

**REPORT BY THE
AUDITOR GENERAL
OF CALIFORNIA**

**A REVIEW OF THE STATE DEPARTMENT
OF EDUCATION'S SYSTEM FOR MANAGING
CONSULTANT CONTRACTS**

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

066

A REVIEW OF THE STATE
DEPARTMENT OF EDUCATION'S SYSTEM
FOR MANAGING CONSULTANT CONTRACTS

OCTOBER 1981



California Legislature

Joint Legislative Audit Committee

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October 26, 1981

066

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 State Department of Education's system for managing consultant contracts.

Respectfully submitted,


WALTER M. INGALLS
Chairman, Joint Legislative
Audit Committee

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SUMMARY

We have reviewed the State Department of Education's system for managing contracts for consultant services. The department employs consultants to perform services such as evaluating programs, developing curricula, and training teachers. During fiscal year 1979-80, the department spent approximately \$7.3 million on consultant services.

The department has restructured its contract management function in response to recommendations of the Legislative Analyst and changes in state law. However, deficiencies still exist in the department's contract management system. Specifically, the department has not updated its contracting procedures, developed a training program for contract managers, conducted internal audits of contracting practices, or adequately controlled payments to consultants.

To address these problems, we recommend that the State Department of Education develop specific, comprehensive contracting procedures; institute regular training programs for contract administrators; and conduct regular audits of contracting practices. The department should also tighten

controls over payments to consultants by establishing policies for approving invoices and by properly accounting for progress payments made on short-term contracts.

Additionally, we were asked to determine if employees of the State Department of Education were acting as consultants to the department. We found that 71 consultants retained by the department during 1979 and 1980 also served the department as civil servants at one time. Since the use of present and former employees as consultants is generally permissible under present law, the Legislature may want to specify the circumstances under which these activities should be allowed.

INTRODUCTION

In response to a request of the Joint Legislative Audit Committee, we have reviewed the State Department of Education's system for managing contracts for consultant services. This review was conducted under the authority vested in the Auditor General by Sections 10527 and 10528 of the Government Code. Contracting practices statewide and within specific state agencies have been the subject of previous Auditor General reports.*

The State Department of Education (SDE), which administers California's public school system, employs consultants to perform services such as evaluating programs, developing curricula, and training teachers. The SDE must adhere to guidelines for managing state consultant contracts given in the State Administrative Manual (SAM). These guidelines, published by the Department of Finance and the Department of General Services, incorporate State Personnel

* In order of their issuance, these previous 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; and Letter Report 029, Energy Commission, May 1981.

Board policies governing contracts outside the civil service system. Additionally, the SDE's administrative manual contains requirements for reviewing and approving contracts. These procedures, however, are superseded by a series of memoranda dealing with various contracting issues.

Three state control agencies oversee the management of consultant contracts throughout the state system by reviewing them before they become effective.* More specifically, the Department of Finance determines whether the contract costs are included in the approved budget for that program. Likewise, the State Personnel Board examines contracts to assure that the contract work cannot be accomplished within civil service. Finally, the Department of General Services conducts a legal review to assure that the contract complies with all relevant laws and that it is in the best interests of the State.

Within the State Department of Education, program managers select consultants, monitor their activities, and approve their invoices. The Personnel Office and the Contract Office review proposed contracts for compliance with contracting requirements. The Accounting Office processes invoices and submits them to the State Controller for payment.

* Each agency, however, exempts certain routine or low-cost contracts from review.

The SDE obtains consultant services through four mechanisms: temporary appointments, standard agreements, short-term contracts, and expense-only agreements. Temporary civil service appointments, which are subject to the approval of the State Personnel Board, are limited to nine months full time. The SDE uses the standard agreement form for completing larger projects. Also, the SDE lets short-term contracts for smaller projects--that is, those that can be completed within 30 working days at a cost of \$4,500 or less excluding travel. Finally, consultants who do not charge a fee receive travel and per diem reimbursements through expense-only agreements.

Some consultants are paid for services or products after completing their work. In other instances, the SDE authorizes contractors to receive progress payments for partial completion of the work. We estimate that the SDE paid approximately \$7.3 million for consultant services in fiscal year 1979-80. Table 1 which follows arrays these expenditures by type and dollar amounts.

TABLE 1

CONSULTANT SERVICES ENTERED INTO
BY THE STATE DEPARTMENT OF EDUCATION
FISCAL YEAR 1979-80

<u>Category</u>	<u>Number</u>	<u>Dollar Amount of Expenditures</u>
Temporary appointments (professional)	23	\$ 375,000
Standard agreements	114	4,272,000
Short-term contracts ^a	2,665	1,482,000
Expense-only agreements ^a	9,930	<u>1,166,000</u>
Total		<u>\$7,295,000</u>

^a For these categories we have given the department's estimate of the cost and number of payments made to consultants. The actual number of individuals performing consultant services is lower since it includes all progress payments and multiple contracts with some consultants.

Scope and Methodology of Review

Our review focused on the procedures and controls within the SDE's system for managing consultant contracts. We examined the adequacy of these procedures and controls and tested the extent to which department staff complied with them. We also reviewed multiple contracts and personnel appointments used to hire certain individuals. It is important to note that we made no conclusions concerning the need for the contracts reviewed or the usefulness of the products delivered.

During our review, we examined files and interviewed staff in the department's contracts, personnel, and accounting offices and in various program units. We also examined a computer listing of individuals who served the SDE both as consultants and as civil servants. This listing was prepared by the State Controller's Office. Finally, we reviewed laws and policies covering consultant contracts.

AUDIT RESULTS

THE STATE DEPARTMENT OF EDUCATION SHOULD CONTINUE TO IMPROVE ITS CONTRACT MANAGEMENT FUNCTION

The State Department of Education has strengthened its contract management function in response to recommendations of the Legislative Analyst and changes in state law. Yet some areas of its contract management system still need improvement. Specifically, the department has not updated its contracting procedures, trained program staff in contract management, conducted internal audits to ensure compliance with sound contracting practices, nor adequately controlled consultant payments.

The SDE Has Restructured Its Contract Management Function

In response to recommendations of the Legislative Analyst and changes in state law, the SDE restructured its contract management function to correct contracting deficiencies. These actions have strengthened the department's contracting system.

During the analysis of the budget for fiscal year 1980-81, the Legislative Analyst reviewed the SDE's contracts and recommended certain improvements.* The Legislative Analyst noted, for example, that controls over short-term contracts were inadequate and that some contracts were not competitively bid. In at least one instance, a contract was in conflict with personnel regulations. To address the issues raised by the Legislative Analyst, the SDE's Chief Deputy Superintendent issued memoranda requiring the Contracts Office and the Personnel Office to perform a comprehensive review of consultant and professional services contracts. The Chief Deputy Superintendent also required the deputy superintendents to approve contracts. Furthermore, the department required more justification for contracts awarded without competitive bidding and later required that contracts over \$500 be advertised in the California State Contracts Register. Lastly, the department has implemented a computer tracking system to check for previous short-term contracts with each consultant before awarding new ones.

* Analysis of the Budget Bill of the State of California for the Fiscal Year July 1, 1980 to June 30, 1981; Report of the Legislative Analyst to the Joint Legislative Budget Committee; February 1980; pp. 1044-1054.

The SDE has adopted other changes in contracting procedures as a result of Assembly Bill 3322, enacted into law as Chapter 1284, Statutes of 1978. This statute revised state fiscal information systems and led to the development and implementation of the California State Accounting and Reporting System (CALSTARS). This automated budgeting and accounting system enables the SDE to charge contract expenditures to individual programs rather than to the total operations budget. This system also includes standard definitions for budget categories.

During our review, we noted some positive changes in the SDE's contract management function. For example, the percentage of standard agreement contracts awarded without competitive bidding declined from 58 percent in fiscal year 1979-80 to 37 percent in fiscal year 1980-81 through May. However, the department should continue to modify its contracting practices as described in the following section.

Additional Improvements Are Needed

Although the SDE has improved its contract management function, it still needs to address certain contracting problems. Some of these problems were similar to those disclosed in a previous Auditor General report on the state

system for managing consultant contracts at other state agencies.* In that report, we recommended improvements in the state system for administering these contracts. Although we directed these recommendations primarily to state control agencies, some also apply to areas where the SDE's contracting system is still insufficient. For example, the SDE has not established specific and comprehensive contracting procedures, developed a training program for contract administrators, or instituted a program for auditing contracting practices. In addition to these problems, the SDE's internal control of payments to consultants is inadequate.

Specific, comprehensive procedures could assist the SDE in managing consultant contracts. Contracting procedures contained in the SDE's Department Administrative Manual were last revised in June 1979. Since that time, 10 internal memoranda dealing with changes in contracting standards and procedures have superseded these provisions. To comply with sound contracting practices, contract administrators need to refer to current guidelines. The Contracts Officer stated she planned to incorporate these procedures but has been unable to do so because of staffing shortages in the Contracts Office.

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

Training courses also help program staff manage contracts effectively. The department has no regularly scheduled training for program staff who administer consultant contracts although the Contracts Officer gave a contract management briefing to program managers in July 1980.

The Audit Bureau of the SDE determines whether the department complies with administrative requirements and then recommends improvements to management. Even though this unit may review individual consultant contracts on a case-by-case basis, it does not regularly audit this area.

Finally, the SDE Accounting Office has not followed appropriate procedures for approving consultants' invoices for payment. During our review, we found that two consultants working for different units at the SDE received duplicate progress payments totaling at least \$1,750.* For the months in which these overpayments occurred, the consultants received three or four payments per month. Yet the State Administrative Manual states that "progress payments should be made not more frequently than monthly in arrears...." Further, the SDE

* The department has asked the consultants to repay this amount. As of August 26, 1981, they had not reimbursed the department.

Accounting Office does not monitor short-term contract progress payments or cross-check claims submitted by consultants working for more than one program unit.

Additionally, procedures for approving payments to contractors are inadequate. For example, in the instances cited above, a division chief's secretary endorsed the invoices with the chief's name. These approval problems have resulted because the Accounting Office does not specify who is authorized to approve contract invoices. Because of these weak payment controls, overpayments to contractors can occur.

CONCLUSION

The State Department of Education has modified its contract management function in response to previous reports and state mandates. Our review, however, found that additional improvements are needed. Specifically, the department has not updated its contracting procedures, trained program staff in contract management, conducted internal audits to ensure compliance with sound contracting procedures, nor adequately controlled consultant payments.

RECOMMENDATIONS

To improve the management of consultant contracts and to encourage compliance with sound contracting practices, the State Department of Education should take the following actions:

- The Contracts Unit should include current and comprehensive contracting procedures in the Department Administrative Manual. The unit should also develop and implement regular training programs for the SDE contract administrators in the program units.
- The Internal Audit Unit should regularly audit contracting practices to provide management with information on compliance with contracting requirements.

Finally, we recommended that the Accounting Office should improve controls over payments to consultants by:

- Establishing a clear policy authorizing certain staff to approve invoices for payment;

- Returning invoices to program staff if the authorized person has not properly approved them;
- Requiring proper accounting for progress payments to short-term consultants; and
- Requiring consultants working for more than one program unit to submit all invoices once each month to prevent duplicate payments.

INFORMATION REQUESTED BY THE LEGISLATURE

We were asked to determine whether employees of the State Department of Education were also serving as consultants to the department and, if so, whether they were providing consultant services during regular working hours. The requesters also questioned whether this practice could result in a conflict of interest.

PRESENT AND FORMER DEPARTMENT
PERSONNEL HAVE SERVED AS CONSULTANTS

In reviewing the use of department employees as consultants, we found that 71 consultants retained by the State Department of Education during 1979 and 1980 were departmental employees at one time. In five instances, individuals rendered consulting services while employed within civil service. This practice is permissible under present law if it does not violate personnel regulations.

To obtain the information requested, we reviewed reports of the State Controller. Specifically, we compared records of consultant payments with employment history files kept on all state employees. As a result of this examination,

we found that 71 of the consultants retained by the State Department of Education during 1979 and 1980 were, at one time, department employees. Table 2 below illustrates whether they rendered consultant services before, during, or after their civil service tenure.

TABLE 2
CONSULTANT SERVICES
PERFORMED BY DEPARTMENT EMPLOYEES^a

<u>When Consulting Service Was Performed</u>	<u>Number of Incidents</u>
Before civil service employment	39
During civil service employment	5
After civil service employment	41
Total consultant services	71 ^b

^a This table represents individuals with consultant contracts; it does not include any department employee who might be providing services for a firm contracting with the department. Thus, the numbers shown may be understated.

^b This column does not total because some individuals received multiple contracts and appointments.

The table shows that in five instances individuals holding civil service status performed consultant services during their civil service tenure. There was no double payment in four out of five instances; however, in the fifth situation, the employee-contractor was overpaid an estimated \$1,900.

In that situation, a graduate student assistant received two short-term contracts to write two chapters of a proficiency assessment handbook for the Office of Program Evaluation and Research. These contracts in effect extended her temporary appointment. The contract started four weeks before the civil service position ended and, for 19 days during February and March 1979, this individual was paid both as a civil servant and as a consultant. Officials in the Office of Program Evaluation and Research stated that the duplicate payments were inadvertent; they have asked the individual to reimburse the department for the \$1,900 overpayment.*

Since December 1979, the department's Personnel Office must review all consultant contracts. This review is designed to prevent program officials from entering into contracts with current department employees or from extending their temporary appointments.

After examining regulations, policies, and laws governing the use of consultants, we learned that using a department employee as a consultant is permissible under present law if it does not violate personnel regulations.

* As of August 26, 1981, the individual had not responded to the department's request.

These regulations prohibit the department from extending temporary appointments by offering a contract to the employee filling the temporary position.

According to an opinion requested from the Legislative Counsel, there are few general restrictions on state employees' consulting activities. Consulting work should not interfere with the employees' regular duties; it should not have a material financial effect on his or her interest; and it should not be in conflict with the agency's statement of specific incompatible activities. This statement for the State Department of Education lists these as activities that are incompatible for its employees:


- Using the prestige or influence of the state office for private gain or advantage.
- Receiving compensation for services that are part of the employee's regular duties.
- Receiving compensation from persons or from public or private agencies subject to the employee's review, recommendation, or approval.

- Performing any service, including teaching, at any public or private school or college without a deputy superintendent's approval.

These guidelines were last revised in February 1980.

In some instances, the State Department of Education has employed the same individual as a consultant and as a civil servant. However, state law generally does not restrict state employees' consulting activities as long as these activities do not violate personnel regulations. As we have noted in our previous reports, the Legislature may wish to specify the circumstances under which present and former employees can perform consultant services.

Respectfully submitted,


THOMAS W. HAYES
Auditor General

Date: September 25, 1981

Staff: Eugene T. Potter, Audit Manager
Georgene L. Bailey
Andrew P. Fusso



STATE OF CALIFORNIA
DEPARTMENT OF EDUCATION
STATE EDUCATION BUILDING, 721 CAPITOL MALL, SACRAMENTO 95814

September 22, 1981

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

Dear Mr. Hayes:

Thank you for this opportunity to comment on your draft report entitled, "A Review of the State Department of Education's System for Managing Consultant Contracts." The report recognizes the significant improvements made by this Department in its contracting system, and we view your recommendations as options for further refinement.

We recognize the need to place all of our existing practices in the Department's Administrative Manual. As you know, our efforts these past two years have been directed toward implementing a controlled, efficient contract system. Nevertheless, we will update the contracting requirements in the Manual to centralize existing procedures and address any changes necessary to further improve our system. We plan to reestablish training sessions on a more periodic basis to ensure that department staff are more aware of these procedures and understand the requirements. Our internal audit unit will review contracts (post audit) whenever possible in view of other audit priorities and reductions in state operation funds which limit activities.

Our updated procedures will specify department staff authorized to approve payments and appropriate signatures will be kept on file in the Accounting Office. Units will be required to attach an accounting of progress payments (if applicable) and invoices for progress payments will not be submitted more frequently than monthly. Very few consultants now work for more than one department unit at the same time, and the contracts unit notifies affected units if overlapping contracts are approved. Our Accounting Office is aware of these modifications in the requirements and will return invoices if they are not prepared in accordance with this policy.

Finally, the department's Personnel Office has been reviewing consultant contracts since December 1979 for compliance with civil service requirements. The instances noted in your report occurred before this review was required

Mr. Thomas W. Hayes

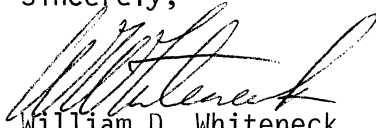
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September 22, 1981

and we feel the situations noted will no longer occur. The three cases brought to our attention by your auditors have resulted in each person receiving a bill from the Department to pay back any money for an overlap period.

We appreciate the recommendations made by your staff and feel they will contribute to the substantial efforts we have already made to improve our contracting system.

Sincerely,



William D. Whiteneck
Deputy Superintendent for Administration
(916) 445-8950

WDW:jml

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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
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