

**REPORT BY THE
AUDITOR GENERAL
OF CALIFORNIA**

**IMPROVEMENTS NEEDED IN THE DEPARTMENT
OF SOCIAL SERVICES' ADMINISTRATION OF
PERSONAL SERVICES CONTRACTS**

REPORT OF THE
OFFICE OF THE AUDITOR GENERAL
TO THE
JOINT LEGISLATIVE AUDIT COMMITTEE

028

IMPROVEMENTS NEEDED IN THE
DEPARTMENT OF SOCIAL SERVICES'
ADMINISTRATION OF
PERSONAL SERVICES CONTRACTS

OCTOBER 1981



California Legislature

Joint Legislative Audit Committee

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October 26, 1981

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The Honorable President pro Tempore of the Senate
The Honorable Speaker of the Assembly
The Honorable Members of the Senate and the
Assembly of the Legislature of California

Members of the Legislature:

Your Joint Legislative Audit Committee respectfully submits the Auditor General's report concerning the Department of Social Services' administration of personal services contracts. The report identifies specific contract management problems. Also, the report identifies that some contracts were awarded in a questionable manner. The Auditor General makes specific recommendations to correct these deficiencies.

Respectfully submitted,

WALTER M. INGALLS
Chairman, Joint Legislative
Audit Committee

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SUMMARY

We have reviewed the Department of Social Services' administration of personal services contracts. In administering its programs, the department is authorized to enter into contracts to provide such needed services as rape counseling, assistance to Indochinese refugees, food stamp outreach, and maternity home care.

During our review, we found that although the department is complying with most state requirements, it is not fully complying with all of them. Specifically, some noncompetitively bid contracts were awarded without justification. In addition, the department did not obtain control agency approval for some contracts when required. Also, for many contracts we reviewed, we found that contractors began work before their contracts received final approval. Further, contractor evaluations were not promptly submitted. Finally, we identified several contracts that appear to have been awarded in a questionable manner.

As a result of these conditions, the department appears to be restricting competition and may be incurring unnecessary costs. Moreover, the department may have assumed a liability for which it was not protected by the terms of a

properly completed contract. Additionally, since the department did not submit some contracts to the state control agencies for approval, these agencies were prevented from performing their duties of ensuring that state contracting is critically reviewed for adherence to state guidelines.

To improve its administration of contracts, we recommend that the department seek competition for all contracted services, ensure that there is proper documentation and approval of all contracts, and discourage contractors from beginning work prior to the approval of a contract.

In this report, we also provide information on the department's use of special consultants and emergency appointments.

INTRODUCTION

In response to Item 309 of the 1980-81 Supplemental Report of the Committee of Conference on the Budget Bill and a request of the Joint Legislative Audit Committee, we have reviewed the contracting practices of the Department of Social Services (DSS). This review was conducted under the authority vested in the Auditor General by Sections 10527 and 10528 of the Government Code.

This review focused on the department's compliance with state contracting procedures, examined specific issues regarding the department's use of special consultants and emergency appointments, and attempted an evaluation of contracted services. The administration of state consultant contracts in general and the specific contracting practices of the California Energy Commission, the California Exposition and State Fair (Cal Expo), and the Department of Rehabilitation have been the subject of previous Auditor General reports.*

* In order of issuance, these reports include Improvements Needed in Controlling Contracts Awarded by the California Energy Commission, Report P-814.2, December 1978; A Review of Cal Expo Operations, Report P-810, January 1979; A Program Review of the Department of Rehabilitation, Report P-839, June 1979; Improvements Needed in the Administration of State Contracts for Consultant Services, Report P-016.2, April 1981.

Background

The Department of Social Services, which is part of the Health and Welfare Agency, administers major support programs to needy inhabitants of the State of California. These major support programs include welfare operations, adult and family services, and disability claims evaluation. The DSS provides this assistance to the needy in response to various state and federal mandates. To provide these and other services, the DSS often contracts with individuals, firms, universities, and state, county, and federal agencies for services such as rape counseling, assistance to Indochinese refugees, food stamp outreach, and maternity home care. During fiscal year 1979-80, the department contracted for over \$24 million in services from individuals, firms, and universities.

The Contracts Bureau, part of the Staff Services Branch of the DSS, has the general responsibility for administering contracts for support programs. In response to authorized requests, the Contracts Bureau prepares the contract, participates in the awarding process, and takes general responsibility for the contract during the various financial and legal reviews until it is fully executed.

Three state control agencies oversee the management of contracts: the Department of Finance (DOF), the Department of General Services (DGS), and the State Personnel Board (SPB). These agencies review state contracts before they become effective. The Department of Finance determines whether the contract costs are included in the approved budget for the specific program. The State Personnel Board examines contracts to determine whether the contract work can be accomplished within civil service. And the Department of General Services conducts a review to assure that the contract complies with all relevant laws and that it is in the best interest of the State. In addition, the DGS maintains contractor performance evaluations, which state agencies are required to submit once a contract has been completed.

Procedures governing contracting are given both in the State Administrative Manual (SAM) and in the contracting guidelines maintained by the DSS. The Department of Finance and the Department of General Services are primarily responsible for publishing the SAM, which incorporates State Personnel Board policies governing contracts outside the civil service system. Departments preparing contracts are responsible for adhering to these provisions. Further, the Department of Social Services itself maintains an operations

manual containing written contracting procedures that generally reiterate the SAM guidelines. In addition, the manual details DSS policy and specifies the in-house review and approval procedures.

Scope and Methodology of Review

We focused our review on 91 contracts awarded for personal services rather than those awarded for equipment. Among the services that the department has contracted for are medical and professional consulting, reviews of welfare fraud, and training courses for DSS staff and county welfare program staff. We selected 86 of these contracts based on a judgment sample that comprised a variety of services, geographical areas, and dollar amounts. The remaining five contracts were identified during our preliminary review as having potential problems. All contracts covered fiscal years 1977-78 through 1979-80 except for contracts prepared with a service authorization form. Generally, this form is used for contracts totaling less than \$10,000 for which state control agency approval is usually not required. These contracts covered fiscal years 1978-79 through 1980-81. It is important to note that we restricted our review to the department's administration and system for managing personal services

contracts. Thus, even though we present information on a sample of contracts, these numbers should not be used to make statistical inferences or conclusions about all contracts.

In our review, we examined the department's administration of these contracts and its compliance with state contracting procedures. This included researching state contracting policies, inspecting department contract and accounting files, reviewing program records, interviewing staff at the department and at control agencies, and interviewing contractors.

Further, we reviewed two specific aspects of the department's use of special consultants and emergency appointments: (1) hiring individuals as special consultants pending their appointment to an exempt position, and (2) the use of emergency appointments and special consultant positions to employ the same individual repeatedly. Finally, we attempted to evaluate the services provided by the sampled contracts.

Limitations of Review

Although all documentation supporting a contract award must accompany the contract to the DGS for final approval, there is no specific provision in the SAM requiring

agencies to keep this information after the contract has been approved. Also, agencies are not required to keep the contractor's reports for any specific time period. Consequently, in reviewing some contracts, we had difficulty documenting both the department's compliance with state contracting procedures and the contractor's compliance with the provisions of the agreement. In these instances, the documentation kept by the Contracts Bureau and the individual program was not sufficient to verify compliance with contract requirements. Also, the absence of the contractor's reports made it difficult to assess the quality of services performed by a contractor. Examples of documentation items missing include bidder lists, requests for proposal, award evaluation sheets, and monthly, quarterly, and final reports required of each contractor.

As part of our contracts review, we were also requested to assess the value of services received from contractors relative to their costs. However, we determined that most of the contracts reviewed do not easily lend themselves to this kind of evaluation. Many of the sampled contracts are for such mandated human services as rape counseling, maternity home care, providing assistance to Indochinese refugees, and food stamp outreach. For human services such as these, there are not sufficient standards by

which to compare cost to benefit. Furthermore, many contract files did not contain sufficient documentation, such as progress reports and program statistics, to facilitate a cost-benefit analysis.

AUDIT RESULTS

THE DEPARTMENT OF SOCIAL SERVICES HAS NOT FULLY COMPLIED WITH STATE CONTRACTING PROCEDURES

In reviewing 91 contracts awarded by the Department of Social Services, we found that although the DSS is complying with most state requirements, it has not fully complied with all of them. Specifically, the DSS awarded some noncompetitively bid contracts without sufficient justification. Because of this, the department may have restricted competition and incurred unnecessary costs. Also, the DSS did not obtain control agency approval for some contracts when required, thus preventing these agencies from performing their duties of ensuring that state contracting is critically reviewed for adherence to state guidelines. It is possible that some of the contracts the DSS awarded would not have been approved. Further, in many instances, contractors began work before the contract received final approval. As a result, the department may have assumed a liability for which it was not protected by the terms of a properly completed contract. Additionally, the DSS did not promptly submit contractor evaluations, thus preventing other state agencies from having access to current information about potential contractors. Finally, the department appears to have awarded a

few contracts in a questionable manner. Consequently, the DSS may have again restricted competition for contracts and incurred unnecessary costs.

Noncompliance with Contract Award Requirements

During our review, we found that some contracts awarded by the DSS were not in compliance with contract award requirements. Specifically, these contracts were awarded without competitive bidding and with little or no supporting documentation to justify the decision. This problem was the result of inadequate guidelines for DSS staff on justifying contract awards. Consequently, the DSS appears to have been restricting competition; this may have prevented the department from selecting the best contractor and realizing the benefits of price competition.

The State Administrative Manual requires that at least three competitive bids must be secured for each contract. In instances where three bids cannot be obtained or where the award is not given to the lowest monetary bidder, the agency must provide a full explanation justifying the award.

Although most DSS contracts we reviewed appeared to be in compliance with this requirement, some were not. For 28 of the 91 contracts reviewed, we found limited or no

explanation of why a contract was not competitively bid. The dollar value of most of these contracts was less than \$10,000. For example, the DSS administered a \$9,850 contract between a law school and another state agency, allowing them to participate in a work study program. The agency hired students from this law school to perform such tasks as researching laws and regulations. In reviewing the contract files, we could find no documentation supporting why the DSS awarded this contract without competitive bids. Furthermore, there was no explanation for why the state agency did not obtain individuals from within the civil service system by using the graduate legal assistant or student assistant classifications. Although an official of the state agency stated that other law schools were contacted, the DSS files contained no documentation supporting this attempt.

This lack of justification for some awards appears to have resulted from inadequate guidelines. We found that the department's operations manual does not fully address the SAM requirement that a complete justification is required for all noncompetitively bid contracts. Consequently, department staff did not adequately justify all noncompetitively bid contracts; thus, there is some question whether these contracts could have been competitively bid. As a result, the DSS may not have provided an opportunity for all interested vendors to compete

for DSS contracts. This restricting of competition may have prevented the department from obtaining quality services at the lowest possible cost.

Recently, the DSS has taken action to comply with the SAM guidelines. The Contracts Bureau distributed a memorandum to its staff informing them that all noncompetitively bid contracts, regardless of value, must include a written justification in the contract file.

Additionally, in June of 1981, the Department of General Services (DGS) established the California State Contracts Register, which, with some exceptions, will list all state contracts available for bid. This listing should enable state agencies to bid more contracts competitively. Also, state agencies are now required to justify why any contract over \$500 is not advertised through the register. This should help ensure that state agencies comply with the justification requirements for noncompetitively bid contracts.

Control Agency Approval
Not Obtained when Required

Our review of DSS contracts also revealed that some contracts requiring control agency review were not submitted to the State Personnel Board (SPB) for approval. In a number of

these instances, it is questionable whether the SPB would have approved the contracts. This problem exists because DSS staff apparently misinterpreted the SAM requirements. We also discovered instances where contracts were written for a value just below that requiring the approval of the Department of General Services. It appears that this was done to avoid the delays incurred by a DGS review. Had state control agencies been given the opportunity to review proposed contracts, they may not have approved some contracts for services procured by the DSS.

The criteria for submitting contracts to control agencies for approval are provided in the State Administrative Manual. All personal services contracts are subject to SPB approval with certain exceptions. These exceptions include training contracts for less than \$5,000 and licensed or certified professional services for less than \$10,000. The DGS reviews all contracts for over \$10,000 as well as other specific types of contracts.*

During our review, we found that the department did not submit 22 of the 69 contracts requiring control agency approval to the SPB. The dollar value for most of these

* Prior to July 1, 1980, the DGS reviewed all contracts totaling more than \$7,000.

contracts was less than \$10,000. Examples of these contracts include services for a training program with a private school, language translation services, and dietician services. An SPB administrator stated that it is questionable whether some of these contracts would have been approved.

For one contract, SPB approval would have been denied. In this instance, the DSS administered a contract to hire an individual pending his appointment to an exempt position as Executive Secretary of the Governor's Advisory Committee on Child Development Program. The department initially contracted with this individual for a two-month period without State Personnel Board approval. Then, in order to extend his employment, the DSS initiated a new contract and this time submitted it for SPB approval. The SPB denied its approval because the individual functioned as a state employee and therefore did not meet the criteria for a personal services contract. The SPB staff further noted that a more appropriate appointment would have been that of special consultant. However, the use of the special consultant category in lieu of the exempt appointment is only approved in highly exceptional circumstances.

The department's failure to submit some of its contracts to the SPB is a result of the department's misunderstanding of the SAM guidelines. The DSS staff stated

that based on their interpretation of the SAM requirements in effect at the time the contracts were requested, SPB approval was not necessary. Currently, the SPB is clarifying its guidelines for determining which contracts are exempt from its review.

In our study, we also identified instances where contracts were written for a value just below that requiring DGS review. In one instance, the amount of a contract was reduced from \$10,030 to \$9,850. Another contract was written for \$9,999, two dollars less than the amount which would have required DGS review. The DSS staff stated that when those requesting contracts are told about the time required in sending contracts through control agencies for approval, they sometimes reduce the amount of the contract in order to expedite its processing. In addition, both of the contracts mentioned above were awarded without competitive bidding and no justification was available for the decision not to bid.

Because the department did not fully comply with the SAM guidelines requiring control agency review of certain contracts, it is questionable whether some contracts would have been approved or whether the contracted services could have been obtained within the civil service system. Consequently, state control agencies were prevented from performing their

duties of ensuring that state contracting is reviewed critically. Furthermore, it is possible that the department may have incurred unnecessary costs.

Contractors Beginning Work
Prior to Contract Approval

Of the DSS contracts we reviewed, more than 46 percent involved the contractors starting work prior to final approval of the contract. For some contracts, work began only a few days before contract approval, while for others it began several months before. In several instances, the contracted services were already completed before the contract was approved. Consequently, the department may have incurred a liability and assumed risks for which it was not protected by a properly completed contract.

Both the Government Code and the SAM require that contracts be approved before contractors commence work. Specifically, Sections 14780 and 14784 of the Government Code state that contracts are not effective until they are approved by the Department of General Services or the contracting agency (if the contract is exempt from the DGS review). Also Section 1204 of the SAM states that

Except in emergency cases...agencies must submit each contract in time for the Department of General Services to approve it prior to commencement of work.

Yet for 42 of the 91 contracts reviewed, we found that contractors began work before the contract was fully approved. Further, for several of these contracts, the work was completed before the contract was approved.

Department staff stated that, until a contract is fully approved, they have only limited control over the contractor. They can only warn the contractor that any work conducted prior to contract approval is done so at the contractor's own risk. However, for a few contracts, it appears that the DSS willingly participated in activities with the contractor prior to obtaining an approved contract. For example, the department hired a consultant to provide training to its staff during the period between October 30 and November 17, 1978. However, this contract did not receive final approval until November 27, 1978.

In other instances, contractors began work prior to DGS approval because, according to DSS staff, there are sometimes delays in federal or state funding or in the contract approval process that could prevent contractors from beginning or continuing their services on a specified date. In order to prevent a disruption of services, some contractors often continue operating and then bill for prior services once the contract is approved.

By allowing contractors to begin work prior to contract approval, the department, and thus the State, may have incurred a liability and assumed risks for which it was not protected by the terms of a properly executed contract.

Untimely Contractor Evaluations

The SAM requires agencies to submit to the DGS an evaluation of a contractor's performance within 30 days after completion of contracts over \$10,000.* The department has not fully complied with this provision. In some instances, the department did not prepare evaluations, while in others it did not submit them promptly. As a result, other state agencies are denied access to current information about potential contractors.

Sections 1204 and 1218 of the SAM require state agencies to submit a form evaluating a contractor's performance within 30 days after completion of contracts for more than \$10,000. The SAM also states that the DGS Legal Office shall maintain a central file of these forms to enable other agencies to review a contractor's previous record.

* Prior to July 1, 1980, the monetary limit was \$7,000.

We found that the department has not fully complied with this provision when required. Sometimes the department prepared no evaluations of contractors' performance, while for the majority of contracts we reviewed, the department did not submit the evaluations within the prescribed time period. In a few cases, the contract had been completed for almost two years before the evaluation was prepared. According to DSS staff, the present filing system used by the DGS was not operating as intended. Furthermore, the DGS has not enforced compliance with regard to submitting evaluations. Consequently, the DSS staff saw limited benefit in complying with the requirement. A recent Auditor General report identified a number of state agencies that are not complying with this requirement.*

The evaluation requirement was established in order to compile data that state agencies could use in selecting contractors. By failing to submit these evaluations in a timely manner, the DSS reduces the information available to other state agencies for making their contracting decisions.

* This report is entitled Improvements Needed in the Administration of State Contracts for Consultant Services, Report P-016.2, April 1981.

During our review, the DSS established a filing system to monitor completion dates of contracts and due dates of contractor performance evaluations. This system should ensure that program staff complete evaluations and that these are promptly forwarded to the DGS.

Currently, the Department of General Services is reviewing state agencies' compliance with the contractor evaluation requirement and assessing the effectiveness of the current system of filing contractor evaluations.

Questionable Justifications for Some Contract Awards

During our review, we found that the department awarded some competitively and noncompetitively bid contracts in a manner that deviated from the general method of awarding contracts. We noted two specific instances of contracts that were questionably awarded. In one, the department appeared to manipulate the facts in the award justification. In the other, the department did not award a contract to the highest ranked bidder. We also encountered a number of other examples of contracts involving questionable awards.

In one of the noncompetitively bid contracts, the DSS appears to have manipulated the facts in the award justification in order to assure that the contract would

receive control agency approval. In this instance, the department tried to favorably influence the state control agencies by including the name of the former director of the Department of Social Welfare in the award justification. In addition, there were some questionable circumstances regarding one of the participants.

The DSS awarded a contract for \$9,595 to a firm to study welfare fraud. This contract was not competitively bid. The DSS justified this action by stating that the firm possessed unique expertise because an officer and senior consultant of the firm was a former director of the Department of Social Welfare. Our review of the documentation and our interviews with individuals involved in the contract raised serious questions regarding the justification for this as a noncompetitively bid contract. Shortly after the department received the unsolicited contract proposal, the deputy director sent a memorandum to the director's office of the DSS stating that

This proposal cannot be justified in its current form as sole source since there are any number of firms and individuals which have the background and experience to perform the work described.

However, the memorandum further stated that in the past, state control agencies had reacted "favorably" to a prior contract with the former director and that if the director were "brought

into the project," the agencies would probably "do so again." Although the original proposal did not mention the former director, the justification submitted to the DGS mentioned him and cited his expertise in the area. We found, however, that this individual worked for only two days reviewing the report after it had been written.

Not only were there problems with the award of the contract, but there were also some questionable circumstances regarding the status of one of the participants. When the proposal was received, one of the two consultants identified in the proposal was already employed by the director's office as a special consultant. Then within two weeks, the department reclassified his position to that of an emergency appointment. In that position, his duties included working with the proposed contractor to determine the feasibility of using computers to detect multiple welfare registration. During the time of his emergency appointment, the contract was approved. After the expiration of his emergency appointment, this individual continued working for the contractor on this project.

We also found problems with the way in which the department awarded some competitively bid contracts. In one such instance, the DSS did not award the contract to the highest rated bidder. The DSS justified this action by stating

that the selected vendor was better qualified. However, we found that these facts appear to be inaccurate and that the department may have incurred unnecessary costs.

The DSS competitively bid a contract to evaluate the Indochinese Refugee Assistance Program. The departmental committee evaluating the bidders' proposals recommended Vendor A, whose proposal received the highest rating and had the lowest cost. However, the department rejected Vendor A in favor of another, Vendor B, whose proposal was rated third and had the second lowest dollar bid. Vendor B's bid of \$50,711 was \$15,491 higher than Vendor A's bid.

It appears that the DSS originally attempted to justify rejecting Vendor A on the grounds that he had performed unsatisfactorily in a previous contract. However, a memorandum discussing the proposal evaluations from the Chief of the Staff Services Branch, of which the Contracts Bureau is a part, to a deputy director stated that "the results would seem to identify **Vendor A** as the logical firm to receive the award (highest rating and lowest cost). However, it is our understanding that the Department wishes to award the contract to **Vendor B**." The memorandum states that the justification for this action

was to be based on Vendor A's unsatisfactory performance on a previous contract. However, after reviewing the vendor's past performance, the chief concluded that

It will be difficult, if not impossible, to justify a conclusion that **[Vendor A]** should be disqualified from the current bid process because of dissatisfaction with its performance.

This conclusion was based partly on the fact that the department gave Vendor A an excellent evaluation on the previous contract and recommended him to the Federal Government for similar work.

The justification finally submitted to the DGS stated that Vendor B was selected because he was more capable of performing the task within the time constraints. However, the evaluation committee's analysis of the proposals indicated that Vendor B's proposal compared less favorably to Vendor A's because of Vendor A's extensive experience and the sophisticated methodology of his proposal. Furthermore, after the contract was completed, the DSS administrator who was responsible for the contract stated that the data obtained from the study was of doubtful quality.

In our review, we came upon a variety of questionable contract awards. In one case, the DSS awarded a contract even though the department's legal review questioned why this

contract was not going to be competitively bid. Also, it questioned the contractors' abilities as presented in their resumes. In another, the justification for the contract sent by the DSS to the Department of General Services was misleading because it implied that the DSS had solicited competitive bids, when in fact, our review showed that it had not.

In three of the four examples cited, the decision to deviate from the usual manner of awarding contracts appears to have been made by management of the DSS. Department officials stated that the explanations used to justify these contracts were valid and that no state procedures were violated. Although the department did justify these actions, its justification in these instances appears to be misleading or questionable.

CONCLUSION

The Department of Social Services did not fully comply with some state contracting procedures. Specifically, the department did not adequately justify some noncompetitively bid contracts, and it did not obtain control agency approval for some contracts when required. Also, in many instances, contractors began work before their contracts received final approval. Additionally, contractor

evaluations were not submitted in a timely manner. Finally, the department awarded several contracts in a questionable manner. As a result, the department may have restricted competition, incurred unnecessary costs, assumed a liability for which it was not protected by the terms of a properly completed contract, and awarded contracts that would not have been approved.

RECOMMENDATION

We recommend that the Department of Social Services comply with current state policies in order to improve its administration of contracts. Specifically, we recommend that the department take the following actions:

- Seek competition for all contracted services. In those instances where competition cannot be obtained, the DSS should provide a detailed justification fully supporting this condition.
- Advertise services to be contracted for through the California State Contracts Register.

- Ensure that there is detailed documentation in all contract files supporting how contracts are awarded. This documentation should include bidder lists, a copy of the request for proposal, and copies of the bids submitted.
- Submit to the state control agencies all contracts requiring their approval. Also, the department should obtain clarification from the SPB on which types of contracted services are exempt from its review.
- Ensure that all contractors are told that no work is to begin before a contract is approved and that any work initiated prior to contract approval is done so at the contractor's own risk.
- Submit contractor performance evaluations to the Department of General Services within the specified time period.

CORRECTIVE ACTION TAKEN

During the time of our review, the department initiated actions which will address deficiencies noted in this report. Specifically, the department:

- Issued a memorandum to its staff informing them that all noncompetitively bid contracts, regardless of value, must include a written justification in the contract file;
- Implemented a filing system by which requests for proposals are recorded and kept on file for five years;
- Implemented a system for ensuring that all contractor evaluations are completed and submitted to the Department of General Services.

INFORMATION REQUESTED BY THE LEGISLATURE

USE OF SPECIAL CONSULTANTS AND EMERGENCY APPOINTMENTS

We reviewed the department's use of special consultants and emergency appointments from fiscal years 1975-76 through 1979-80. Specifically, we reviewed the following issues:

- Hiring individuals as special consultants pending their appointments to exempt positions, that is, those outside the civil service system; and
- Repeatedly employing the same individual through the use of special consultant and emergency appointments.

State statutes allow state agencies to obtain the services of an individual without issuing a contract by using the class of special consultant or emergency appointment. In general, special consultants are used for highly specialized assignments that last less than nine months and for which there are no civil service classifications. The State Personnel Board (SPB) establishes the standards for hiring special consultants, and its approval is required for each appointment. In contrast, emergency appointments are used by departments to prevent the stoppage of public services when an actual

emergency exists or when the need for a short-term appointment arises. Such appointments cannot exceed 30 working days in any four consecutive months except in the case of fire, flood, or other extreme emergency. Emergency appointments do not require the approval of the SPB. Exempt appointments are appointments to positions that are not part of the civil service system. These positions do not require SPB approval, but they must be approved by the Department of Finance.*

Use of Individuals as Special
Consultants Pending Their
Appointments to Exempt Positions

We found that the department hired nine individuals as special consultants before they were appointed to exempt positions. At the time of these hirings, the State Personnel Board had no specific policy regarding this issue. In March 1979, the SPB clarified its policy by stating that this situation should be avoided except in highly exceptional circumstances. We did not find that the DSS hired any individuals in this manner after April 1979.

We found that during the period under review, the department hired nine individuals as special consultants before they were appointed to exempt positions. Four of the nine

* As of July 1, 1981, the responsibility for approving exempt appointments has been transferred to the Department of Personnel Administration.

special consultant requests submitted by the department for SPB approval specified that these appointments were going to be used until approval of the exempt appointments. In the other five instances, the department's request stated that the appointments were made so that specific tasks could be completed. However, each of these five individuals was subsequently given an exempt appointment. Appendix A provides specific information about each of these nine appointments.

At the time that these special consultant positions were approved, the SPB had no specific policy regarding the use of special consultant positions in lieu of exempt appointments. The SPB policies stated that the primary use of a special consultant was for a highly specialized assignment which was expected to be completed in less than nine months and for which there was no existing appropriate class. If there was a deviation from this policy, as in the DSS case, it had to be approved by an SPB supervisor. A State Personnel Board administrator stated that four of these requests for special consultants were approved because the department was having difficulty obtaining approval for these as exempt appointments. The other five requests were approved based on the specific tasks to be performed; the requests did not state that these individuals would subsequently be given exempt appointments.

In March 1979, the SPB clarified its policy to its staff and to the DSS regarding the use of special consultants in lieu of exempt appointments. An SPB memorandum noted that

There are two separate and distinct personnel systems--one for civil service appointments and one for exempt appointments. When the civil service process is used to facilitate the hiring of an exempt employee, the separateness of the two systems is compromised and unintended consequences can result. This situation should be avoided except in highly exceptional circumstances.

This memorandum further stated that if an exceptional situation does occur, advance approval must be secured from the SPB's Executive Officer.

Since April 1979, we found no instances in which individuals hired as special consultants were subsequently given exempt positions.

Use of Special Consultant and
Emergency Appointment Positions to
Employ an Individual Repeatedly

We found that the department employed 26 individuals for extended periods of time through the use of special consultant and emergency appointments. Most of these individuals received appointments from 2 to 15 times. We noted further that 7 of the 26 individuals, although hired as

emergency appointments, did not perform actual emergency functions. Although each of these appointments was made according to state policies, it is questionable whether the combination of some of these appointments is consistent with civil service hiring policies.

According to state policies, special consultant appointments are for assignments lasting less than nine months, while emergency appointments are not to exceed 30 days within a period of four consecutive months. Although special consultant and emergency appointments are intended to be used for limited duration only, we found that the department employed 26 individuals for extended periods of time through the combined use of special consultant and emergency appointments. Using the special consultant and emergency appointment classifications, the department hired 19 of these individuals to perform various duties under the Individual and Family Grant Program, which provides assistance to persons when there is a federally declared disaster in the State. Positions for which these individuals were hired include appraiser, analyst, and clerical support. Most of these individuals first received an emergency appointment; when those appointments expired, they were immediately hired as special consultants.

The remaining seven individuals employed through the combined use of special consultants and emergency appointments performed various other duties for the department in nonemergency situations. Such duties included conducting studies for the director and evaluating services provided to Indochinese refugees. Present SPB policy permits the use of emergency appointments in nonemergency situations. However, an SPB official stated that an emergency appointment provides departments with a vehicle for quickly employing people to respond to real emergencies. Emergency appointments are not intended to be used in cases where proper planning would permit the use of the competitive civil service process or in cases where the current work force could perform the work.

Five of the seven individuals mentioned above received more than two back-to-back appointments. In an extreme case, one individual was employed by the department 15 times over a four-year period--3 times as a special consultant and 12 times as an emergency appointment. Appendix B provides specific information about this individual.

In reviewing each of the 26 appointments, we found no instances in which the department did not comply with state policies. In each instance, the appointment did not exceed the required time limits established by state regulations.

However, when an individual is repeatedly hired in this manner, it becomes questionable whether the nature of these appointments is consistent with the civil service hiring process.

The SPB identified these same issues in a review published in September 1979 entitled, Classification and Delegated Functions Audit: Department of Social Services. This review noted that instances of employing an individual over extended periods of time through the combined use of special consultant and emergency appointments can represent a circumvention of the civil service hiring process. The review also recommended that the SPB clarify its policy regarding the use of emergency appointments in nonemergency situations. The SPB is currently revising this policy to restrict nonemergency use of these appointments to those cases in which other civil service processes clearly cannot accommodate the needs.

Respectively submitted,


THOMAS W. HAYES
Auditor General

Date: October 21, 1981

Staff: Eugene T. Potter, Audit Manager
Dennis L. Sequeira
James H. McAlister

DEPARTMENT OF SOCIAL SERVICES
744 P Street, Sacramento, CA 95814
(916) 455-4622



October 19, 1981

Mr. Thomas W. Hayes
Auditor General
Office of the Auditor General
660 J Street, Suite 300
Sacramento, CA 95814

Dear Mr. Hayes:

The purpose of this letter is to officially respond on behalf of the Department of Social Services to Auditor General audit number 028. First, I feel it is necessary to say for the record that all personnel actions mentioned in audit number 028 were accomplished with the full knowledge and cooperation of the State Personnel Board where this was appropriate, and are in compliance with all existing state laws and regulations. In addition you are to be commended for noting in the audit that you "... found no instances in which the department did not comply with state policies".*

Further, I want to indicate that DSS fully agrees with the recommendations the audit makes regarding contracts procedures. That being the case, allow me to briefly outline actions taken by our Department both before and during the period of the audit which we believe brings DSS into full compliance with the State Administrative Manual in the area of contracting procedures.

- DSS has issued instructions to all contracts analysts regarding the documentation of all contract action bidding activities. It is and has been the standing policy of our Department to provide complete information to all interested parties concerning the bidding process involved for any services purchase. In those cases where a sole source situation arises, DSS now maintains full and complete justifications on file for inspection at any time.

- DSS has designed a system for followup with managers in the Department to ensure that all Standard 4 Evaluation forms are submitted to the Department of General Services as required by the State Administrative Manual.

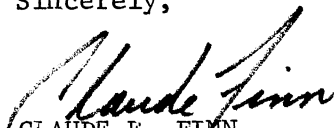
* Auditor General Comment: For the reader's perspective, this quotation comes from page 31 of our report and refers only to the uses of special consultants and emergency appointments.

- DSS will continue its efforts to make information available to the general public regarding bidding opportunities. We have developed a good working relationship with State Contracts Register personnel and will be using their resources to identify appropriate contractors for all contract purchases.

- Finally, let me assure you that all measures have been and are being taken to comply fully with all contracts review agency requirements as outlined in the State Administrative Manual. At present there are eight State offices which monitor DSS contracts, each office having a different set of regulations.

Our analysts are constantly being trained so as to stay abreast of these state review requirements and you may rest assured that our objective is to satisfy all mandates of law in the contracting area.

Sincerely,


CLAUDE E. FINN
Deputy Director
Administration

INDIVIDUALS HIRED AS SPECIAL CONSULTANTS
PRIOR TO BEING GIVEN EXEMPT APPOINTMENTS

<u>Employee</u>	<u>Special Consultant</u>			<u>Exempt Appointment</u>		
	<u>Time Period</u>	<u>Days Worked</u>	<u>Appointment Date</u>	<u>Appointment Date</u>	<u>Position</u>	<u>Position</u>
#1	09/01/75 - 10/14/75 ^a	29 days	10/15/75	10/15/75	Executive Assistant to the Director	Executive Assistant to the Director
#2	12/01/75 - 03/31/76 ^a	87 days	04/01/76	04/01/76	Deputy Director--Audits and Collections	Deputy Director--Audits and Collections
#3	09/24/75 - 03/21/76	112 days				
	03/22/76 - 06/21/76 ^a	66 days	07/01/76	07/01/76	Assistant Director--Planning	Assistant Director--Planning
#4	10/06/75 - 12/19/75 ^a	50 days	12/22/75	12/22/75	Deputy Director--Health Operations and Review Section	Deputy Director--Health Operations and Review Section
#5	11/05/75 - 11/04/76 ^a	181 days	11/05/76	11/05/76	Assistant to the Director	Assistant to the Director
#6	01/12/76 - 03/31/76	58 days	04/01/77	04/01/77	Deputy Director--Government and Community Relations	Deputy Director--Government and Community Relations
	07/01/78 - 03/21/79	181 days	03/22/79	03/22/79	Deputy Director--Government and Community Relations	Deputy Director--Government and Community Relations
#7	02/02/76 - 03/01/76	21 days	03/02/76	03/02/76	Community Relations Advisor	Community Relations Advisor
#8	02/11/76 - 04/27/76	52 days	05/01/76	05/01/76	Deputy Director--Legal Affairs	Deputy Director--Legal Affairs
#9	07/01/77 - 04/02/78	187 days	04/03/78	04/03/78	Special Assistant to the Director	Special Assistant to the Director

^a The reason specified for these appointments was to complete a specific task; they were not intended to be used as interim employment pending an exempt appointment. However, each individual was subsequently given an exempt appointment.

REPEATED HIRING OF AN INDIVIDUAL THROUGH THE
USE OF SPECIAL CONSULTANT AND EMERGENCY APPOINTMENT POSITIONS

	<u>Dates</u>	<u>Tenure Appointment</u>	<u>Months/Days Worked</u>	<u>Total Accumulative Months/Days Worked/Task</u>	<u>Total Amount</u>	<u>Reason For Appointment</u>
1.	03/22/76 to 03/31/76	Emergency	8 days	30 days	\$ 1,664	Review County Welfare Department questionnaire
2.	04/01/76 to 04/30/76	Emergency	22 days		4,576	
3.	06/14/76 to 07/13/76	Special Consultant	15 days	15 days	3,120	Review San Francisco County Welfare Department Operations
4.	09/13/76 to 11/01/76	Emergency	16 days		3,379	Review the Department's Management by Commitment process
5.	11/02/76 to 12/01/76	Emergency	8 days	27 days	1,689	
6.	12/02/76 to 12/31/76	Emergency	2 days		422	
7.	01/01/77 to 01/31/77	Emergency	1 day		211	
8.	02/01/77 to 03/01/77	Emergency	8 days		1,689	Review current organization of department and recommend organizational and management changes
9.	03/02/77 to 03/31/77	Emergency	8 days	30 days	1,689	
10.	04/01/77 to 04/30/77	Emergency	8 days		1,689	
11.	05/01/77 to 05/31/77	Emergency	6 days		1,267	
12.	06/01/77 to 06/30/77	Emergency	8 days	16 days	1,689	Evaluate and prepare a report on the results of the Orange County Assessment Center Demonstrative Project
13.	07/01/77 to 08/01/77	Emergency	8 days		1,774	
14.	01/09/78 to 09/30/78	Special Consultant Special Consultant	8 mo., 17 days	8 mo., 17 days	17,555 9,105	Assist with the department's reorganization
15.	11/07/79 to 03/06/80	Special Consultant ^a	74 days	74 days	<u>11,100</u>	Evaluate services provided to Indochinese refugees in southern California
	Total				<u>\$62,618</u>	

^a From March 12, 1979 to August 31, 1979 this individual worked as a consultant for a DSS contractor who received a sole-source contract.

cc: Members of the Legislature
Office of the Governor
Office of the Lieutenant Governor
Secretary of State
State Controller
State Treasurer
Legislative Analyst
Director of Finance
Assembly Office of Research
Senate Office of Research
Assembly Majority/Minority Consultants
Senate Majority/Minority Consultants
California State Department Heads
Capitol Press Corps