2008–09 biennial reporting cycle. Furthermore, Justice plans to take corrective actions to address any future identified staffing or written materials deficiencies.

Department of Motor Vehicles' Action: Partial corrective action taken.

The Department of Motor Vehicles (Motor Vehicles) reported that it implemented improved procedures and incorporated additional checks and balances for the 2010 biennial language survey to ensure that it accurately assesses and reports its LEP clients' language needs to the Personnel Board. Motor Vehicles formally analyzes its language survey results and considers other available bilingual resources to determine its true staffing deficiencies. Motor Vehicles will establish a taskforce and create a list of printed materials that require translation by April 2011. Finally, Motor Vehicles indicated that it will develop and submit to the Personnel Board a detailed corrective action plan that describes how and when it will address its written materials deficiencies by October 2011.

Department of Public Health's Action: Pending.

The Department of Public Health (Public Health) reported that it will continue to ensure that it accurately assesses and reports its client's language needs to the Personnel Board. Public Health will also analyze the language survey results and its available bilingual resources to determine its true staffing deficiencies by February 2011. Public Health also stated that it will develop procedures for identifying written materials needing translation for its LEP clients by March 2011. Finally, Public Health will submit an implementation plan to the Personnel Board that includes corrective action plans addressing any staffing and written materials deficiencies by October 2011.

Department of Toxic Substances Control's Action: Pending.

The Department of Toxic Substances Control (Toxic Substances Control) accurately assessed and reported its client's language needs to the Personnel Board. Toxic Substances Control also reported that it performs an internal analysis of its language survey results to determine whether it has true staffing deficiencies. However, it recognizes that it needs to formally document this analysis, and

thus it will ensure that all future analyses of its language survey results and resulting conclusions are formally documented and retained. Toxic Substances Control also indicated that it will develop procedures to identify the materials the Act requires to be translated, as well as a process to ensure that those materials are translated or made accessible to its LEP clients. Finally, Toxic Substances Control will develop a corrective action plan describing how and when it will address its staffing and written material deficiencies and it will include this plan in the implementation plan it submits to the Personnel Board.

Employment Development Department's Action: Partial corrective action taken.

The Employment Development Department (Employment Development) reported that it designed and implemented corrective actions for the recently completed 2010 language survey to ensure it collected all hard-copy documentation from all public contact employees so there would be no questions about the accuracy of data provided to the Personnel Board. In addition, Employment Development stated that it added controls over data collection, tabulation, and submission so that all information could be traced back to hard-copy documentation. Employment Development stated that it does not consider it cost-effective to implement procedures that require extensive analysis of how to remedy minor staffing deficiencies, but it will update its procedures to have managers document their analyses for significant deficiencies. We believe that Employment Development could determine whether it has sufficient alternative resources (i.e., certified staff from other units, contract staff, etc.) to mitigate the staffing deficiencies identified in its biennial language survey without having to perform an "extensive analysis." Employment Development also reported that it will supplement its existing policy and procedures to provide further guidance about translating materials into other languages. This guidance will include steps to identify and maintain lists of materials that need translation, and procedures to ensure that identified materials are translated.

Finally, Employment Development stated that it will obtain operational managers' reasons for choosing a particular remedy for a staffing deficiency along with implementation details should a significant staffing deficiency occur, and will submit that information to the Personnel Board. Likewise, Employment Development stated that if future language surveys identify any materials that need translation, it will identify its corrective action steps and timeline and submit that information to the Personnel Board.

Finding #7: State agencies are not maximizing opportunities to reduce the costs of providing bilingual services.

Some state agencies are not maximizing opportunities to reduce their costs to provide bilingual services by leveraging existing California Multiple Award Schedules (CMAS) contracts with the Department of General Services (General Services) and the Personnel Board's contracts for interpretation and translation services. For example, both Employment Development and Food and Agriculture entered into separate agreements with a contractor to translate documents into Spanish at a cost of 30 cents per word; however, this service is available from a CMAS vendor for 17 cents per word. If these departments purchase these services up to their maximum contracted amounts, they will collectively end up paying approximately $47,400 more than if they purchased these services from the CMAS vendor. Moreover, the savings could be greater because the prices listed in CMAS vendors' contracts represent the maximum rates they may charge for a given service; thus, General Services strongly encourages agencies to negotiate more favorable rates with these vendors.

The Personnel Board maintains one contract for sign language interpretation services and another contract for over the telephone interpretation services and written translation services. We found that these contracts contained rates that were sometimes lower than the rates negotiated by other state agencies. Thus, state agencies needing contract interpreters or translators should check with the Personnel Board to identify the vendors with which the Personnel Board contracts and the associated rates it is paying. State agencies can use this information as leverage when negotiating prices with CMAS or other vendors.

We recommended that state agencies leverage General Services' and the Personnel Board's contracts for interpretation and translation services to potentially reduce the costs of providing bilingual services.

Emergency Management's Action: Pending.

Emergency Management reported that it will research the possibility of utilizing General Services' and the Personnel Board's contracts as a cost-effective tool to provide written translation and interpretation services for its LEP clients, and will outline this process in its 2011 implementation plan.

Highway Patrol's Action: Corrective action taken.

Highway Patrol reported that it complies with this recommendation and will continue to negotiate the lowest possible rates for bilingual services while ensuring quality deliverables.

Corrections' Action: Pending.

Corrections reported that it would review its internal procurement controls to ensure it is utilizing the reduced rates offered by existing CMAS contracts for language access services.

Food and Agriculture's Action: Pending.

Food and Agriculture reported that its equal employment opportunity office will further educate all of its divisions regarding the availability of CMAS contracts for language access services. Food and Agriculture also indicated that in upcoming training sessions and workshops, the equal employment opportunity office will promote the utilization of CMAS contracts and the importance of negotiating with CMAS vendors as a cost-effective way of providing language access services.

Housing's Action: Pending.

In an effort to achieve the best service at the lowest cost possible, Housing's equal employment opportunity officer will contact the Personnel Board to obtain information and pricing on its bilingual services contracts, and will compare those prices to the rates of the CMAS and other vendors that it currently uses for its bilingual services needs. Housing reported that these activities will occur by June 2011.

Justice's Action: Pending.

Justice reported that it will consider exploring the bureau's recommendation to leverage General Services' and the Personnel Board's contracts when its current language interpretation and translation service contract expires.

Motor Vehicles' Action: Corrective action taken.

Motor Vehicles reported that it already complies with this recommendation, and therefore, no further action is required.

Public Health's Action: Pending.

Public Health reported that it will issue a contract bulletin by March 2011 outlining the usage of CMAS contracts to procure interpretation and translation services. Public Health indicated that this bulletin will also inform department employees that utilizing CMAS contracts could provide leverage to reduce costs.

Toxic Substances Control's Action: Pending.

Toxic Substances Control reported that it will consider General Services' and the Personnel Board's contracts for interpretation and translation services when appropriate in an effort to reduce the costs of providing bilingual services.

Employment Development's Action: Pending.

Employment Development asserted that it leverages all of General Services' master and statewide contracts, including CMAS contracts, when appropriate for use. However, Employment Development stated that before contracting out for personal services with a private vendor, as is available through CMAS, it first considers an agreement with another state agency. Nonetheless, the Employment Development contract described previously illustrates that state agencies have opportunities to reduce their costs of providing bilingual services by leveraging CMAS contracts.

Finding #8: Two state agencies did not follow contracting rules to pay for their bilingual services.

During the course of our audit, we discovered some inappropriate contracting practices at Public Health and Corrections. The Public Contracts Code generally requires state agencies to obtain a minimum of three bids when contracting for services valued at $5,000 or more. In addition, the State Contracting Manual prohibits state agencies from splitting into separate tasks, steps, phases, locations, or delivery times to avoid competitive bidding requirements any series of related services that would normally be combined and bid as one job.

Despite these requirements, during fiscal year 2007–08, Public Health used four individual service orders for $4,999.99 each to one vendor for interpreting services. Instead of executing multiple service orders having an aggregate value exceeding $5,000 with one vendor for the same service, Public Health should have combined the services into one job and solicited competitive bids. Public Health has a decentralized procurement process and does not track centrally the service orders that exist for language access services; thus, it places itself at risk for violating the State's contracting rules.

Corrections established five individual service orders for $4,999.99 each to purchase interpretation services from one vendor during fiscal year 2009–10. It agrees that these five service orders should have been consolidated into a single competitively bid contract. According to Corrections' service contracts chief, it inadvertently used the five service orders in this case to purchase services from one vendor because its headquarters office received these service orders from different parole regions at different times, and it did not identify the need for a single contract.

We recommended that Public Health and Corrections develop procedures to detect and prevent contract splitting.

Corrections' Action: Pending.

Corrections reported that it would review its internal procurement controls to ensure it is utilizing the reduced rates offered by existing CMAS contracts for language access services. In addition, Corrections stated that it would address our specific recommendations in a corrective action plan at 60-day, six-month, and one-year intervals.

Public Health's Action: Pending.

Public Health reported that it will strengthen its oversight of service orders by providing semi-annual reminders to its staff on the use of service orders to ensure that programs are complying with the guidelines of its service order manual. In addition, Public Health stated that its internal auditors will perform periodic inspections to ensure compliance with contract requirements, prevent splitting of service orders, and to ensure service orders do not exceed the maximum allowed amount of

$4,999.99 per service type and contractor in one fiscal year. Finally, Public Health indicated that it will issue a policy memo by January 2011 that outlines the appropriate and inappropriate uses of service orders and the tracking log that each program must keep for auditing purposes.

Finding #9: Some local agencies have no formal process for clients to complain about any lack of bilingual services.

Our survey of local government administrators and department managers revealed that residents in the cities of Fremont, Santa Ana, and Garden Grove may have insufficient means of voicing their need for bilingual services. Specifically, these jurisdictions reported that they do not have a complaint process at the city's administration offices or at the individual local department included in our survey that would allow the public to notify them about a lack of available bilingual staff or translated written materials. Local agencies without a formal complaint process that would allow their LEP clients to report formally any lack of bilingual services may not hear or address such complaints appropriately.

We recommended that the cities of Fremont, Santa Ana, and Garden Grove should consider establishing complaint processes through which the public can report the absence of bilingual services or resources.

City of Fremont's Action: Pending.

The city of Fremont reported that it is currently researching the complaint processes that other jurisdictions have in place and plans to adopt a complaint procedure in early 2011.

City of Santa Ana's Action: Pending.

The city of Santa Ana (Santa Ana) reported that it plans to provide complaint forms regarding bilingual services and resources at all of its public counters and on its Web site, and that these forms will be available in each of the primary languages spoken in Santa Ana. In addition, Santa Ana stated that it will ensure that a central department is responsible for addressing all complaints. Finally, Santa Ana asserted that it will ensure that any complaints are addressed in a timely manner.

City of Garden Grove's Action: Pending.

The city of Garden Grove (Garden Grove) reported that it will establish a central point of contact for complaints related to the Act. In addition, Garden Grove stated that over the next few months, it will draft a formal complaint process as an administrative regulation. When this regulation is adopted, the formal complaint process will be made available to the public in all of the city's public facilities and on its Web site, in each of the city's major languages.

California Prison Health Care Services

Improper Contracting Decisions and Poor Internal Controls

REPORT I2008-0805, JANUARY 2009

Responses from the California Prison Health Care Services and Department of Corrections and Rehabilitation as of January 2010

When California Prison Health Care Services (Prison Health Services) discovered that some of its information technology (IT) acquisitions had been made with a single vendor in 2007 and 2008 without complying with either the state contracting process or the alternative contracting processes established by a federal court, it requested that we investigate the matter.

Finding: Prison Health Services acquired $26.7 million in IT goods and services in a noncompetitive manner from November 2007 through April 2008.

We found that staff at Prison Health Services ignored state contracting laws, as well as the alternative contracting requirements, when it acquired $26.7 million in IT goods and services in a noncompetitive manner from November 2007 through April 2008. Specifically, Prison Health Services used 49 purchase orders to acquire $23.8 million worth of IT goods from a single vendor when it should have sought competitive bids. It also contracted with the same vendor to provide $2.9 million in IT services again without using a competitive process. Further, staff at the Department of Corrections and Rehabilitation (Corrections) helped to execute the purchase orders for Prison Health Services after initially questioning the propriety of the process used. Consequently, the State cannot be certain that Prison Health Services spent $26.7 million in public funds prudently or that it received the best value for the money spent.

To ensure consistent application of proper contracting procedures for acquiring IT goods and services, we recommended that Prison Health Services do the following:

- Require employees with procurement and contracting responsibilities to attend training at regular intervals regarding state contracting processes.
- Formally communicate to purchasing and contracting staff at Prison Health Services and Corrections the meaning of the federal court's waiver order and the correct procedures that must be followed to use the alternative contracting processes approved by the court.
- Develop and document contracting procedures for staff to follow when acquiring IT goods and services under existing state processes.
- Develop and document the contracting procedures for staff to follow when acquiring IT goods and services under each of the alternative contracting processes approved by the federal court.

Investigative Highlights . . .

California Prison Health Care Services' (Prison Health Services) staff violated legal requirements and bypassed internal controls by noncompetitively acquiring $26.7 million in information technology (IT) goods and services. Specifically, Prison Health Services:

» *Used 49 purchase orders to acquire $23.8 million of IT goods from a single vendor without inviting competitive bids.*

» *Contracted with the same vendor to provide $2.9 million in IT services without using a competitive process.*

Staff at the Department of Corrections and Rehabilitation ultimately executed purchase orders after initially questioning the propriety of the process used.

- Specify in writing who at Prison Health Services has authority to sign contracts and purchase orders under the state and alternative contracting processes, and distribute this information to employees who have responsibilities regarding procurement.

- Establish internal procedures to ensure there is documentation of approval from the receiver or his designee to make an acquisition under each of the alternative contracting processes.

- Ensure that prior to staff selecting a method for acquiring an IT good or service, the proposed acquisition is reviewed by an appropriate staff member to evaluate whether the method of acquisition is proper.

- Ensure that when contracts and purchase orders are being processed by staff at either Prison Health Services or Corrections for IT goods and services, an appropriate staff member will evaluate the proposed acquisition to determine whether it is proper and has the authority to halt the acquisition until any suspected impropriety has been resolved.

To ensure that the State follows applicable contracting laws, Corrections should establish a protocol for communicating with Prison Health Services' executive management when it becomes aware of any potential violations of state contracting laws.

Prison Health Services' Action: Corrective action taken.

Prison Health Services reported that it obtained approval from the Department of General Services to use a noncompetitively bid contract to continue to use the vendor that was the subject of this report. It also reported that it adopted a formal policy governing the use of the federal court's waiver of state contracting laws. In addition, Prison Health Services notified us subsequently that employees in its IT acquisitions unit attended training about state contracting processes. Prison Health Services also indicated that it distributed its policy on the use of the federal court's waiver. Further, Prison Health Services stated that it began to route all IT procurements to its procurement office to ensure the propriety of the purchasing method used. It also noted that it gave that office the authority to halt any procurement that does not meet state laws and regulations. Moreover, Prison Health Services told us in May 2009 that it developed a training policy for staff with purchasing responsibilities. In addition, it developed procedures for staff to follow when acquiring IT goods and services under state processes as well as under contracting processes approved by the federal court. Finally, it established a policy to ensure that authority to sign purchasing documents is limited to authorized individuals.

Corrections' Action: Corrective action taken.

Corrections reported that its managers will continue to review contract documentation and abort any transactions that violate applicable contracting requirements.

California Prison Health Care Services

It Lacks Accurate Data and Does Not Always Comply With State and Court-Ordered Requirements When Acquiring Information Technology Goods and Services

REPORT NUMBER 2008-501, JANUARY 2009

California Prison Health Care Services' response as of August 2009[1]

State law gives the Bureau of State Audits (bureau) the authority to audit contracts involving the expenditure of public funds in excess of $10,000 entered into by public entities at the request of the public entity. The current court-appointed receiver requested that the bureau conduct an audit of contracts for information technology (IT) goods and services initiated by California Prison Health Care Services (Prison Health Services) for the improvement of prison medical health care services.

Finding #1: Prison Health Services does not have accurate data for contracts it initiates.

Prison Health Services does not have sufficiently reliable data to allow it to identify all contracts it initiates, including IT contracts, and related information. When entering into contracts through the state contracting process, Prison Health Services typically performs all necessary work to identify the preferred vendor for its IT contracts. The contracting office of the Department of Corrections and Rehabilitation (Corrections) executes the contract with the preferred vendor, and its accounting office is responsible for making payments on these contracts. While Corrections maintains two databases that contain various information related to contracts, including those initiated by Prison Health Services and approved through the state contracting process, these databases often contain inaccurate and incomplete data. Prison Health Services noted that its staff use reports generated from these databases to identify the number of contracts it initiates and to assess appropriate future staffing levels to support its operational efforts internally instead of relying on Corrections. Its chief information officer stated that Prison Health Services was in the process of implementing a new enterprise-wide business information system that would house future contract information and would have appropriate controls to limit inaccurate data. Corrections noted that data related to some existing contracts has been migrated to the new system from the existing contracts database. Therefore, even though Prison Health Services intends to limit inaccurate data, the new system may already contain inaccurate or incomplete data.

We recommended that Prison Health Services ascertain that the internal controls over the data entered into the new enterprise-wide business information system work as intended. We further recommended that for contract-related data that has already been

Audit Highlights . . .

Our review of California Prison Health Care Services' (Prison Health Services) contracts for information technology (IT) goods and services revealed the following:

- *Prison Health Services does not have reliable data to identify all IT contracts it initiates—current databases contain inaccurate or incomplete data.*
- *The new enterprise-wide business information system may already contain inaccurate or incomplete data, migrated from the old databases.*
- *Eight of 21 contracts we reviewed lacked required certifications justifying the purchase and four service contracts did not have evidence of compliance with all bidding and contract award requirements.*
- *Prison Health Services has not complied with all provisions of the federal court's order when using alternative contracting methods—two contracts did not contain justification for an expedited formal bid method.*

[1] Prison Health Services' six-month response dated August 2009 indicated that corrective action was complete for all recommendations. We have since reviewed the support for Prison Health Services' assertions regarding its status in implementing our recommendations and agree all corrective action is complete. Thus, a one year response due in January 2010 was not required.

migrated from old databases to the new system, Prison Health Services needs to ensure the accuracy of key fields such as the ones for contract amount, service type, and the data fields that identify contracts initiated by Prison Health Services by comparing the data stored in its new database to existing hard-copy files.

Prison Health Services' Action: Corrective action taken.

Prison Health Services stated that it has implemented the processes required to ensure complete and accurate contract information. It has also established one certified trainer and two certified power users to ensure the new enterprise-wide system is used to its highest potential. Further, according to Prison Health Services, to ensure that complete and accurate IT contract information has been migrated to the new enterprise-wide system, it has established various internal controls such as comparing the hard-copy contracts to an internal tracking log in the enterprise-wide system and reviewing key fields in the new enterprise-wide system upon receiving a copy of an executed agreement.

Finding #2: Prison Health Services does not consistently follow state contracting requirements to purchase information technology goods and services.

Prison Health Services failed to consistently adhere to state contracting requirements, including Corrections' and its own internal policies, when entering into contracts for IT goods and services. State laws and regulations outline the process that Corrections must follow when making such purchases. Because the receiver acts in place of the secretary of Corrections for all matters related to providing medical care to adult inmates, Prison Health Services must adhere to the same contracting requirements as Corrections, except to the extent that the federal court has waived those requirements. Our review of 21 contract agreements related to IT goods and services executed between January 1, 2007, and June 30, 2008, found that Prison Health Services did not have required documentation to justify the purchases for eight contracts, failed to ensure the contractor agreed to the various required provisions for one contract, and could not demonstrate it complied with appropriate bidding and bid evaluation requirements for four contracts. Prison Health Services' failure to comply with these requirements could be attributed to its lack of adequate controls to ensure that appropriate individuals reviewed these contracts.

We recommended that Prison Health Services ensure that all responsible staff are aware of and follow processing and documentation requirements, including evidencing the review and approval of contracts.

Prison Health Services' Action: Corrective action taken.

Prison Health Services stated that it has developed policies, procedures, guides, checklists, and flowcharts related to proper processing, execution, and documentation of service agreements and made them available to all staff involved with contract practices. In addition, its policies require that contracts are routed through various internal stakeholders to ensure compliance. According to Prison Health Services, it provides training to its staff on the processing of all purchase and service agreements on a continuous basis.

Finding #3: Prison Health Services cannot be assured that it met all court-ordered provisions related to alternative contractng methods.

Although Prison Health Services uses the alternative contracting methods authorized by the federal court that established the receivership, it has not fully complied with all provisions of the court's order for using such methods. To better fulfill Prison Health Services' mission to raise the quality of inmate medical care, the court approved the receiver's request to use streamlined alternative contracting methods in lieu of the state contracting process. The court outlined specific requirements that are to be met when applying any one of the three alternative methods and affirmed that the underlying principles of accountability and transparency called for in state contracting law should

be maintained. However, Prison Health Services has not developed internal policies and procedures to ensure the appropriate implementation of the court-approved alternative contracting methods. We found that Prison Health Services did not comply with the explicit requirements imposed by the court in executing five of six IT-related contracts approved since January 1, 2007, that used alternative contracting methods. In addition, Prison Health Services cannot support that it reported all required information to the court because of weak internal controls and poor record keeping and retention practices.

We recommended that Prison Health Services develop policies to support its use of alternative contracting methods. These policies should include a requirement that Prison Health Services develop clear and specific criteria and guidelines for determining when the waiver authority should be used and how the requirements of the waiver are to be met and documented. Further, Prison Health Services should clearly identify the value of all contracts it executes and ensure that all contracting documents are maintained in a central location. We also recommended that Prison Health Services develop a system of tracking all contracts executed under alternative contracting methods and retain all bids it receives for each contract. To better track its contracts, Prison Health Services should assign a sequential contract number or other unique identifier to each contract executed using alternative contracting methods.

Prison Health Services' Action: Corrective action taken.

Prison Health Services has developed a policy that outlines when the waiver authority may be used for entering into new contracts. The policy includes identifying which distinct project efforts such contracts may support and provides specific guidance on obtaining approval for using alternative contracting methods. The procedure includes specific criteria for the selection of contractors using one of the three processes authorized by the federal court. It also contains a checklist for ensuring that certain requirements are met and guidance for the retention of appropriate documentation in a centralized contract file, including all solicitations and bids. Prison Health Services stated that it has distributed the policy and procedure to management and staff and it has provided related training.

Prison Health Services noted that all contracts processed using standard state contracting procedures clearly identify the value of the agreement by the use of standard forms. It has instructed staff to ensure that contracts developed without the use of standard forms contain all pertinent information found on the standard forms. Further, Prison Health Services noted that it identifies the value of all executed contracts by the establishment of an internal tracking log that identifies key data elements for each executed agreement.

Prison Health Services maintains a log for tracking key data elements, such as funding amount and vendor name, for each executed contract using the alternative methods. In addition, Prison Health Services maintains a tracking log of the type of agreement to be executed, services to be solicited, bidders list for solicitation purposes, bidder responses, and awarded vendor information. Further, solicitation and bids for acquisitions using alternative contracting methods are centrally housed. Prison Health Services also noted that it assigns a unique identifier to contracts executed using the alternative methods.

California Department of Corrections and Rehabilitation

It Fails to Track and Use Data That Would Allow It to More Effectively Monitor and Manage Its Operations

REPORT NUMBER 2009-107.1, SEPTEMBER 2009

Responses from the California Department of Corrections and Rehabilitation and California Prison Health Care Services as of September 2010

The Joint Legislative Audit Committee requested that the Bureau of State Audits evaluate the effect of California's rapidly increasing prison population on the state budget. We were asked to focus on specific areas of the Department of Corrections and Rehabilitation's (Corrections) operations to provide the Legislature and the public with information necessary to make informed decisions. Specifically, we were asked to do the following:

- Review the current cost to house inmates; stratify the costs by their security level, age, gender, or any other relevant category tracked by Corrections; and determine the reasons for any significant cost variations among such levels and categories.
- Determine the number of inmates Corrections has sent to other states and calculate the State's cost and impact on Corrections' budget.
- Analyze Corrections' budget to determine the amounts allocated to vocational training, rehabilitation, and education programs.
- For a sample of institutions offering vocational training, rehabilitation, and education programs, review Corrections' system for determining the number of instructors and custody staff needed for inmates to participate in these programs. If such staffing is inadequate, determine if any inmates have been denied access to these programs.
- To the extent possible, determine the costs for incarceration under the three strikes law. At a minimum, determine the incarceration cost for each of the following three scenarios:
  - The third strike was not a serious and violent felony.
  - One or more of the strikes was committed as a juvenile.
  - Multiple strikes were committed during one criminal offense.
- Calculate annual overtime pay since 2002 for Corrections' employees, including correctional officers and custody staff, and investigate the reasons for significant fluctuations.

Audit Highlights . . .

Our review of California's increasing prison cost as a proportion of the state budget and the California Department of Corrections and Rehabilitation's (Corrections) operations revealed the following:

» *While Corrections' expenditures have increased by almost 32 percent in the last three years, the inmate population has decreased by 1 percent during the same period.*

» *Corrections' ability to determine the influence that factors such as overcrowding, vacant positions, escalating overtime costs, and aging inmates have on the cost of operations is limited because of a lack of information.*

» *The cost of housing an inmate out of state in fiscal year 2007–08 was less per inmate than the amount Corrections spent to house inmates in some of its institutions.*

» *Overtime is so prevalent that of the almost 28,000 correctional officers paid in fiscal year 2007–08, more than 8,400 earned pay in excess of the top pay rate for officers two ranks above a correctional officer.*

» *Over the next 14 years, the difference between providing new correctional officers with enhanced retirement benefits as opposed to the retirement benefits many other state workers receive, will cost the State an additional $1 billion.*

continued on next page . . .

» *Nearly 25 percent of the inmate population is incarcerated under the three strikes law. We estimated that the increase in sentence length due to the three strikes law will cost the State an additional $19.2 billion over the duration of the incarceration of this population.*

» *Although Corrections' budget for academic and vocational programs totaled more than $208 million for fiscal year 2008–09, it is unable to assess the success of its programs.*

» *California Prison Health Care Services' ability to transition to using telemedicine is impeded by a manual scheduling system and limited technology.*

- Review the number of vacant positions during the last five years and determine whether they affect the annual overtime costs and whether filling vacancies would save Corrections money.

- Determine the extent to which Corrections currently uses and plans to use telemedicine. Further, determine if by using telemedicine Corrections is reducing inmate medical and custody costs and the cost to transport and guard inmates outside the prison environment.

In a subsequent report we plan to provide additional information on several of the subjects we were asked to review, including the size and additional costs of specific portions of the population of inmates sentenced under the three strikes law. We also plan to provide additional information on medical specialty visits similar to the types of consultations that California Prison Health Care Services (Health Care Services) is currently providing through its use of telemedicine and their associated costs. Finally, we plan to provide additional information related to vacant positions.

Finding #1: Corrections cannot determine the impact of inmate characteristics on incarceration costs.

Although Corrections spent more than $8 billion in fiscal year 2007–08 to incarcerate inmates in various security levels at its 33 institutions, it did not track costs by individual inmate or by specific inmate populations such as security level or age. While Corrections' accounting records identify cost categories at each institution related to inmate housing, health care, and program costs, Corrections does not specifically track the costs of institution characteristics such as the physical design or the presence of specialized units that increase costs, and therefore its ability to compare the costs to operate one institution versus another is limited. At the time of our audit, Corrections was in the process of developing a new automated solution that will allow for statewide data analysis, according to the chief of its Program Support Unit, and may be used to analyze various characteristics related to the operation of an institution. According to the project advisor, the new system will replace the assignment and scheduling systems currently used by the institutions and was initially scheduled to be implemented by June 2009 but has been delayed after testing revealed that the system was not complete and fully ready.

We recommended that in order to help it assess the effect of policy changes and manage operations in a cost-effective manner, Corrections should ensure that its new data system will address its current lack of data available for statewide analysis, specifically data related to identifying the custody staffing cost by inmate characteristics such as security level, age, and custody designations. We further recommended that if the implementation of this new system continues to be delayed or if Corrections determines that the new system will not effectively replace the current assignment and scheduling systems used by the institutions, it should improve its existing data related to custody staffing levels and use the data to identify the related costs of various inmate populations.

Corrections' Action: Pending.

In its one-year response, Corrections stated that to meet the requirements of the recommendation, it will need to fully implement its new Business Information System (BIS), a phase of the new Strategic Offender Management System (SOMS), and a statistical analysis package with an external reporting component to analyze the data from the new systems. Currently, it expects the BIS to be fully deployed by April 2011, and expects the SOMS to be fully deployed by August 2012. Corrections indicated that its Enterprise Information Services and its Office of Research are working together to implement a data warehouse to conduct correlative analysis of the data contained within BIS and SOMS. According to Corrections, the basic infrastructure has been procured and its Enterprise Information Services and its Office of Research have agreed to continue to work together so that as the new SOMS information systems are developed and implemented, data on assignments, waiting lists, and recidivism can be captured and archived in the enterprise data warehouse for program management and evaluation purposes. Despite the somewhat lengthy time frame for the deployment of these new systems, Corrections indicates that it does not intend to develop a method to utilize existing information as it would be duplicative of the other information systems. However, until Corrections has finished implementing its new data systems and performed this suggested analysis, we are unable to assess its success in addressing this recommendation.

Finding #2: Corrections' overtime costs for custody staff have increased significantly over the last five years.

Corrections spent $431 million on overtime for custody staff in fiscal year 2007–08, and these overtime costs have risen significantly over the last five years. This increase in overtime costs was caused by various factors including salary increases, vacant positions, and the need for additional guarding for increased medical care required by the receiver. However, the cost to recruit and train new correctional officers, combined with the significant increases in the cost of benefits in recent years has made hiring a new correctional officer slightly more expensive than paying overtime to those currently employed by Corrections. Some of the increase in overtime costs may also be related to the way in which hours worked were classified in the past. Corrections' implemented labor agreement allowed leave credit to be counted as time worked when calculating the amount of overtime an officer earns. For example, a correctional officer could hypothetically take 40 hours of leave during his or her regularly scheduled work period, then work an eight-hour shift in a previously unscheduled period and be paid for the eight hours at the overtime rate. In February 2009 state law was added specifying the way in which overtime is calculated, removing leave of any kind from being considered in determining the total hours worked and thus when overtime hours commence. However, state law leaves open the possibility for future labor agreements to override these provisions.

A state law effective August 2003 requires Corrections to establish a standardized overtime limit for correctional officers, not to exceed 80 hours each month. However, the law also indicates that the State is not relieved of any obligation under a memorandum of understanding relating to hours of work, overtime, or alternative work schedules. The current implemented labor agreement for correctional officers dated September 2007 allows them to exceed the 80-hour overtime limit in certain circumstances. Additionally, a Corrections' policy memorandum dated February 2008 requires each institution to track and immediately report all instances in which the 80-hour overtime limit is exceeded and states that the institution is responsible for limiting the instances in which the 80-hour overtime limit has been or will be exceeded to operational needs or emergencies. During the course of our analysis of the overtime hours worked by correctional officers, we found errors in the overtime data. Specifically, we found that personnel specialists at some institutions improperly keyed retroactive overtime salary adjustments as new overtime payments. Although we have no reason to believe they were not paid the proper amounts, by coding the adjustments improperly, Corrections' payroll data misrepresented the nature of the overtime worked, inadvertently inflating the number of overtime hours it indicated correctional officers had worked, and deflating the average hourly amount it indicated that they received for working those hours. After removing these adjustments, we determined that over

4,700 correctional officers were each paid for more than 80 hours of overtime in at least one month during fiscal year 2007–08. Employees working such a high number of overtime hours causes concern regarding the safety of officers, supervisors, and inmates.

To ensure that the State is maximizing the use of funds spent on incarcerating inmates, we recommended that Corrections communicate to the Department of Personnel Administration the cost of allowing any type of leave to be counted as time worked for the purposes of computing overtime compensation. Additionally, in an effort to more closely align its operations with state law, make certain that inmates are provided with an adequate level of supervision, and protect the health and safety of employees; we also recommended that Corrections encourage the Department of Personnel Administration to not agree to provisions in bargaining unit agreements that permit any type of leave to be counted as time worked for the purpose of computing overtime compensation.

We also recommended that Corrections encourage the Department of Personnel Administration to negotiate a reduction in the amount of voluntary overtime a correctional officer is allowed to work in future collective bargaining unit agreements in order to reduce the likelihood that involuntary overtime will cause them to work more than 80 hours of overtime in total during a month. Further, we recommended that Corrections should better ensure that it prevents the instances in which correctional officers work beyond the voluntary overtime limit in a pay period.

Finally, to ensure that overtime hours are accurately reported, we recommended that Corrections provide training to its personnel specialists to ensure they properly classify retroactive overtime salary adjustments according to the *Payroll Procedures Manual*.

Corrections' Action: Partial corrective action taken.

In its 60-day response, Corrections stated that it will partner with the Department of Personnel Administration on an ongoing basis to ensure the department's intent of not exceeding the current provisions, and that it is committed to future memorandums of understanding that require an employee to physically work more than 40 hours in a pay period/work week. However, Corrections did not address the portion of our recommendation regarding communicating the cost of allowing any type of leave to be counted as time worked. We are concerned that without stakeholders understanding the cost component, they may not fully understand the impact when negotiating future memorandums of understanding.

In addition, Corrections stated that in future negotiations, its office of labor relations will recommend that a memo be sent to the Department of Personnel Administration recommending a reduction in the work period overtime cap to 60 hours, in an attempt to ensure that it stays within the 80 hour limit.

Finally, Corrections stated that it will provide direction to institution personnel offices via a memorandum regarding the proper procedure for coding salary adjustments. In its one-year response, Corrections stated that it had finalized the Personnel Information Bulletin related to this issue and in February 2010 sent the bulletin to its personnel officers. Corrections also stated that it discussed the bulletin with institution personnel officers in March 2010.

Finding #3: Although Corrections budgeted more than $200 million for academic and vocational inmate programs in fiscal year 2008–09, it lacks a staffing plan based on inmate needs.

In reviewing the adequacy of staffing for Corrections' education and vocational programs, we found that it does not have a current staffing plan based on inmate needs. According to the acting superintendent of the Office of Correctional Education (acting superintendent), Corrections does not have a staffing plan for allocating teachers and instructors based on inmates needs. Instead, she indicated that teacher and instructor positions are initially allocated in the institution's activation package when the institution is first opened. She stated that an institution can augment their staffing

plans through a budget change proposal, when an institution changes missions, or because of overcrowding. When we asked Corrections why it has not developed a staffing plan based on inmate needs, the acting superintendent stated that Corrections recognizes that the current staffing packages for rehabilitative programs are not based on inmate needs and the need for change has become apparent as Corrections has begun to deactivate gymnasiums and other nontraditional beds and has lost teachers and other program staff due to these reductions.

We recommended that Corrections develop a staffing plan that allocates teacher and instructor positions at each institution based on the program needs of its inmate population to ensure that it is addressing the program needs of its inmate population in the most cost-effective manner.

Corrections' Action: Partial corrective action taken.

In its six-month response, Corrections stated that due to significant budget reductions it was in the process of revising the way in which it provides educational services consistent with our recommendation. Specifically, Corrections stated that it was developing a staffing plan that allocates educational staff based on the target population at each institution using: (1) California Static Risk Assessment scores of moderate to high risk to recidivate, (2) Criminogenic need, including COMPAS and Test of Adult Basic Education scores, and (3) length of time left to serve. However, Corrections stated that its allocations were limited by funding.

Finding #4: Corrections does not currently track individual inmate participation in education programs and therefore cannot assess program effectiveness or compliance with state law.

During our review of Corrections' administration of its education and vocational programs, we found that while Corrections collects aggregate data, such as the total number of inmates participating in a program and the total number of inmates who successfully complete a program, it does not maintain data for individual inmate's participation in education programs once the inmate leaves the institution. As a result, Corrections cannot demonstrate whether or not inmates have been denied access to programs. When inmates are assigned to a program that is full, they are placed on a waiting list, and while awaiting placement they are usually placed in a work assignment. Corrections told us that it does not maintain historical waiting list or program assignment data. It also stated that it maintains data on program assignments as long as an inmate remains at an institution, but that once an inmate leaves the institution—by being paroled or transferred to another institution, for example—the program participation data are not kept. Therefore, Corrections cannot determine the length of time inmates are on a waiting list for a program, whether inmates are paroled before being assigned to a program, whether inmates are assigned to the programs their assessments indicated they should attend, or the length of time inmates are in programs. Additionally, because Corrections does not maintain historical waiting list and program assignment data for individual inmates, it does not have sufficient data to determine whether it has made literacy programs available to at least 60 percent of eligible inmates in the state prison system, in compliance with state law.

Finally, we found that Corrections' policy regarding education programs is outdated and does not align with state laws regarding prison literacy. State law requires Corrections to implement literacy programs in every state prison designed to ensure that upon parole, inmates are able to achieve a ninth-grade reading level and to make these programs available to at least 60 percent of eligible inmates. Corrections' policy states that the warden is responsible for ensuring that inmates who are reading below the sixth-grade reading level are assigned to adult basic education and that the warden shall make every effort to assign 15 percent of the inmate population to academic education. Despite the differences between Corrections' policy and state law, it appears that Corrections' programs are more closely aligned with state law. Nevertheless, because Corrections has not updated its policy regarding adult education programs since 1993, staff may not be clear on the relevant requirements that should be met.

We recommended that Corrections track, maintain, and use historical program assignment and waiting list data by inmate to allow it to determine its compliance with state law and the efficacy of its programs in reducing recidivism. We also recommended that Corrections update its adult education program policies to ensure that staff are aware of the relevant requirements that should be met related to prison literacy.

Corrections' Action: Pending.

In its one-year response, Corrections stated that it is in the process of developing a number of items that will address this issue, including phases of the SOMS, a risk assessment tool, and a statistical analysis tool. Corrections expects completion of the risk assessment and statistical analysis tools by July 2011 and expects the relevant portions of the SOMS will be deployed at the institutions in August 2012. However, until this system is implemented, we are unable to assess Corrections' success in addressing this recommendation.

In addition, in its one-year response, Corrections stated that it plans to update Chapter 10 of its *Adult Programs Administrative Manual* and associated regulations according to the Office of Administrative Law Rule Making schedule in fiscal year 2010–11.

Finding #5: Health Care Services has limited information regarding the cost-effectiveness of telemedicine consultations.

In 2006 a federal court appointed a receiver to provide leadership and executive management over the California prison medical health care system. The receiver uses the name Health Care Services to describe the organization he oversees. Health Care Services currently uses telemedicine—two-way video conferencing between an inmate and a health care provider—to furnish some medical specialty care to inmates housed in the adult institutions run by Corrections. Although Health Care Services has expanded the use of telemedicine in the last three years, according to the federal receiver's *Turnaround Plan of Action* and the *Telemedicine Project Charter*, insufficient telemedicine infrastructure exists to support the plan to vastly expand the telemedicine program.

The use of telemedicine reduces the costs to transport and guard inmates who otherwise may need to be taken out of the institution to visit medical specialty care providers. However, Health Care Services has gathered only limited data related to the cost savings of using telemedicine. Also, Health Care Services has limited information available regarding the effectiveness of telemedicine use. The expansion of telemedicine is in its early stages and although the receiver planned to transition additional medical care to telemedicine, progress in doing so has been impeded by a manual scheduling system and limited technology. Without systemwide improvements, it is unlikely that significant amounts of additional care could be provided via this delivery method. A 2008 review of the telemedicine program, which Health Care Services contracted with a consultant to provide, indentified numerous shortcomings and recommended significant revisions to program management policies, existing hardware and technology, and related human resources.

We recommended that Health Care Services review the effectiveness of telemedicine consultations to better understand how to use telemedicine to minimize costs. In addition, we recommended that Health Care Services perform a more comprehensive comparison between the cost of using telemedicine and the cost of traditional consultations, beyond the guarding and transportation costs, so that it can make informed decisions regarding the cost-effectiveness of using telemedicine. We further recommended Health Care Services increase the use of the telemedicine system by continuing to move forward on its initiative to expand the use of telemedicine in Corrections' institutions, implement the recommendations that it has adopted from the consultant's review of telemedicine capabilities, and maintain a focus on developing and improving its computer systems to increase the efficiency of using telemedicine.

Health Care Services' Action: Partial corrective action taken.

In its one-year response, Health Care Services stated that it completed its eight-month long project to increase telemedicine in selected institutions. According to Health Care Services, this strategy evaluated the need for additional services at each institution and identified and addressed needed resources and existing barriers. Lessons learned will be applied in ongoing expansion efforts. Additionally, Health Care Services stated that it is beginning another pilot project to implement primary care via telemedicine at selected institutions. Health Care Services stated that its goals are to increase telemedicine, decrease off-site specialty consultations and follow-ups, and expand telemedicine at all Corrections' adult institutions. Although Health Care Services identified these projects to expand telemedicine, it did not provide us with information on how these initiatives will address its understanding of the effectiveness of telemedicine consultations or provide further information on how to use telemedicine to minimize costs. In fact, in this most recent response Health Care Services states that the historic emphasis on telemedicine potential for clinical cost savings should be transitioned to its utility in transportation/guarding costs and public safety.

Regarding our recommendation that it continue to implement the recommendations adopted from the consultant's review of telemedicine capabilities, in its one-year response Health Care Services stated that it no longer planned to implement the consultant's recommendations but was instead developing an alternative plan for expanding telemedicine. Health Care Services expects to complete its alternative plan by March 2011. Also, Health Care Services stated that it continues its efforts to incrementally implement an interim scheduling system for telemedicine and in July 2010 the system was upgraded to its first major version. Health Care Services indicated that there is still work to be done to enhance performance of the interim system, and to provide reports.

Finally, Health Care Services stated that it is continuing its efforts to implement a Health Care Scheduling System, which it expects to complete by December 2011. Health Care Services stated that it is working with the Health Care Schedule System team to help them understand all of Health Care Services' business requirements. However, Health Care Services stated that all of the functionality required by telemedicine will not be available until subsequent releases of the system, which may not be available until 2012 or later.

California Department of Corrections and Rehabilitation

Inmates Sentenced Under the Three Strikes Law and a Small Number of Inmates Receiving Specialty Health Care Represent Significant Costs

REPORT NUMBER 2009-107.2, MAY 2010

Response from the California Department of Corrections and Rehabilitation and California Prison Health Care Services as of November 2010

The Joint Legislative Audit Committee requested that the Bureau of State Audits evaluate the effect of California's rapidly increasing prison population on the state budget. We were asked to focus on specific areas of the California Department of Corrections and Rehabilitation's (Corrections) operations to provide the Legislature and the public with information necessary to make informed decisions. This is our second report related to this request and contains the following subject areas:[1]

- Review the current cost to house inmates; stratify the costs by their security level, age, gender, or any other relevant category tracked by Corrections; and determine the reasons for any significant cost variations among such levels and categories.
- To the extent possible, determine the costs for incarceration under the three strikes law. At a minimum, determine the incarceration cost for each of the following three scenarios:
  - The third strike was not a serious and violent felony.
  - One or more of the strikes was committed as a juvenile.
  - Multiple strikes were committed during one criminal offense.
- Review the number of vacant positions during the last five years and determine whether they affect the annual overtime costs and whether filling vacancies would save Corrections money.
- Determine the extent to which Corrections currently uses and plans to use telemedicine. Further, determine if by using telemedicine Corrections is reducing inmate medical and custody costs and the cost to transport and guard inmates outside the prison environment.

For this report, we determined the number of striker inmates whose current offense was not a serious and violent felony, striker inmates who committed one or more serious or violent offenses as a juvenile, and striker inmates who committed multiple serious or violent offenses on the same day. We also estimated the potential cost of the additional

[1] We addressed many of the objectives contained in the Joint Legislative Audit Committee's request in a report we published in September 2009 titled: *California Department of Corrections and Rehabilitation: It Fails to Track and Use Data That Would Allow It to More Effectively Monitor and Manage Its Operations* (report 2009-107.1).

Audit Highlights . . .

Our review of California's increasing prison cost as a proportion of the state budget and California Department of Corrections and Rehabilitation's (Corrections) operations revealed the following:

» *Inmates incarcerated under the three strikes law (striker inmates):*

- *Make up 25 percent of the inmate population as of April 2009.*
- *Receive sentences that are, on average, nine years longer—resulting in about $19.2 billion in additional costs over the duration of their incarceration.*
- *Include many individuals currently convicted for an offense that is not a strike, were convicted of committing multiple serious or violent offenses on the same day, and some that committed strikeable offenses as a juvenile.*

» *Inmate health care costs are significant to the cost of housing inmates. In fiscal year 2007–08, $529 million was incurred for contracted services by specialty health care providers. Additionally:*

- *30 percent of the inmates receiving such care cost more than $427 million.*
- *The costs for the remaining 70 percent averaged just over $1,000 per inmate.*
- *The costs for those inmates who died during the last quarter ranged from $150 for one inmate to more than $1 million for another.*

continued on next page . . .

» *A significant portion of the increased workload due to medical guarding and transportation is covered through overtime.*

» *The large leave balances of custody staff, to which the furlough program has contributed a significant amount, will eventually cost the State from $546 million to more than $1 billion.*

years of incarceration imposed by the three strikes law for each of these groups. Further, we reviewed additional information regarding vacant positions and leave usage and examined state laws, policies, and procedures relevant to these subjects. In addition, to expand on the information presented in our prior report regarding the stratification of incarceration costs by inmate characteristics, we analyzed cost data for contracted specialty health care and reviewed certain characteristics of inmates receiving specialty care. We also reviewed the California Prison Health Care Services' (Health Care Services) plans for containing health care costs, including its plan and associated costs for increasing the use of telemedicine.

Finding #1: Outdated and erroneous information reduces the usefulness of Corrections' data.

We identified approximately 85,000 convictions that appeared to be associated with outdated information. Additionally, we identified 42,000 of the 2.8 million convictions we considered in our analysis that were associated with sentencing information related to 53 offenses that—according to Corrections' records—were effective for only one day, indicating errors in the data. When we asked about these errors, Corrections' staff stated that it updates sentencing information to reflect changes in the law once a year and sometimes only once every two years. However, Corrections stated that after the new laws go into effect, staff do not subsequently review convictions associated with the sentencing information that has been updated. Corrections also indicated that there are situations when staff will correct sentencing information, but some inmate convictions associated with the incorrect sentencing information may go undetected. According to Corrections, because inmate sentences imposed by the judicial system are based on legal documents and are tracked separately from the table that contains sentencing data in Corrections' data system, errors in the sentencing information do not affect the actual sentences that inmates serve. However, convictions associated with incorrect sentencing information may require Corrections' staff to perform additional analyses to determine if an individual's actual sentence was inappropriate. Corrections also told us that incorrect sentencing information could lead to inaccurate estimates of the average daily population in future years, which are used to estimate budgetary costs or savings. Finally, although Corrections indicated that the clean up of existing data will be part of implementing a new system, its plan does not address in detail how historical data will be reviewed or corrected.

We recommended that to address the erroneous sentencing information and inappropriate assigned convictions in its data system, Corrections should complete its clean up of data that will be transferred into the new system, ensuring that this review includes a detailed evaluation of convictions that have been assigned outdated sentencing information as well as deleting erroneous sentencing information before it begins using its new data system. We also recommended that Corrections create a schedule for regular checks of the accuracy of existing sentencing information, as well as the accuracy with which sentencing information has been assigned to convictions.

Corrections' Action: Pending.

In its six-month response, Corrections stated that it reviewed a sample of convictions that appear questionable. However, according to the description of its analysis, in selecting this sample Corrections failed to consider the universe of errors we identified during the audit. In addition, Corrections' review focused on those inmates serving active terms for one of the identified convictions. From the results of this review, Corrections concluded that the procedure to clean up the data is labor intensive and because of the resources necessary to review the potentially erroneous records, it believes that such a review would pose a hardship on its staff and, in its opinion, would provide minimal results.

Case records staff stated that they will work with the Enterprise Information Services (EIS) and Strategic Offender Management System (SOMS) project team to identify and correct questionable data when Corrections begins the conversion process to move data into its new system. However, the EIS and SOMS project team states that it has deferred to Case Records staff, because they are the owners of the data. In response to our questions about the conflicting information in its six-month response, Corrections stated that the Case Records' description indicates when the data will be moved to the new system, and in contradiction to the six-month response further states that data clean-up efforts have been ongoing and will continue to be made by Case Records staff. However, Corrections did not provide any documentation substantiating the data clean up described.

Corrections also reviewed and updated its procedures for adding or altering sentencing information in its Offender-Based Information System. However, this response fails to completely address the recommendation. Specifically, Corrections does not address the evaluation of the accuracy of existing sentencing information as we recommended.

Finding #2: Most specialty health care costs were associated with a small population of inmates, and older inmates were generally more costly.

Our analysis of the information in Health Care Services' Contract Medical Database found that 70 percent of the inmate population with specialty health care costs during fiscal year 2007–08 averaged just more than $1,000 and cost $42 million in total, while the remaining 30 percent of the inmates cost $427 million. We also found that a small percentage, 2 percent or 1,175 inmates, represented 39 percent—or $185 million—of the total contracted specialty health care costs. Further, although we noted that the average contracted specialty health care costs generally increased with the age of inmates, the cost of specialty health care associated with inmates that died during the last quarter of fiscal year 2007–08 were significantly greater than those of any specific age group. Each of the 72 inmates who died during the last quarter incurred, on average, $122,300 for specialty health care services for fiscal year 2007–08. Costs for the 72 inmates who died totaled $8.8 million and costs for each individual ranged from $150 to $1 million.

We recommended that Health Care Services continue to explore methods of reducing the costs of medical care to the State, including those of inmates with high medical costs. These efforts could include proposing a review of the program that allows for the early release of terminally ill or medically incapacitated inmates, and other possible means of altering the ways in which inmates are housed without unduly increasing the risk to the public.

Health Care Services' Action: Partial corrective action taken.

In its six-month response, Health Care Services states that it is in the process of establishing internal processes to implement a bill recently passed to provide medical parole. These processes will allow for the medical parole of eligible inmates who do not pose a risk to public safety. Health Care Services stated that it anticipates implementing these processes in January 2011 when the law takes effect. Health Care Services has not yet provided documentation substantiating the actions described.

Finding #3: Health Care Services has not calculated a savings associated with the decrease in the number of referrals for specialty health care.

As part of its efforts to address concerns about unnecessary referrals for specialty health care, the receiver reported that it has implemented the use of specialty referral guidelines. In its cost-containment report, Health Care Services reports that since the implementation of the specialty referral guidelines in the fall of 2008, the number of requests for services decreased by 41 percent between April 2009 and January 2010. Despite this decrease in referrals in specialty care overall, the receiver stated that Health Care Services has not calculated the cost savings associated with the reduction in referrals. However, the receiver indicated that he believes the number of unnecessary referrals has decreased significantly. According to the Health Care Services' chief medical officer for utilization management, the data captured by the utilization management databases do not interface with any of Health Care Services' contract or claims databases. Because utilization management data do not interface with the contract or claims databases, Health Care Services is unable to associate specialty health care utilization with the cost of providing care. As a result, Health Care Services has not calculated a savings associated with the decrease in the number of referrals.

We recommended that to improve its ability to analyze and demonstrate the effectiveness of current and future utilization management efforts in containing health care costs, Health Care Services should identify a method to associate cost information with utilization management data.

Health Care Services' Action: Pending.

In its six-month response, Health Care Services stated that it has developed various reports that link volume data with paid claims so that high volume and high cost specialty and hospital data can be analyzed. However, it did not provide us with evidence of these reports, or a description of how they are being used to analyze or demonstrate the effectiveness of its efforts to use utilization management to contain health care costs.

Finding #4: Health Care Services has not fully estimated the cost benefit of expanding telemedicine use.

Although Health Care Services has continued expanding its use of telemedicine as part of its cost-containment strategy, it has not fully estimated the potential cost savings of using additional telemedicine. When we asked Health Care Services to provide us with an estimate of the number of medical specialty visits that could be replaced with telemedicine, the statewide program director for the Office of Telemedicine stated that the data systems needed to generate data that Health Care Services could use to estimate the percentage or number of medical specialty visits that could potentially be provided using telemedicine are not available.

Health Care Services did provide an estimate of the guarding and transportation costs that are avoided with each telemedicine consultation. This estimate included an updated methodology that addressed one of the concerns with its earlier estimate that we expressed in our prior report. However, the updated estimate did not address other concerns. For example, the calculation continues to exclude consideration of other factors that might affect costs, such as whether a subsequent in-person visit must be performed because the issue could not be treated through telemedicine. Further, even without considering the degree to which telemedicine consultations are unsuccessful because the issue must be treated through an in-person consultation, the underlying information used in Health Care Services' cost-avoidance figures varies between $94 and $1,233 per visit, suggesting that telemedicine consultations may not be cost-effective at some institutions.

We recommended that to determine whether the additional expansion of telemedicine is cost-effective within the California correctional system, Health Care Services should identify and collect the data it needs to estimate the savings of additional telemedicine through an analysis of the cost of specialty care visits currently provided outside the institution that could be replaced with telemedicine. We also recommended that Health Care Services further analyze the cost-effectiveness of telemedicine through

a more robust estimate of savings, including considering factors such as the percent of telemedicine consultations that required subsequent in-person visits because the issue could not be addressed through telemedicine.

Health Care Services' Action: Pending.

In its six-month response, Health Care Services indicated that its Office of Telemedicine Services has implemented collaboration between Utilization Management and Telemedicine to increase the use of telemedicine statewide and is tracking statistics. Health Care Services also stated that its efforts are ongoing and that as telemedicine visits increase and improve access to health care, improvements in public safety and decreases in travel and custody costs for off-site specialty consults and follow-ups should result. Health Care Services stated that cost-avoidance outcomes are to be determined by the health care access team and will be reflected in decreased transportation and guarding costs. However, Health Care Services' response to this recommendation did not provide a description of how it would analyze the cost of current specialty care visits provided outside of the institution that could be replaced with telemedicine. Health Care Services described several reports that it expects would be available by the end of December 2010 to evaluate initial and follow-up specialty encounters in an effort to provide more detail on such care. Health Care Services has not yet provided documentation substantiating the actions described.

Finding #5: The number of correctional officer positions that Corrections indicated it filled is higher than the amount we calculated using the State Controller's Office (SCO) data.

A summary of data collected by Corrections' program support unit indicated that it had filled about 1,070 more correctional officer positions than we calculated using SCO's position roster file. When we discussed the differences with Corrections' staff, the chief of the program support unit stated that there are a number of factors that could cause the differences. Some of the reasons he provided included a variance in the methodology used by each institution to determine the number of filled positions, significant lag time between when the positions are filled at institutions and when the institutions submit the paperwork and it is processed by SCO, and institutions counting staff that are in temporary positions—referred to as blanket positions—as filled positions.

We recommended that to ensure that SCO has accurate information on the number of authorized and filled positions, Corrections determine why the number of positions SCO indicates are vacant is higher than the number of vacant positions it is aware of, and submit information to SCO to correct this situation as necessary.

Corrections' Action: Pending.

In its six-month response, Corrections stated that it is developing and implementing the same Enterprise Resource Solution as SCO and that this automated system includes a strong position maintenance module that will improve the accuracy of position information. Corrections also stated that it has completed various efforts to improve its position data, including reconciling position data with SCO data, completing data cleansing activities and updating budget, SCO, and the automated system's position data, establishing a baseline position data set, and developing processes to ensure ongoing maintenance of position data. Corrections also stated that it is monitoring compliance and these efforts are ongoing. However, Corrections did not provide us with any documentation demonstrating the activities it cites in its six-month update.

Finding #6: A significant number of medical guarding assignments are covered with overtime.

Staff we interviewed at three institutions told us they either did not have authorized positions for medical guarding and transportation or the authorized positions were insufficient. For example, an associate warden at San Quentin told us that it guards inmates receiving inpatient care at Bay Area hospitals. She stated that the number of inmates in community hospitals varies from 10 to 35 per day,

but averages 19. She told us that guarding these inmates requires about 100 guarding assignments to provide coverage for a 24-hour shift. This is because guarding an inmate out of the institution typically requires two correctional officers per inmate for each of the three shifts a day. Further, she stated that, on average, 58 of these guarding assignments are not associated with authorized positions and are covered through overtime. This information is consistent with the receiver's February 2010 *Monthly Health Care Access Quality Report,* which indicated that as of February 2010, the monthly average for medical guarding and transportation for fiscal year 2009–10, based on information reported by the institutions, is 1,900 personnel years that is being covered by overtime, redirected, and part-time staff. The 1,900 personnel years include an average of 243,500 hours of overtime per month and accounts for 78 percent of the medical guarding and transportation hours. According to the director of administrative support services, Health Care Services decided not to request additional custody staff positions because it believes that referrals for outside specialty services will decrease in the future. In addition, according to the receiver, Health Care Services is considering a plan to place inmates with higher specialty care needs in institutions that can provide some of those specialties, thus reducing the number of inmates receiving care outside the institution. Finally, the director of administrative support services stated that, because emergency transportation cannot be predicted, it would be inefficient to staff for this item through established positions. However, given the amount of medical guarding and transportation work covered through overtime, we believe that care must be taken to ensure that the total amount of overtime worked by custody staff does not impact the safety of operations.

We recommended that to ensure that the total amount of overtime worked by custody staff does not unduly reduce their effectiveness and result in unsafe operations, Health Care Services should monitor overtime closely. If its efforts to reduce the number of referrals of inmates to outside specialty services do not reduce the amount of overtime worked by custody staff for the purpose of medical guarding and transportation, Health Care Services should explore other methods of reducing the total amount of overtime worked by custody staff.

Health Care Services' Action: Pending.

In its six-month response, Health Care Services stated that it is participating in a joint effort with Corrections to assess medical guarding and transportation staffing, as well as the use of overtime to ensure custody staffing needs are addressed. Based on the results of this effort, it plans to pursue a budget change proposal with Corrections regarding these issues. Health Care Services has not yet provided documentation substantiating the actions described. Health Care Services expects full implementation in June 2011.

Finding #7: Some aspects of Corrections' staffing formulas are outdated and others appear to be flawed.

To ensure that it hires sufficient staff to handle the guarding assignments that exist, Corrections uses staffing formulas to ensure, when the regularly scheduled custody staff are unavailable, that additional staff can work the assignment. These staffing formulas are also used to determine how many individuals can take vacation at any given time. We reviewed the documentation Corrections provided to support the specific calculations it used when updating the correctional officer staffing formula. Although we found that the factors that make up the formula agreed in total, some factors do not match the documentation provided as support for the calculations used to update the formula, which last occurred about six years ago. Because these formulas are used for staffing, such errors have an effect on Corrections' ability to ensure that custody staff are able to use the leave they earn.

These errors are reduced by errors in the way in which Corrections calculates the amount of vacation leave that it allows custody staff to take. Specifically, the number of staff who can take vacation and holiday leave at an institution is based on the number of authorized guarding assignments and does not change based on the number of custody staff positions actually filled. However, when there are vacant positions, less vacation coverage is needed because there are fewer employees. In addition, individuals working overtime in place of staff who would otherwise fill vacant positions do not earn additional leave. As a result at institutions that have vacant positions, the staffing formula allows for

more holiday or vacation leave than the formula indicates custody staff earn. Because of the offsetting errors, depending on the number of vacant positions at a specific institution, correctional officers may be provided too many or too few opportunities to use the leave they earn.

We recommended that to ensure that custody staffing meets institutional needs, and to provide staff the opportunity to use the amount of leave that they earn in the future, Corrections update its staffing formulas to accurately represent each of the factors for which custody staff are unavailable to work, such as vacation or sick leave. Corrections should attend to this project before implementing its new business information system to ensure the updated formulas can be used as soon as practical. We also recommended that Corrections create a policy for regularly scheduled reviews of the data used in the staffing formulas and to update the formulas as necessary.

Corrections' Action: Pending.

In its six-month response, Corrections stated that it plans to conduct an annual review of the average usage and accrual rates for various leave categories and that it has collected the data and is in the process of reviewing the data. Corrections also stated that it is currently working to replace the relief methodology with a ratio driven formula and that the new formula will ensure staffing levels are adequate to allow custody staff to use the leave balances they earn. Corrections expects full implementation of this recommendation by June 2011.

Finding #8: Growing leave balances, due in part to vacancies and errors in the staffing formulas, reduce current costs but represent a future liability.

Various factors have caused Corrections' staff to accrue large leave balances. When this occurs, current staffing costs are reduced but the State incurs the cost in the future when staff take the leave or are paid for the balances when they quit or retire. Currently, the state furlough program is the most significant cause of the accumulation of leave balances for Corrections' custody staff.

Although many custody staff have chosen to use the furlough hours they have earned, the amount of leave they can take is limited, as defined in the staffing formulas. As a result, their use of furlough hours means they use less of other types of leave, causing balances in those categories to increase. Additionally, when vacant positions exist, custody staff who do not use the amount of leave they earn reduce the need for overtime to work the guarding assignments of those vacant positions. Although this reduces staffing costs in the near term, it contributes to the growth of staff leave balances and essentially defers the costs into the future. The liability that leave balances represent must be paid out at employees' retirement, if it is not addressed before then. If Corrections were to increase staffing or overtime to allow custody staff to take their accrued leave, it would represent, including sick leave, a liability we estimate to be approximately $940 million. Alternatively, if paid out when individuals retire or quit in lump sums, the leave balance—minus sick leave that can be credited toward the amount of time an individual is considered to have worked when they retire but is not paid out—represents a liability to the State that we estimate at approximately $500 million. Further, according to Corrections it does not budget for leave payouts upon retirement, so these costs represent an unbudgeted expense each year.

We recommended Corrections provide supplemental information to the relevant legislative policy and fiscal committees. Specifically, we recommended that the supplemental information include a calculation of the annual increase or decrease in its liability for the leave balances of custody staff to better explain the cause of changes in expenditures. We also recommended that the supplemental information include an estimate of the annual cost of leave balances likely to be paid for retiring custody staff.

Corrections' Action: None.

In its six-month response to this recommendation, Corrections references its previous discussion regarding efforts to replace its staffing formula that will ensure adequate staffing levels to allow custody staff to use the leave they earn. However, in no way does this action communicate to the relevent legislative policy and fiscal committees the amount, or increase or decrease in Corrections' liability for custody staff leave balances, as we recommended.

Further, Corrections states that due to a number of factors influencing retirement decisions, it is difficult to accurately estimate the annual cost of leave balances paid out to retiring custody staff. As a result, it does not intend to provide any further response to this recommendation.

Department of Corrections and Rehabilitation and Department of General Services

Investigations of Improper Activities by State Employees, July 2008 Through December 2008

ALLEGATION I2007-0891 (REPORT I2009-1), APRIL 2009

Department of Corrections and Rehabilitation's response as of March 2010 and Department of General Services' response as of September 2009

The Department of Corrections and Rehabilitation (Corrections) and the Department of General Services (General Services) wasted $580,000 in state funds by continuing to lease 5,900 square feet of office space that Corrections left unoccupied for more than four years. Delays and inefficient conduct by both state agencies contributed to the waste of state funds.

Investigative Highlight . . .

Because of multiple delays and inefficient conduct, the Department of Corrections and Rehabilitation (Corrections) wasted $580,000 in state funds from January 2005 through June 2008, and the Department of General Services has taken more than four years to complete Corrections' request for office space.

Finding #1: Corrections failed to adequately describe its need for space and to promptly fulfill its responsibilities in the leasing process.

Over the four-year period that Corrections was seeking office space, it failed to give General Services an accurate description of its space needs and to promptly provide required information and approvals that were necessary to facilitate the lease process. Its failures contributed to General Services' delays in meeting Corrections' space needs and caused Corrections to waste state funds.

We recommended that Corrections require its employees to confirm leasing needs before submitting a request to General Services to ensure that accurate information is communicated, and to promptly review and approve required lease information to facilitate the process. In addition, we recommended that Corrections obtain training from General Services about the leasing process and General Services' expectations of Corrections' staff in charge of requesting leasing services.

Corrections' Action: Corrective action taken.

Corrections informed us that it moved into the office space in May 2009. Corrections indicated subsequently that it initiated several improvements to its leasing procedures and lease project management. In particular, Corrections reported that it had refined its lease project processes to include conducting field reviews of its leased space. In addition, it stated that it had completed a business plan to standardize leasing processes, ensure quality assurance, and strengthen lease inventory records management. Further, in September 2009 Corrections completed a lease process flow diagram. Finally, in March 2010 it noted that its remaining leasing staff attended a General Services' training course on the State's leasing process. Corrections also notified us that its project tracking system allowed it to track and monitor the status, schedule, and budget of leasing projects and that it still had plans to develop a formal leasing database but was considering new software options.

Finding #2: General Services failed to properly exercise its project management responsibilities.

General Services was slow to act on Corrections' request for a reduction of its leased space, and it allowed the negotiation of a new lease to drag on for an unreasonable amount of time while the State continued to pay for unused space. Furthermore, its leasing actions failed to ensure that Corrections' request was efficiently processed without wasting state funds and time.

We recommended that General Services establish reasonable processing and completion timelines for lease activities. We also recommended General Services strengthen its oversight role to prevent state agencies from unnecessarily using leased space when state-owned space is available and to create guidelines for leasing representatives. Finally, we recommended that General Services develop a procedure to evaluate all costs incurred in the processing of a request, including any rent paid on unoccupied space, to ensure that it makes cost-effective decisions when considering the feasibility of a space request.

General Services' Action: Corrective action taken.

In May 2009 General Services confirmed Corrections' occupancy of the office space. In addition, General Services updated its timelines for its lease activities to extend to 36 months from 24 months the maximum time to complete leasing projects. Furthermore, General Services stated that the addition of 15 space planning staff has allowed for a more manageable distribution of its workload to improve the efficiency of planning activities and for timely resolution of critical issues associated with lease projects. It also provided us with its two new policies that, effective May 1, 2009, established procedures for its staff in resolving lease project disputes and in monitoring lease project progress. In addition, to strengthen its enforcement over using state-owned space, General Services indicated that it established policies and practices requiring it to address conflicts with state agencies regarding the use of available state-owned space. Finally, in August 2009 General Services provided us with a policy that, effective June 1, 2009, established its initial processing of lease requests as not to exceed 18 days.

Department of Corrections and Rehabilitation

Its Poor Internal Controls Allowed Facilities to Overpay Employees for Inmate Supervision

REPORT NUMBER I2009-0702, NOVEMBER 2009

Department of Corrections and Rehabilitation's response as of November 2010

Many of the Department of Corrections and Rehabilitation's (Corrections) employees receive extra pay called a pay differential for supervising inmates who perform the work that a civil servant would typically perform. To receive the pay differential, the employees must supervise at least two inmates who collectively work at least 173 hours. We examined Corrections' payments for inmate supervision to 153 employees at six correctional facilities using a random sample of payments made from March 2008 through February 2009.

Finding #1: Corrections overpaid employees for inmate supervision and failed to collect overpayments it previously made.

Our investigation concluded that Corrections had overpaid 23 of the employees we reviewed a total of $34,512. The overpayments to the individual employees ranged from $380 to $3,900. Based on our sample, we estimated that Corrections may have overpaid its employees as much as $588,376 statewide during the 12-month period we reviewed. In addition, we found that for the most part Corrections had not initiated collection efforts to recover the improper payments it had identified after we reported on an investigation at another correctional facility in October 2008.

We recommended that Corrections initiate accounts receivable for the employees identified as receiving improper payments and begin collection efforts for these accounts.

Corrections' Action: Partial corrective action taken.

In October 2009 Corrections inferred that we applied the requirements for receiving the pay differential too strictly and supplied some information it received from the Department of Personnel Administration (Personnel Administration). However, we concluded that much of the information from Personnel Administration did not affect our investigation. In addition, we disagreed with a Personnel Administration opinion that inmates did not necessarily need to work the required number of hours for the employees to qualify for the pay differential.

Corrections subsequently stated that it established a task force of key staff to fully review the information received from Personnel Administration. It also noted that some grievances had been filed about establishing accounts receivable and that the grievances were put on hold pending the outcome of task force's actions and direction from its legal staff.

Investigative Highlights . . .

Our investigation of inmate supervision payments made by the Department of Corrections and Rehabilitation (Corrections) revealed the following:

- *Corrections overpaid 23 employees a total of $34,512 over a 12-month period at five of the six correctional facilities we visited.*
- *Based on our sample, Corrections may have improperly paid as much as $588,376 to its employees statewide during the same 12-month period.*
- *Corrections failed to implement sufficient controls to ensure that employees who received inmate supervision pay met the requirements.*
- *Except in a few instances, Corrections had not initiated collection efforts to recover improper payments it identified subsequent to our initial investigation.*

Corrections reported in June 2010 that it decided not to pursue collection efforts against the employees whom we identified as receiving improper payments. It explained that it did not believe it would prevail in an arbitration hearing since it had not established a formal operating procedure at the time of our investigation and it lacked documentation to demonstrate that the payments were improper.

Finding #2: Corrections lacked sufficient controls to ensure that only employees satisfying the inmate supervision requirements received the pay differential.

Five of the six facilities we visited had few or no policies in place during the period we reviewed to ensure that employees receiving the pay differential for supervising inmates met the necessary requirements each month. The remaining facility had implemented a policy requiring employees to submit inmate time sheets along with their own time sheets each month. However, the policy did not apply to all employees who received the pay differential. In addition, we noted weaknesses in document retention at the facilities in our review and found that many employees' personnel files did not contain certain required documents related to inmate supervision.

We recommended that employees at all of its facilities submit copies of the supervised inmates' time sheets to their personnel offices each month along with their own time sheets so personnel staff can use these documents to verify each employee's eligibility to receive the pay differential. We also recommended that Corrections take steps to develop clearer requirements that specifically define what constitutes "regular" supervision of inmates. Finally, we recommended that Corrections provide adequate training and instruction to its employees who supervise inmates and the personnel staff reviewing time sheets regarding the requirements for receiving the pay differential and proper documentation.

Corrections' Action: Corrective action taken.

Corrections reported that in May 2010 it issued a department-wide operational procedure that clarified and defined the criteria for receiving inmate supervision pay, identified documentation and training needs, and established an internal audit process. Corrections also reported that in June 2010 it had conducted training with its personnel officers and personnel staff regarding its new department-wide procedure. In November 2010 Corrections stated that it was still developing an internal audit process to examine compliance with the operating procedure and that it anticipated scheduling its first annual audit between July and September 2011.

Employment Development Department

Investigations of Improper Activities by State Employees, July 2008 Through December 2008

ALLEGATION I2008-0699 (REPORT I2009-1), APRIL 2009

Investigative Highlight . . .

An employee of the Employment Development Department sent inappropriate e-mail messages to other state employees. Management then failed to take corrective action despite noting similar behavior in the past.

Employment Development Department's response as of November 2009

An employee of the Employment Development Department (Employment Development) misused his state computer and state e-mail account for personal purposes, including sending inappropriate messages to other state employees. In addition, he engaged in incompatible activities by failing to devote his full time, attention, and efforts to his job when he was at work. Furthermore, management at Employment Development failed to take appropriate action concerning the employee's inappropriate activities despite noting similar behavior for several years.

Finding #1: The employee misused state resources for personal purposes and engaged in activities that were incompatible with his job.

The employee misused his state computer and e-mail account for activities unrelated to his work at Employment Development. As part of the duties of his job, the employee is to ensure that claims are promptly paid, routed, or reissued. His duties require him to use a state computer and Employment Development data systems. However, in an eight-day sampling of e-mail messages from February 15, 2008, through April 16, 2008, the investigation revealed that the employee sent 256 e-mails that were personal, some of which were inappropriate in nature. An analysis of the e-mails on these days indicated that the employee spent periods from nearly an hour to eight hours sending e-mails that were unrelated to his duties. For example, on one day in April 2008 during a roughly seven-hour period, the employee sent 75 e-mails, all of which were personal and thus not related to his work. In addition, during an interview, the employee admitted that he sent multiple e-mail messages to an employee in another department that contained vulgar language. He also admitted that he kept three e-mails with sexually explicit photos on his state computer.

The investigation also found that the employee misused his state computer in other ways. He regularly accessed the Internet beyond minimal and incidental use. For example, on three days in April 2008, he spent from one to two hours each day browsing the Internet even though his duties do not require such access. In addition, he used his state computer to send and receive e-mails about his external employment during his work hours at Employment Development. Further, on two occasions the employee got into an Employment Development database without authorization to assist external business associates with claims. Finally, besides using his state computer for these personal purposes, the employee engaged in discourteous behavior when he used his computer and e-mail account to send several inappropriate messages

to employees at Employment Development and other state agencies. As a result of all of these actions, the employee engaged in incompatible activities when he failed to devote his full time and attention to his state employment during his work hours.

After the completion of the investigation, Employment Development informed us in December 2008 that it suspended the employee for 30 days.

We recommended that Employment Development monitor the employee's use of state resources after his return to work after the 30-day suspension.

Employment Development's Action: Corrective action taken.

Employment Development notified us that it continues to monitor the employee's use of state equipment to ensure he only conducts state business while on duty.

Finding #2: Management failed to take appropriate action despite their noting years of similar behavior.

The employee's inappropriate use of his state computer and e-mail account were just the latest installment in a series of improprieties. Since 2001 the employee had repeatedly misused his state time, telephone, and computers to engage in personal business during his workdays. In addition, he inappropriately used his state computer for personal e-mails and to access the Internet. Moreover, the employee had unexcused absences and attendance problems.

Despite the employee's long history of disciplinary problems, Employment Development did not adequately resolve these problems. From January 2001 through November 2007, Employment Development issued 10 written notifications to the employee—and held several formal discussions with him—about his unacceptable behavior. The notifications consistently cited the employee's excessive use of his state telephone, computer, and e-mail account for personal purposes. In addition, on one occasion Employment Development ordered the employee to "cease and desist" contact with another state employee through his state telephone and computer. In at least eight of the 10 written documents the employee received since January 2001, Employment Development specifically stated that the incidents discussed in the respective notifications could form the basis of an adverse action.

Even with these written notices and formal discussions spanning several years, Employment Development did not escalate either its corrective or disciplinary actions against the employee. The State Personnel Board has repeatedly ruled that agencies have the right to proceed with progressive disciplinary actions against employees where it is well documented and when lesser sanctions—such as written reprimands and memos—fail to positively influence the employee. Repeated incidents by the employee over a period of several years demonstrate a measured level of sustained inappropriate behavior. Furthermore, the employee's ongoing misuses demonstrate that his behavior did not change as a result of Employment Development's written notifications and discussions.

We recommended that Employment Development conduct training at regular intervals for its management and branch staff on methods of progressive discipline.

Employment Development's Action: Corrective action taken.

Employment Development indicated to us that all of its new managers and supervisors are required to attend a two-week course that covers managerial and supervisory roles and responsibilities, including the proper administration of the progressive discipline process. Further, refresher training is also provided on the progressive discipline process for managers and supervisors when labor contract changes are made resulting from a new collective bargaining agreement.

Department of Justice

Investigations of Improper Activities by State Employees, July 2008 Through December 2008

ALLEGATION I2007-1024 (REPORT I2009-1), APRIL 2009

Investigative Highlight . . .

An employee's time sheets did not reflect overtime worked. She was later absent from work for 136 hours—or 17 days—and these absences were not reflected on her time sheets. Further, the Department of Justice overpaid her $497 for travel expenses she did not incur.

Department of Justice's response as of April 2010

A Department of Justice (Justice) regional office employee failed to properly report her time worked and leave taken from June through August 2007. In addition, she claimed travel expenses that she did not incur during the same period. Further, the employee's manager did not ensure that the employee accurately reported her time and travel expenses. Consequently, Justice paid the employee $648 in unearned compensation and reimbursed her $497 for travel expenses not incurred.

Finding #1: The employee failed to properly account for overtime worked and absences taken, and claimed travel expenses she did not incur. In addition, Justice's management failed to ensure that the employee properly reported her time, attendance, and travel expenses.

Our investigation determined that the employee failed to properly account for 77 hours of overtime she worked in June and July 2007. Had the employee properly accounted for the 77 hours of overtime on her time sheets, she would have earned 116 hours of compensated time off. In addition, she failed to properly account for 136 hours—or 17 days—of absences she took in July and August 2007. The employee acknowledged that she was absent on the 17 days and that she did not charge her leave balances for the absences because she used the informal time off to account for the uncompensated overtime she worked in June and early July 2007. However, the employee's 136 hours of absences exceeded the 116 hours of uncompensated overtime by 20 hours. Therefore, by taking more time off than she actually earned in hours of uncompensated overtime, Justice essentially paid the employee $648 in estimated compensation she did not earn for the excess 20 hours of leave she failed to charge against her leave balances.

At the same time the employee worked the unrecorded overtime in June and early July 2007, she claimed reimbursement for more travel expenses than she actually incurred. Specifically, the employee overstated her mileage by 62 miles on each of 19 days she drove her personal vehicle to an off-site location to conduct her work. Because she claimed more mileage than she actually traveled in violation of state regulations, Justice overpaid her $497 for travel expenses she did not incur.

We recommended that Justice properly modify the employee's leave balances to reflect the 116 hours of overtime that she earned in June and July 2007. We further recommended that Justice charge to the employee's leave balances the 136 hours for her absences on 17 days in July and August 2007, thus eliminating the need to seek reimbursement of unearned compensation. Finally, we recommended that it seek reimbursement from the employee for the travel expenses she did not incur.

Justice's Action: Corrective action taken.

Justice reported in June 2009 that the employee revised her time sheets to account for the hours of overtime she worked and the hours she was absent. As of November 2009 the employee had reimbursed Justice for the overpayment of travel expenses.

Finding #2: Justice's management failed to ensure that the employee properly reported her time, attendance, and travel expenses.

Justice's management in the regional office did not ensure that the employee properly reported the time she worked and the absences she took, and it similarly failed to ensure that the employee properly reported her travel expenses. In particular, the employee's manager allowed her to disregard time-reporting requirements prescribed in state regulations and Justice's policies. Further, managers at the regional office engaged in administrative practices that failed to effectively ensure the accuracy of her time sheets, in violation of state laws and regulations, and her manager failed to scrutinize the appropriateness of her travel claim reimbursements.

We recommended that Justice prohibit the regional office employees and managers from engaging in informal timekeeping arrangements, require them to use time sheets and its overtime request form, and provide training to these employees regarding the proper time-reporting and travel claim requirements.

Justice's Action: Corrective action taken.

Justice reported in June 2009 that it issued a memorandum to the regional office employees, as well as legal staff at other Justice regional offices in the division, reminding them of the proper time-reporting policies and procedures that it previously discussed at meetings with these employees. It also informed us that it issued a memorandum of instruction to the employee and her manager about their failure to follow time-reporting and travel expense claim policies and procedures. In September 2009 Justice reported that it provided travel expense claim policy training to the subject and other regional office employees, followed by training in proper time reporting in December 2009.

State Bar of California

It Can Do More to Manage Its Disciplinary System and Probation Processes Effectively and to Control Costs

REPORT NUMBER 2009-030, JULY 2009

State Bar of California's response as of July 2010

The California Business and Professions Code requires the State Bar of California (State Bar) to contract with the Bureau of State Audits to audit the State Bar's operations every two years, but it does not specify topics that the audit should address. For this audit, we focused on and reviewed the State Bar's disciplinary system. To determine the efficiency and effectiveness of this system, we examined the State Bar's discipline costs, the method by which the State Bar accounts for its discipline expenses, the outcomes of cases, the length of time that the State Bar takes to process cases, and the recovery of discipline expenses. We also evaluated the State Bar's attorney probation system and its audit and review unit. Further, we reviewed the State Bar's progress in addressing recommendations from reviews of its operations and the circumstances surrounding an alleged embezzlement by a former State Bar employee. Finally, we reviewed the status of the State Bar's implementation of recommendations made in our 2007 audit titled *State Bar of California: With Strategic Planning Not Yet Completed, It Projects General Fund Deficits and Needs Continued Improvement in Program Administration*. This report summarizes our assessment of the State Bar's strategic planning efforts, projected General Fund deficit, legal services trust fund, and certain aspects of the attorney disciplinary system.

Finding #1: The State Bar does not account for discipline costs so that it can measure efficiency.

The State Bar does not track the costs of the disciplinary system according to its various functions and therefore cannot be certain that it is using its resources as efficiently as possible, nor can it determine whether policy changes affect the costs of the disciplinary functions. The State Bar's total costs for its attorney disciplinary system have risen from $40 million in 2004 to $52 million in 2008, or 30 percent over five years. This upsurge in expenses has outpaced both inflation and the growth in the State Bar's active membership, and it does not match the changes in caseload size in most stages of the system for disciplining attorneys who violate professional standards. Although the State Bar accounts for the expenses for the intake and the State Bar Court functions separately, it combines expenses of other functions such as investigations, trials, and audit and review. Consequently, the State Bar could not readily differentiate the cost of its investigation and trial functions.

Additionally, we found that the State Bar's offices in San Francisco and Los Angeles do not track their disciplinary expenses in the same manner, which further contributes to the difficulty of identifying actual expenses by function. Therefore, not only is the State Bar unable to separately track and monitor what it spends on key aspects of its disciplinary system, such as investigations and trials, it cannot

Audit Highlights . . .

Our audit of the State Bar of California revealed the following:

- *The costs of its disciplinary system have escalated by $12 million from 2004 to 2008, while the number of disciplinary inquiries opened has declined.*
- *It cannot measure its efficiency or identify where to reduce costs because it does not track expenses by key disciplinary function.*
- *Its offices in San Francisco and Los Angeles calculate discipline costs differently.*
- *Because of the methodology it uses to calculate the average time it spends to close investigations, it reported a decrease of 11 days from 2004 to 2007 when the average investigation time has actually increased by 34 days.*
- *Relatively simple changes to its billing procedures would probably yield additional revenue that could offset some of its increased discipline costs.*
- *Its probation office's workload has increased from 791 cases in 2004 to 867 cases in 2008, yet the number of probation deputies was only recently increased by one.*
- *It discovered an alleged embezzlement of nearly $676,000 by a former employee and is taking measures to strengthen its internal controls.*
- *It still needs to fully implement recommendations made in a consultant's report, in the periodic audits conducted by its internal audit and review unit, and in our prior audit.*

even make meaningful comparisons between the two offices because it has no consistent method of accounting for its operations. This fact inhibits the State Bar's ability to identify specific reasons for cost increases, and if warranted, to take appropriate actions to contain them.

Because the State Bar does not track costs separately for each of its key functions within the disciplinary system, it cannot measure the cost impact of policy changes. In 2005 the California Supreme Court criticized the State Bar for failing to bring all possible charges against an attorney who was ultimately disbarred and for failing to follow its internal guidelines that delineate the appropriate actions that the State Bar must take against attorneys who have repeatedly violated professional or legal standards. The former chief trial counsel provided guidance to staff to ensure consistency in applying sanction standards and to take cases to trial if they warrant more severe discipline than the respondent is willing to accept in a stipulation. Before this policy shift, according to the former chief trial counsel, the State Bar settled before trial about 90 percent of cases in which the accused attorney participated. However, he recently estimated that this percentage has decreased to about 75 percent.

The recent trend in the number of cases going to trial is consistent with these policy changes. The former chief trial counsel said that he does not track the average costs of a case that proceeds to trial, and explained that the decisions to prosecute are based on the merits of the cases and not the costs. Although decisions may not be based primarily on financial considerations, we believe the State Bar would benefit from at least understanding roughly how much it spends on trials—especially since the number of trials has nearly doubled in the past few years. Specifically, the number of trials commenced in the State Bar Court each year has increased from 65 in 2004 to 127 in 2008.

We recommended that the State Bar account separately for the expenses associated with the various functions of the disciplinary system, including its personnel costs. This can be accomplished through a study of staff time and resources devoted to a specific function. We also recommended that the State Bar ensure that all its offices track expenses consistently.

State Bar's Action: Corrective action taken.

In its 60-day response, the State Bar stated that beginning with its 2010 budget it will adjust its methodology to track the component costs of its disciplinary system separately and consistently. In its one-year response, the State Bar indicated that it retained a consulting firm to assist in the study of staff time and resources. Based on subsequent inquiry, the State Bar provided us with documentation summarizing the results of its efforts to track staff time for a five-week period in March 2010. The State Bar gathered data across the budgeted component functions of the discipline systems, i.e., Intake, Investigation, Trials, Audit and Review, and Management. According to the State Bar, the data gathered supports the budget allocation methodology the Office of Finance adopted in response to our recommendation to track and report costs, particularly including personnel costs, by discipline system function. The hours allocated to each function by the time study correlates closely to the budget dollars allocated to the same functions.

Finding #2: The State Bar was unaware that its investigation case processing time has increased.

Our analysis demonstrated that the length of time to process cases proceeding beyond intake is generally increasing. Specifically, in 2004 the State Bar staff took more than 360 days to process 378 of 3,853 cases received in the investigation and trial unit, or 10 percent. In 2007 the proportion of cases taking longer than 360 days had increased to 13 percent. Additionally, from 2004 to 2005, although the number of cases taking more than 360 days to resolve in the State Bar Court decreased from 172 to 131, or 5 percent, the number of cases already pending for more than 360 days increased from 160 to 209 cases, or 31 percent.

When we asked the State Bar why it is taking longer to process cases beyond the intake stage, the former chief trial counsel noted that according to the State Bar's analysis of investigation processing time, the trend has decreased over the past five years except for a slight increase in 2008. After

discussing with the State Bar its methodology for calculating its average investigation processing time, we determined that it is not calculating this average in a way that fully represents yearly trends. According to the program/court systems analyst (systems analyst), the State Bar combines average processing time to compute a single average for all cases closed since 1999 as opposed to calculating a separate average based on cases closed for a particular year. However, this is not a meaningful measure of current yearly investigative case processing times because the number of cases from which the State Bar generates the averages continues to grow and includes data from years that do not apply to the relevant reporting year.

Using the State Bar's method to calculate the average processing times for closed investigations resulted in average processing times that ranged from a high of 197 days in 2004 to a low of 186 in 2007. In contrast, when we used what we believe to be a more representative method that only considers the time investigations remained open during a given year, whether eventually closed or forwarded to the next stage, average processing times were generally longer. Using this method, the average processing times for the State Bar's investigations ranged from a low of 168 days in 2004 to a high of 205 days in 2006 before declining to 202 days in 2007.

We recommended that the State Bar adjust its methodology going forward for calculating case processing times for investigations so that the calculations include time spent to process closed and forwarded cases for the relevant year only. For example, for its 2009 annual discipline report, the State Bar should report the average processing time for only cases it closed or forwarded to the State Bar Court in 2009.

State Bar's Action: Corrective action taken.

In its one-year response, the State Bar provided a copy of its 2009 Annual Discipline Report demonstrating that it had begun including this information. The State Bar stated that it will include this information in each subsequent annual discipline report.

Finding #3: The State Bar could better inform the Legislature by including all relevant information when it reports its backlog.

In its annual discipline report, the State Bar reports a case as part of its backlog when its staff has not resolved the case within six months of its receipt or when the State Bar designates the case as complex and has not resolved it within 12 months of receiving the complaint. However, the State Bar does not include seven other types of cases when it reports its backlog. Specifically, the State Bar only reported 1,178 of the 3,020 total cases, or 39 percent, that were not resolved within six months from 2005 through 2008.

Additionally, the number of complex cases over 12 months old has increased from 2005 through 2008 from 74 to 95, or 28 percent. Because the State Bar designates cases as complex and does not include them in the backlog until they are over 12 months old, separately identifying them from noncomplex cases would allow stakeholders to better understand reasons for fluctuations. Further, the State Bar does not count inquiries in the intake unit that do not move on to the investigations unit—even though these issues could remain in intake for more than six months. Because the annual discipline report notes that the investigation and trial unit strives to complete investigations within six months after receipt of the complaint (or 12 months if they are designated as complex), the State Bar is not providing complete and clear information regarding its backlog when it does not identify or explain its reason for not including inquiries.

Over the past five years, the State Bar has also changed the types of cases that it includes in its annual discipline report, which makes year-to-year comparisons difficult. Additionally, beginning in 2008, the State Bar excluded cases in its backlog that were being handled by special deputy trial counsels, who are outside examiners. Although the State Bar noted this change in its 2008 discipline report, it did not explain the reason for the revision. Finally, the State Bar reports its backlog by case and not by member,

which further decreases the number of cases that could be included in the backlog count. In some circumstances, multiple attorneys can be named on the same complaint, but the State Bar only includes one in its backlog calculation, even if separate cases are opened that would otherwise be included. The interim chief trial counsel believes that it is appropriate to report backlog by case and not by member because the complaint, whether it alleges misconduct by one or more attorneys, is generated from a single complaint made by one complaining witness and, for the most part, the issues and evidence are the same. However, the backlog table in the State Bar's annual discipline report does not indicate that the backlog is reported by case rather than by member.

We recommended that the State Bar include additional information regarding backlog in its annual discipline report to the Legislature. Specifically, the State Bar should identify the number of complex cases over 12 months old in its backlog. Additionally, we recommended that it identify in its annual discipline report the types of cases that it does not include in its calculation of backlog and explain why it chooses to exclude these cases. Specifically, the State Bar should identify that it presents its backlog by case rather than by member, and that it does not include intake, nonattorney, abated, and outside examiner cases. Finally, we recommended that the State Bar identify the composition of each year's backlog to allow for year-to-year comparisons, as the law requires.

State Bar's Action: Corrective action taken.

In its one-year response, the State Bar provided a copy of its 2009 Annual Discipline Report demonstrating that it had begun including this information. The State Bar stated that it will include this information in each subsequent annual discipline report. Additionally, the State Bar stated that reporting the backlog composition is a work-in-progress and it continues to refine its methods for presenting the data to provide more clarity.

Finding #4: The State Bar has not updated the formula it uses to bill disciplined attorneys and it does not consistently include due dates on bills.

For those costs it is allowed to recover from disciplined attorneys, the State Bar uses a formula—a fixed amount primarily based on how far the case proceeds through the disciplinary system before resolution—to bill attorneys who are publicly disciplined. Although discipline costs have increased 30 percent during the last five years, the State Bar has not updated this formula since it became effective beginning in 2003.

Additionally, undermining any attempt to track the billing and payment of attorneys' disciplinary expenses is the fact that the State Bar does not consistently include due dates for when payments must be made when billing disciplined attorneys. Our review of 28 bills sent to attorneys in 2006 and 2007 found that attorneys promptly paid their discipline bills at a much greater rate if the due date was explicitly stated on the bill. For the 15 bills with specific due dates, 14 attorneys, or 93 percent, paid their bills in full by the due date. For the 13 bills we reviewed with no specific due date, only one attorney paid by the end of the next fiscal year. By not including specific due dates on its bills to disciplined attorneys, the State Bar is much less likely to recover costs as promptly as it could.

Further, according to the assistant supervisor of membership billing, the State Bar cannot reasonably predict the amount of recovery costs it expects to receive from disciplined attorneys in a given year because in many cases the bills do not include any set due date for when payments must be made. Consequently, the State Bar cannot adequately evaluate its discipline cost recovery collection efforts or fully budget for such collections. According to a summary report of amounts billed and received, in 2007 and 2008, the State Bar collected an average of 63 percent of the amount it billed. Although these percentages provide some context about collections, they are somewhat misleading and not necessarily a useful measure of the effectiveness of the State Bar's efforts. This is because the State Bar does not match the percent collected with the corresponding amount billed. In fact, payments often are

received years after they are billed. Using detailed payment information provided by the State Bar, we determined that of the $1.1 million billed for recovery costs in 2008, only $229,000 was collected in that year, or about 21 percent.

We recommended that the State Bar update annually its formula for billing discipline costs and include due dates on all bills so that it maximizes the amounts it may recover to defray the expense of disciplining attorneys. Additionally, to report accurately its collection amounts and to analyze the effectiveness of its collection efforts, we recommended that the State Bar track how much it anticipates receiving against how much it actually receives in payments for discipline costs each year.

State Bar's Action: Corrective action taken.

In its one-year response, the State Bar indicated that its consultant reviewed the State Bar's discipline cost formula and methodology for updating the cost formula. In subsequent documentation provided in December 2010, the State Bar provided a copy of its consultant's report recommending that the State Bar increase the discipline cost formula and adjust it annually based on the U.S. Department of Labor, Bureau of Labor Statistics, Employment Cost Index. The State Bar stated that these recommendations will be presented to the State Bar's Board of Governors for consideration in January 2011.

Additionally, the State Bar adjusted its billing system to include due dates on all notices to disciplined members and reported to us that it has adjusted its cost recovery database application to track how much it anticipates receiving against how much it actually receives in payments each year.

Finding #5: The State Bar does not track how much it spends on cost recovery efforts.

Before April 2007 the State Bar's efforts to recover costs associated with disciplined attorneys typically included billing the disciplined attorneys through annual membership bills and contracting with a collection attorney. Effective April 1, 2007, the State Bar received California Supreme Court approval of a rule to enforce as a money judgment, disciplinary orders directing payments of costs. A money judgment is an order entered by a court that requires the payment of money. The State Bar contracted with a collection attorney to pursue collections from disciplined attorneys owing the largest unpaid amounts to the Client Security Fund. The State Bar agreed to pay the collection attorney 25 percent of the net funds recovered. Also, if no recovery was obtained, the State Bar agreed to pay the expenses the collection attorney incurred. According to its discipline payments summary report, the collection attorney collected $11,600 for the State Bar in 2007, but he was paid $19,400 in recovery fees and expenses. For 2006 through 2008, the collection attorney collected $156,600, and the State Bar received $63,900, or 41 percent, of the total amount recovered.

According to the State Bar's acting general counsel, the legal work required to prepare a money judgment is labor intensive, and in an effort to avoid having the collection agency conduct this legal work, the State Bar is currently using its own in-house staff. However, when we asked about the cost of the efforts of its in-house staff, the general counsel told us that the State Bar does not specifically track all of these costs. After our request, the State Bar identified some estimates of in-house costs to prepare the money judgments, and the general counsel acknowledged that paying the higher 25 percent of recovered costs might be more cost beneficial than having the State Bar staff conduct this work.

The State Bar's discipline payments summary shows that for 2006 through 2008, it collected $3 million in discipline costs and Client Security Fund recoveries from its in-house billing efforts, but it does not track its costs associated with making these recoveries. We acknowledge that because of statutory restrictions on the amount of discipline costs that can be recovered, the State Bar is limited to recovering substantially less than its costs. However, conducting a cost-benefit analysis of its collections efforts would allow the State Bar to evaluate and determine whether more cost-effective alternatives exist that could potentially increase the net amount that it recovers.

In an effort to provide the State Bar with some alternative best practices regarding cost recovery efforts, we asked two state agencies about methods they use for collecting money owed to them. A representative told us about the Franchise Tax Board's (Tax Board) Interagency Intercept Collections Program (intercept program) that offsets a debtor's state tax refund by the amount owed to a state entity. According to the intercept program participation booklet for 2009, the cost for the program is approximately 25 cents per account.

We recommended that the State Bar complete a cost-benefit analysis to determine whether the benefits associated with using collection agencies outweigh the costs. If it determines that the collection agencies are, in fact, cost-effective, the State Bar should redirect in-house staff to other disciplinary activities. Finally, the State Bar should also research the various collection options available to it, such as the Tax Board's intercept program.

State Bar's Action: Partial corrective action taken.

In its one-year response, the State Bar stated that its consultant hired to review the measures and categories of data and assist in the completion of the cost-benefit analysis is nearing completion. The State Bar stated that it expects that its preliminary analysis will be confirmed and is prepared to direct collection of all delinquent discipline cost accounts to an outside collection agency. The State Bar also reported that it is seeking a new vendor to replace the current collection agency, which has elected not to renew its contract.

In November 2010 the State Bar stated that it will explore legislative support for introducing legislation next year authorizing the State Bar to participate in the Franchise Tax Board's Intra-agency Intercept program, which it stated was previously rejected by the Legislature.

Finding #6: The State Bar's office of probation has not determined appropriate workload levels for staff to monitor probationers effectively.

Over the past five years, the probation office's caseload has increased nearly 10 percent, making it more difficult for its staff to manage disciplined attorneys effectively. The probation office believes that it is understaffed, but it is unsure whether its recent request for an additional probation deputy position will fulfill its needs.

In a memo to the deputy executive director requesting an additional probation deputy position, the former chief trial counsel noted that with existing caseloads, it has become increasingly difficult, if not impossible, for probation deputies to oversee probation in a timely, effective manner. The memo further notes that an additional probation deputy will reduce the current caseload and increase the probation office's ability to effectively fulfill its function. However, the additional probation deputy will only decrease the overall caseload to around 175 cases per deputy. According to the supervisor of the probation office, because of increases in alternative discipline cases and other changes to the probation office's responsibilities, she is still in the process of monitoring staff workloads and determining the appropriate caseload. Until the State Bar determines that its probation deputies have reasonable workloads, it cannot be sure that they are devoting the amount of attention necessary to effectively monitor probationers.

We recommended that the State Bar continue its efforts to determine the appropriate caseload level for its staff to effectively monitor probationers and adjust staffing as appropriate.

State Bar's Action: Partial corrective action taken.

In its 60-day response, the State Bar stated that it recently hired an additional probation deputy and will continue to monitor caseload levels to evaluate appropriate staffing levels for effective monitoring of probationers. Additionally, in November 2009, the State Bar informed us that it is in the process of retaining a measurement consultant to evaluate the office of probation's appropriate workload.

In its one-year response, the State Bar indicated that it continues to monitor work and caseloads in the Probation Unit. Specifically, the State Bar stated that it included the Probation Unit in the time and resource study discussed previously and that data from that study has been included in an ongoing evaluation of the allocation of time and resources in the Probation Unit. The State Bar reported that currently it appears that staffing at the probation deputy level is adequate, considering budget limitations. The State Bar stated that it will continue to monitor and evaluate staffing needs in this area.

In November 2010 the State Bar stated that after review of data on staffing and available resources, its consultants found that the current allocation is adequate considering budget limitations. The State Bar stated that with the filling of a vacant position it has five probation deputies and the caseload for each deputy has been reduced to 174 cases. The State Bar stated that it is continuing to monitor performance and evaluate the effectiveness of this new caseload and will make any additional adjustments as appropriate and permitted by the budget.

Finding #7: The office of probation is not fully meeting its strategic goals to help attorneys successfully complete probation and to protect the public.

The probation office has not fully met its mission of assisting attorneys to successfully complete probation and of protecting the public because it did not always promptly communicate attorneys' probation terms and did not refer probation violations to the Office of the Chief Trial Counsel consistently or promptly. Specifically, for eight of the 18 initial probation letters that we reviewed from cases closed in 2008, the probation office sent the initial letters communicating the terms of probation to disciplined attorneys between eight and 72 days after it received the related court orders. Although the probationer is ultimately responsible for meeting the terms of probation, the State Bar's probation deputy manual requires its probation deputies to send a letter to the affected attorney within seven days of receiving the court order.

The probation office has also not promptly referred attorneys who have violated their probationary terms to the Office of the Chief Trial Counsel, and in some cases, referred the same type of violation inconsistently. Related to eight of the 20 probation case files we reviewed that the State Bar closed in 2008, probation office deputies had prepared 11 referrals of probation violations to the Office of the Chief Trial Counsel. For five of the 11 referrals, probation deputies took well over a month after the violation occurred to refer the violation. In fact, the timing of these five referrals ranged from 96 days to 555 days after the violation occurred, with probation deputies taking more than 500 days for two of the referrals.

Because attorneys are still often able to practice law during their probationary period, unnecessary delays in making referrals for violations may allow an errant attorney to continue to practice law and represent clients. Further, when the probation office does not make referrals promptly, it is not meeting its goal of protecting the public. Finally, when staff are not consistent or prompt in referring violations, it may create a perception of favoritism or leniency, and could undermine the efforts of the Office of the Chief Trial Counsel to enforce disciplinary standards.

We recommended that the State Bar ensure that it effectively communicate with and monitor attorneys on probation by ensuring that staff comply with procedures for promptly sending initial letters reminding disciplined attorneys of the terms of their probation. We also recommended that to make certain that it does not create a perception of favoritism or leniency, the State Bar increase compliance

with its goal to improve timeliness and consistency of probation violation referrals to the Office of the Chief Trial Counsel. If the State Bar believes instances occur when probation staff appropriately deviate from the 30-day goal, it should establish parameters specifying time frames and conditions acceptable for a delay in the referral of probation violations and clearly document that such conditions were met.

State Bar's Action: Corrective action taken.

In its 60-day response, the State Bar stated that it will review its procedures for notifying disciplined attorneys of the terms of their probation and will take steps to ensure greater compliance and prompt notice to probationers. In November 2010 the State Bar stated that the probation office worked with the State Bar Court to assure receipt of copies of disciplinary orders within two weeks after filing.

In its one-year response, the State Bar stated in order to increase compliance with its goal to improve timeliness and consistency of probation violation referrals to the Office of the Chief Trial Counsel, the probation staff is implementing a tiered system for violation referrals. According to the State Bar's new policy, this system maintains the standard 30-day goal but also establishes 60-day and 90-day deviations. The tiered system of referral also establishes conditions for deviation from the 30-day goal and the documentation in each case that such conditions were met.

Finding #8: The State Bar has not fully addressed concerns identified in a review of its cost recovery process.

Although the State Bar contracted with a consultant in September 2007 to review interdepartmental processes surrounding its cost recovery processes, including its planned cost recovery system, the State Bar did not fully address recommendations for improving internal control weaknesses that the consultant identified. In response to some of the concerns raised in the consultant's review, the State Bar indicated that it would achieve corrective action through various functions and processes associated with the new cost recovery system it was developing. Although it anticipated that the new cost recovery system would resolve the deficiencies, the State Bar did not obtain the new system immediately and is still in the process of fully implementing it.

We recommended that the State Bar fully implement recommendations from audits and reviews of the State Bar and its functions. Further, we recommended that the State Bar ensure that its new cost recovery system and related processes address the issues identified in the consultant's 2007 report on its cost recovery process.

State Bar's Action: Corrective action taken.

In its 60-day response, the State Bar indicated that it had completed this recommendation. According to the response to the audit report, the State Bar stated that it had implemented changes in its manual and automated processes and controls to address issues raised in the 2007 report on its cost recovery process. These processes and controls apply to the new cost recovery system. Because it did not inform us of these changes until after it had received a draft copy of our report, we were not able to verify whether these changes fully address our concerns. As part of our next statutorily required audit, we plan to review the cost recovery system to determine whether the new system corrects the identified issues.

The State Bar retained a consultant that reports directly to the Board's Audit Committee, to perform an internal audit function. The State Bar's internal auditors began a review of all internal audit functions to assess risks associated with its organization-wide internal control functions, provide training to staff, and recommend improvements to strengthen internal controls. The consultant completed internal audits of the State Bar's payroll, accounts payable, procurement, and budget control functions in July 2010. According to the State Bar it will implement all recommendations contained in the audit reports before the end of 2010.

Finding #9: The State Bar's audit and review unit does not ensure its recommendations are implemented.

In keeping with one of its goals to enhance the quality of the Office of the Chief Trial Counsel's investigations and prosecutions the State Bar's audit and review unit has identified some recurring deficiencies and recommended providing training during its periodic audits of case files. However, it could do more to ensure that staff receive appropriate training in areas that need improvement. According to State Bar policy, twice each year staff in its audit and review unit review at least 250 recently closed disciplinary cases and complete a checklist to determine whether staff followed specific requirements and whether the files include appropriate documentation. After each audit, the audit and review unit prepares a summary report of the deficiencies found and submits it to the Office of the Chief Trial Counsel for consideration. The summary also identifies training opportunities. According to the audit and review manager, she makes such recommendations in areas where errors could be avoided by training staff to properly follow policies and procedures.

We reviewed five audit summaries covering September 2005 through February 2008 and noted several recurring deficiencies and related recommendations for training. When we asked the State Bar for documentation that it had followed up on these and other recommendations from its audits, the audit and review manager told us no documentation of the implementation of recommendations exist. She further stated that the managers within the units generally address concerns through a combination of discussing specific issues with the State Bar staff, discussing general issues at their unit meetings, informally reminding unit staff, or raising the issues with supervisors. However, the number of recurring deficiencies present in the summaries suggests the need for a more formal process of ensuring corrective action. Without a formal process to ensure that its recommendations from the audit summaries are implemented, the audit and review unit is not maximizing the value it can add to improve the quality of investigations and prosecutions.

We recommended that the State Bar's audit and review unit establish a formal process to follow up on and ensure implementation of recommendations from its twice yearly audits.

State Bar's Action: Corrective action taken.

In its one-year response, the State Bar provided a copy of its Office of the Chief Trial Counsel's policy directive issued in January 2010 creating a formal process for the Audit and Review Unit to follow up on and ensure implementation of recommendations from its twice-yearly audits. The formal process includes the preparation of a memorandum summarizing the overall findings of the audit. The memorandum is then shared with and discussed by the Office of the Chief Trial Counsel's management team and used as the basis for an all-staff meeting and training.

Finding #10: The State Bar has partially implemented three and fully implemented seven of our 2007 audit recommendations.

Our April 2007 report titled *State Bar of California: With Strategic Planning Not Yet Completed, It Projects General Fund Deficits and Needs Continued Improvement in Program Administration* (2007 030), included 10 recommendations to the State Bar. The State Bar has fully implemented seven of the recommendations related to improvement of its strategic plans and tracking and monitoring grant recipients under its legal services trust fund program. However, it has only partially implemented the three other recommendations related to improving the State Bar's disciplinary system, which is also the subject of the current report.

In 2007 we recommended that, after the Supreme Court's approval, the State Bar should complete its cost recovery database and input all available information on the Client Security Fund and on disciplinary debtors, implement its proposed policy for pursuing debtors, and complete its assessment of the costs and benefits of reporting judgments to credit reporting agencies. Although the State Bar has implemented its pursuit policy and obtained a new database that will capture amounts owed and

payments received from individual debtors, it has not yet entered all of the Client Security Fund and disciplinary debtors' information. In May 2009 the State Bar's acting general counsel stated that he expects the new database to be fully online within 60 days.

Additionally, the State Bar has only partially implemented our 2007 recommendation related to its reduction of backlogged cases. Although the State Bar reported in its annual report that it has decreased its disciplinary case backlog from 327 cases in 2007 to 311 cases in 2008, it has still not reached its most recent goal of having no more than 250 backlogged cases. Finally, the State Bar has not fully implemented the recommendations from our 2007 audit related to its compliance with two State Bar policies established to improve its processing of disciplinary cases.

We recommended that the State Bar continue acting on recommendations from our 2007 report related to continuing its efforts to enter all of the Client Security Fund and disciplinary debtor information into its database, taking steps to reduce its inventory of backlogged cases, and improving its processing of disciplinary cases by more consistently using checklists and performing random audits.

State Bar's Action: Partial corrective action taken.

In its 60-day response, the State Bar stated that it has completed the uploading of Client Security Fund and disciplinary debtor information required for tracking it cost recovery efforts from its existing database into its new database and application.

In its six-month response, the State Bar stated that it continues to develop evolving strategies for backlog management in an effort to keep the backlog as low as possible. In its one-year response, the State Bar indicated there was a substantial increase in new client complaints arising out of the recession, mortgage crises and resultant misconduct by attorneys offering loan modification services, coupled with the absence of additional staff resources, that has made backlog management more challenging. As a result, the State Bar has not been able to reduce its backlog. However, the State Bar indicates that despite challenging workloads, it continues to take steps to manage case inventory. Specifically, the State Bar states that on a monthly basis, it tracks existing backlog of matters in investigation as well as cases expected to roll into backlog within the next 30, 60, and 90 days. Staff target these cases to ensure the lowest possible statutory backlog at all times consistent with office priorities, resources and public protection.

In its one-year response, the State Bar stated that it continues to conduct its monthly random audit of open investigations and ensure that checklists are being used consistently and effectively so that all significant case processing tasks are completed, as appropriate. In late December 2009, the Office of the Chief Trial Counsel issued a new policy directive implementing new case file checklists for trials and investigations. Additionally, the State Bar reported that it is still in the process of automating its intake checklist and that staff will continue to use the manual checklist until the automated one is available. The State Bar stated that implementation of the automated checklist is expected by the end of 2010.

Finding #11: The State Bar cannot implement the information technology portion of its strategic plan without additional resources.

Although the State Bar implemented the four recommendations from our 2007 audit related to updating its strategic plan, it has only secured funding for a portion of its planned technology initiatives. In our 2007 audit, we recommended that the State Bar should either take the steps necessary to ensure that its information technology systems can capture the required performance measurement data to support the projects needed to accomplish strategic planning objectives or devise alternative means of capturing this data. During our current review we found that departments within the State Bar currently use Microsoft Excel spreadsheets or other methods to capture this information. The manager of planning and administration indicated that the State Bar plans to implement a new information technology system that will capture this strategic planning data and allow centralized

access to the departments' performance indicators. In reviewing the State Bar's Information Technology Strategic Plan (IT plan), which outlines the State Bar's strategic goals and objectives for information technology, we noted that its IT plan included an implementation plan that identified steps the State Bar determined were necessary to attain its vision for information technology. Although the planning efforts related to its information technology needs are detailed, the State Bar has yet to secure funding for all of its plans.

We recommended that the State Bar follow its IT plan to ensure that it can justify requests to fund the remaining information technology upgrades.

State Bar's Action: Corrective action taken.

In its one-year response, the State Bar stated that it is fully utilizing its internal information technology resources for project, program and information technology infrastructure support. Additionally, in November 2010, the State Bar provided copies of its status in implementing various portions of its IT plan and continues to implement portions of the plan as resources become available.

Departments of Health Care Services and Public Health

Their Actions Reveal Flaws in the State's Oversight of the California Constitution's Implied Civil Service Mandate and in the Departments' Contracting for Information Technology Services

REPORT NUMBER 2009-103, SEPTEMBER 2009

Responses from the Departments of Health Care Services and Public Health and the State Personnel Board as of September 2010

The Joint Legislative Audit Committee (audit committee) requested that the Bureau of State Audits (bureau) examine the use of information technology (IT) consulting and personal services contracts (IT contracts) by the Department of Health Care Services (Health Care Services) and the Department of Public Health (Public Health). The audit committee specifically asked the bureau to review and assess the two departments' policies and procedures for IT contracts to determine whether they are consistent with state law. The audit committee also requested that we identify the number of active IT contracts at each department and—for a sample of these contracts—that we determine whether the departments are complying with California Government Code, Section 19130, and with other applicable laws, rules, and regulations. For the sample of contracts, the committee also requested that we collect various data and perform certain analyses, including determining whether the two departments are enforcing the knowledge-transfer provisions contained in the contracts.

The audit committee also asked us to identify the number, classification, and cost of IT positions budgeted at each department for each of the most recent five fiscal years. In addition, we were to determine the number of vacant IT positions, the turnover rate, and any actions that the departments are taking to recruit and retain state IT employees.

For a sample of contracts under review by the State Personnel Board (board), the audit committee asked us to identify the California Government Code section that the departments are using to justify an exemption from the implied civil service mandate emanating from Article VII of the California Constitution. For the contracts overturned by the board, we were asked to review the two departments' responses and determine whether corrective action was taken. Finally, the audit committee requested that we review and assess any measures that the two departments have taken to reduce the use of IT contracts.

Audit Highlights . . .

Our review of the personal services and consulting contracts for information technology (IT contracts) used by the Department of Health Care Services (Health Care Services) and the Department of Public Health (Public Health) revealed the following:

- *Over the last five years, the State Personnel Board (board) has disapproved 17 of 23 IT contracts challenged by a union.*
- *Many of the board's decisions were moot because the contracts had already expired before the board rendered its decisions.*
- *Of the six IT contracts still active at the time of the board's decisions, only three were terminated because of board disapprovals.*
- *Health Care Services did not comply with state policy regarding the use of blanket positions and was disingenuous with budgetary oversight entities.*
- *Neither Health Care Services nor Public Health has a complete database that allows it to identify active IT contracts and purchase orders.*
- *The departments complied with many, but not all, state procurement requirements.*
- *The departments did not obtain the requisite financial interest statements from half the sampled employees responsible for evaluating contract bids and offers.*

Finding #1: The board disapproved most of the departments' challenged IT contracts, but these decisions had limited impact.

Over the last five years, the board has disapproved 17 IT contracts executed by Health Care Services, Public Health, and their predecessor agency—the Department of Health Services (Health Services).[1] The board disapproved the IT contracts because the departments, upon formal challenges from a union, could not adequately demonstrate the legitimacy of their justifications for contracting under the California Government Code, Section 19130(b), which provides 10 conditions under which state agencies may contract for services rather than use civil servants to perform specified work. These conditions include such circumstances as the agencies needing services that are sufficiently urgent, temporary, or occasional, or the civil service system's lacking the expertise necessary to perform the service.

Although the union prevailed in 17 of its 23 IT contract challenges, many of the board's decisions were moot because the contracts had already expired before the board rendered its decisions. This situation occurred primarily because the union raised challenges late in the terms of the contracts and because the board review process was lengthy. The board's former senior staff counsel stated that if the board disapproves a contract, the department must immediately terminate the contract unless the department obtains from the superior court a stay of enforcement of the board decision. However, as the board's executive officer explained, the board's decisions usually do not state that departments must immediately terminate disapproved contracts, and she is unaware of the historical reasons behind this practice. Of the six IT contracts that were active at the time of the board's decisions, only three were terminated because of board disapprovals. For each of the other three IT contracts, the departments either terminated the contract after a period of time for unrelated reasons or allowed it to expire at the end of its term. We found that one contract was not terminated because the department was unaware of the board's decision and another because of miscommunications between the department's legal services and program office managing the contract. Because the board lacks a mechanism for determining whether state agencies comply with its decisions, the departments experienced no repercussions for failing to terminate these contracts.

Additionally, our legal counsel believes that uncertainties exist about whether or not a contract disapproved by the board is void and about the legal effect of a void contract. However, if a court were to find that the disapproved contract violated public contracting laws, the contractor may not be entitled to any payment for services rendered.[2] Because the legal effect of a board-disapproved contract is uncertain, it may be helpful for the Legislature to clarify when payments to the related contractors must cease and for what periods of service a vendor may receive payments.

To provide clarity to state agencies about the results of its decisions under California Government Code, Section 19130(b), we recommended that the board explicitly state at the end of its decisions if and when state agencies must terminate disapproved contracts. Additionally, we recommended that the board obtain documentation from the state agencies demonstrating the terminations of disapproved contracts.

To vet more thoroughly the Section 19130(b) justifications put forward by the departments' contract managers, to ensure the timely communication of board decisions to the contract managers, and to make certain that disapproved contracts have been appropriately terminated, we recommended that legal services in both departments take these actions:

- Review the Section 19130(b) justifications put forward by the contract managers for proposed personal services contracts deemed high risk, such as subsequent contracts for the same or similar services as those in contracts disapproved by the board.

[1] Only July 1, 2007, Health Services became Health Care Services, and Public Health was established. All contracts disapproved by the board were originally executed by Health Services. However, the management of these contracts was performed by Health Services, Health Care Services, or Public Health.

[2] *Amelco Electric v. City of Thousand Oaks* (2002) 27 Cal. 4th 228, 234, upholding *Miller v. McKinnon* (1942) 20 Cal. 2d 83, 89, and *Zottman v. San Francisco* (1862) 20 Cal. 96, 101, 105-106.

- Notify contract managers of the board's decisions in a timely manner and retain records in the case files showing when and how the notifications were made.

- Require documentation from the contract managers demonstrating the termination of disapproved contracts and retain this documentation in the case files.

Board's Action: Pending.

The board stated that all of its future decisions disapproving a contract will include a deadline for when the contract should be discontinued and a requirement that the affected department submit written confirmation of the discontinuation of the contract to it and the interested labor organizations.

Health Care Services' Action: Partial corrective action taken.

Health Care Services stated that its legal services is available to review personal services contracts identified by its contract managers as high risk but—as of November 2010—its instructions as to how its contract managers would identify contracts as high risk had only been verbal. Health Care Services added that it is in the process of developing training for its contract managers regarding Section 19130 of the California Government Code requirements and what types of contracts need review by legal services.

Health Care Services also stated that notifying contract managers of relevant board decisions is in accordance with its current practices and that it would request notifications from program managers of contract terminations related to board-disapproved contracts and document them in the case files.

Public Health's Action: Corrective action taken.

Public Health issued a policy effective November 3, 2009, that requires its program staff to obtain approval from its legal services before entering into personal services contracts. Public Health stated that it has developed procedures to ensure that contract managers receive timely notification of board decisions and to maintain documentation for all notices of contract terminations in legal services' case files.

Finding #2: Although it saved the State $1.7 million by replacing IT consultants with state employees, Health Care Services failed to follow budgetary instructions and rules.

Partly in response to the disapproved contracts, the two departments sought to replace IT contractors with state IT employees. For this purpose, in January 2009, the Department of Finance (Finance) approved the creation of an additional 28 IT positions within the information technology services division (IT division) of Health Care Services and 11 IT positions within the IT division of Public Health. Health Care Services began the process of converting IT contractor positions into state positions as early as October 2006, but it did not clearly disclose this effort in its budget change proposal (BCP) requesting additional positions. Specifically, despite language in Health Care Services' January 2009 BCP stating that the 28 requested positions "will replace contractors *currently* providing IT support functions" and that these conversions will occur over three fiscal years, it had already replaced nine contractors, and the termination dates for the contracts associated with these nine contractors had already expired.

Because permanent positions had not yet been approved in the state budget, Health Care Services funded the new employees—who were hired as permanent civil servants—using temporary-help positions authorized in the budget as *blanket positions*, which are positions in the approved budget that an agency may use for short-term or intermittent employment needs when expressing those needs as classified positions has proven impracticable. According to the *State Administrative Manual*, an agency may not use temporary—help positions provided under its blanket authority to fund permanent employees. Although it did not comply with state policy regarding the use of blanket positions and was disingenuous with budgetary oversight entities, we estimate that Health Care Services saved the State more than $1.7 million when it converted IT contracts to IT positions. Public Health stated that it will not be able to replace its IT contracts with state employees until fiscal year 2010–11, which is when it anticipates it will be able to hire and train employees who have the appropriate skill sets to make the transition successful.

To ensure that Finance and relevant legislative budget subcommittees are able to assess its need for additional IT positions, we recommended that Health Care Services prepare BCPs that provide more accurate depictions of the department's existing conditions.

To comply with requirements in the *State Administrative Manual*, we recommended that Health Care Services refrain from funding permanent full-time employees with the State's funding mechanism for temporary-help positions.

Health Care Services' Action: Partial corrective action taken.

Health Care Services stated that it strives to provide clear and precise BCPs and that it would continue to provide training to staff on the preparation of BCPs, based on guidance from Finance, that are accurate and complete. Health Care Services also stated that it moved all of the individuals identified by the audit out of temporary-help positions and into newly authorized positions and provided us with a report indicating the same.

However, we requested that Health Care Services provide this report for the department as a whole and found—as of November 2010—other permanent full-time employees in temporary-help positions. Four of these employees had been in these positions for more than one year. Health Care Services stated that it will endeavor to limit the use of temporary-help positions to those instances that meet the definition in the *State Administrative Manual*.

Finding #3: The two departments cannot readily identify active IT contracts.

Neither Health Care Services nor Public Health has a complete database that allows it to identify active IT contracts and purchase orders. Consequently, the departments cannot readily identify such procurements. The best source of information for the purposes of this audit was the contracts database maintained by the Department of General Services (General Services) and populated with self-reported data from state agencies. However, we found errors in the data reported by Health Care Services and Public Health indicating that the information in General Services' database is incomplete and inaccurate for these departments.

Public Health stated that it is in the process of developing a new database that will identify all contracts that are active and IT-related. The database will include this information for all completed contracts and those in progress. Public Health anticipates implementing its database in October 2009. The chief of its Contracts and Purchasing Support Unit stated that Health Care Services is monitoring the development of Public Health's database, and Health Care Services will consider its options for creating a similar database if the implementation of Public Health's database is successful.

To readily identify active IT and other contracts, we recommended that Public Health continue its efforts to develop and implement a new contract database. Additionally, we recommended that Health Care Services either revise its existing database or develop and implement a new contract database.

To ensure that reporting into General Services' contracts database is accurate and complete, we recommended that both departments establish a review-and-approval process for entering their contract information into the database.

Health Care Services' Action: Partial corrective action taken.

Health Care Services stated that it completed an assessment of the feasibility of creating a new contract database, but determined that it is not economically feasible at this time. Health Care Services also stated that it provided training and instructions to staff on the importance of entering accurate information into the General Services database and that a supervisor regularly reviews reports from the database to ensure the accuracy and completeness of the data.

Public Health's Action: Partial corrective action taken.

Public Health stated that it plans to fully implement its new contract database by December 2010. Public Health added a reminder for entering information into General Services' database to its procurement checklists and indicates that it has and will continue to regularly conduct reviews to ensure staff enter the information appropriately.

Finding #4: The departments generally complied with the procurement requirements that we tested.

The departments complied with many, but not all, state procurement requirements we reviewed. For a sample of 14 contracts, the departments obtained the requisite number of supplier responses, encouraging competition among suppliers. The departments also complied with requirements related to maximum dollar amounts and allowable types of IT personal services, except in one instance. In this instance, Public Health procured some unallowable printer maintenance services under its contract with Visara International (Visara). Visara's master agreement with General Services allows it to provide maintenance on numerous printer types. However, 13 of the 17 printer types listed in Public Health's contract with Visara are not included in General Services' master agreement. Therefore, the prices negotiated between Public Health and Visara for maintenance on these 13 printer types were not subject to the required level of scrutiny that is designed to ensure that Public Health is not paying too much.

To make certain that it procures only maintenance services allowed in the State's master agreement with Visara, we recommended that Public Health either make appropriate changes to its current Visara contract or have General Services and Visara make appropriate changes to Visara's master agreement.

Public Health's Action: Corrective action taken.

Public Health processed an August 2009 amendment to remove noncovered printers from its Visara contract and, after working with General Services to add these printers to its Visara master agreement, executed a January 2010 amendment to add these printers back into its VIsara contract.

Finding #5: The departments have not provided suppliers with selection criteria.

The *State Contracting Manual* establishes the requirements for departments to follow when conducting supplier comparisons, and it provides a request-for-offer template. The request-for-offer template states that if departments use the best-value method to select suppliers, they should detail their selection criteria and the corresponding points that will be used to determine the winning offer.[3] The best-value

[3] The *State Contracting Manual* provides departments with limited discretion regarding policy requirements prefaced by the term "should." It states that such policies are considered good business practices that departments need to follow unless they have good business reasons for deviating from them.

method, which is the basis for all California Multiple Award Schedules (CMAS) contracts, refers to the requirements, supplier selection, or other factors used to ensure that state agencies' business needs and goals are met effectively and that the State obtains the greatest value for its money.

Three of the requests for offer associated with the five CMAS contracts we reviewed contained only brief, vague statements regarding how the departments would determine the winning offers. Further, none of the requests for offer for these five contracts included information on the corresponding points. Without specific selection criteria, potential suppliers are left to guess the criteria and their relative importance using what they can glean from the departments' requests for offer.

To promote fairness and to obtain the best value for the State, we recommended that the two departments demonstrate their compliance with General Services' policies and procedures. Specifically, in their requests for offer, they should provide potential suppliers with the criteria and points that they will use to evaluate offers.

Health Care Services' Action: Corrective action taken.

Health Care Services modified its request-for-offer template to include evaluative criteria that it will use on all CMAS procurements.

Public Health's Action: Pending.

Public Health stated that by November 2010 it plans to develop and distribute to staff a new form they can use to inform potential suppliers of the criteria it will use to evaluate their offers.

Finding #6: The departments did not obtain some required approvals and conflict-of-interest information for the contracts that we reviewed.

The departments did not always obtain prior approvals from their agency secretary, directors, and—in the case of Public Health, IT division—as required by state procurement rules and departmental policies. In particular, we found that the departments did not obtain the appropriate agency secretary's or director's approvals for three of the seven CMAS and master agreement contracts for which the requirement was applicable. Additionally, despite a policy requiring its IT division to review all IT contracts, we found that Public Health's IT division did not review two of the 14 Public Health contracts we reviewed.

The departments also did not consistently obtain requisite annual financial interest statements from bid or offer evaluators. Health Care Services failed to obtain this statement from one employee and Public Health failed to obtain the financial interest statement from six of its employees. For three of the six employees, Public Health stated that the employees were not in positions designated in the department's conflict-of-interest code as needing to file the financial interest statement. Our review raised questions about whether Public Health's conflict-of-interest code appropriately designated all employees engaged in procurement. We believe that state employees who regularly participate in procurement activities may participate in the making of decisions that could potentially have a material financial effect on their economic interests. To maintain consistency with the Political Reform Act, state agencies should designate such employees in their conflict-of-interest codes. Without the approvals mentioned earlier and these financial interest statements, the departments are circumventing controls designed to provide high-level purchasing oversight and to deter and expose conflicts of interest.

To ensure that each contract receives the levels of approval required in state rules and in their policies and procedures, we recommended that the departments obtain approval by their agency secretary and directors on contracts over specified dollar thresholds. In addition, we recommended that Public Health obtain approval from its IT division on all IT contracts, as specified in departmental policy.

To make certain that it fairly evaluates offers and supplier responses, Public Health should amend its procedures to include provisions to obtain and retain annual financial interest statements from its offer evaluators. Further, both departments should also ensure that they obtain annual financial interest statements from all designated employees. Finally, Public Health should ensure that its conflict-of-interest code is consistent with the requirements of the Political Reform Act.

Health Care Services' Action: Corrective action taken.

Health Care Services stated that it would obtain the necessary approvals, as required. Health Care Services did not indicate that any revision of policy or procedure would be necessary. Health Care Services also stated that in February 2010 it provided specific instructions to staff regarding the disclosure categories related to offer evaluators. Health Care Services provided documents showing that its contracts management unit added language to its user guides stating that disclosure requirements apply to all persons involved in contractor selection.

Public Health's Action: Corrective action taken.

Public Health revised its IT Manual and provided us with training material demonstrating its efforts to make procurement staff aware of the IT approval policies.

Effective November 3, 2009, Public Health issued a policy that requires each staff member who participates in the procurement process to file a conflict-of-interest and confidentiality statement it created. To its procurement checklists, Public Health added a reminder that each member of the evaluation team must complete conflict-of-interest and confidentiality statements.

Finding #7: Health Care Services could not always demonstrate fulfillment of contract provisions requiring IT consultants to transfer knowledge to IT employees.

Health Care Services and Public Health did not always include specific contract provisions in their contracts with IT consultants to transmit the consultants' specialized knowledge and expertise (knowledge transfer) to the State's IT employees because these knowledge-transfer provisions were not always applicable. However, when its IT contracts included knowledge-transfer provisions, Public Health was generally able to demonstrate that the department met these provisions, while Health Care Services had difficulty doing so for all three of its contracts in our sample that contained knowledge-transfer provisions.

To verify that its consultants comply with the knowledge-transfer provisions of its IT contracts, and to promote the development of its own IT staff, we recommended that Health Care Services require its contract managers to document the completion of knowledge-transfer activities specified in its IT contracts.

Health Care Services' Action: Corrective action taken.

Health Care Services stated that it would remind all managers and supervisors who are responsible for managing IT contracts to document the completion of knowledge-transfer activities. Health Care Services did not indicate that any revision of policy or procedure would be necessary.