

FLORIDA DEPARTMENT OF LAW ENFORCEMENT

Office of Inspector General



PROJECT NUMBER: IG-0025

Enterprise Contracting Audit

FINAL REPORT

June 12, 2012

Service - Integrity - Respect - Quality



Florida Department of Law Enforcement

Office of Inspector General

EXECUTIVE SUMMARY		Audit #IG-0025
AUDIT TITLE: Enterprise Contracting Audit		Date Issued: June 12, 2012
Responsible Managers: Victoria Kliner, Business Support Program Director and Penny Kincannon, Information Resource Management Director		Auditor: Theresa Skipper, Senior Management Analyst II
Background:	<p>Based on Section (S.) 14.32, Florida Statutes (F.S.), the Executive Office of the Governor, Office of the Chief Inspector General (CIG) initiated an enterprise audit to evaluate state agencies' current policies, procedures, and processes for contracting. In cooperation with the CIG, the Florida Department of Law Enforcement (FDLE), Office of Inspector General (OIG) conducted an audit of FDLE's contracting procedures and training. This report presents the results of that audit. The CIG intends to publish a companion report to identify any enterprise systemic issues and best practices.</p> <p>FDLE contracts with a variety of vendors, primarily for information system consulting, implementation, upgrades, and maintenance. These contracts, along with other agreements for meeting room rental, licenses, and other services are managed by various individuals throughout the agency who have multiple responsibilities. As of January 2012, FDLE had 49 current contracts.</p> <p>The FDLE Office of General Services (OGS), a component of the Business Support Program, provides procurement oversight. OGS also has the primary responsibility for contract administration, property and facilities management, fleet management, the FDLE print shop, risk management, the mail room, auto accident claims, and member credit card activities. OGS is also responsible for providing applicable training, technical assistance, and administrative guidance for members involved in these activities.</p> <p>Policies and procedures for contracting are included in FDLE's Policy #1.5 and the General Services Manual.</p>	
Scope:	The scope of this audit focused primarily on FDLE's current policies, procedures, processes, and training related to contracting.	
Audit Objectives:	<p>The objectives of the audit were to:</p> <ul style="list-style-type: none">• Determine if contracting policies and procedures are in compliance with state laws, rules, and other regulatory requirements.• Assess the adequacy of contract manager training and development.• Identify potential best practices by evaluating contracting processes.	
Methodology/ Tasks:	<p>The audit included a review of prior related audits and management reviews to prevent duplication and to follow-up on any previous findings and recommendations.</p> <p>A review was conducted of Florida Statutes, Florida Administrative Code, Florida Department of Financial Services (DFS) contracting guidance, Chief Financial Officer (CFO) Memoranda, and FDLE policies and procedures to obtain an understanding of applicable contracting laws, rules, guidance, regulations and policies.</p> <p>Checklists developed by an enterprise team of agency inspectors general and audit directors were used for determining compliance with state laws, rules, and other regulatory requirements, and whether FDLE policies and procedures addressed the</p>	

	<p>following topics:</p> <ul style="list-style-type: none"> • Responsibilities of agency personnel. • Training of agency personnel. • Identification of conflicts of interest. • Specific contract document language. • Contract monitoring. • Measurement of outcomes and outputs. • Dispute resolution and corrective action. • Contingency plans for interruption of service or contractor failure. • Processes for reviewing invoices for accuracy and completeness, compliance with the contract, etc. • Convicted vendor lists. • Memoranda of Understanding/Memoranda of Agreement (MOU/MOA). • Contract close-out. <p>Interviews were conducted to:</p> <ul style="list-style-type: none"> • Clarify and determine the effectiveness of policies, procedures, and practices; • Assess the adequacy of training; and, • To identify any best practices. <p>The Florida Department of Management Services (DMS) Internet website was reviewed to verify compliance with requirements related to contract manager training and qualifications of contract negotiators.</p> <p>Contract document templates were reviewed to determine whether specific elements were included, such as a scope of work, minimum performance standards, and deliverables. Three of 49 current contracts were also reviewed to gain an understanding of the types of contracts FDLE has executed and determine the effectiveness of contracting policies, procedures, and training.</p> <p>An analysis was conducted of lists of current contracts to identify the number of current contracts, the types of contracts executed, and the assigned contract managers.</p> <p>A contract management survey, developed by the enterprise team, was distributed to 46 FDLE members involved in contracting and grants management. Responses were received from 34 members. The purpose of the survey was to obtain feedback on contract management guidance, current practices, and documents.</p> <p>This audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.</p> <p>Copies of this audit report will be made available for public inspection.</p>
<p>Summary of Audit Findings:</p>	<p>In general, FDLE contract policies and procedures are in compliance with state laws, rules, and other requirements.</p> <p>The audit identified the following best practices:</p> <ul style="list-style-type: none"> • FDLE maintains a detailed list to identify those with signature authority for a

variety of responsibilities related to expenditures, not just contracts. The list helps ensure accountability and good communication.

- Technical experts are an integral part of the contracting process. They provide assurance that deliverables meet complex contractual requirements.
- Legal services are readily available throughout the procurement process. These services help to ensure that contracts are consistent with state and federal laws.

The following findings identify areas for improvement:

1) Contract management guidance could be strengthened to ensure FDLE meets requirements of laws, rules, and guidelines.

1.1 It is unclear who FDLE designates to function as contract manager, the member responsible for enforcing contract performance and serving as a liaison with the contractor. See page 5 for a description of actions taken to address this finding prior to release of the report.

1.2 Requirements for training contract managers and qualifications for negotiators of contracts in excess of \$1 million and \$10 million were not found in the General Services Manual. See page 7 for a description of actions taken to address this finding prior to release of the report.

1.3 The General Services Manual does not include requirements for identifying potential convicted vendors, using MOUs and MOAs, reviewing invoices, and closing-out contracts. See page 10 for a description of actions taken to address this finding prior to release of the report.

1.4 The General Services Manual requires the use of a standard contracting template, Exhibit 1; however, the template does not include clauses to address penalties, auditing, documentation for required reports, and reconciliation of required reports. See page 12 for a description of actions taken to address this finding prior to release of the report.

2) Training for contract managers could be enhanced.

2.1 There are limited on-going training opportunities for contract managers. Training could be enhanced by addressing certain specific topics, such as: contract enforcement, contract close-out and available resources.

FINDINGS	#IG-0025	ISSUE: # 1 of 2
AUDIT TITLE: Enterprise Contracting Audit		Date Issued: June 12, 2012
ISSUE 1:	Contract management guidance could be strengthened to ensure FDLE meets requirements of laws, rules, and guidelines.	
FINDING 1.1:	<p>The General Services Manual uses the titles of “Program/Regional Contract Manager,” “Program/Regional Coordinator,” “Technical Manager,” and “General Services Contract Manager” to describe the various contracting roles. It is unclear which of these titles is used to designate the member who is responsible for enforcing contract performance and serving as liaison with the contractor.</p> <p><u>Program/Regional Contract Manager</u> The “Program/Regional Contract Manager,” as defined in the General Services Manual, is the Executive Policy Board member responsible for the entity within FDLE for which a contract is processed.</p> <p>The Program/Regional Contract Manager is accountable for the development of methods to evaluate, monitor, and validate contract performance. The General Services Manual requires the name of this person to be included in the standard contracting template, Exhibit 1, which indicates that the Program/Regional Contract Manager functions as liaison with the contractor. However, a member of the OGS is also listed in contracts as the receiver of official notices.</p> <p>Based on a review of Information Resource Management (IRM) Procedure 1.300 and several IRM contracts, the name used for the Program/Regional Contract Manager is not that of an Executive Policy Board member, but rather a member of the Executive Council, which is a larger group of management.</p> <p><u>Program/Regional Coordinator</u> A Program/Regional Coordinator is designated to advise the Program/Regional Contract Manager of the status and disposition of each contract, forward budgetary and contract performance documentation to the OGS, and authorize payment. The name of the Program/Regional Coordinator is used when completing the Contract Manager section of the Contract Summary Form required by DFS when submitting invoices for payment to certify that services were satisfactorily received in accordance with the contract terms and that payment is due.</p> <p><u>Technical Manager</u> A Technical Manager is responsible for evaluating contract performance and providing written notice to the Program/Regional Coordinator documenting acceptance of the deliverables.</p> <p><u>General Services Contract Manager</u> The functional title of “General Services Contract Manager” is used to describe the role of members who provide contract administration. The responsibilities of those who serve in this role include ensuring compliance with procurement laws, rules, and regulations; working with the Office of General Counsel to review contract documents; assisting with contract negotiations; and maintaining contract files.</p>	

incorporate a special conditions section that captures language needed for IT-related contracts.

Although BSP agrees with the recommendation that OGS strengthen the General Services Manual by clarifying the responsibilities of a contract manager, we found clarification to be problematic after research revealed differing views of the terms 'contract management' and 'contract manager' between the Florida Department of Management Services (DMS) and the Florida Department of Financial Services (DFS). Due to each agency's respective contract management processes an OGS purchasing unit member could be considered a contract manager from a DMS perspective and a program area designee assigned to monitor contract performance could also be considered a contract manager from a DFS perspective. At times a technical manager, sometimes referred to as a project manager, may also be involved in contract management, too.

DMS is the state agency that is responsible for providing uniform commodity and contractual service procurement policies, rules and procedures. It certifies public purchasing professionals who possess the knowledge, skills and abilities to effectively design, solicit, negotiate, award and 'manage contracts'. The purchasing and procurement certifications for the State of Florida are:

- Florida Certified Purchasing Agent
- Florida Certified Purchasing Manager
- Florida Certified Contract Manager
- Florida Certified Contract Negotiator

The above certifications require that certain criteria are met before a person can pursue the designation. Typically, a person must have a minimum of twelve (12) months experience in a full time purchasing position for the State of Florida where the majority of work time includes making final decisions on procurement methods, contract and purchase order terms and conditions, and conducting source selection processes. Program area members, for example, typically do not handle this type of work and, therefore, would likely not meet the criteria for becoming a 'Florida Certified Contract Manager'.

OGS purchasing unit members are typically eligible to pursue such certification and are very knowledgeable about procurement best practices. Their procurement skills and abilities are concentrated in competitive bidding, invitations to negotiate, requests for proposals, sole and single source purchases, category threshold restrictions and public procurement ethical standards. While this expertise is necessary for appropriate contract management, the subject matter knowledge regarding the commodity or service is also necessary to manage the contract and that specific expertise requires someone with a program operations perspective.

DFS conducts training for agency 'contract managers' responsible for contracts exceeding Category Two threshold amount (\$35,000) to meet the requirements of Section 287.057 (14), Florida Statutes. Contract management in this context is for monitoring and documenting contractor performance, and reviewing and documenting all deliverables exceeding Category Two. Since inception of the statutory requirements, program area members that coordinate documentation of deliverables must complete this training. Technical (contract) managers may also serve as the program area coordinator of deliverables documentation; however, that varies among programs.

These separate distinctions complicate the ability to clearly identify the member who

<p>IMPLEMENTATION DATE:</p> <p>RESPONSIBLE ENTITIES/MANAGERS:</p> <p>OIG RESPONSE:</p>	<p>is responsible for managing contract performance. While the functional titles used for those involved in the contracting process have been revised in the OGS Manual as a result of the findings, BSP believes further clarification is needed from an enterprise statewide level to clarify the roles and at that point further revision of the OGS Manual may be appropriate.”</p> <p>June 30, 2012</p> <p>Victoria Kliner, Business Support Program Director and Penny Kincannon, Information Resource Management Director</p> <p>The request for clarification of the role of a contract manager, from the perspectives of DFS and DMS, will be forwarded to the enterprise audit team.</p>
<p>FINDING 1.2:</p> <p>CRITERIA:</p> <p>CAUSE:</p> <p>EFFECT/RISK:</p> <p>RECOMMENDATION:</p> <p>MANAGEMENT RESPONSE:</p>	<p>Documentation was provided to indicate that FDLE members who manage contractual services contracts in excess of \$35,000 received training required by S. 287.057, F.S. Documentation was also provided to indicate that members who participate in negotiation of contracts in excess of \$1 million have the qualifications required by S. 287.057, F.S. However, requirements for contract manager training and qualifications for negotiators were not found in the General Services Manual.</p> <p>S.S. 287.057(14), F.S. requires contract managers responsible for contractual services contracts in excess of \$35,000 to attend DFS CFO training at least once every two years.</p> <p>S.S. 287.057(16), F.S. requires participation of a certified contract negotiator for the negotiation of contracts in excess of \$1 million and participation of a project management professional for negotiation of contracts in excess of \$10 million.</p> <p>The General Services Manual has not been updated to reflect current requirements for contract manager training and for participation in contract negotiations.</p> <p>Not addressing requirements of laws, rules, or regulations could cause noncompliance in the future.</p> <p>The OGS should enhance the General Services Manual to include requirements for contract manager training and requirements for participation in negotiation of contracts in excess of \$1 million and \$10 million.</p> <p>Prior to release of this report, the OGS updated the General Services Manual to include the training requirements for contract managers. It is recommended that the OGS further update the General Services Manual to include requirements for participation in negotiations.</p> <p>Agree.</p> <p>“Prior to audit language, Florida Statute, Section 287.057(14) referencing contract manager training was added to the OGS Manual, Section G, Contractual Services/Two Party Signed Documents, (4) Contract Manager Training Requirements.</p> <p>The following language for Florida Statute, Section 287.057(16) and in keeping with</p>

<p>IMPLEMENTATION DATE:</p> <p>RESPONSIBLE ENTITY/MANAGER:</p>	<p>Florida Administrative Code (FAC) 60A 1.041 as it relates to solicitation requirements and contract negotiation and certification definitions was added to the OGS Manual Section D, Requirements for Competition or Non-Competition in Purchasing, (9) Requirements for all FDLE Formal Solicitations:</p> <p>Section 287.057(16), F.S. and F.A.C. 60A 1.041 require that an 'Invitation to Negotiate' in excess of \$1 million in any fiscal year must include at least one person conducting the negotiations hold a 'State Certified Contract Negotiator' certification recognized by the Department of Management Services. If the value of a contract is in excess of \$10 million in any fiscal year, at least one of the persons conducting the negotiations must hold a 'Project Management Professional' certification from the Project Management Institute."</p> <p>Complete.</p> <p>Victoria Kliner, Business Support Program Director</p>
<p>FINDING 1.3:</p>	<p>The General Services Manual does not include requirements for identifying potential convicted vendors, using agreements such as MOUs and MOAs, reviewing invoices, and closing-out contracts.</p> <p><u>Convicted Vendors</u> Procedures were not found to require a check of the state and federal convicted vendor lists before awarding a contract in excess of \$35,000 or for ensuring members who receive information that a person has been convicted of a public entity crime transmit that information to the DMS. However, the contracting template Exhibit 1 does include a clause addressing prohibitions from contracting or transacting business with a person or affiliate who has been placed on the convicted vendor list.</p> <p><u>MOUs/MOAs</u> In addition to contracts, FDLE uses other types of agreements such as grants, MOUs and MOAs. Similar to contracts, MOUs and MOAs define the responsibilities of each party in the agreement, provide the scope and authority of the agreement, and clarify terms. Procedures for MOUs and MOAs could not be found. Based on interviews, such agreements are reviewed by and copies are maintained by the Office of General Counsel.</p> <p><u>Invoicing</u> The General Services Manual requires the Program/Regional Coordinator to authorize payment. Based on interviews, contractor invoices are reviewed by the Program/Regional Coordinator who signs the Summary of Contractual Services Agreement/Purchase Order form, certifying that the provided information is correct and the goods and services received were satisfactory. The Program/Regional Contract Manager also signs the form to certify that the information is correct and reflects the terms and conditions of the contract. Members of the Office of Financial Management also review invoices prior to payment.</p> <p>Procedures were not found to specifically address the following:</p> <ul style="list-style-type: none"> • Ensuring invoices include a description of the services provided, the number of service units provided, or the period of service. • Validating the accuracy of the invoice.

<p>IMPLEMENTATION DATE:</p> <p>RESPONSIBLE ENTITY/MANAGER:</p>	<p>Services/Two Party Signed Documents, (7) Payment Verification Actions:</p> <p>The purpose of the payment verification process is to ensure that the Agency has received the goods and/or services required to be provided before payment is made. Please see Section I, Receiving, Invoicing and Return/Exchange Procedures, (4), Returns/Exchanges, of the OGS manual for further invoice information.</p> <p>The following language was added to the OGS Manual, Section G, Contractual Services/Two Party Signed Documents, (8) Contract Closeout:</p> <p>A contract closeout includes, but is not limited to determining and documenting that:</p> <ul style="list-style-type: none"> • All deliverables and services have been delivered and accepted in writing • All applicable reports have been received and accepted in writing • If applicable, financial consequences have been assessed for non-performance/noncompliance • Coordinate with the Office of Financial Management for Payment Closeout" <p>Complete.</p> <p>Victoria Kliner, Business Support Program Director</p>
<p>FINDING 1.4:</p> <p>CRITERIA:</p> <p>CAUSE:</p>	<p>The General Services Manual requires the use of a standard contracting template, Exhibit 1. This template does not include clauses to address the following:</p> <ul style="list-style-type: none"> • Applicable penalties for violation of the terms and conditions of the contract. • A right to audit clause. • Requirements for the contractor to maintain documentation to support information in required reports. • Requirements for required reports to be readily reconcilable to invoices and any required supporting documentation, if applicable. <p>FDLE Policy #1.5 requires the existence of proper internal controls to protect FDLE's assets.</p> <p>The General Services Manual requires that proper internal controls exist to protect FDLE's assets and requires the development, maintenance, and dissemination of uniform departmental procedures and guidelines governing procurement.</p> <p>The <i>State of Florida Contract and Grant User Guide</i> suggests that "a clear and comprehensive agreement provides the legal basis for enforcing the agreement and has a direct effect on the payment and monitoring process. Issuing a clear and complete agreement is critical." It also suggests that all agreements identify specific remedies for noncompliance/nonperformance of required service, include specific language that makes all records available for inspection, and clearly describe requirements for reports.</p> <p>The <i>Reference Guide for State Expenditures</i> suggests that an agreement should contain financial consequences in the event the contractor fails to perform in accordance with the agreement.</p> <p>Exhibit 1 has not been updated to reflect current guidance.</p>

EFFECT:	<p>Not addressing current requirements and guidance could cause noncompliance or contracting problems in the future.</p> <p>Inadequate procedures for contracting documents could result in agreements that are ambiguous and could create risks for the Department.</p>	
RECOMMENDATION:	<p>The OGS, the Office of General Counsel, and the IRM program should work together to develop an updated Exhibit 1 to include the above listed topics. The IRM program has developed various contracting documents that address the above listed topics and additional requirements that may be applicable to other FDLE programs.</p> <p>Prior to release of this report, the OGS updated the General Services Manual to require the use of Exhibit 1 for contractual services in excess of \$35,000, not including formal solicitations. Formal solicitations are required to include DMS form PUR 1000, which contains standard contract terms and conditions. However, it is still recommended that the OGS enhance Exhibit 1 to include the topics mentioned in this finding. Members of the OGS have indicated that the Exhibit 1 is in the process of being updated.</p>	
MANAGEMENT RESPONSE:	<p>Agree.</p> <p>“Additional language will be added to the FDLE Exhibit 1 to include ‘A Right to Audit’ and ‘Financial Consequences’ clause.”</p>	
IMPLEMENTATION DATE:	June 30, 2012	
RESPONSIBLE ENTITY/MANAGER:	Victoria Kliner, Business Support Program Director	
FINDINGS	#IG-0025	ISSUE: #2 of 2
AUDIT TITLE: Enterprise Contracting Audit	Date Issued: June 12, 2012	
ISSUE 2:	Training for contract managers could be enhanced.	
FINDING 2.1:	<p>Based on interviews, the review of procedures, and a survey of FDLE members, there are limited on-going training opportunities for contract managers. Training could be enhanced by addressing issues such as: responsibilities for enforcing contract terms and conditions, contract close-out, and available resources such as the <i>State of Florida Contract and Grant User Guide</i> and the DFS website.</p>	
CRITERIA:	FDLE Policy #1.5 requires the existence of proper internal controls to protect FDLE’s assets. An important part of internal control is a workforce that receives training aimed at developing and retaining employee skill levels to meet changing needs.	
CAUSE:	The OGS is responsible for a wide variety of administrative duties and has limited resources for identifying and meeting on-going training needs.	
EFFECT/RISK:	Members may not have the information needed to manage contracts in the most effective and efficient manner.	
RECOMMENDATION:	The OGS should enhance training for contract managers by conducting an assessment of training needs and, as a minimum, addressing the topics listed in this finding.	

- 72% of respondents indicated they were aware of the contract monitoring guidelines found in the DFS Contract and Grant User Guide, and 76% indicated they were aware of contract monitoring guidelines found in CFO Memorandum No. 1 (10-11).
- 90% of respondents agreed that documents provided with invoices are reviewed for costs, adequacy, and relevancy prior to payment approval.
- 100% of respondents agreed that disallowable costs are deducted from invoices prior to approving payment.
- 100% of respondents indicated they knew who to contact if they encounter issues regarding contractual terms, fiscal monitoring and payment processing. 95% indicated they knew who to contact if they encounter issues regarding performance oversight.
- 50% of respondents indicated they were aware of training provided by FDLE, and 48% indicated they had attended training provided by FDLE.
- 37% of respondents indicated that FDLE has a process for making suggestions regarding contract management improvements. 16% indicated that FDLE does not have such a process, and 47% indicated they were not sure.