



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

September 2009 Report 2009-103



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September 10, 2009

2009-103

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the California State Auditor presents this audit report on the use of information technology personal services and consulting contracts (IT contracts) at the Department of Health Care Services (Health Care Services), the Department of Public Health, and their predecessor department, the Department of Health Services. We found that the departments' responses to the State Personnel Board's (board) disapproval of IT contracts reveal faults in the State's oversight of the State Constitution's implied civil service mandate. In particular, the board currently has no mechanism for determining whether state agencies are complying with its decisions. Consequently, the departments experienced no repercussions for failing to terminate IT contracts disapproved by the board. Additionally, under current state law, the departments are able to enter into new contracts for substantially the same services that were the subject of contracts previously disapproved by the board. As a result, the effort and resources spent reviewing challenged IT contracts would seem to yield only limited benefits.

Our audit included other aspects of the departments' use of IT contractors. We found that, partly in response to board disapprovals of their contracts, the departments have attempted to replace IT contractors with state IT employees. Although we estimate that Health Care Services' efforts in this regard saved the State an estimated \$1.7 million, it did not comply with state budgeting instructions and rules to do so. The departments complied with many of the procurement requirements we tested but did not consistently obtain required approvals and conflict-of-interest information. Health Care Services also had difficulty demonstrating that specific contract provisions requiring the transfer of consultants' knowledge and expertise to its state IT employees were met. Lastly, the departments are unable to readily identify all active IT contracts because their databases contain limited information.

Respectfully submitted,



ELAINE M. HOWLE, CPA
State Auditor

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Summary

Results in Brief

Actions taken by the Department of Health Care Services (Health Care Services), the Department of Public Health (Public Health), and their predecessor agency, the Department of Health Services (Health Services), in response to the disapproval of certain information technology (IT) contracts reveal flaws in the oversight of constitutional provisions protecting the civil service system in the State of California (State). The California Supreme Court has recognized that the California Constitution contains an implied civil service mandate (civil service mandate), which prohibits state agencies from contracting with private entities to perform work that the State has historically and customarily performed and that it can perform adequately and competently. State law allows state agencies to contract for these services—rather than employing civil servants—under specified conditions, and it places responsibility with the State Personnel Board (board) to review these contracts upon request by state employee representatives (unions). The Joint Legislative Audit Committee requested that the Bureau of State Audits examine the personal services and consulting contracts for IT (IT contracts) used by Health Care Services and Public Health (departments) based on concerns detailed by a union. The chief concern was that the State could be mispending millions of dollars on IT contracts because the control process for guarding against unnecessary contract spending and for enforcing the civil service mandate has become overwhelmed and because corrective action generally does not occur until after state agencies may have misspent the money.

Over the last five years, the board has disapproved 17 IT contracts executed by Health Care Services, Public Health, and 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.

¹ On 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 either Health Services, Health Care Services, or Public Health.

Audit Highlights . . .

Our review of the personal services and consulting contracts for information technology (IT contracts) used by the Department of Health Care Services and the Department of Public Health (departments) 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.*

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. 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. 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. Although not prohibited by law from doing so, the departments entered into numerous subsequent contracts for the same services as those in the contracts previously disapproved by the board. In one case, the board disapproved an IT contract for the same service from the same supplier that it had already disapproved in an earlier union challenge. Without some limitation on subsequent same-service contracts, board decisions related to Section 19130(b) of the California Government Code will often affect only contracts with terms that have expired or will soon expire, and the decisions will not preclude similar contracts from immediately replacing those that the board disapproves. As a result, all the effort and resources spent reviewing challenged IT contracts would seem to be an inefficient use of state resources.

Partly in response to the disapproved contracts, the two departments have 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 request for additional positions. 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 Health Care Services 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.

The departments indicated to us that recruiting and retaining qualified IT personnel are difficult. In recent years, both departments have begun tracking vacancies in their IT positions, using delegated authority from the Department of Personnel Administration (Personnel Administration) to offer more competitive wages to IT employees and taking advantage of the board's efforts to increase the State's pool of IT applicants. The departments' vacancy and turnover rates for their IT positions have remained fairly stable over the last five years.

During our review we found other issues related to the departments' IT contracting that although not directly related to compliance with the civil service mandate, were nonetheless important. First, 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.

Second, 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. However, the departments did not provide suppliers with selection criteria for five California Multiple Award Schedules contracts. This lack of selection criteria may inhibit suppliers' ability to produce offers that best meet the departments' needs.

Our audit also revealed that the departments did not consistently obtain required approvals and conflict-of-interest information. Specifically, the departments did not always obtain approvals from their respective agency secretary and director (or the next immediate ranking official) for procurements valued over \$250,000. The departments also did not obtain the requisite annual financial interest statements from half the sampled employees responsible

for evaluating the bids and offers for the 14 contracts that we reviewed, as required by state law. Thus, the departments have neglected controls designed to provide high-level purchasing oversight and to deter and expose unacceptable conflicts of interest. Finally, although it stated that its IT consultants performed activities to transfer knowledge to state employees when applicable, Health Care Services had difficulty demonstrating that it had met the knowledge-transfer provisions in its IT contracts.

Recommendations

To create more substantive results from the reviews conducted by the board under California Government Code, Section 19130(b), the Legislature should do the following:

- Specify that contracts disapproved by the board must be terminated and require state agencies to provide documentation to the board and the applicable unions to demonstrate to the satisfaction of the board the termination of these contracts.
- Prohibit state agencies from entering into subsequent contracts for substantially the same services as specified in contracts under board review without first notifying the board and the applicable unions, allow unions to add these contracts to the board's review of the original contracts, and allow the board to disapprove the subsequent contracts, if appropriate, as part of its decision on the original contracts.
- Require state agencies that have contracts disapproved by the board to obtain preapprovals from the board—in a manner similar to the process that occurs for requests under California Government Code, Section 19130(a)—before entering into contracts for substantially the same services. Further, if an agency enters into a contract without the board's preapproval, the Legislature should allow the applicable union to challenge this contract and prohibit the agency from arguing that the contract was justified under Section 19130(a) or (b). Instead, the board should resolve only whether the subsequent contract is for substantially the same service as the disapproved contract.

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

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

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

To readily identify active IT and other contracts, Public Health should continue its efforts to develop and implement a new contract database. Additionally, Health Care Services should 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, both departments should establish a review-and-approval process for entering their contract information into the database.

To promote fairness and to obtain the best value for the State, the two departments should 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 their offers.

To ensure that each contract receives the levels of approval required in state rules and in their policies and procedures, the departments should obtain approval by their agency secretary and directors on contracts over specified dollar thresholds.

To make certain that they fairly evaluate bids, offers, and supplier responses, the departments should amend their procedures to include provisions to obtain and retain annual financial interest statements from their bid and offer evaluators. Further, the departments should also ensure that they obtain annual financial interest statements from all designated employees.

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, Health Care Services should require its contract managers to document the completion of knowledge-transfer activities specified in its IT contracts.

Agency Comments

In its response, Health Care Services generally agreed with the recommendations and provided additional perspective and information related to our findings. Additionally, Public Health concurred with all of our recommendations. Finally, the board's executive officer stated that its legal counsel concluded that it is unable to implement our recommendations without a statutory amendment.

Introduction

Background

In the State of California (State), the Department of Health Care Services (Health Care Services) and the Department of Public Health (Public Health) have similar missions—preserving, improving, or optimizing the health of Californians—and a common history. On July 1, 2007, the former Department of Health Services (Health Services) was renamed Health Care Services, and Public Health was established. Health Care Services focuses on administering publicly financed health insurance and safety net programs. Public Health focuses on detecting, preventing, treating, or otherwise responding to public health or environmental problems and emergencies, which it does primarily by providing funds to the local public health community for the delivery of services.

The two departments are similar in size; each has roughly 3,000 budgeted positions. However, Health Care Services' budget is much larger than that of Public Health; the former had nearly \$40 billion for fiscal year 2008–09 compared to Public Health's budget of approximately \$3.2 billion. One very large program, the California Medical Assistance Program (Medi-Cal), dominates Health Care Services' budget. Financed by the state and federal governments, Medi-Cal is a health insurance program that allows low-income individuals to receive needed health care services. In comparison, Public Health has a greater number of programs with relatively smaller budgets.

Information Technology Employees at Health Care Services and Public Health

Health Care Services and Public Health (departments) use various forms of information technology (IT) and employ IT personnel to carry out their programs and responsibilities. Health Care Services' information technology services division (IT division) supports a complex portfolio of program applications, the largest of which is the Medi-Cal Eligibility Data System, and supports the program and administrative objectives and facilitates the successful completion of IT projects for both departments. Public Health also has an IT division that supports Public Health's IT endeavors. For example, as part of an effort to improve the quality of the data available to assist with public health decisions, Public Health maintains and manages access to more than 100 data sets that

Information Technology Job Classifications for Employees Working Within the Departments of Health Care Services and Public Health

- Computer operator
- Data processing manager
- Information systems analyst
- Information systems technician
- Programmer
- Programmer analyst
- Systems software specialist

Source: Department of Finance's Salaries and Wages supplements.

are all cataloged in an interactive electronic data resource inventory. Table 1 shows the number of IT employees—and their estimated costs—that Health Care Services and Public Health were authorized to hire during the last five fiscal years.

Table 1
Authorized Positions and Estimated Costs for the Departments’ Information Technology Employees by Fiscal Year
(Dollars in Millions)

FISCAL YEAR	DEPARTMENT OF HEALTH SERVICES		DEPARTMENT OF HEALTH CARE SERVICES		DEPARTMENT OF PUBLIC HEALTH	
	NUMBER OF POSITIONS	ESTIMATED COST	NUMBER OF POSITIONS	ESTIMATED COST	NUMBER OF POSITIONS	ESTIMATED COST
2004–05	407.0	\$24.9				
2005–06	435.3	27.8				
2006–07	465.8	29.7				
2007–08	NA	NA	296.0	\$20.4	219.8	\$14.7
2008–09	NA	NA	293.0	21.2	228.8	16.5

Source: Bureau of State Audits’ analysis based on the Department of Finance’s Salaries and Wages supplements.

NA = Not applicable because, effective July 1, 2007, the Department of Health Services was renamed the Department of Health Care Services, and the Department of Public Health was established.

Laws and Regulations Governing State Agencies’ Contracting for Personal Services

In addition to employing IT personnel, the departments enter into IT personal services contracts (IT contracts) with private consulting firms to assist in the development and support of their IT systems. The *State Contracting Manual* defines IT personal services as the performance of services—such as hardware, software, or system maintenance—by individuals. It also defines IT consulting services as assistance of an advisory nature that provides a recommended course of action, personal expertise overseeing technical projects, or IT training. For purposes of this report, we refer to these IT services as *personal services*.

In *Professional Engineers in California Government v. Department of Transportation*, the California Supreme Court recognized that an implied “civil service mandate” emanates from Article VII of the California Constitution, which prohibits state agencies from contracting with private entities to perform work that the State has historically and customarily performed and can perform adequately

and competently.² However, under circumstances specified in the California Government Code, Section 19130, state agencies may contract for these services rather than employ civil servants.

Under Section 19130(a) of the code, state agencies may generally enter into personal services contracts with private vendors if the agencies can clearly demonstrate that doing so would achieve sufficient cost savings to the State. In these instances, state law requires state agencies to notify the State Personnel Board (board), which is constitutionally charged with enforcing the State's civil service system. The board consists of five appointed members and employs an executive director to administer the civil service statutes. After notification by an agency, the board must then immediately notify all organizations that represent state employees (unions) who perform the type of work delineated in the personal services contract—as well as any person or organization that has filed a request for notice—so that they may have a reasonable opportunity to comment on the proposed contract. Any union may request, within 10 days of notification, a board review of the proposed or executed contract for that contract's compliance with the standards specified in Section 19130(a).

In contrast to the provisions contained in the California Government Code, Section 19130(a), state law does not require state agencies to notify the board, nor does it require the board to notify the unions, before agencies enter into contracts justified under California Government Code, Section 19130(b). This section provides state agencies with 10 specific conditions that justify entering into personal services contracts. These conditions include circumstances in which the services are of such an urgent, temporary, or occasional nature that the delay incumbent in their implementation under civil service would frustrate their very purpose, or in which the service is of such a highly specialized or technical nature that the expertise necessary to perform the service is not available within the civil service system. (Refer to Appendix A for a complete list of all 10 conditions.) Under Section 19130(b), the board must review a personal services contract only upon a union's request.

The Board's Process for Reviewing Contracts Subject to Section 19130(b) of the California Government Code

State regulations allow those unions that want to request a board review of a contract proposed or executed by a state agency according to Section 19130(b) to file with the board and to serve

² *Professional Engineers in California Government v. Department of Transportation* (1997) 15 Cal. 4th 543, 547.

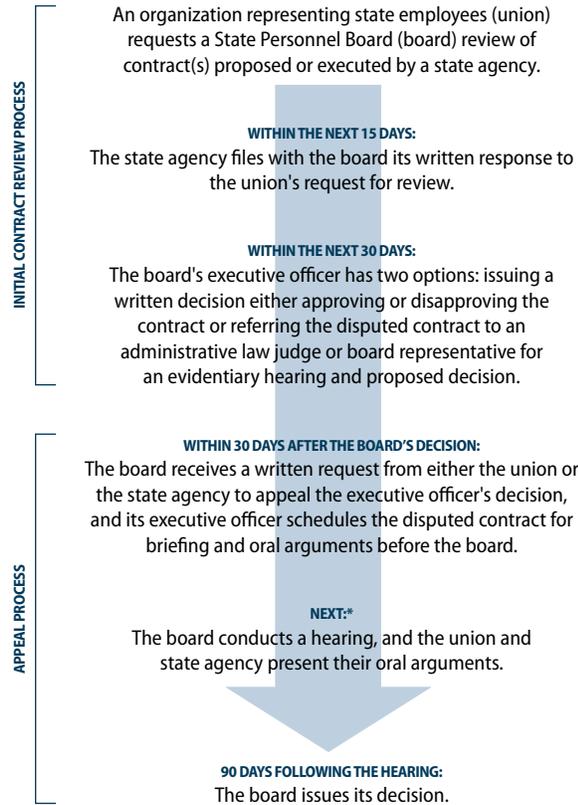
upon the state agency a written request for review. The union's request must identify the contract to be reviewed and include specific and detailed factual information that demonstrates how the contract fails to meet the conditions specified in the California Government Code, Section 19130(b). The union's request must also include other documentary evidence and/or declarations in support of its position. Finally, the union must file a proof of service with the board that states when and how it served the state agency with a copy of its request for review.

Under state regulations, within 15 days after receiving a copy of the union's request for review, the state agency must file with the board the proposed or executed contract and the state agency's written response to the union's request for review, and it must serve the union a copy of the filing. The state agency's response must include specific and detailed factual information that demonstrates how the contract meets one or more of the conditions specified in the California Government Code, Section 19130(b), and documentary evidence and/or declarations in support of its position. Further, within five days after it receives from the state agency a copy of the contract and the state agency's response, the union may file a written reply to the state agency's response with the board and serve on the state agency a copy of the filing.

As Figure 1 shows, state law and regulations require that within 30 days after receiving a copy of the proposed or executed contract from the state agency, the board's executive officer shall either approve or disapprove the contract or, upon union request and showing of good cause, refer it to an administrative law judge or board representative to conduct an evidentiary hearing and submit to the board a proposed decision. The union's five-day period for replying to the state agency's response and this 30-day period run concurrently. Therefore, under ideal conditions the review process should take as little as 45 days.

Any party may appeal the executive officer's decision to the five-member board by filing a written request with the board within 30 days after issuance of the executive officer's decision. Upon receipt of a timely appeal, the executive officer must schedule the matter for a briefing and oral arguments before the board. However, as Figure 1 indicates, state law and regulations do not specify how quickly the board must schedule oral arguments. After hearing oral arguments, the five-member board will decide the appeal based on the information, documentary evidence, and/or declarations submitted to the executive officer before he or she issued his or her decision. By law, the board has 90 days from the date that it hears oral arguments to render its decision.

Figure 1
The State Personnel Board’s Review and Appeal Processes for Contracts Subject to the California Government Code, Section 19130(b)



Sources: California Government Code, Section 18671.1, and California Code of Regulations, Title 2, sections 547.61, 547.62, 547.64, and 547.66.

Note: State law or regulations specify the periods indicated.

* State law or regulations do not specify the amount of time for this step.

Procurement Methods Approved by the Department of General Services

The Department of General Services (General Services) is statutorily responsible for the acquisition of IT goods or services. However, state law allows General Services to delegate this authority to state agencies that have demonstrated to its satisfaction the ability to conduct value-effective IT acquisitions of goods and services that consider factors other than cost. State law sets forth criteria for *value-effective acquisitions* that include such factors as the quality of the services, the quality and effectiveness of the business solution and approach, and the supplier’s industry and program experience. The State has established various acquisition approaches that generally fall under the following three categories:

- *Competitively bid contracts:* Within established dollar limits, state agencies can conduct competitive procurements for IT goods and services. Departments must advertise their need for particular IT goods or services, obtain and evaluate competing offers from responsible bidders, and award contracts in a manner that is fair and transparent to all participating parties.
- *Noncompetitively bid contracts:* Within established dollar limits, state agencies can enter into IT contracts without soliciting competing bids, but they must demonstrate that proposed acquisitions are the only goods or services that meet the State's needs or that an immediate acquisition is necessary for the protection of public health, welfare, and safety.
- *Leveraged procurement agreements:* These agreements enable the State to streamline its purchases by removing repetitive, resource intensive, costly, and time-consuming bid processes by departments. Instead, departments can obtain IT goods and services that General Services indicates have been competitively assessed, negotiated, or bid.

General Services has delegated to Health Care Services the same types of IT purchasing authority with the same maximum dollar limits as Public Health. Table 2 shows certain types of purchasing authority delegated to the two departments by General Services and the number of active contracts by procurement type as of March 13, 2009.

Table 2
The Number of Active Information Technology Contracts Procured by the Departments

PROCUREMENT TYPE	MAXIMUM DELEGATED PURCHASING AUTHORITY FOR BOTH DEPARTMENTS	NUMBER OF ACTIVE INFORMATION TECHNOLOGY (IT) SERVICE CONTRACTS	
		DEPARTMENT OF HEALTH CARE SERVICES	DEPARTMENT OF PUBLIC HEALTH
Competitively Bid Contracts	\$4,999.99	0	0
Noncompetitively Bid Contracts	\$4,999.99	0	0
Leveraged Procurement Agreements			
Master agreements	\$1,500,000.00	3	3
California Multiple Award Schedules	500,000.00	42	21
Exempt Contracts	\$4,999.99	1	3
Totals		46	27

Sources: Purchasing authority approvals from the Department of General Services (General Services) for the period of December 1, 2008, through November 30, 2009, and General Services' state contract and procurement registration system, which was designed to track all state contracts and purchase orders greater than \$5,000. Effective March 16, 2009, General Services consolidated this database into its eProcurement system.

Note: The information in this table represents contracts and purchase orders executed between January 2005 and March 2009 that were active as of March 13, 2009. We found errors in General Services' database and concluded that the database was incomplete for the purpose of providing the number of active IT contracts. However, we present the information in this table because the Joint Legislative Audit Committee specifically requested it, and there was no better source from which to obtain this information.

Both departments typically use leveraged procurement agreements to obtain IT goods and services. In particular, they use California Multiple Award Schedules, which offer federal multiple award schedule pricing—primarily with California terms and conditions—from suppliers that provide IT goods and services. They also use master agreements that General Services, using the State’s collective buying power, enters into with suppliers that are able to provide various goods and services that meet the State’s business needs. Finally, the departments use exempt contracts that can be awarded without advertising or competitive bidding because state law or policy exempts such requirements. Although these purchases are exempt from advertising or competitive bidding, the maximum dollar limits under the departments’ delegated purchasing authority still apply.

If one of the department’s particular needs goes beyond its delegated authority for entering into IT contracts (for example, in procurement type or in maximum dollar amount), General Services procures the goods or services for Health Care Services or Public Health. For example, as Table 3 shows, Health Care Services has six active IT contracts that General Services procured competitively, and Public Health has four. Public Health also has one contract that General Services procured noncompetitively. Although few in number, contracts procured by General Services for the departments represent more than 80 percent of the active IT contract dollar amounts.

Table 3
The Departments’ Active Information Technology Service Contracts That Exceed \$5,000

PROCURED BY*	DEPARTMENT OF HEALTH CARE SERVICES' IT CONTRACTS		DEPARTMENT OF PUBLIC HEALTH'S IT CONTRACTS	
	NUMBER	TOTALS IN DOLLARS	NUMBER	TOTALS IN DOLLARS
Department	46	\$7,615,708	27	\$5,208,845
Department of General Services (General Services)	6	48,374,311	5	19,008,855
Totals	52	\$55,990,019	32	\$24,217,700

Source: The state contract and procurement registration system managed by General Services. The system was designed to track all state contracts and purchase orders greater than \$5,000. Effective March 16, 2009, General Services consolidated this database into its eProcurement system.

Note: The information in this table represents contracts and purchase orders executed between January 2005 and March 2009 that were active as of March 13, 2009. We found errors in General Services’ database and concluded that the database was incomplete for the purpose of providing the number of active information technology contracts. However, we present the information in this table because the Joint Legislative Audit Committee specifically requested it, and there was no better source from which to obtain this information.

* This designation is based on the departments’ delegated purchase authority (shown in Table 2) and unaudited information related to procurement type, department designation, and contract dollar amount in General Services’ contract database.

Scope and Methodology

The Joint Legislative Audit Committee (audit committee) requested that the Bureau of State Audits (bureau) examine the use of IT consulting and personal services contracts (IT contracts) by Health Care Services and Public Health. For purposes of our audit, we refer to both types of services as *personal services*. 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, we were to do the following:

- Identify the number, type, billing rates, and hours worked of the staff employed under each contract as well as the overall cost to the State.
- Identify any consultants previously employed by either department as state employees. If we found any such individuals, we were to compare their pay at separation from the State with the cost to retain these individuals as consultants.
- Identify the year that each contract was originally signed, the effective date, and the termination date.
- Review the time period and justification for any contracts that the departments renewed or repurchased. For renewed contracts, determine whether any evidence indicates that departments split the contracts into multiple procurements to avoid any maximum dollar limits under its delegated purchasing authority.
- For any amended contracts with an original effective date before July 1, 2003, identify the cost of the original contract, the amount added, and the original term of the contract.
- For contracts that include provisions for IT consultants to transfer their knowledge to the State's employees, determine whether the two departments are enforcing these provisions.

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 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. 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.

To determine whether the departments' policies and procedures for IT contracts are consistent with state law, we reviewed relevant statute and rules and compared them to the departments' procurement policies and procedures manuals. To identify all active IT contracts at each department, we interviewed its IT employees and identified six databases that have information related to that department's IT contracts and purchase orders. For purposes of our audit, we refer to both the contracts and purchase orders as *contracts*. However, as we discuss in Chapter 2, the General Services' contracts database was the only database that by design captured most of the requested information. The U.S. Government Accountability Office, whose standards we are legally required to follow, requires us to assess the reliability of computer-processed data if the data to be analyzed are intended to support audit findings, conclusions, or recommendations. It was our intent to use the contracts database to select a sample of IT contracts and to provide background information on the number of IT contracts. Therefore, a data reliability assessment was not required. Instead we needed to gain assurance that the population of contracts from which we selected our sample was complete. For this purpose, we found the contracts database to be incomplete, as discussed in Chapter 2.

Because General Services' contracts database was the only database that by design captured most of the requested information, we used it to select a sample of IT contracts despite concerns over its completeness. From this database, we selected 13 active IT contracts with the highest dollar amounts, which totaled \$74.4 million, or roughly 88 percent of the total dollar value of the active IT contracts listed in General Services' contracts database. Additionally, during our audit, we identified another active IT contract for \$3.9 million that Health Care Services had entered incorrectly into the database as a non-IT contract.

From this sample of 14 contracts, we determined whether the departments are complying with Section 19130 of the California Government Code and other applicable laws, rules, and regulations. To do so, we reviewed the departments' contract files and interviewed their contracting and program staff.

In addition to testing compliance with procurement rules, we also examined the departments' internal controls associated with their procurement process. We determined whether IT contracts in our sample received required authorizations from department and agency officials. We also tested for conflicts of interest among the employees involved in the competitive bidding or supplier selection process. To accomplish this task, we selected one employee associated with each of the 14 sampled contracts and requested their conflict-of-interest disclosure forms for the year in which the respective contract was awarded.

For this same sample of 14 contracts, we identified the number, type, billing rates, and hours worked by the contract staff employed under each contract, as well as the overall cost to the State, by reviewing invoices or cost-tracking spreadsheets provided by the departments. We present detailed information related to these contracts in Appendix B.

To identify whether either department previously employed any consultants as state employees, we obtained the Social Security numbers of the consultants who worked on the IT contracts in our sample and compared the numbers against payroll records maintained by the State Controller's Office. Based on the results from electronically testing key data fields used in our analysis and from testing performed annually for the bureau's audit of the State's financial statements, we found these payroll records sufficiently reliable for the purpose of identifying consultants who were former employees.

One contractor refused to provide the Social Security numbers of the consultants working under contract with the State claiming that, because Health Care Services did not express a legal right to this information, the bureau did not have a right to this information as well. We found one former employee of Health Care Services who later worked as a contracted IT consultant for Health Care Services. The periods of service were two years apart, and the individual earned a project manager's certification after leaving Health Care Services. Therefore, we did not attempt to compare the pay at separation from the State with the cost to later retain this individual as a consultant. However, in our review of contracts disapproved by the board, we found a former state employee who separated from state service after working for Health Care Services and, a few months later, began working as a contracted consultant for her former department. The timing of these activities raises questions relating to various conflict-of-interest laws, but we did not have sufficient information to determine whether any conflict actually existed. Although not employed in the same capacity, her estimated pay as a state employee was \$40 an hour compared to \$90 an hour as a consultant.

To identify the year each contract in our sample was originally signed, the effective date, and termination date, we gathered information from the departments' contract files. We found that the date each contract was originally signed was either on, prior to, or within one week of the effective date. We present effective and termination dates in Appendix B.

For the sample of 14 contracts, we determined which ones represented renewals of previously completed contracts for the same services (renewed or reprocured contracts). We began by searching for prior contracts from the same suppliers in General Services' contracts database. We confirmed whether the departments had renewed or reprocured the contracts by obtaining relevant contract information from the departments. For the contracts that we confirmed as renewed or reprocured, we determined whether any evidence existed of the departments splitting contracts into multiple procurements (contract splitting) to avoid surpassing the maximum dollar limits for delegated purchasing authority by first examining the criteria associated with prohibitions against contract splitting. We found that the specific set of circumstances described in the *State Administrative Manual* regarding contract splitting for the purpose of avoiding delegated dollar thresholds—awarding more than one contract to a single contractor in any one year for work normally considered one undertaking—does not by its express terms apply to contracts renewed over a span of multiple years. Specifically, eight of the 14 sampled contracts represented renewals of previous contracts; however, we did not have any reason to believe any of these contracts were split from their predecessors to avoid contracting requirements. We searched General Services' contracts database to determine if the suppliers associated with our sample of 14 contracts had other contracts during the same time period as those in our sample, and found no evidence of contract splitting.

To identify any amended contracts with an original effective date before July 1, 2003, we examined the departments' procurement files for our sample of contracts. We found one applicable contract, and we provide the cost of the original contract, the amount added, and the original term of the contract in Appendix C.

To determine whether the departments are enforcing knowledge-transfer provisions in their IT contracts, we used General Services' contracts database to select the 14 highest-dollar IT contracts that had closed in 2008. Among these, we found six contracts that specifically listed knowledge transfer as a contract requirement. We then requested documentation from the departments indicating that the contractor had fulfilled these contract requirements.

To identify the number, classification, and cost of IT positions budgeted at each department for each of the most recent five fiscal years, we gathered information from the Department of Finance's Salaries and Wages supplements. From these reports we created a list of IT classifications used by the departments and confirmed this list with representatives from both departments. To ascertain the number of vacant IT positions and turnover rate, we analyzed monthly payroll data from the State Controller's Office. Specifically, to determine average vacancy rates, we first calculated the positions filled by dividing the number of IT positions for which the State Controller's Office monthly payroll data recorded a payment (excluding any lump-sum payouts of overtime, holiday credits, vacation, or sick leave) by the number of IT positions budgeted. We then used the results to calculate the monthly and average annual vacancy rates. Using this same payroll data, we calculated turnover rates by dividing the number of separations of IT employees each year by the number of IT personnel employed at the beginning of the fiscal year. Based on the results from electronically testing key data fields used in our analysis and from the testing performed annually for the bureau's audit of the State's basic financial statements, we found the payroll data from the State Controller's Office to be sufficiently reliable for the purpose of determining the number of vacant IT positions and turnover rates.

To learn about the actions taken by the departments to recruit and retain state IT employees, we interviewed the chief information officer at both departments and Health Care Services' chief deputy director and human resource branch manager. Using information obtained from the departments, the board, and the Department of Personnel Administration, we then attempted to verify whether these individuals' descriptions of the departments' efforts matched the departments' actual attempts to hire and retain personnel.

To select a sample of contracts under review by the board, we interviewed staff at the board and a union. We found that no IT contracts executed by the departments were under review by the board as of April 2009. Consequently, we shifted the focus of our review to the 21 IT contracts reviewed by the board over the past five years. For contracts disapproved by the board, we reviewed files belonging to the departments to determine the departments' responses as well as their corrective actions. We then interviewed staff at the departments to identify measures taken by the departments to reduce their reliance on IT contracts.

Chapter 1

THE DEPARTMENTS HAVE NOT RESPONDED PROMPTLY OR ENTIRELY APPROPRIATELY TO THE DISAPPROVAL OF INFORMATION TECHNOLOGY CONTRACTS

Over the last five years, the State Personnel Board (board) has disapproved 17 information technology (IT) contracts executed by the Department of Health Care Services (Health Care Services), the Department of Public Health (Public Health), and the Department of Health Services (Health Services), which was the agency that preceded the first two departments.³ The board's executive officer disapproved the IT contracts because Health Services, Health Care Services, and Public Health (departments) could not adequately demonstrate the legitimacy of their justifications under California Government Code, Section 19130(b). However, many of the executive officer's decisions were moot because they were issued after the contracts had already expired. This situation arose mainly because an organization that represents state employees (union) raised its challenges late in the contracts' terms and because the board review process is lengthy. Consequently, only six of the 17 IT personal services contracts (IT contracts) were active at the time they were disapproved. However, for three of the six contracts, the departments allowed two contracts to expire at the end of their terms and terminated one contract after approximately one month for reasons unrelated to the disapproval of the contract.

Because the board lacks a mechanism for determining whether agencies of the State of California (State) carry out the board's decisions, the departments experienced no repercussions when they failed to terminate the IT contracts immediately. Finally, although not prohibited from doing so by law, the departments entered into numerous subsequent contracts for the same IT services—even with the same suppliers and consultants—as those provided under contracts that the board had previously disapproved. Because no laws prohibit state agencies from entering into subsequent contracts for essentially the same services as those named in disapproved contracts, all of the effort and resources spent reviewing challenged contracts would seem to yield only limited benefit.

As part of their response to the disapproved IT contracts, the departments have sought to replace IT contractors with state IT employees. For this reason, in January 2009, the Department of

³ On 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 either Health Services, Health Care Services, or Public Health.

Finance (Finance) approved the creation of an additional 28 IT positions within the information technology services division (IT division) of Health Care Services and another 11 IT positions within the IT division of Public Health. However, as early as October 2006, Health Services had begun the process of converting IT contractor positions into less costly state positions. Moreover, Health Care Services, the successor to Health Services, did not clearly disclose this effort in its January 2009 request for additional positions. Because Finance had not yet approved permanent positions, Health Care Services funded the newly hired permanent civil service employees—often the same consultants who performed the same services under contract previously—using a funding mechanism reserved for *temporary-help positions*, which consist of short-term or intermittent employment only. According to the *State Administrative Manual*, state agencies may not use temporary-help positions to fund employees hired on a permanent basis. On the other hand, without excusing Health Care Services' noncompliance and its failure to communicate with budgetary oversight entities in a forthright manner, we estimate that Health Care Services saved the State more than \$1.7 million by replacing IT contractors with less costly state employees.

The departments indicated to us that recruiting and retaining qualified IT personnel are difficult. In recent years, both Health Care Services and Public Health have begun tracking vacancies in their IT positions, using delegated authority from the Department of Personnel Administration (Personnel Administration) to offer more competitive wages to IT employees, and taking advantage of the board's efforts to increase the State's pool of IT applicants. The departments' vacancy and turnover rates for their IT positions have remained fairly stable over the last five years.

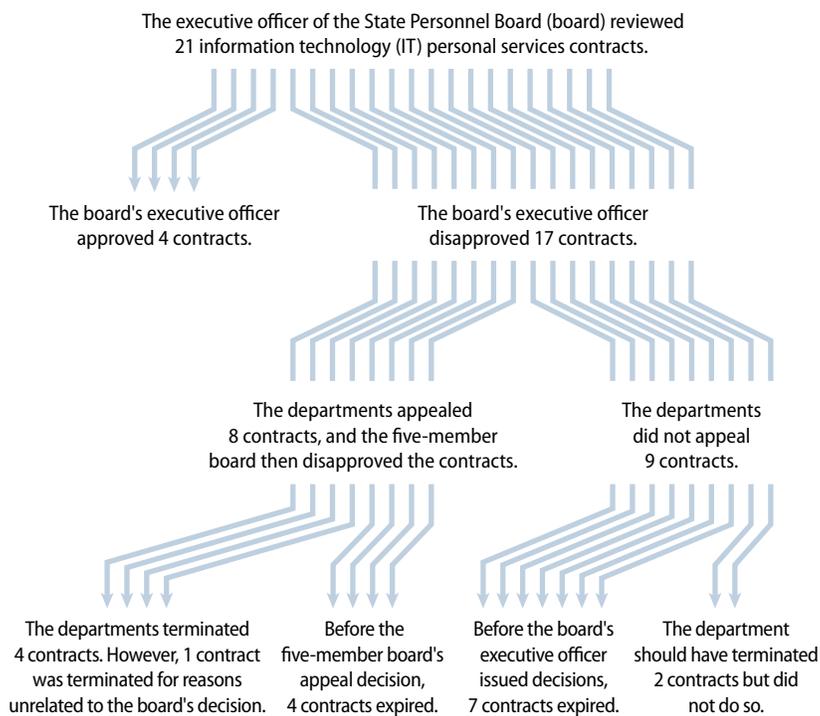
The Board Disapproved Most of the Departments' Challenged IT Contracts, but These Decisions Had Limited Impact

For most of the IT contracts they reviewed, the five-member board or its executive officer determined that the contracts executed by Health Services violated California Government Code, Section 19130(b). Even so, the terms of roughly two-thirds of the contracts disapproved by the five-member board or its executive officer had already expired before the board's decisions. Therefore, the departments did not need to terminate the contracts. As this report's Introduction explains, the board may review personal services contracts justified under California Government Code, Section 19130(b) only upon a union's request. Over the past five years, a state employees' union has made such requests for 23 IT contracts executed by Health Services. Because the expiration dates for two of the 23 contracts occurred before the date of the

Roughly two-thirds of the contracts disapproved by the board or its executive officer had already expired before the board's decisions.

union's request, the board's executive officer did not review them. Figure 2 presents the results of the board's reviews of the remaining 21 IT contracts.

Figure 2
Summary of the State Personnel Board's Decisions Related to Its Review of the 21 Information Technology Contracts Challenged Under California Government Code, Section 19130(b)



Sources: Files belonging to the State Personnel Board and to the departments of Health Care Services and Public Health.

The board's executive officer disapproved 17 of the 21 contracts. The departments unsuccessfully appealed to the five-member board the executive officer's decisions on eight contracts. Generally, the reason that the board's executive officer disapproved the contracts was that the departments could not adequately demonstrate, with specific and detailed evidence, that justifications for contracts under California Government Code, Section 19130(b) were legitimate.

Health Care Services did not terminate two disapproved contracts immediately after receiving the executive officer's decisions on February 19, 2008, and March 3, 2008. Instead, Health Care Services allowed the contracts to expire on the termination dates specified in the contracts, which for one contract was more

than one year after the executive officer's decision. However, the department has experienced no repercussions for failing to terminate these contracts promptly. Although a union might voice its concerns or file a court action, the State has not established a mechanism for determining whether or not a state agency is carrying out the board's decisions.

Health Care Services and Public Health Often Have Not Been Able to Support Adequately Their Justifications for Challenged IT Contracts

Although the departments' written responses to the union's requests for review of the 21 contracts stated that the contracts were justified under California Government Code, Section 19130(b), the board's executive officer approved only four of these contracts. As the Introduction outlines, Section 19130(b) provides state agencies with 10 specific conditions to justify their entering into personal services contracts. The departments used only three of the 10 conditions for justifying the 21 contracts. However, the board's executive officer disapproved 17 contracts primarily because the departments could not demonstrate the validity of their arguments. For example, Table 4 shows that in the initial contract request or in response to the union's challenges, the departments used Section 19130 (b)(3) to justify all but one of the 21 contracts.⁴ Yet the board's executive officer rejected this justification for 16 of the 17 disapproved contracts. The board's executive officer also rejected this justification for three of the four contracts approved, accepting instead the Section 19130(b)(10) justification. Consequently, other than the one instance in which a contract received approval under the Section 19130(b)(3) exemption, the board's executive officer determined that the two departments failed to present evidence that established the absence or inadequacy of civil service job classifications from which they could appoint employees with the necessary expertise or that they had made a good-faith effort to recruit civil service employees to perform the services described in the contracts before entering into those contracts.

When responding to the union's challenges for 14 of the 21 contracts, the departments cited justifications in addition to those originally referenced at the execution of the contracts. Because Health Services executed the 21 contracts within its delegated purchasing authority and thus did not receive reviews

The board's executive officer disapproved 17 of the 21 contracts reviewed because the departments could not demonstrate the validity of their arguments.

⁴ Refer to Table 4 for a full description of the Section 19130(b) justifications used by the departments.

Table 4
Section 19130(b) Justifications Used by the Departments and the Decisions Made by the State Personnel Board

	DESCRIPTION OF THE SERVICES ASSOCIATED WITH THE CONTRACTS REVIEWED BY THE STATE PERSONNEL BOARD (BOARD)	JUSTIFICATIONS UNDER CALIFORNIA GOVERNMENT CODE, SECTION 19130(b)*			EXECUTIVE OFFICER'S DECISION APPEALED AND UPHeld BY THE FIVE-MEMBER BOARD
		SUBSECTION NUMBER USED WHEN THE CONTRACT WAS INITIALLY REQUESTED	SUBSECTION NUMBER USED BY THE DEPARTMENTS IN RESPONSE TO THE UNION'S CHALLENGES	APPROVED BY THE BOARD'S EXECUTIVE OFFICER (SUBSECTION NUMBER)	
1	Independent verification and validation	(5)	(3), (5), and (10)	Yes (10)	Not appealed
2	Implementation of the National Provider Identifier requirements for the Health Insurance Portability and Accountability Act of 1996 (HIPAA)	(10)	(3) and (10)	Yes (10)	Not appealed
3	Internet, intranet, and extranet Web sites and applications support	(3)	(3) and (10)	Yes (3)	Not appealed
4	Reorganization and enhancement of intranet Web site content	(10)	(3) and (10)	Yes (10)	Not appealed
5	Independent verification and validation	(5)	(3), (5), and (10)	No	Yes
6	HIPAA project management	(3)	(3) and (10)	No	Yes
7	County organized health system claims reconciliation	(3)	(3) and (10)	No	Yes
8	County organized health system claims data improvement	(3)	(3) and (10)	No	Yes
9	Independent verification and validation	(10)	(3), (5), and (10)	No	Yes
10	Security auditing	(10)	(3) and (10)	No	Yes
11	Development of the feasibility study report for the Child Health and Disability Gateway Project	(10)	(3) and (10)	No	Yes
12	California Medical Assistance Program Eligibility Data System and Test Data Management System support	(10)	(3) and (10)	No	Yes
13	Database administration	(3)	(3)	No	Not appealed
14	Database administration	(3)	(3)	No	Not appealed
15	Information security	(3)	(3)	No	Not appealed
16	Database security	(3)	(3)	No	Not appealed
17	Information security	(3)	(3)	No	Not appealed
18	Upgrade of Targeted Case Management system	(10)	(10)	No	Not appealed
19	Database security	(3)	(3)	No	Not appealed
20	Database administration	(3)	(3) and (10)	No	Not appealed
21	Project management	(10)	(3) and (10)	No	Not appealed

Sources: California Government Code, Section 19130, and files belonging to the departments of Health Care Services and Public Health and the board.

Note: Please refer to Appendix A for the full text of California Government Code, Section 19130(b).

* The departments used the following justifications from California Government Code, Section 19130(b):

- (3) *The services contracted are not available within civil service, cannot be performed satisfactorily by civil service employees, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the civil service system.*
- (5) *The legislative, administrative, or legal goals and purposes cannot be accomplished through the utilization of persons selected pursuant to the regular civil service system. Contracts are permissible under this criterion to protect against a conflict of interest or to insure independent and unbiased findings in cases where there is a clear need for a different, outside perspective. These contracts shall include, but not be limited to, obtaining expert witnesses in litigation.*
- (10) *The services are of such an urgent, temporary, or occasional nature that the delay incumbent in their implementation under civil service would frustrate their very purpose.*

and approvals from the Department of General Services, nothing prohibited the departments in these instances from adding justifications after the union had challenged these contracts.⁵

According to Health Care Services' assistant chief counsel and Public Health's senior staff counsel, the departments' offices of legal services (legal services) do not review the Section 19130(b) justifications before the execution of a contract unless contracting or program staff ask for assistance. Further, they stated that legal services gets involved after the execution of contracts only when unions challenge the departments' contracts. However, we believe the departments may benefit by having legal services review certain personal services contracts deemed high risk. For example, as we discuss later, the departments have reentered into contracts that procure substantially the same services from the same suppliers as those involved in contracts disapproved by the board. We consider these contracts high risk because the services specified were once the subjects of disapproved contracts, and procuring those services again under the same or similar circumstances may also lead to violations of the implied civil service mandate.

Because the Review Process Takes Longer Than Regulations Require, Some Contracts Expire Before the Board Issues Its Decisions

Although state regulations require the board to respond to unions' requests for contract reviews within 45 days, the process can last much longer, and the board can issue its executive officer's decisions on challenged contracts after the contracts expire. For the 21 contracts that we reviewed, the only penalty that the departments received for not adhering to the requirements of California Government Code, Section 19130(b) was the termination of disapproved contracts. Therefore, a long review process during which contracts may expire before the board's executive officer issues decisions can render the contract reviews moot. As Table 5 indicates, the board's executive officer's review process for each of the 21 contracts took between 64 and 152 days. As previously shown in Figure 2, seven contracts expired before the board's executive officer was able to render decisions. If any party appeals the executive officer's decision for a given contract, the appeal can add more time to the process. Figure 2 also indicates that four additional contracts expired during the appeal process before the five-member board was able to reach decisions.

A long review process during which contracts may expire before the board issues decisions can render the contract reviews moot.

⁵ In board decision PSC 01-09, the board held that if the challenging union objects, departments may not add—and the board will not consider—additional California Government Code, Section 19130(b) justifications to contracts previously reviewed by the board's executive officer or the Department of General Services after a contract has been challenged.

Table 5
Time Elapsing Between the Dates of the Union’s Requests for Review of the 21 Contracts and the Decisions by the Executive Officer of the State Personnel Board

DATES OF THE UNION'S REQUEST FOR REVIEW	NUMBER OF CONTRACTS REVIEWED BY THE EXECUTIVE OFFICER OF THE STATE PERSONNEL BOARD (BOARD)	AVERAGE NUMBER OF DAYS REMAINING BETWEEN THE UNION'S REQUESTS AND THE EXPIRATION DATES OF THE CONTRACTS	NUMBER OF DAYS FROM THE UNION'S REQUEST TO THE DEPARTMENTS' RESPONSE*	NUMBER OF DAYS FROM THE DEPARTMENTS' RESPONSE TO THE EXECUTIVE OFFICER'S DECISION†	TOTAL NUMBER OF DAYS
November 2, 2005	5	22 days	76 days‡	76 days	152 days
October 23, 2007	15	279 days	21 days	111 days	132 days
December 17, 2007	1	500 days	21 days	43 days	64 days

Sources: Files belonging to the board and to the departments of Health Care Services and Public Health, as well as California Code of Regulations, Title 2, sections 547.62, 547.64, and 547.65.

- * State regulations require that within 15 days after the state agency receives a copy of the union's request for review, the state agency shall file with the board and serve upon the union a copy of the contract and the state agency's written response.
- † State regulations require that within 30 days after receiving a copy of the contract, the executive officer of the board shall issue a written decision either approving or disapproving the contract, or upon a union's request and show of good cause the executive officer shall refer the matter to an administrative law judge or other authorized representative of the board to conduct an evidentiary hearing and submit a proposed decision to the board.
- ‡ Health Services' initial response was limited to challenging the board's authority to review the five contracts because the terms had expired before the union's request for review. The number of days elapsing between the union's request, the department's initial response, and the board's response to the department's initial response was 57 days. After the board's response, the department submitted its written response to the union's request for review in 19 days.

For five of the seven contracts that expired before the board's executive officer rendered decisions, the union requested the reviews with fewer than 30 days remaining on the terms of the contracts. Even under ideal conditions, these contracts would have expired before the executive officer's decision to disapprove them. For the other two contracts, if the review process had actually taken 45 days, these contracts would not have expired before the executive officer's decision to disapprove them. In response to our inquiry as to why the union challenged the five contracts so late in their terms, a union representative stated that the challenging of contracts depends on a multiple-step process that involves different people who must locate the contracts, determine whether the contractors are performing a scope of work that is similar to the work performed by state employee classifications, and have the opportunity to prepare and file the legal challenges. The board's executive officer stated that she reviewed the files related to the 21 IT contracts and could find no reasons indicating why the board issued the decisions more than 30 days after receiving the departments' copies of the contracts and written responses to the union's requests.

For the four appealed contracts expiring before the five-member board could render its decisions, we found that the number of days remaining in the contract terms ranged between 56 and 89 days when Health Care Services filed its appeal on April 2, 2008. Under state law and regulations, after receiving a timely appeal of a contract, the executive officer must schedule the matter for

briefing and oral arguments before the board. As the Introduction discusses, state law and regulations do not specify how quickly the board must schedule oral arguments on an appeal. The one appeal we reviewed included all eight contracts challenged by one union and appealed by Health Care Services. The board scheduled oral arguments for its meeting on June 9-10, 2008. However, the board then learned that one of the eight contracts belonged to Public Health. To allow Public Health time to respond, the board amended the briefing schedule and rescheduled oral arguments for its meeting on July 7-8, 2008. By law, the board has 90 days from the date that it hears oral arguments to render its decision, and the board rendered its decision on this appeal 57 days after hearing oral arguments. However, because of the roughly three months that elapsed before the board heard oral arguments, the entire appeal process took more than 150 days. Consequently, the four contracts expired during this time.

The Departments Did Not Terminate Certain IT Contracts When They Should Have Done So

Although board decisions do not always specifically order that departments terminate disapproved contracts, state law provides that a contract that cannot be justified pursuant to California Government Code, Section 19130(b) is void. However, according to our legal counsel, it is unclear whether a contract that the board has disapproved is void without a similar finding by a court of law. Our legal counsel also stated that a void contract generally has no legal effect, but unless and until either a court rules on the matter or the law is clarified, the legal effect of a contract found by the board to violate Section 19130(b) remains somewhat uncertain. 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 not aware of the historical reasons behind this practice. According to our legal counsel, because a contract found by the board to violate Section 19130(b) may be void, it is unclear whether a contract that has been disapproved by the board must be terminated formally, particularly in the absence of any clear instruction from the board itself. Our legal counsel agrees with the board's former senior staff counsel that from a practical perspective, departments should immediately terminate disapproved contracts—even when the board does not clearly order termination—if for no other reason than to inform the contractors that they should cease providing services.

We found that the departments failed to terminate, in response to board decisions, three of the six disapproved IT contracts that had not already expired. On February 19, 2008, the board's executive officer disapproved the first of the three contracts. The contract was for project management services related to IT changes necessitated by the federal Health Insurance Portability and Accountability Act (HIPAA). Even though this contract had more than 400 days remaining in its term when the executive officer disapproved it, Health Care Services failed to terminate the contract. According to Health Care Services' assistant chief counsel, the attorney assigned to this case was transferred to another unit in legal services and then called to active duty in the military in March 2008. All cases assigned to this attorney were reassigned to other attorneys. The assistant chief counsel further stated that legal services for Health Care Services cannot locate the case file for this contract and that legal services views the loss of the file, or the failure to create a file if the department never created one, as an unfortunate ministerial error for which Health Care Services takes full responsibility. Finally, he stated that legal services has no knowledge or evidence demonstrating that it notified the program office managing the contract about the disapproval of the contract by the executive officer of the board. The managers within Health Care Services' Office of HIPAA Compliance stated that they were not aware that the contract had been disapproved until we brought this fact to their attention in May 2009. This contract expired on April 30, 2009, and a subsequent contract with the same supplier began on May 7, 2009.

On March 3, 2008, the board's executive officer disapproved the second of the three contracts with 28 days remaining in its term. Health Care Services did not terminate the contract; however, we found that the contractor did not perform any work on the project after February 2008. Although the department paid more than \$48,000 to the contractor after the contract was disapproved and should have been terminated, the payments covered work performed by the consultant from September 2007 through February 2008, before the executive officer disapproved the contract. The *State Contracting Manual* requires that upon a contract's termination, the contractor must receive reimbursement for all reasonable expenses authorized and incurred up to the date of termination. As stated previously in this report, 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, according to our legal counsel, in 2002, the California Supreme Court upheld a longstanding precedent that "if a public contract is declared void, a contractor may not be paid for work performed under that contract" because a contract that fails to comply with public contracting laws exceeds the agency's power

The departments failed to terminate, in response to board decisions, three of the six disapproved IT contracts that had not already expired.

Because the legal effect of a board-disapproved contract remains uncertain, it may be helpful for the Legislature to clarify when payments to the related contractors must cease.

to contract.⁶ Thus, 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. Because the legal effect of a board-disapproved contract remains 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.

On March 3, 2008, the executive officer also disapproved the third of the three contracts. Public Health appealed this decision, and on September 3, 2008, the board upheld the executive officer's decision. This contract had 150 days remaining in its term when the board upheld the executive officer's decision. However, Public Health did not terminate the contract as a result of the board decision. Instead, unaware that the board had disapproved the contract, Public Health terminated the contract effective October 1, 2008, and informed the contractor that it was using the California Multiple Award Schedules General Provision 22, "Termination for the Convenience of the State," as the basis for ending the contract. After September 3, 2008, the contractor received payments totaling roughly \$41,500, which consisted primarily of payments for the months of March 2008 through August 2008, but also included full payment of \$5,664 for the month of September 2008. As mentioned previously, 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.

The chief of Public Health's Planning and Oversight Section stated that after terminating the contract, Public Health entered into a contract with a different supplier for the same services. The chief also stated that in checking the board's Web site, he eventually became aware of the board's disapproval of the original contract. Finally, the chief stated that he checked with the department's legal counsel, who advised him not to terminate the subsequent contract. According to Public Health's senior staff counsel, Health Care Services—not Public Health—was served the board's decision, and no one at Public Health who could have acted on the information became aware of the board's decision until January 2009. He does not recall a conversation with the contract manager; however, if he had been asked to provide his advice on the subsequent contract, he would have concluded that the subsequent contract was acceptable for the following reasons:

⁶ *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.

- By definition the subsequent contract was not the contract disapproved by the board. Under California Government Code, Section 19130(b), it is the union's responsibility to challenge a contract if it feels the contract is not justified. Any contracts entered into subsequent to an overturned contract, even if the services are similar in nature, are not prohibited statutorily.
- Public Health was not involved in the original arguments surrounding the disapproved contract when the board's executive officer made her initial ruling. During the appeal process, the board discovered that responsibility for the contract in question had been transferred to Public Health. Consequently, Public Health's legal counsel analyzed the contract justifications and provided the board with a different, more appropriate legal argument for Public Health's justification for the contract than the legal argument initially presented to the board's executive officer. However, the board did not consider this legal argument.⁷ Aware that the Department of Motor Vehicles had recently won a case using the same justification under a similar set of facts, the senior staff counsel would have told the contract manager to proceed with the subsequent contract.

The events surrounding the first and third disapproved contracts show that board decisions are not always communicated to appropriate parties so that departments can terminate disapproved contracts promptly. The board's former senior staff counsel acknowledged that the board has no mechanism in place to follow up on whether or not departments are carrying out its decisions. According to our legal counsel, the board could likely implement, even without a statutory change, a reporting process to ensure the termination of disapproved contracts. However, adding statutes requiring the board to do so—and requiring state agencies to comply—would settle any questions regarding authority and help ensure that state agencies adhere to this process.

The Departments Have Entered Into Subsequent Contracts for Substantially the Same Services as Those in Contracts Disapproved by the Board

Health Care Services and Public Health have entered into new contracts—often with the same suppliers and consultants—for substantially the same services that were the subject of contracts disapproved by the board. Because state laws and regulations do not prohibit this practice, state agencies can render board decisions

Board decisions are not always communicated to appropriate parties so that departments can terminate disapproved contracts promptly.

⁷ As the Introduction explains, the board decides appeals only upon the factual information, documentary evidence, and/or declarations submitted to the executive officer before he or she issues his or her decision.

meaningless by terminating disapproved contracts, as required, but then entering into subsequent contracts for substantially the same services. Figure 3 presents the time line of the departments' actions related to the 17 IT contracts disapproved by the board. For nine of the 17 contracts, the departments entered into subsequent contracts for substantially the same services as those in disapproved contracts.

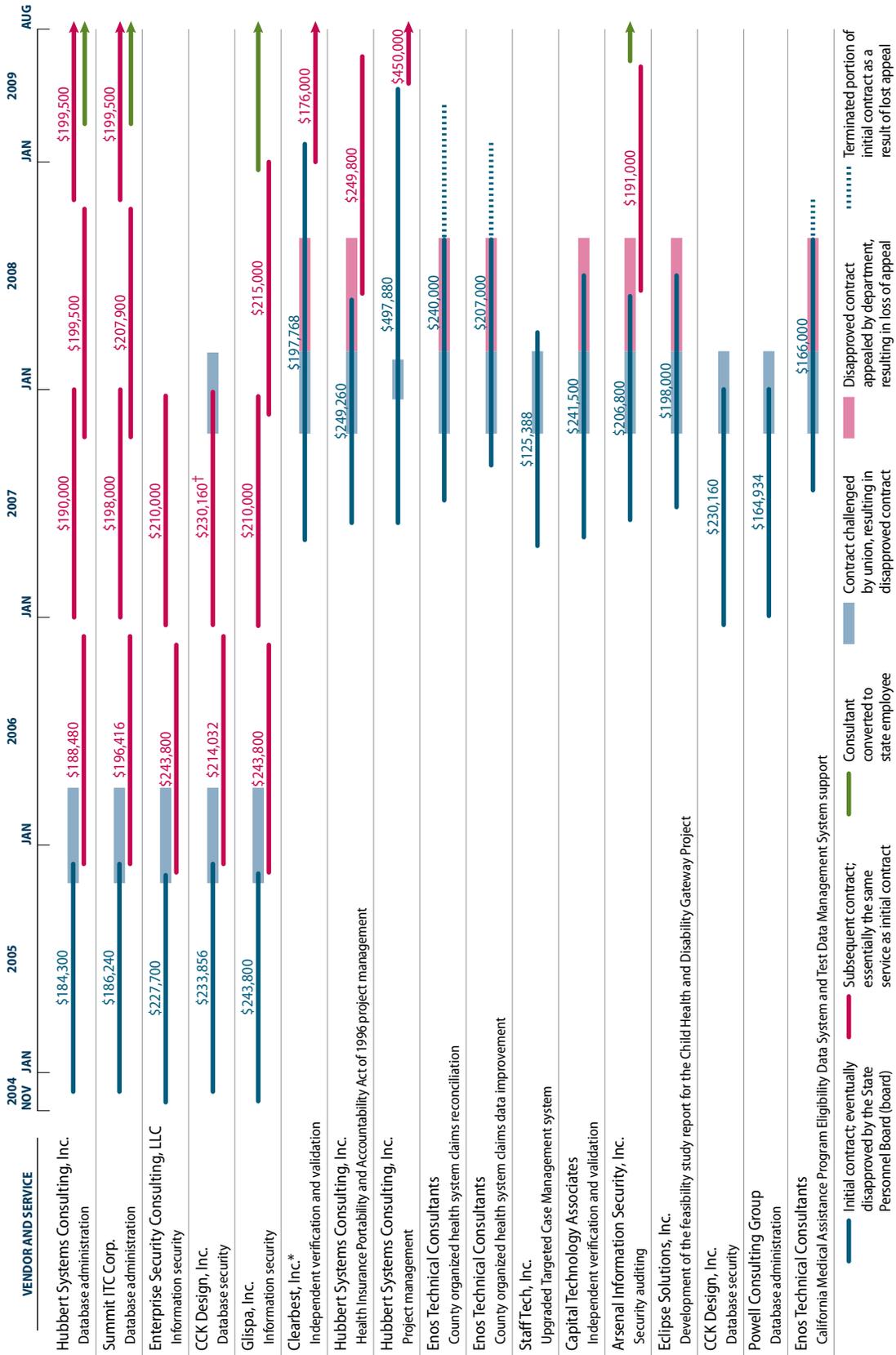
The previous section discusses the circumstances surrounding the disapproved contract belonging to Public Health. For the remaining disapproved contracts, Health Care Services was responsible for entering into subsequent contracts for substantially the same services. For example, as line 1 in Figure 3 shows, Health Care Services entered into a contract for database administration services with a term of December 1, 2004, through November 30, 2005. The union requested that the board review this contract in early November 2005. The board's executive officer disapproved this contract on April 3, 2006. However, on November 29, 2005, Health Care Services entered into a subsequent contract with a term of December 1, 2005, through November 30, 2006, for essentially the same services with the same supplier.

Thus, the execution of the contract occurred while the challenge of the first contract was pending and before the board's executive officer issued a decision. Because the board's review is limited to the challenged contract and has no legal effect on any subsequent contracts, Health Care Services was not required to terminate this subsequent contract after the executive officer's decision or justify to the board the three additional contracts it entered into with the same supplier and the same consultant to perform essentially the same services. The terms of the three additional contracts ranged collectively from January 1, 2007, through October 31, 2009.

Current state law does not prohibit state agencies from entering into subsequent contracts for substantially the same services as those included in board-disapproved contracts. According to Health Care Services' assistant chief counsel, after the board disapproved the initial contracts, the department made improvements to the documentation of its hiring efforts. However, the board's rulings in 2008 indicate that the department's efforts were not sufficient. Specifically, Health Care Services lost 12 of the 16 contract challenges that the board decided in 2008. Furthermore, as described below, Health Care Services again failed to obtain board approval of the contract in the only instance in which the board reviewed a subsequent contract for similar services.

Current state law does not prohibit entering into subsequent contracts for substantially the same services as those included in board-disapproved contracts.

Figure 3
Time Line of Actions Taken by the Departments of Health Care Services and Public Health in Response to Contracts Disapproved by the State Personnel Board



Sources: Files belonging to the departments of Health Care Services (Health Care Services) and Public Health (Public Health) and the board.
 * Management responsibility for this contract transferred from the Department of Health Services (Health Services) to Public Health. Management of all other contracts in this figure was either performed by Health Services or Health Care Services.
 † This contract is the same as the one for CCK Design, Inc. shown below and is the only subsequent contract listed that the board ever reviewed.

As line 4 of Figure 3 shows, Health Care Services entered into a contract for database security services with a term of December 1, 2004, through November 30, 2005. The union asked that the board review this contract in early November 2005, and the board's executive officer disapproved the contract on April 3, 2006. Health Care Services entered into two subsequent contracts with the same supplier, and the same consultant was assigned to perform essentially the same services. The terms of the two subsequent contracts ran from December 1, 2005, through November 30, 2006, and from December 15, 2006, through December 30, 2007. The subsequent contract commencing on December 15, 2006, was challenged by the union on October 23, 2007, and disapproved by the board's executive officer on March 3, 2008. In their written responses to the union's requests for board reviews in 2005 and 2007, Health Care Services and its predecessor department—Health Services—justified the contracts using California Government Code, Section 19130(b)(3). In addition to citing other findings, the board's ruling again pointed to the department's failure to provide sufficient evidence of its recruitment efforts.

We asked board staff whether laws or regulations prohibit a department from entering into subsequent contracts for the same services that were the subject of contracts disapproved by the board. According to the board's former senior staff counsel, the board reviews each contract individually according to the facts presented by a department. Because state law lacks a specific prohibition, the responsibility for ensuring that state agencies do not enter into subsequent contracts for the same services defaults to the union to challenge any subsequent contracts. A representative of the union that challenged the departments' 23 IT contracts stated the following:

The volume of contracts is too high for any union with limited staff and resources to effectively serve as a de facto regulatory agency. The union cannot, nor should it have to, ensure that departments are complying with the letter and spirit of board decisions. The union does what it can to protect its members but this does not absolve the State from the responsibility of establishing mechanisms to uphold the civil service mandate in the California Constitution. The union does not begrudge its role as initial challenger of contracts but once a contract—representing a set of services that the board's decision indicates should be performed by state employees—is overturned, the union's ability to file subsequent petitions or challenges in superior court or with the board should not represent the sum total of the State's follow-up process. The fact that this is currently the case is evidence that the system now in place is designed to allow these contracts, which are costly and often unnecessary, to continue to exist.

Because the board reviews each contract individually, the State's current process is not designed to detect state agencies' entering into subsequent contracts for the same services as those in disapproved contracts. We were unable to quantify the time spent by Health Care Services and the board on the disapproved contracts. Specifically, Health Care Services' assistant chief counsel stated that legal services is not able to provide the number of hours or the costs related to the disapproved contracts because its current tracking system captures hours by client instead of by case. Similarly, the board's chief counsel stated that its system tracks only the aggregate time spent on contracting cases. Nevertheless, without appropriate statutory requirements and regulatory mechanisms in place to require state agencies to change future practices in response to board decisions, all of the effort and resources spent reviewing these challenged contracts would seem to be an inefficient use of state resources.

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 board's disapproval of certain IT contracts, Health Services began a conversion plan in October 2006 to replace relatively expensive IT consultants with less expensive state employees. As of July 2009, Health Care Services had replaced 17 IT consultants with state employees—often doing so by recruiting into state service the same consultants who previously performed the services under contract. However, Health Care Services began implementing its conversion plan and hiring these individuals as permanent civil servants years before it received budget approval to create any new, permanent IT positions. To do so, it funded these new employees by using temporary-help positions authorized in the budget as *blanket positions*, which the budget expresses in terms of full-time equivalent personnel years and associated salary amounts that the agency may spend for short-term or intermittent uses when it is impracticable to express a state agency's needs in terms of classified positions. According to the *State Administrative Manual*, an agency should not use its blanket authority to fund the cost of employees hired on a permanent basis. The recruited employees for Health Care Services remained in blanket positions for up to 20 months, and the IT division increasingly exceeded its budget for temporary-help positions. Additionally, when Health Care Services did seek approval—via a January 2009 budget change proposal (BCP)—for establishing these positions, it did not reveal the true nature of the circumstances surrounding its request. Finally, to prepare for the BCP request,

The Purpose of the Budget Change Proposal

The budget change proposal (BCP) has been the traditional decision document used by state agencies to propose a change to the existing budget level. The agencies submit BCPs to the Department of Finance for review and analysis.

Source: *The State Administrative Manual*.

Health Care Services moved some of the recruited employees from blanket positions into its existing permanent IT positions that were vacant apparently to reduce its vacancy rate and improve its chances of obtaining approval.

Health Care Services' chief information officer stated that although the process may have been convoluted, the bottom line is he made use of the positions available to him to hold on to the expert employees he was able to hire from his recruiting efforts, and these employees were essential to making the contract-conversion effort successful. He also stated that acting on the conversion plan as early as 2006, rather than waiting for final approval on the positions, saved the State additional money and allowed his division to form a more stable, skilled workforce earlier than what would have otherwise occurred.

We estimate that Health Care Services saved the State more than \$1.7 million between October 2006 and July 2009 as a result of implementing its conversion plan. Health Care Services was able to achieve these savings because, as Table 6 shows, the billable hourly rates for IT consultants were higher than the estimated hourly rates for the state employees who replaced them.

Although Health Care Services achieved cost savings, its savings cannot excuse its disregard for adhering to the State's budgetary instructions related to requesting full-time permanent positions and to rules related to agencies' use of blanket positions to fund temporary-help positions. Failing to follow these instructions and rules did not allow budget oversight entities, such as Finance and certain legislative budget subcommittees, to assess whether Health Care Services truly needed to add positions when it eliminated the use of IT contracts.

Health Care Services Did Not Report Accurately the Status of Its Efforts to Convert IT Contractor Positions to State Positions

In January 2009 Finance approved BCPs authorizing the creation of additional IT positions within Health Care Services' IT division and within Public Health's IT division and its Women, Infants and Children Program division. The new permanent positions are intended to replace contractors providing IT services to the departments. The BCPs authorized 28 permanent IT positions that Health Care Services indicated it would phase in between fiscal years 2009–10 and 2011–12, and 11 such positions that Public Health indicated it would phase in between fiscal years 2009–10 and 2010–11. According to the BCPs, existing funding redirected from IT services contracts will cover the costs of the new state positions.

Table 6
Estimated Amounts That the Department of Health Care Services Saved by Converting Information Technology Consultants Into State Employees

	INFORMATION TECHNOLOGY (IT) CONTRACTOR POSITIONS	IT CONSULTANT'S BILLABLE HOURLY RATE	STATE EMPLOYEE'S ESTIMATED HOURLY RATE*	MONTHS SINCE CONVERSION—AS OF JULY 31, 2009	ESTIMATED SAVINGS—AS OF JULY 31, 2009†
	DESCRIPTION OF DUTIES				
1	E-mail and messaging systems support	\$65	\$47	34.2	\$106,702
2	Server management	67	46	34.0	123,758
3	Desktop and laptop management and security	64	45	32.5	107,031
4	Security breach investigations	130	55	30.9	401,692
5	Information systems security	105	47	30.4	305,615
6	Network infrastructure support‡	75	56	21.3	70,147
7	E-mail and messaging systems support	85	55	21.1	109,718
8	Database administration‡	80	39	15.7	111,573
9	Information systems security	105	64	14.2	100,913
10	Database administration‡	80	46	5.7	33,591
11	Web development and support‡	88	42	5.5	43,853
12	Database administration‡	95	46	5.1	43,315
13	Database administration‡	85	50	5.1	30,939
14	Database administration‡	95	51	5.1	38,895
15	Database administration‡	95	40	4.8	45,759
16	Programming for California Medical Assistance Program database‡	80	42	4.6	30,298
17	Web content management	95	38	1.7	16,796
	Total				\$1,720,595

Sources: Contract files belonging to the Department of Health Care Services (Health Care Services), its *positions converted* spreadsheet as of July 2009, and the State Controller's Office payment history report.

* The Bureau of State Audits (bureau) calculated the estimated hourly rates by dividing the employee's salary and benefits, including any retirement contributions by the employer, for his or her first full month in the converted position by 173.33 hours. These hours represent the average monthly hours for a state employee who works a 40-hour week, according to the Department of Personnel Administration. In cases in which employer retirement contributions were added to the employee's benefits in later months, we added the cost of these contributions into the estimated hourly rate to present the most accurate representation of the employee's ongoing hourly cost.

† The bureau calculated the estimated savings by multiplying the difference between the consultant's hourly rate and the state employee's estimated hourly rate by the estimated number of hours worked by the state employee since the conversion. We calculated the hours by multiplying the numbers in the Months Since Conversion column by 173.33 hours. The estimated savings do not include any salary changes occurring after the employees' first full month in the converted position.

‡ Health Care Services hired into state service the same person who previously worked under an IT contract.

Public Health stated that its ability to eliminate certain IT contracts would not occur until fiscal year 2010–11, after it has been able to hire employees who have the appropriate skill sets and who have had an opportunity to work with the contractors to obtain application-specific knowledge. However, despite language in Health Care Services' January 2009 BCP stating that the 28 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

Health Care Services moved forward with its conversion plans without approval to add new permanent IT positions.

these nine contractors had already expired. Although its BCP describes IT position conversions conducted in 2006 and 2007, Health Care Services failed to mention that these actions related to nine of the 28 contractor positions that the BCP requested approval to replace. As its chief information officer explained, acting on the conversion plan as early as 2006 saved the State more money and allowed his division to form a more stable, skilled workforce earlier than if the department had waited for final approval of the positions.

Nevertheless, it is clear that Health Care Services moved forward with its conversion plans without approval to add new permanent IT positions. In its instructions on the preparation of BCPs, Finance stresses that the BCPs need to be timely and that the information contained in them needs to be complete, informative, and concise. The instructions also point out that succinctness and clarity are important in preparing the BCPs. In this instance, if Health Care Services had submitted a timely BCP, it would have presented the document at least three years earlier. In addition, the department did not describe clearly how the conversion of the nine contractor positions related to its request for 28 new, permanent full-time state positions. Thus, Finance was not able to fully perform its role as provider of critical analysis to assess whether Health Care Services truly needed to add positions when it eliminated the use of IT contracts. Further, as we describe in the next section, through a process even its chief information officer describes as convoluted, Health Care Services funded the hiring of full-time, permanent IT employees by using temporary-help positions that were not intended for this purpose.

Health Care Services' Use of Funding for Temporary-Help Positions to Hire Regular, Permanent IT Employees Did Not Comply With State Rules

Health Care Services did not follow state rules when it used temporary-help positions instead of full-time permanent positions to fund the salaries of 13 of the 17 IT employees whom it hired as part of its plan to replace contractors providing IT services with permanent IT employees (conversion plan). Section 6518 of the *State Administrative Manual* characterizes temporary-help positions as *blanket* positions. As we explained previously, these blanket positions are authorizations in the approved state budget—expressed in terms of full-time equivalent personnel years and associated salary amounts—that agencies can use for short-term or intermittent purposes when expressing the agencies' needs in terms of classified positions would be impracticable. The *State Administrative Manual* further defines temporary-help positions as authorizations to be used only for payment of employees for a limited duration and not for personnel employed

permanently. The manual lists examples of some situations in which agencies can use temporary-help positions appropriately; the list includes student assistants, seasonal workers, and employees working on special projects of a limited nature.

Table 7 shows that Health Care Services initially funded six of the 17 employees whom it hired to replace IT contractors by using temporary-help positions for up to 20 months before placing the six employees into existing permanent full-time positions that were vacant. Table 7 also shows that as of July 2009, for roughly five months, Health Care Services funded another seven permanent full-time employees whom it had hired between February and March 2009 using temporary-help positions. Finally, Health Care Services placed four employees hired as part of the conversion plan directly into existing but vacant permanent full-time positions.

Table 7
Months Spent by Conversion-Plan Employees in Temporary-Help Positions at the Department of Health Care Services

	INFORMATION TECHNOLOGY (IT) CONTRACTOR POSITIONS	DATE PERMANENT EMPLOYEE WAS PLACED IN A:		MONTHS IN TEMPORARY-HELP POSITION*†
		TEMPORARY-HELP POSITION	PERMANENT FULL-TIME POSITION	
1	E-mail and messaging systems support	October 9, 2006	June 12, 2008	20.4
2	Server management	October 16, 2006	May 5, 2008	18.9
3	Desktop and laptop management and security	November 28, 2006	January 1, 2008	13.3
4	Security breach investigations	January 15, 2007	June 27, 2008	17.6
5	Information systems security	February 1, 2007	August 12, 2008	18.6
6	Network infrastructure support‡		November 1, 2007	NA
7	E-mail and messaging systems support	November 6, 2007	July 31, 2008	8.9
8	Database administration‡		April 15, 2008	NA
9	Information systems security		June 1, 2008	NA
10	Database administration‡	February 9, 2009		5.7
11	Web development and support‡	February 17, 2009		5.5
12	Database administration‡	March 1, 2009		5.1
13	Database administration‡	March 1, 2009		5.1
14	Database administration‡	March 1, 2009		5.1
15	Database administration‡	March 9, 2009		4.8
16	Programming for California Medical Assistance Program database‡	March 16, 2009		4.6
17	Web content management		June 10, 2009	NA

Sources: Contract files belonging to the Department of Health Care Services (Health Care Services), its *positions converted* spreadsheet as of July 2009, and employment history reports from the State Controller's Office.

NA = Not applicable.

* The number of months calculated represents the number of months between the date that Health Care Services placed the employee in a temporary-help position and either the date that the department placed the employee in a permanent full-time position or July 31, 2009, if the employee was still in a temporary-help position on that date.

† The information in this column relates to the initial employees brought in to replace the contractors. In some instances, other employees later replaced these initial employees. The time spent by these subsequent employees in temporary positions does not appear here.

‡ Health Care Services hired into state service the same person who was working under the IT contract previously.

According to Health Care Services' chief information officer, hiring state staff into temporary-help blanket positions was the only viable option to comply with both the board's interpretation of the Government Code [Section 19130(b)] and state and federal mandates, while allowing time for the department to follow the budgetary process to establish permanent positions.

Furthermore, in recent years, the number of Health Care Services' IT division employees funded from temporary-help positions have greatly exceeded the number of positions budgeted for this category. Specifically, while the number of temporary-help positions in the approved budgets was just over three positions, Health Care Services reported a total of 10 and 14.5 IT division employees occupying these positions in fiscal years 2006–07 and 2007–08, respectively. Health Care Services' chief information officer stated the following:

The Legislature and federal government require that Health Care Services carry out certain mandates—many of which require the development of new, or modification of existing, IT systems. Hiring state staff into temporary-help blanket positions was the only viable option to comply with both the board's interpretation of the Government Code [Section 19130(b)] and state and federal mandates, while allowing time for the department to follow the budgetary process to establish permanent positions. Placement of the individuals in the blanket [temporary-help positions] was always intended to be for a limited duration as we attempted to establish permanent full-time positions by working with the Administration and the Legislature. The hires we made were part of a good faith effort to respond to the lawsuits [contract challenges] filed by the union, while still getting the critical work performed. Although it took longer than originally anticipated to establish the positions, individuals were moved out of the blanket into authorized vacant positions as they became available.

Health Care Services may have intended to use temporary-help positions for a limited time to fund salaries for the permanent civil service employees hired as part of its conversion plan. However, as Table 7 indicates, this situation often lasted more than a limited time. Further, although the chief information officer stated that Health Care Services moved individuals out of the temporary-help positions into authorized vacant positions “as they became available,” this statement is not completely accurate. For each of these permanent full-time positions into which Health Care Services moved the employees, our review of the State Controller's Office records revealed that vacancies existed in the IT division for the same classifications for much of the time that these individuals held temporary-help positions. In an earlier statement about Health Care Services' decision to move the IT employees into the existing but vacant full-time positions, Health Care Services' chief information officer explained the following:

Because having a high number of vacancies could have hurt the division's chances of getting the needed BCP approved, the division moved some of the conversion employees from the temporary blanket positions into full-time division positions that

were vacant. Although [we] were able to fill existing vacancies, the underlying work product associated with the formerly vacant position was still not entirely being satisfied because the employee occupying the position was doing the work that the contractor used to perform. Consequently, when the budget is passed, and the department can create full-time positions specifically designed for the converted employees, the IT division will move converted employees into those positions, and the resulting vacant positions will still need to be filled.

The chief information officer's earlier statement made no mention of any attempts by Health Care Services to shorten the length of time that the employees hired as part of the conversion plan were funded using the temporary-help positions. Further, the information shown in Table 7 and the availability of existing vacant permanent full-time positions do not give us reason to believe that Health Care Services was attempting to comply with the requirements of the *State Administrative Manual*.

Finally, Health Care Services has yet to establish the 28 positions approved in its January 2009 BCP so that it can place the seven permanent employees funded using temporary-help positions into permanent full-time positions. Specifically, the chief of its Financial Management Branch explained that the 28 positions in its BCP were approved as part of the governor's budget in February 2009, but because of the unusual nature of this year's budget cycle and ongoing budget negotiations, Health Care Services had not established the permanent positions as of July 2009 and does not know when it will do so.

The Departments Indicate That They Have Made Efforts to Recruit and Retain Qualified IT Employees

A common theme in the departments' Section 19130(b) justifications is that they do not have in their labor force—and that they are unable to recruit—individuals with specific IT skills. In recent years, the departments have begun tracking vacancies within their IT positions. The departments have used delegated authority from Personnel Administration to offer more competitive wages to IT employees, and they have taken advantage of the board's efforts to increase the State's pool of IT applicants. Except for one year in which Health Services' vacancies were very low and another in which Public Health's vacancies were higher than normal, the departments' vacancy and turnover rates within IT positions have remained fairly stable over the last five years.

The departments' vacancy and turnover rates within IT positions have remained fairly stable over the last five years.

The Departments Are Tracking Vacancy Rates for IT Positions

Health Care Services and Public Health are tracking IT position vacancies. Specifically, Health Care Services' implementation plan for fiscal year 2008–09 requires all of its divisions to reduce vacancy rates each quarter and from one year to the next year. The chief deputy director of Health Care Services explained that to fulfill this goal, the department has made an effort to reduce its vacancies throughout the department. Further, she stated that for the more specialized and difficult-to-fill positions, such as those in IT, she began monitoring the department's recruitment efforts by holding bimonthly meetings with managers to discuss vacancy reports, recruitment efforts, and the status of filling the positions. The chief information officer for Public Health's IT division stated that he uses the same approach as Health Care Services to track his division's vacancy rates.

Our analysis indicates that except in two instances, the vacancy rates for the departments' IT positions have remained relatively stable over the last five fiscal years. In fiscal year 2004–05, Health Services had a minimal number of vacancies, and in fiscal year 2007–08, which was just after Public Health was created, Public Health experienced a 12 percent average vacancy rate. Other than these instances, vacancy rates for the departments ranged between 6 percent and 9 percent.

The Departments Have Benefited From Offering Higher Wages and From the Board's Efforts to Increase the Applicant Pool

Reducing the turnover rates involves not only recruiting but also retaining qualified employees. The turnover rates for IT positions at Health Services, Health Care Services, and Public Health generally ranged between 11 percent and 13 percent for fiscal years 2004–05 through 2008–09.⁸ However, in fiscal year 2007–08 the turnover rate for Public Health was 18 percent. The chief information officer for Public Health's IT division stated that a number of the division's IT employees were either recruited by another agency, or they transferred to other departments before the hiring freeze implemented on July 31, 2008, as a result of an executive order.

Historically, the State's recruitment and retention of IT employees has been difficult because it was often unable to compete with salaries paid by the private sector. Effective April 1998, Personnel Administration delegated to Health Services the authority to hire,

⁸ The turnover rates for fiscal year 2008–09 were calculated using the State Controller's Office's monthly payroll data for July 2008 through May 2009.

in accordance with established standards, employees at pay rates above the State's established minimum salary levels based on the individuals' outstanding qualifications, prior experience, or competing salaries. Health Care Services and Public Health have been able to benefit from this delegated authority because it allows them to hire certain IT employees at salaries above the State's established minimum salaries. For example, in 2009 Health Care Services hired six of the eight conversion plan employees at salaries above the minimum state salaries for their job classifications.

Additionally, the board has taken steps to streamline the examination process and increase the number of available applicants in the IT classifications. Specifically, according to the manager of its Selection Services Program, the board began using Internet-based testing processes for IT classifications in 2002 and 2003 to reduce the amount of time that it takes the State to fill IT positions. However, the manager also stated that in 2004 and 2005, moratoriums were placed on open testing for IT job classifications because Personnel Administration and the unions were working on the consolidation of these positions. Generally, open tests administered by the board are considered servicewide examinations and can be used for making hires by any state department. Further, the manager stated that because the consolidation was taking longer than expected, in 2006 the board began allowing open testing for IT classifications to increase the applicant pool.

According to the board's unaudited information generated by its Examination and Certification Online System on June 11, 2009, there were only individuals available for hire in two nonsupervisory classifications in the information systems analyst series in 2006, and no individuals were available in the nonsupervisory classifications in the systems software specialist and programmer analyst series. The same data also show that the number of IT classifications in these series with individuals available for hire grew to five classifications in 2007 and then to seven classifications in 2008. As of July 2009 the board had examinations in progress for several IT classifications using its Internet-based processes. Finally, the manager stated that the board is working with the Office of the Chief Information Officer and the departments to conduct job analyses, test development, and test administration for other IT classifications.

The chief of its human resources branch stated that Health Care Services recently received approval from the board to conduct open testing on a case-by-case basis. The chief also stated that Health Care Services and Public Health have taken advantage of this opportunity by partnering with 13 other state agencies to hold open examinations for the programmer analyst classification.

The board has taken steps to streamline the examination process and increase the number of available applicants in IT classifications.

Further, according to its chief information officer, Health Care Services continues to invest in training and developing its IT employees so that they can obtain the necessary skills and expertise and remain interested in and challenged by their work. Finally, according to the chief information officer for Public Health's IT division, the department has made an effort to retain employees by developing and instilling the values defined in the department's strategic plan, and this effort has helped to create a positive working environment.

Recommendations

To create more substantive results from the reviews conducted by the board under California Government Code, Section 19130(b), the Legislature should do the following:

- Specify that contracts disapproved by the board must be terminated and require state agencies to provide documentation to the board and the applicable unions to demonstrate to the satisfaction of the board the termination of these contracts.
- Clarify when state agencies must terminate contracts disapproved by the board, when payments to the contractors must cease, and for what periods of service the contractors are entitled to receive payments.
- Prohibit state agencies from entering into subsequent contracts for substantially the same services as specified in contracts under board review without first notifying the board and the applicable unions, allow unions to add these contracts to the board's review of the original contracts, and allow the board to disapprove the subsequent contracts as part of its decision on the original contracts.
- Require state agencies that have contracts disapproved by the board to obtain preapprovals from the board—in a manner similar to the process that occurs for requests under California Government Code, Section 19130(a)—before entering into contracts for substantially the same services. Further, if an agency enters into a contract without the board's preapproval, the Legislature should allow the applicable union to challenge this contract and prohibit the agency from arguing that the contract was justified under Section 19130(a) or (b). Instead, the board should resolve only whether the subsequent contract is for substantially the same service as the disapproved contract.

To provide clarity to state agencies about the results of its decisions under California Government Code, Section 19130(b), the board should explicitly state at the end of its decisions if and when state agencies must terminate disapproved contracts. Additionally, the board should 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, legal services in both departments should 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.
- 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.

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

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

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Chapter 2

THE TWO DEPARTMENTS HAVE DATABASES AND PROCUREMENT PROCESSES THAT MEET SOME BUT NOT ALL STATE REQUIREMENTS

The databases and procurement processes for the Department of Health Care Services (Health Care Services) and the Department of Public Health (Public Health) for the State of California (State) have some weaknesses. Specifically, the departments cannot use their databases to readily identify active information technology (IT) contracts. Health Care Services and Public Health (departments) also do not accurately or consistently enter all IT contracts into the Department of General Services' (General Services) contracts database, the most comprehensive database available to them. The lack of databases that can readily identify active IT contracts has resulted in the departments' spending otherwise unnecessary resources to compile this information or in their relying on inaccurate, incomplete information.

The departments complied with many but not all state procurement requirements when contracting for IT services. The departments obtained the requisite number of supplier responses for our sample of 14 contracts, and such responses help ensure competition among suppliers. The departments also remained within their respective delegated purchasing authority and purchased only allowable IT services, except in one instance. However, for five California Multiple Award Schedules (CMAS) contracts, the departments did not provide selection criteria to suppliers. The lack of selection criteria may inhibit suppliers' ability to produce offers that best meet the departments' needs.

Further, Health Care Services and Public Health did not consistently obtain required approvals and conflict-of-interest information. Specifically, each department did not always obtain approvals by the agency secretary and director (or the next immediate ranking official) on procurements valued over \$250,000, as required in the *State Contracting Manual*. The departments also did not obtain requisite annual financial interest statements from some employees participating in their competitive bidding process and Public Health did not obtain these statements for some employees involved in the process for awarding CMAS, master agreements, and an exempt contract, as required by the California Government Code.

Finally, Health Care Services and Public Health do 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 are 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 the same.

The Two Departments Cannot Readily Identify Active IT Contracts

The Joint Legislative Audit Committee (audit committee) directed the Bureau of State Audits (bureau) to identify the number of active IT personal services and consulting contracts (IT contracts) at each department and to select a sample from these contracts.⁹ However, the departments are unable to identify all of their active IT contracts. Specifically, their databases are not designed to collect the information needed to identify all active IT contracts. Additionally, the departments have not accurately and consistently registered contracts in General Services' database, the most comprehensive database currently available to them. The departments' inability to readily identify contracts has had a negative effect on their efficiency and on the reliability of the data they provide to others. For example, Public Health must use a significant amount of employee resources to identify its active contracts. Further, although it is aware that the database does not contain all of its contracts, Health Care Services relies on General Services' contracts database.

Both Departments Lack Databases That Identify All Active IT Contracts

The departments cannot readily track all active IT contracts using their databases, resulting in the departments spending otherwise unnecessary time and resources to identify these contracts and their relying on incomplete and inaccurate information. A key factor in identifying an active contract is its expiration date. In fact, the *State Contracting Manual* indicates that state agencies' contract databases should be able to identify the expiration date for each contract. The On Track system, which both departments use to capture information regarding their purchase orders, does not contain contract expiration dates. Further, because the departments implemented an IT designation in their Contracts Tracking System in 2006 and Public Health recently implemented its Purchasing Services Unit Tracking Log in 2008, we were not able to use these databases to identify all active IT contracts. Table 8 provides information regarding six databases used by the two departments; these databases contain only partial information regarding whether IT contracts are active.

The database that both departments use to capture purchase-order information does not contain contract expiration dates.

⁹ For purposes of this report, we refer to both types of contracts as *personal services contracts*.

Table 8
Contract Databases Used by the Departments of Health Care Services and Public Health

DATABASE	ADMINISTERING DEPARTMENT	CONTENT OF DATABASES		
		CONTRACTS AND PURCHASE ORDERS*	INFORMATION TECHNOLOGY (IT) DESIGNATION	ACTIVE DESIGNATION
State contract and procurement registration system [†]	Department of General Services (General Services)	Only \$5,000 and more. [‡]	Yes	Yes
IT support department log	Departments of Health Care Services (Health Care Services), Public Health (Public Health)	Only purchase orders.	No	No
On Track system	Health Care Services, Public Health	Only purchase orders.	Yes	No
Contracts tracking system	Health Care Services, Public Health	Only contracts.	Yes [§]	Yes
Purchasing services unit tracking log	Public Health	Only purchase orders.	Yes	Yes
California State Accounting and Reporting System (CALSTARS)	Department of Finance (Finance) [#]	Contracts and purchase orders. However, Health Care Services includes only multiyear purchase orders and those greater than \$5,000; Public Health includes only purchase orders greater than \$50,000.	No	Yes

Sources: Databases administered by Finance, General Services, Health Care Services, and Public Health.

* Most orders under leveraged procurement agreements (such as California Multiple Award Schedules and master agreements) are executed using purchase orders. For purposes of this report, we refer to both contracts and purchase orders as *contracts*.

† Effective March 16, 2009, General Services consolidated its state contract and procurement registration system into its eProcurement system.

‡ The state contract and procurement registration system also contains contract amendments with dollar amounts that are below \$5,000.

§ The departments implemented the IT designation for the contracts tracking system in 2006.

|| Public Health implemented its purchasing services unit tracking log in September 2008.

Finance administers CALSTARS, but the departments maintain it.

On July 31, 2008, the governor issued an executive order to all state agencies and departments under his executive authority to take immediate action to suspend all noncritical, nonexempt personal services contracts, except for services provided under multiyear contracts for IT systems and services. According to the former acting chief of its Program Support Branch, to comply with the order, Public Health had to compile a list of its contracts and purchase orders using its On Track system and Contracts Tracking System databases. Then Public Health had to separate the contracts into categories, including IT. Public Health asked its employees from all programs and divisions who were responsible for originating the contracts to review the lists, identify the active contracts, and verify the categories. Thus, because it did not have a comprehensive contracts database, Public Health had to use a significant amount of time and resources to comply with the executive order.

Public Health stated that it is in the process of developing a new database that will identify all active, IT-related contracts.

On June 8, 2009, the governor issued another executive order requiring state agencies and departments under his executive authority to disencumber funds for contracts entered into on or after March 1, 2009, for which contractors had not provided goods or services.¹⁰ According to the chief of Public Health's Program Support Branch, the department used a similar process to the one described previously to comply with this executive order. Health Care Services, in its effort to comply with both of the executive orders, used only General Services' contract database. Because of the limitations with General Services' database that we discuss in the next section, Health Care Services may not have identified all of its active contracts subject to the executive order.

The departments assert that they are taking steps to ensure that they can identify active contracts. Specifically, 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.

The Departments Did Not Follow the Requirement for Registering Accurately Specified Contracts in General Services' Database

The departments do not enter accurately all contracts valued at \$5,000 or more into General Services' database. The *State Contracting Manual* requires that state agencies enter into General Services' contract database all contracts meeting this criterion; the database provides a centralized location for tracking the State's contracting and purchasing transactions.

However, General Services' database is not entirely complete or accurate in regards to the departments' contracts. Our review of a sample of 29 Public Health contracts found that three were not in the database. The chief of Public Health's Contracts and Purchasing Services Section agreed that the three contracts should appear in the database. Further, although we were able to locate our sample of 29 Health Care Services contracts in the database, during our audit we discovered an active \$3.9 million IT contract that initially

¹⁰ The governor's executive order did not affect contracts associated with projects funded by the American Recovery and Reinvestment Act, projects funded by bonds or grants, projects specifically mandated by court orders, or public-private partnerships that required no direct expenditures by the State.

did not appear to be in the database. We subsequently found that in General Services' database, the contract type was incorrectly identified as grants and subventions instead of IT. The chief of Health Care Services' Contracts and Purchasing Services Unit stated that the incorrect identification was simply a clerical error. Both departments have staff who enter the contract information into General Services' database before sending the contract to the supplier, but their managers and supervisors do not perform subsequent reviews of the data to ensure that staff entered the information accurately. However, according to General Services, since the inception of its database in 2003, the individual managers and supervisors at the state agencies have been responsible for verifying the accuracy of the data they enter into the database. General Services also stated that weekly, bimonthly, and monthly reports are available for them to complete regular reviews of the data.

Because the database contains incomplete, inaccurate information, it hinders the departments' and other parties' ability to use the information. For example, as previously stated, the audit committee requested that the bureau report the number of active IT contracts and select a sample for further testing. Of the databases shown in Table 8, General Services' database was the best source for this information. Thus, we used it to accomplish both objectives. However, due to the discrepancies we found with our sample of 29 Public Health contracts and the IT contract miscoded by Health Care Services, we found the database to be incomplete for the purpose of providing a list of active IT contracts or ensuring that our sample came from the complete universe of active IT contracts.

Incomplete and inaccurate information hinder the departments' and other parties' ability to use General Services' database.

The Departments Generally Complied With Certain Procurement Requirements That We Tested

Using General Services' contracts database, we selected a sample of 13 IT contracts that were active as of March 13, 2009, and added the IT contract miscoded by Health Care Services. These 14 contracts had the highest dollar amounts, representing 88 percent of the total dollar value of the active contracts. We found that, as Table 9 on the following page indicates, the departments generally remained within their respective maximum delegated purchasing authority, purchased only allowable IT services, completed forms explaining their justification under California Government Code, Section 19130, and obtained the requisite number of supplier responses to ensure competition.

For the 14 IT contracts, the departments used four different acquisition approaches; each approach has different requirements. For example, the process used for the competitively bid contracts

Table 9
Compliance by the Departments of Health Care Services and Public Health With the Procurement Requirements We Tested

DEPARTMENT AND CONTRACTOR	ACQUISITION APPROACH*	MAXIMUM AMOUNT PAYABLE UNDER THE CONTRACT	WITHIN DEPARTMENT'S DELEGATED PURCHASING AUTHORITY?	REQUIREMENTS MET FOR MINIMUM NUMBER OF SUPPLIER RESPONSES?	SERVICES ALLOWABLE UNDER THE LEVERAGED PROCUREMENT AGREEMENT OR EXEMPTION?	COMPLETED FORM EXPLAINING ITS JUSTIFICATION UNDER CALIFORNIA GOVERNMENT CODE 19130?
Department of Health Care Services (Health Care Services)						
Integrus, Inc.	Competitively bid	\$44,293,359	†	†	NA	Yes
Trinity Technology Group, Inc.	Competitively bid	3,942,500	†	†	NA	Yes
R Systems, Inc.	Competitively bid	3,798,340	†	†	NA	Yes
Hubbert Systems Consulting, Inc.	California Multiple Award Schedules (CMAS)	499,800	Yes	Yes	Yes	Yes
Hubbert Systems Consulting, Inc.	Master agreement	497,880	Yes	Yes	Yes	Yes
Eclipse Solutions, Inc.	CMAS	289,850	Yes	Yes	Yes	Yes
Department of Public Health (Public Health)						
Summit ITC Corporation	Competitively bid	\$8,666,500	†	†	NA	Yes
Atlas Development Corporation	Exempt‡	6,238,094	‡	NA	Yes	Yes
Solutions West Consulting	Competitively bid	3,657,867	†	†	NA	Yes
Continuity Consulting, Inc.	Master agreement	910,710	Yes	Yes	Yes	Yes
Visara International	Master agreement	498,942	Yes	§	No	No
Branagh Information Group	CMAS	439,850	Yes	Yes	Yes	Yes
KPMG, LLP	CMAS	414,540	Yes	Yes	Yes	Yes
Impact Assessment, Inc.	CMAS	312,084	Yes	Yes	Yes	Yes

Sources: Files belonging to Health Care Services and Public Health.

NA = Not applicable.

* Please refer to Appendix B for additional information related to these contracts.

† We did not test for this requirement when the Department of General Services (General Services) was involved with the procurement through a competitively bid contract.

‡ This contract was exempt from the advertising requirements and the competitive bid process in accordance with California Health and Safety Code, Section 101319, which relates to the State's bioterrorism preparedness.

§ The master agreement refers to services under General Services' master agreement that was noncompetitively bid. Thus, Public Health did not need multiple supplier responses.

for IT services contains many requirements to ensure competition and fairness, including requirements regarding advertising and legal reviews of requests for proposals. Conversely, the processes for master agreement and CMAS contracts, which the Introduction describes, allow state agencies to obtain goods and services that have been competitively assessed, negotiated, or bid by General Services. However, state agencies that use these methods must generally stay within certain dollar thresholds, purchase only products and services listed in the agreements, and obtain a minimum number of supplier responses.

The *State Contracting Manual* requires state agencies to obtain at least three responses from suppliers for CMAS and master agreement contracts to ensure competition among suppliers. If the state agencies contact more than three suppliers and if they receive fewer than three responses, state agencies must contact those suppliers that did not respond to determine why. Health Care Services and Public Health complied with these supplier response requirements. However, when using a master service agreement, Public Health procured some unallowable IT services in its contract with Visara International (Visara). Specifically, Public Health purchased unallowable printer maintenance services. 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. The chief of Public Health's contracts and procurement services section within its Women, Infants and Children Program stated that she believed Public Health could contract for all the printer types listed in its Visara contract because they were listed and priced in the current or prior master agreement. However, according to General Services and our review of General Services' master agreement, the prior and current Visara master agreements do not list or price these 13 printer types. 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.

The two departments' policies and procedures require them to complete an internal form that explains why each contract is permissible under California Government Code, Section 19130. As Table 9 shows, the departments completed these forms for 13 of the 14 contracts. For the one contract without this form, Public Health cannot explain why it did not complete the form. Without this form, Public Health cannot demonstrate that it considered whether the contract was allowable under Section 19130.

The Departments Have Not Provided Suppliers With Selection Criteria

In the requests for offer for the five CMAS procurements that we reviewed, the departments did not provide the potential suppliers with specific selection criteria. Consequently, potential suppliers may have been unable to design their offers in a manner that best met the departments' needs.

The *State Contracting Manual* establishes 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

Without specific selection criteria, potential suppliers may have been unable to design offers in a manner that best met the departments' needs.

select suppliers, they should detail their selection criteria and the corresponding points that will be used to determine the winning offer.¹¹ The best-value method, which is the basis for all 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. Figure 4 provides an excerpt from General Services' request-for-offer template that provides examples of selection criteria that state agencies could include in the requests for offer they provide to potential suppliers.

Figure 4
The Department of General Services' Request-for-Offer Template for Awarding Contracts Under the California Multiple Award Schedules

Review of Offers for Award

The department should detail in this section the criteria and corresponding points that will be used to determine the winning offer.

For example:

Administrative criteria	20%	60 points
Technical criteria	30%	90 points
Cost	50%	150 points
Total	100%	300 points

Examples of *administrative criteria* are:

- The organization chart identifies all proposed project team members and tracks each person to the pertinent task. (25 points maximum)
- Resumés are included for each proposed project team member and they describe the experience levels in detail and support the statement of work. (35 points maximum)

Examples of *technical criteria* are:

- Outlines examples of deliverables from other projects are acceptable and support the statement of work. (20 points maximum)
- Proposed tasks and deliverables accomplish the project goals. (40 points maximum)
- Work plan supports the tasks and deliverables proposed in the statement of work. (30 points maximum)

Source: The *State Contracting Manual, Volume 3 (Information Technology)*, Chapter 5, sections 5.A3.5 and 5.B2.1.

¹¹ 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.

Three of the requests for offer associated with the five CMAS contracts 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. In Table 10 we present the selection criteria included in the requests for offer and the criteria eventually used by the departments.

Table 10
Selection Criteria Used by the Departments of Health Care Services and Public Health for Five California Multiple Award Schedules Contracts

DEPARTMENT AND CONTRACTOR	SELECTION CRITERIA LISTED IN THE DEPARTMENTS' REQUESTS FOR OFFER	SELECTION CRITERIA ACTUALLY USED BY THE DEPARTMENTS
Department of Health Care Services (Health Care Services)		
Eclipse Solutions, Inc.	Each offer will be reviewed and scored on the following criteria: (1) proposed staff experience and qualifications, (2) proposed approach, (3) proposed cost, and (4) potential interview.	Interview (285 points), cost (150 points), knowledge and experience (150 points), and approach and methodology (150 points).
Hubbert Systems Consulting, Inc.	The review will be based solely on the contents of the offer, references, and interviews.	Interview (400 points), cost (200 points), experience (200 points), and approach (180 points).
Department of Public Health (Public Health)		
Branagh Information Group, Inc.	The review will be based solely on the contents of the offer, cost offered, and references.	Scope of work (SOW) deliverables (120 points), cost (97.7 points), minimum staff requirements and existence (33 points), SOW state (24 points), SOW local (21 points), California Medical Assistance Program FFP matching system (18 points), and minimum general experience (12 points).
KPMG, LLP	Each offer for services will be reviewed and scored on the following criteria: (1) proposed staff experience and qualifications, (2) proposed approach, methodology, and description of tasks/activities, (3) proposed cost, (4) work sample, and (5) potential interview.	Skills and experience (125 points), interview (105), and cost (50 points).
Impact Assessment, Inc.	Evaluations will be based solely on the offer, reference checks, and scoring of the highest rated vendors.	*

Sources: Files belonging to Health Care Services and Public Health.

* The department contacted 10 firms, but only Impact Assessment, Inc. submitted an offer.

The chief of Health Care Services' contracts and purchasing services unit stated that she was uncertain why its program staff do not supply detailed selection criteria in their requests for offer. Similarly, the chief of Public Health's contracts and purchasing section stated that she was unsure exactly why its request-for-offer

The departments did not consistently obtain requisite annual financial interest statements from bid or offer evaluators.

templates for CMAS do not contain detailed selection criteria because she was not involved in their development. Nevertheless, until both departments provide CMAS suppliers selection criteria as directed by the *State Contracting Manual*, the departments cannot demonstrate that they are being equitable to all potential bidders and pursuing the best value for the State.

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—information technology services division (IT division), as required by state procurement rules and departmental policies. The departments also did not consistently obtain requisite annual financial interest statements from bid or offer evaluators. Without these approvals and statements, the departments are circumventing controls designed to provide high-level purchasing oversight and to deter and expose conflicts of interest.

Some of the Contracts That We Reviewed Were Missing Key Approvals

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. The *State Contracting Manual* states that the agency secretary and director (or next immediate ranking official) must approve, in writing, all CMAS and master agreement procurements valued over \$250,000. Consistent with the *State Contracting Manual*, each department's policies and procedures require it to obtain approval from its agency secretary and director for procurements valued over \$250,000. The purpose of their review is primarily to ensure that the department will make the proposed procurement in accordance with applicable state laws, regulations, policies, and procedures. Table 11 provides a summary of the approvals for the 14 contracts we reviewed.

Public Health was unable to explain why it did not obtain the approvals for its two contracts, and the chief of Health Care Services' contracts and purchasing services unit indicated that Health Care Services did not need approvals from its agency secretary and director (or next immediate ranking official) for its Eclipse Solutions, Inc. contract. Specifically, she stated that an exemption within a 2003 General Services' memorandum regarding services under the Health Insurance Portability and Accountability Act (HIPAA) master agreements applied to the contract. However, our review found that the memorandum does not exempt the

contract from the approval requirement because, although it was HIPAA related, it was a CMAS purchase, not a master agreement purchase. Therefore, the exemption within the 2003 General Services' memorandum would not apply.

Additionally, the departments have established review processes to ensure that their IT divisions review all of their IT contracts. The purpose of the reviews is to ensure compliance with departmental standards, policies, and procedures as well as the State's laws and regulations. Table 11 shows that two of the 14 contracts were not approved by Public Health's IT division. Public Health was unable to explain why it did not obtain its IT division's approvals for these contracts.

Table 11
In Some Instances, the Departments of Health Care Services and Public Health Did Not Obtain the Required Approvals for the 14 Information Technology Contracts That We Selected for Review

DEPARTMENT AND CONTRACTOR	ACQUISITION APPROACH	APPROVALS BY AGENCY SECRETARY AND DIRECTOR OR NEXT IMMEDIATE RANKING OFFICIAL	APPROVALS BY INFORMATION TECHNOLOGY SERVICES DIVISION
Department of Health Care Services (Health Care Services)			
Integris, Inc.	Competitively bid	*	Yes
Trinity Technology Group, Inc.	Competitively bid	*	Yes
R Systems, Inc.	Competitively bid	*	Yes
Hubbert Systems Consulting, Inc.	California Multiple Award Schedules (CMAS)	Yes	Yes
Hubbert Systems Consulting, Inc.	Master agreement	†	Yes
Eclipse Solutions, Inc.	CMAS	No	Yes
Department of Public Health (Public Health)			
Summit ITC Corporation	Competitively bid	*	Yes
Atlas Development Corporation	Exempt‡	*	No
Solutions West Consulting	Competitively bid	*	Yes
Continuity Consulting, Inc.	Master agreement	Yes	Yes
Visara International	Master agreement	No	No
Branagh Information Group	CMAS	Yes	Yes
KPMG, LLP	CMAS	Yes	Yes
Impact Assessment, Inc.	CMAS	No	Yes

Sources: Files belonging to Health Care Services and Public Health.

* State contracting rules do not require the departments to obtain secretarial approval for competitively bid contracts and the exempt contract listed above.

† A May 2003 management memorandum issued by the Department of General Services exempted contracts for services under the Health Insurance Portability and Accountability Act master service agreement from this approval requirement.

‡ This contract was exempt from the advertising requirements and the competitively bid process in accordance with California Health and Safety Code, Section 101319, which relates to the State's bioterrorism preparedness.

The Departments Could Not Demonstrate That All Employees Required to File Annual Financial Interest Statements Did So

The Political Reform Act requires public officials to perform their duties in an impartial manner, free from bias caused by their own financial interests or by the financial interests of persons who support them. To further this objective, the Political Reform Act requires each state agency to adopt a conflict-of-interest code and to obtain annual financial interest statements from employees designated by each department. For example, the agency must include among its designated employees certain employees who are involved in negotiating or signing contracts awarded through competitive bidding or in making decisions in conjunction with the competitive bidding process. In addition to annual filings, each designated employee must file a statement within 30 days of assuming or leaving a designated position. The Political Reform Act states that agencies must retain the statements and make them available to the public.

The State uses the Statement of Economic Interests (Form 700) to obtain the required annual financial interest information from designated employees. However, the departments did not obtain a Form 700 for two employees involved in its competitive bidding process. Public Health stated that an employee left her designated position and that it could not locate the Form 700 she was supposed to have filed within 30 days after her leaving the position. Health Care Services also stated that it had no record of receiving the Form 700 for one of its designated employees.

Public Health also did not obtain a Form 700 from four employees who participated in the selection process for awarding CMAS and master agreement contracts and an employee involved in an exempt contract. Public Health stated that it could not locate the Form 700 for one employee that was supposed to file within 30 days after leaving his position. Public Health also stated that another employee simply did not file the form. Finally, Public Health stated that three employees were not in positions designated in the department's conflict-of-interest code as needing to file Form 700. Our review raised questions about whether Public Health's conflict-of-interest code appropriately designated all employees engaged in procurement. Specifically, we found employees who appeared to be actively engaged in contracting activities on behalf of the department but who were not designated or required to file annual financial interest statements. 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.

Employees who appeared to be actively engaged in contracting activities on behalf of Public Health were not designated or required to file annual financial interest statements.

Until the departments strengthen their procedures for ensuring that they comply with the Political Reform Act, they may be unaware of conflicts of interest. Further, designated employees who fail to file a Form 700 are subject to penalties including disciplinary action, civil or administrative penalties, or criminal prosecution.

Health Care Services Could Not Always Demonstrate Fulfillment of Contract Provisions Requiring IT Consultants to Transfer Knowledge to IT Employees

The departments sometimes did not include specific knowledge-transfer provisions in their IT contracts because these provisions were not always applicable. However, when these knowledge-transfer provisions existed, Health Care Services had difficulty demonstrating to us their fulfillment. From General Services' contracts database, we selected the 14 highest dollar original IT contracts that had closed in 2008. We used this year because we were told that some contract provisions require the knowledge transfer to occur after the expiration date of a contract. Of these 14, we found eight contracts that specifically listed a knowledge-transfer contract provision.

For the six contracts that did not include knowledge transfer as a specific outcome, we found that these contracts were for temporary projects, for projects that resulted in the provision of consultant-created documents or reports, or for activities that the department indicated could already be performed by state staff if the department only had budget approval to hire the necessary employees. In these instances, we understood how provisions related to knowledge transfer would not be particularly applicable.

For four contracts that included a knowledge-transfer provision, Public Health was able to provide documentation indicating the transfer of knowledge between the consultant and its employees. Specifically, the department demonstrated that the consultant conducted training presentations and provided training materials to state staff. For a fifth contract, Public Health's IT services division (IT division) asserted that the knowledge transfer will occur when it has been able to hire employees after it establishes positions.

Health Care Services had difficulty demonstrating the occurrence of the knowledge transfer for all three of its contracts containing this provision. In one instance, Health Care Services hired the consultant to fill a state position, and the department believes that this job conversion was a complete transfer of knowledge. In the other two instances, Health Care Services' contract managers could not demonstrate the occurrence of the knowledge transfer. Specifically, the IT section chief for the Office of HIPAA

Health Care Services' contract managers could not demonstrate the occurrence of the knowledge transfer for its three contracts containing this provision.

Compliance asserted that the knowledge transfer for these contracts took place, although he was unaware of any documentation that would confirm his assertion. As a result, Health Care Services has less assurance that it is developing state employees to one day provide the services that its consultants currently provide.

Recommendations

To readily identify active IT and other contracts, Public Health should continue its efforts to develop and implement a new contract database. Additionally, Health Care Services should 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, both departments should establish a review-and-approval process for entering their contract information into the database.

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

To promote fairness and to obtain the best value for the State, the two departments should 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 their offers.

To ensure that each contract receives the levels of approval required in state rules and in their policies and procedures, the departments should obtain approval by their agency secretary and directors on contracts over specified dollar thresholds. In addition, Public Health should 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.

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, Health Care Services should require its contract managers to document the completion of knowledge-transfer activities specified in its IT contracts.

We conducted this review under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. We limited our review to those areas specified in the audit scope section of the report.

Respectfully submitted,



ELAINE M. HOWLE, CPA
State Auditor

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Appendix A

SPECIFICATIONS OF CALIFORNIA GOVERNMENT CODE, SECTION 19130(b)

The Joint Legislative Audit Committee directed the Bureau of State Audits to identify, for a sample of contracts under review by the State Personnel Board (board), the California Government Code section that the Department of Health Care Services and the Department of Public Health used to justify exemptions from the implied civil service mandate in the California Constitution. In the Introduction to this report, we discuss the implied civil service mandate. Additionally, in Chapter 1, we explain the results of our review of a sample of contracts that were subject to the board's review. We present below the 10 specific conditions that state agencies can use to justify entering into personal services contracts.

California Government Code, Section 19130(b), states that personal services contracting shall also be permissible when any of the following conditions can be met:

- (1) The functions contracted are exempted from civil service by Section 4 of Article VII of the California Constitution, which describes exempt appointments.
- (2) The contract is for a new state function and the Legislature has specifically mandated or authorized the performance of the work by independent contractors.
- (3) The services contracted are not available within civil service, cannot be performed satisfactorily by civil service employees, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the civil service system.
- (4) The services are incidental to a contract for the purchase or lease of real or personal property. Contracts under this criterion, known as "service agreements," shall include, but not be limited to, agreements to service or maintain office equipment or computers that are leased or rented.
- (5) The legislative, administrative, or legal goals and purposes cannot be accomplished through the utilization of persons selected pursuant to the regular civil service system. Contracts are permissible under this criterion to protect against a conflict of interest or to insure independent and unbiased findings

in cases where there is a clear need for a different, outside perspective. These contracts shall include, but not be limited to, obtaining expert witnesses in litigation.

(6) The nature of the work is such that the California Government Code standards for emergency appointments apply. These contracts shall conform with Article 8 (commencing with Section 19888) of Chapter 2.5 of Part 2.6.

(7) State agencies need private counsel because a conflict of interest on the part of the Attorney General's office prevents it from representing the agency without compromising its position. These contracts shall require the written consent of the Attorney General, pursuant to Section 11040.

(8) The contractor will provide equipment, materials, facilities, or support services that could not feasibly be provided by the state in the location where the services are to be performed.

(9) The contractor will conduct training courses for which appropriately qualified civil service instructors are not available, provided that permanent instructor positions in academies or similar settings shall be filled through civil service appointment.

(10) The services are of such an urgent, temporary, or occasional nature that the delay incumbent in their implementation under civil service would frustrate their very purpose.

Appendix B

SUMMARY OF SELECT INFORMATION ON INFORMATION TECHNOLOGY CONSULTANTS AND COSTS

The Joint Legislative Audit Committee directed the Bureau of State Audits to obtain a sample of the active IT personal services and consulting contracts entered into by the Department of Health Care Services and the Department of Public Health and to furnish specific information regarding the consultants who provided services under those contracts. This sample is the same as the sample drawn from the Department of General Services' contracts database described on page 15 of this report. Table B.1 presents information regarding the contract terms and the original maximum amounts payable for our sample of 14 contracts. Table B.2 on the following page presents the billing rates per hour, hours worked, and costs to the State for consultants working on five of the 14 contracts. Table B.3 on page 65 presents less detailed information regarding the consultants and the costs to the State of California for nine contracts. For this table, we used the costs for items delivered under the contracts instead of the number of hours worked by the consultants.

Table B.1
Additional Information Related to Information Technology Contracts at the Departments of Health Care Services and Public Health

DEPARTMENT AND CONTRACTOR	CONTRACT'S EFFECTIVE DATE	CONTRACT'S TERMINATION DATE	MAXIMUM AMOUNT PAYABLE UNDER THE CONTRACT
Department of Health Care Services (Health Care Services)			
Integris, Inc.	February 15, 2007	February 14, 2011	\$44,293,359
Trinity Technology Group, Inc.	November 20, 2007	May 19, 2010	3,942,500
R Systems, Inc.	May 1, 2006	March 30, 2009	3,398,340
Hubbert Systems Consulting, Inc.	April 16, 2007	June 16, 2009	499,800
Hubbert Systems Consulting, Inc.	March 1, 2007	April 30, 2009	497,880
Eclipse Solutions, Inc.	May 11, 2007	June 30, 2009	289,850
Department of Public Health (Public Health)			
Summit ITC Corporation	June 1, 2003	May 31, 2008	\$6,266,500
Atlas Development Corporation	May 1, 2008	April 30, 2013	6,238,094
Solutions West Consulting	March 3, 2008	March 31, 2010	3,737,955
Continuity Consulting, Inc.	February 15, 2008	June 30, 2010	910,710
Visara International	April 1, 2007	June 10, 2009	498,942
Branagh Information Group	January 1, 2009	December 31, 2010	439,850
KPMG, LLP	March 17, 2008	April 30, 2009	314,580
Impact Assessment, Inc.	July 1, 2008	June 30, 2009	312,084

Sources: Files belonging to Health Care Services and Public Health.

Table B.2
Information on the Hours and Costs of Information Technology Consultants for the Departments of Health Care Services and Public Health as of April 2009

CONTRACTOR	POSITION	BILLING RATE PER HOUR	HOURS WORKED PER FISCAL YEAR							TOTALS	COST TO THE STATE
			2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09		
Summit ITC Corporation	Senior database information specialist	\$80 to \$95*	77	1,842	1,673	1,931	2,009	1,984	1,751	11,266	\$983,968
	Senior print specialist/programmer	85†	157	1,747	1,744	1,742	1,764	1,654	1,325	10,132	861,178
	Senior database administrator	90†	176	1,983	2,066	2,082	2,266	2,103	1,719	12,394	1,115,415
	Senior programmer/analyst	80 to 88*	138	1,536	1,650	1,851	1,872	1,890	1,531	10,468	895,655
	Senior project manager	90	182	1,889	1,928	1,970	1,939	1,987	1,563	11,458	1,031,220
	Senior database administrator/programmer	90	168	1,892	1,945	1,853	2,067	1,912	1,581	11,418	1,027,620
	Multitier systems programmer	85†	178	1,903	1,947	2,063	1,990	2,079	1,620	11,780	1,001,258
	Total									‡	\$6,916,313
R Systems, Inc.	Technical lead	\$70 to 80*				352	1,778	1,942	1,490	5,561	\$405,735
	Senior software developer	90 to 95*				324	2,062	1,904	1,167	5,456	507,678
	Senior software developer	65 to 84*				272	1,874	1,941	1,515	5,603	438,624
	Software developer	87 to 95*				356	1,703	1,830	1,536	5,425	486,373
	Software developer	87 to 90*				284	1,538	1,135	0	2,957	261,359
	Software developer	60 to 65*				352	1,619	1,688	1,559	5,218	330,493
	Software developer	60 to 65*				328	1,754	1,986	1,369	5,437	345,428
	Information technology analyst	45 to 48*				304	1,787	1,804	1,502	5,397	254,024
	Information technology analyst	45 to 48*				344	1,888	1,915	1,581	5,727	269,648
	Information technology analyst	50				287	1,891	1,743	1,512	5,432	271,600
Total									§	\$3,570,959	
Hubbert Systems Consulting, Inc.	Project manager—year 1	\$133†					576			576	\$76,575
	Project manager—year 2	133						1,665		1,665	221,445
	Project manager—year 3	138							1,385	1,385	191,130
	Total										\$489,150
Impact Assessment, Inc.	Project manager	\$73							0	0	\$0
	Senior systems analyst	73							1,564	1,564	114,172
	Systems analyst	58							1,512	1,512	87,696
	Systems specialist	48							1,492	1,492	71,616
Total										\$273,484	
Branagh Information Group	Project manager	\$123				0	0	0	0	0	\$0
	Principal database programmer/analyst	115				0	0	0	0	0	0
	Database programmer/analyst	81				0	0	0	0	0	0
	Database programmer/analyst	81				0	0	0	0	0	0
	Web architect/engineer	63				0	0	0	0	0	0
	Technical writer/editor	40				0	0	0	0	0	0
Total									#	\$0	

Sources: Files and cost-tracking spreadsheets belonging to the departments of Health Care Services and Public Health and contractor invoices. Because we present Table B.2 for informational purposes only, data reliability assessments of the departments' electronic cost-tracking spreadsheets were not required.

* Billing rates per hour often changed over the contract's life. Therefore, we present the range of the billing rates per hour. Further, the figures in the "Cost to the State" column are not a product of multiplying a single billing rate per hour and hours worked; instead they represent the amounts shown on the invoices.

† Although there is a single billing rate, the figures in the "Cost to the State" column differ due to rounding.

‡ This total does not include \$8,110 of late penalty fees.

§ This total does not include \$5,613 in reductions due to overcharges from the contractor.

|| This total amount does not include \$6,410 of travel costs.

The Branagh Information Group contract is effective as of January 1, 2009, and had no hours worked or expenditures as of April 2009.

Table B.3
Information on Information Technology Contract Costs and Consultants at the Departments of Health Care Services and Public Health as of April 2009

CONTRACTOR	COST BY FISCAL YEAR			TOTAL COSTS	POSITIONS AND NUMBER OF POSITIONS IF GREATER THAN ONE
	2006-07	2007-08	2008-09		
Integrus, Inc.	\$663,315	\$18,607,341	\$6,233,148	\$25,503,803	Project manager Assistant project manager Health care specialist Training analyst Business analyst (6) Documentation specialist/librarian Lead developer Developer Database administrator Infrastructure specialist Administrative support Datafeed specialist (4)
Solutions West Consulting	322,077	715,612	2,585,192	3,622,881	Project manager Assistant project manager Director of client services Systems engineer (7)
Trinity Technology Group, Inc.*		712,800	2,758,927	3,471,727	Project manager (3) Lead developer Senior developer (3) Developer (2) Senior business analyst (2) Business analyst (2) Quality assurance Architect Administrator Biztalk specialist
Atlas Development Corporation		1,911,150	324,923	2,236,073	Director of client services Director of business development Senior vice president Vice president of technical operations Implementation specialist (2) Product manager System administrator Trainer
Hubbert Systems Consulting, Inc.	46,305	206,745	215,880	468,930	Client services manager Consultant (2) Senior manager
Visara International	56,022	223,930	186,560	466,512	Program manager Program management director Vice president, operations Technical support Finance administrator Customer service manager (3) Technician (34)
KPMG, LLP		74,970	334,656	409,626	Project manager Team member (2)
Continuity Consulting, Inc.		304,113	87,483	391,596	Project manager Senior project manager (5) Senior technical lead (6)
Eclipse Solutions, Inc.	4,200	103,350	145,300	252,850	Project manager Senior technologist (2) Technical expert

Sources: Files and cost-tracking spreadsheets belonging to the departments of Health Care Services and Public Health. Because we present Table B.3 for informational purposes only, data reliability assessments of the departments' electronic cost-tracking spreadsheets were not required.

* The payment terms for this contract are based on items delivered for project management, system design, development, and implementation services as well as hours worked related to system maintenance services. The costs shown in this table are based on items delivered. The hourly costs have not been represented because we lacked sufficient data to accurately calculate these costs.

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Appendix C

SUMMARY OF SELECT INFORMATION FOR RENEWED AND AMENDED INFORMATION TECHNOLOGY CONTRACTS

The Joint Legislative Audit Committee (audit committee) directed the Bureau of State Audits to select a sample of active IT personal services and consulting contracts entered into by the Department of Health Care Services and the Department of Public Health. Further, for any amended contracts with an original effective date before July 1, 2003, the audit committee directed the bureau to identify the costs of the original contracts, the costs added by the amendments, and the original terms of the contracts. Table C presents this information for the one contract in our sample that went into effect before July 1, 2003.

Table C
The Department of Health Care Services' Information Technology Contract With Summit ITC Corporation

	CONTRACT'S TERM	MAXIMUM AMOUNT PAYABLE UNDER THE CONTRACT
Original contract number 02-26267	June 1, 2003, to May 31, 2008	\$6,266,500
Amendment 1	June 1, 2008, to May 31, 2009	1,200,000
Amendment 2	June 1, 2009, to May 31, 2010	1,200,000
Total		\$8,666,500

Sources: Files belonging to the Department of Health Care Services.

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(Agency response provided as text only.)

Department of Health Care Services
1501 Capitol Avenue
Suite 71.6001, MS 0000
P.O. 997413
Sacramento, CA 95899-7413

Ms. Elaine M. Howle, CPA*
State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Dear Ms. Howle:

The California Department of Health Care Services (DHCS) has prepared its response to the draft report entitled "Departments of Health Care Services and Public Health: Their Actions Reveal Flaws in the State's Oversight of the California Constitution's Implied Civil Services Mandate and in the Departments' Contracting for Information Technology Services" (2009-103). DHCS appreciates the work performed by the Bureau of State Audits and the opportunity to respond to the draft report.

Please contact Ms. Traci Walter, Audit Coordinator, at (916) 650-0298 if you have any questions.

Sincerely,

(Signed by: David Maxwell-Jolly)

David Maxwell-Jolly
Director

* California State Auditor's comments begin on page 75.

Response to the Bureau of State Audits' Draft Report Entitled

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

Chapter 1

The Departments Have Not Responded Promptly or Entirely Appropriately to the Disapproval of Information Technology (IT) Contracts

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

Response: The Department of Health Care Services (DHCS) Office of Legal Services (OLS) is available to review Section 19130(b) justifications put forward by contract managers for personal service contracts deemed high risk. However, past determinations of the State Personnel Board (SPB) may or may not be instructive regarding subsequent contracts for the same or similar services. No such legal review, no matter how thorough, can guarantee the outcome of any subsequent litigation regarding the propriety of the justification. Each case will undoubtedly have unique facts and circumstances which can be interpreted differently.

Recommendation:

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

Response: This recommendation is appropriate and in accord with current business practices of DHCS OLS.

Recommendation:

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

Response: OLS will request notification from program managers regarding the termination of disapproved contracts for retention in case files.

Recommendation: To ensure that the Department of Finance and relevant budget subcommittees are able to assess its need for additional IT positions, Health Care Services should prepare budget change proposals that provide a more accurate portrayal of its existing conditions.

Response: DHCS has always strived to provide clear and concise information in its Budget Change Proposals (BCP). The Department has provided BCP training to staff on how to prepare and write BCPs based upon guidance from the Department of Finance. It will continue to provide BCP training and will emphasize, to both the writer and reviewer, the importance of providing complete and accurate information.

Recommendation: To comply with State Administrative Manual Requirements, Health Care Services should refrain from funding permanent full-time employees with the funding mechanism for temporary-help positions.

Response: Placement of the individuals in question in the blanket was always intended to be for a limited duration as we attempted to establish permanent full time positions by working with the Administration and the Legislature. The hires we made were part of a good faith effort to respond to the lawsuits filed by the Service Employees International Union (SEIU), while still getting the critical work performed. It took longer than originally anticipated to establish the positions. Individuals were moved out of the blanket into authorized vacant positions as they became available. With the approval of the BCP in the budget, the Department is in the process of establishing the newly authorized positions with the State Controller's Office. Once established, the remaining staff will be moved out of the blanket into these positions.

②

Chapter 2

The Two Departments Have Databases and Procurement Processes That Meet Some but Not All State Requirements

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

Response: DHCS will review its business requirements and assess the feasibility for enhancing its contract database(s).

Recommendation: To ensure that reporting into General Services' contracts database is accurate and complete, both departments should establish a review and approval process for inputting their contract information into the database.

Response: One contract was entered into the State Contract and Procurement Registration System (SCRPS) database with an error made in the Acquisition Classification field. However, information on this IT contract was provided to the auditors as part of a listing of IT contracts they requested. To ensure the accuracy of information entered in SCRPS in the future, DHCS will provide training and instructions to staff on how to gather and input the required information and the importance of accuracy. In addition, a supervisor will regularly review reports available from the system to ensure accuracy and completeness.

③

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

Response: DHCS will provide policy, procedures, formats and instructions to include criteria and points that will be used to evaluate request-for-offers in future IT service procurements.

Recommendation: To ensure that each contract receives the level of approvals required in state rules, and in their policies and procedures, the departments should obtain approval by their agency secretary and directors of contracts over specified dollar thresholds.

④

Response: DHCS did receive approvals from the Agency but not the Agency Secretary. DHCS understood that this met the requirements under Management Memo (MM) 03-10. MM 03-10 was rescinded effective January 1, 2008, and Agency approval is no longer required on Notice of Contract Award. In the future, DHCS will continue to obtain all necessary level of approvals required.

Recommendation: To ensure that they fairly evaluate offers and supplier responses, the departments should amend their procedures to include provisions to obtain and retain conflict-of-interest disclosure forms from their offer evaluators. Further, the departments should ensure that they obtain annual conflict-of-interest disclosure forms from all designated employees.

Response: The auditors identified one individual that did not have a Conflict of Interest Form 700 on file. This individual was not properly designated as an individual that required reporting. DHCS will enhance its procedures to ensure employees are properly designated and all offer evaluators will have a Conflict of Interest Form 700 on file.

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

Response: DHSC will document required knowledge transfer in current and future IT contracts when applicable.

Additional Comments:

⑤

1. DHCS objects to the use of the word "disingenuous" on page five of the SUMMARY because it is neither objective nor neutral. The California State Auditor (BSA) is expressing an opinion, which is unprofessional, outside the audit parameters and contains a value judgment. The entire statement "and was disingenuous with budgetary oversight entities" should be omitted.

2. Page 48 of 94 states that Health Care Services had not established the permanent positions as of July 2009 and does not know when it will do so. BSA should update this paragraph to indicate that DHCS has initiated the process for establishing 10 permanent positions in its approved BCP. ⑥

3. Page 60 of 94 states that vacancy rates for Departments averaged about six to seven percent. DHCS requests that BSA expand the report to state that all state departments are required to keep a salary savings level of five to six percent. ⑦

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Comments

CALIFORNIA STATE AUDITOR'S COMMENTS ON THE RESPONSE FROM THE DEPARTMENT OF HEALTH CARE SERVICES

To provide clarity and perspective, we are commenting on the response to our audit from the Department of Health Care Services (Health Care Services). The numbers below correspond to the numbers we have placed in the margins of Health Care Services' response.

In its response, it remains unclear how Health Care Services plans to implement our recommendation. We look forward to the department's 60-day response for an explanation of how its contract managers will deem contracts high risk and submit them to the Office of Legal Services for review.

①

Health Care Services reiterates an assertion made on page 38 of the report, which we found is not entirely accurate. As we stated on that same page, our review found that vacant, permanent positions were available for much of the time that permanent employees associated with the department's conversion plan held temporary-help positions. In fact, as shown in Table 7 on page 37 the department waited many months—over 20 months in one instance—to move conversion plan employees into vacant, permanent positions.

②

Health Care Services is mischaracterizing the issue. The department was unaware, until we brought the issue to its attention, that the contract did not appear in the IT section of the Department of General Services' contracts database, which provides a centralized location for tracking the State's contracting and purchasing transactions.

③

Health Care Services offers additional information here but none of it is relevant to our audit finding. Specifically, both the *State Contracting Manual* and the management memo to which the department refers required departments to obtain agency secretary approval—not some other form of agency approval—for all contracts not otherwise exempted. As we point out on pages 54 and 55, Health Care Services believed an exemption related to a particular type of master agreement applied to a contract procured under California Multiple Award Schedules, but it was mistaken. Further, the "Notice of Contract Award" no longer being required does not negate the requirement in the *State Contracting Manual* that departments obtain agency secretary approval for contracts over a certain dollar threshold.

④

- ⑤ Because page numbers shifted while preparing our draft audit report for publication, the report text to which the department is referring appears on page 2 of the final report. The Bureau of State Audits conducts its audits in accordance with generally accepted government auditing standards. These standards require us to critically assess the evidence and use our professional judgment in reporting the results of our review. Based on an objective review of the evidence, it is our professional opinion that Health Care Services was not truthful in its January 2009 budget change proposal (BCP) when it stated that 28 positions for which it was requesting approval “will replace contractors *currently* providing IT support functions” and that these conversions will occur over the next three fiscal years. As we point out on pages 35 and 36, Health Care Services had already replaced nine contractors, and the termination dates for contracts associated with these nine contractors had already expired. The department would have known this fact prior to the approval of the BCP but did not disclose it. Expressing our professional opinion on matters regarding fact and fiction is not only within “audit parameters,” it is our core function. The fact that the department is questioning a word choice but has not provided any evidence to refute our finding is a clear indication of the strength of our conclusion.
- ⑥ Because page numbers shifted while preparing our draft audit report for publication, the report text to which the department is referring appears on page 39 of the final report. It reflects conditions as they were as of July 2009, which represents the end of our fieldwork. Health Care Services did not include with its response any evidence of its initiation of the establishment of the 10 permanent positions it describes. Thus, we did not update the paragraph as requested.
- ⑦ The report text to which Health Care Services is referring appears on page 40 of the final report and was modified during our quality control process to reflect a minor revision of our vacancy-rate calculations. Nevertheless, the additional information described by the department has no affect on our conclusion that its vacancy rates were generally stable over the last five years. The Department of Finance (Finance) describes salary savings as the amount of salary expense that a department saves when a position is vacant or filled at a lower salary than the budgeted level. Additionally, Finance states that the total salaries for all positions in budget change proposals are generally reduced by 5 percent to reflect salary savings. During the audit, the department never stated that it was holding IT positions vacant to achieve any particular salary savings targets. Therefore, we chose not to expand the report as requested.

(Agency response provided as text only.)

California Department of Public Health
Director's Office
MS 0500
P.O. Box 997377
Sacramento, CA 95899-7377

Elaine M. Howle
State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Dear Ms. Howle:

The California Department of Public Health (CDPH) has prepared its response to the Bureau of State Audits' (BSA) draft report entitled, "Department of Health Care Services and Public Health: Their Actions Revealed Flaws in the State's Oversight of the California Constitution's Implied Civil Service Mandate and in the Departments' Contracting for Information Technology Services." The CDPH appreciates the opportunity to provide the Bureau of State Audits' with a response to the draft report.

If you have any questions, please contact Karen Petruzzi, CDPH Audit Coordinator (916) 650-0266.

Sincerely,

(Signed by: José Ortiz for)

Mark B Horton, MD, MSPH
Director

Enclosure

Chapter 1

RECOMMENDATION 1

Legal

- 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.

Response 1:

CDPH concurs. Within 60 days, CDPH will implement such a step through its Contract Management Unit, causing "high risk" contract packages to be reviewed by the CDPH Office of Legal Services. "High risk" contracts are defined as described above, as "subsequent contracts for the same or similar services as those in contracts disapproved by the State Personnel Board."

RECOMMENDATION 2

Legal

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

Response 2:

CDPH concurs. This can be implemented immediately, applicable to any prospective rulings by the State Personnel Board invalidating any contract under Government Code Section 19130(b).

RECOMMENDATION 3

Legal

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

Response 3:

CDPH concurs. This can be implemented immediately, applicable to any prospective rulings by the State Personnel Board invalidating any contract under Government Code Section 19130(b).

Chapter 2

RECOMMENDATION 1

Admin

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

Response 1:

California Department of Public Health (CDPH) response and/or explanation.

CDPH agrees/concurs. Contracts and Purchasing System (CAPS database) will be completed for both the Contracts Management Unit (CMU) and Purchasing Services Unit (PSU) by July 1, 2010. CAPS will be able to identify various types of contracts in the system.

RECOMMENDATION 2

Admin

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

Response 2:

California Department of Public Health (CDPH) response and/or explanation.

CDPH agrees/concurs. Effective August 17, 2009, the Contracts and Purchasing Services Section (CPSS) staff were informed verbally of a new procedure regarding entering information into the State Contracting & Procurement Registration System (SCPRS). CPSS staff are responsible for printing a screen print that will be verified by a second reviewer who will initial the registration form. In addition, by August 28, 2009, CPSS staff will receive written instructions on this new procedure.

RECOMMENDATION 3

Admin

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

Response 3:

California Department of Public Health (CDPH) response and/or explanation.

CDPH agrees/concurs. WIC Program staff are currently working with the DGS to add the Visara's printer maintenance services to the Master Rental Agreement (MRA). Until this process has been completed, CDPH will process an amendment to remove these printers from the original purchase order by September 1, 2009.

RECOMMENDATION 4

Admin

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

Response 4:

California Department of Public Health (CDPH) response and/or explanation.

CDPH agrees/concurs. CDPH will develop a new form by January 1, 2010 for Program staff to use in their solicitations to inform contractors/vendors of the criteria used by CDPH to award the solicitation. A contract bulletin will be sent out in by January 1, 2010 to inform staff of this change.

RECOMMENDATION 5

Admin

To ensure that each contract receives the level of approvals required in state rules, and in their policies and procedures, the departments should obtain approval by their agency secretary and directors of contracts over specified dollar thresholds. In addition, Public Health should ensure that its IT divisions approve IT contracts as specified in department policy.

Response 5:

California Department of Public Health (CDPH) response and/or explanation.

CDPH agrees/concurs. CDPH will release a contract bulletin by December 31, 2009 to remind staff of the State Information Technology (IT) Policy for processing all IT procurements. In addition, Program Support Branch staff will include a reminder to CDPH staff of the new IT Policy Letter, Information Technology Procurement Letter (ITPL) 09-06 issued on July 2, 2009.

RECOMMENDATION 6

Admin

To ensure that they fairly evaluate offers and supplier responses, the departments should amend their procedures to include provisions to obtain and retain conflict-of-interest disclosure forms from their offer evaluators. Further, the departments should ensure that they obtain annual conflict-of-interest disclosure forms 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.

Response 6:

California Department of Public Health (CDPH) response and/or explanation.

CDPH agrees/concurs. The Program Support Branch (PSB) will obtain a conflict of interest disclosure form for all staff in the Contracts and Procurement Services Section (CPSS) and will collect the Conflict of Interest and Confidentiality Statement form on an annual basis. PSB shall require that Program complete a form for every solicitation that is developed. Each solicitation that is evaluated shall require Program to have all the panel members sign one (1) copy in blue ink. Program shall keep the original in Program's file and send a copy to CPSS with the contract or procurement package. A contract bulletin will be sent out by December 31, 2009 to inform CDPH of this new requirement.

(Agency response provided as text only.)

California State Personnel Board
801 Capitol Mall
Sacramento, California 95814

MEMORANDUM

DATE: August 26, 2009

TO: Elaine M. Howle, State Auditor*
Bureau of State Audits

(Signed by: Suzanne M. Ambrose)
FROM: Suzanne M. Ambrose, Executive Officer
State Personnel Board

SUBJECT: Response to AUDIT REPORT OF 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 Department's Contracting for Information Technology Services (Draft Report)

On behalf of the five-member State Personnel Board (SPB), I would like to thank you for your thorough and insightful evaluation of the personal services contract review process pursuant to Government Code section 19130. We have reviewed the redacted copy of the draft report and the Bureau of State Audit's recommendation that "the board should state explicitly at the end of its discussions whether agencies must terminate disapproved contracts" and "obtain from the state agencies documentation demonstrating the termination of disapproved contracts."

SPB Legal Counsel advises that the recommended language would exceed the scope of the Board's statutory authority under Government Code section 19130. Therefore, without a statutory amendment, the Board is unable to include the recommended language in either the Executive Officer or Board decisions.

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If you or your staff wish to discuss this further, please call me at 916-653-1028.

* California State Auditor's comment begins on page 83.

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Comment

CALIFORNIA STATE AUDITOR'S COMMENT ON THE RESPONSE FROM THE STATE PERSONNEL BOARD

To provide clarity and perspective, we are commenting on the response to our audit from the State Personnel Board (board). Specifically, we are providing the basis of our legal conclusion that the board could likely implement, even without a statutory change, a reporting process to ensure the termination of disapproved contracts. The number below corresponds to the number we have placed in the margin of the board's response.

California Government Code, Section 19130, is silent as to the board's authority and instead sets forth the circumstances under which departments may contract for personal services without violating the civil service mandate. California Government Code, Section 19132, requires the board, upon union request, to review the adequacy of any proposed or executed 19130(b) contract in accordance with Public Contract Code, Section 10337(c), which provides, among other things, that "[a]ny review shall be restricted to the question as to whether the contract complies with the provisions of subdivision (b) of Section 19130 of the Government Code." It further requires that the executive officer or board "approve or disapprove the contract," and provide the reasons for the decision in writing. Moreover, Section 10337(a) provides the board with discretion to establish those "standards and controls over approval of contracts by the Department of General Services as are necessary to assure that the approval is consistent with the merit employment principles and requirements contained in Article VII of the California Constitution." Such standards "shall be established at the discretion of the State Personnel Board" so long as they are not constructed or construed in a manner that replaces or adds to the Department of General Services' program for contract review and approval. Additionally, Section 10337(d) provides that "[c]ontracts subject to State Personnel Board review under this section shall not become effective unless and until approval is granted." Further, Public Contract Code, Section 10420 provides that every contract entered in violation of the chapter of the Public Contract Code containing Section 10337, is "void, unless the violation is technical or nonsubstantive."

Harmonizing the plain language of these provisions, as well as the board's constitutional mandate to "enforce the civil service statutes," we find nothing in the law that expressly prohibits the board from including in its decisions an order that state agencies terminate disapproved contracts and provide to the board proof of termination. Nevertheless, as we acknowledge on page 29 of this report, adding statutes requiring the board to order the

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termination of disapproved contracts—and requiring state agencies to comply—would settle any questions regarding authority and help ensure that state agencies adhere to this process.

cc: Members of the Legislature
Office of the Lieutenant Governor
Milton Marks Commission on California State
Government Organization and Economy
Department of Finance
Attorney General
State Controller
State Treasurer
Legislative Analyst
Senate Office of Research
California Research Bureau
Capitol Press