Memorandum

To:
DAVID PRIZMICH
Division Chief
Procurement and Contracts

GILBERT PETRISSANS
Division Chief
Division of Accounting

From:
RHONDA L. CRAFT
Inspector General
Independent Office of Audits and Investigations
P.O. BOX 942874, MS-2
Phone (916) 323-7111
Fax (916) 323-7123
TTY 711
https://ig.dot.ca.gov

Date: May 28, 2020
File: P3000-0430

Subject: Department of General Services Contract Delegation Audit

Attached is the Independent Office of Audits and Investigations' final audit report on Contract Delegation Audit. Your response has been included as part of the final report. This report is intended for your information and for Department Management.

Please provide our office with status reports on the implementation of your audit finding dispositions 60-, 180-, and 360-days subsequent to the transmittal date of this memorandum.

Senate Bill 1 requires the Inspector General to report at least annually, or upon request, to the Governor, the Legislature, and the California Transportation Commission with a summary of audit findings and recommendations. The summary along with this report and the status reports will be posted on the Independent Office of Audits and Investigations' Internet Website.
We thank you and your staff for their assistance provided during this audit. If you have any questions or need additional information, please contact Kevin Yee, Chief, Finance and Operations, at (916) 323-7929, or me at (916) 323-7863.

Attachment

c: Dennis Miras, Audit Supervisor, Office of Audit Services, Department of General Services
Mitch Weiss, Executive Director, California Transportation Commission
Rodney Whitfield, Director of Financial Services, Federal Highway Administration
Elissa Konove, Deputy Secretary, California State Transportation Agency
Toks Omishakin, Director, Caltrans
James E. Davis, Chief Deputy Director, Caltrans
Aaron Ochoco, Deputy Director, Administration, Caltrans
Lindy Cruz, Assistant Division Chief, Non-IT Contracts, Division of Procurement & Contracts, Caltrans
Tracy Gentry, Assistant Division Chief, Policy, Protest, Communications, Property Control, Scope of Work and Minor B, Division of Procurement & Contracts, Caltrans
Rajit Sharma, Assistant Division Chief, IT Procurement and Contracts, Non-IT Procurement and CAL-Card, Division of Procurement & Contracts, Caltrans
Diana Antony, Chief Deputy Inspector General, Independent Office of Audits and Investigations
William Lewis, Assistant Director, Independent Office of Audits and Investigations
Kevin Yee, Audit Chief, Finance and Operations, Independent Office of Audits and Investigations
Jose Camacho, Audit Manager, Independent Office of Audits and Investigations
California Department of Transportation - Contract Delegation Audit

Background

Public Contract Code (PCC) Section 10335 requires all state contracts to be approved by the Department of General Services (DGS) with certain exceptions. DGS may exempt from its approval contracts under $150,000 if the awarding state agency meets all the requirements set forth in PCC 10351. DGS issued the Department of Transportation (Caltrans) an Exemption Letter dated June 17, 2016, covering the period July 1, 2016, through June 30, 2020, and requiring two audits during this exemption period. These audits must be conducted in accordance with DGS Office of Audit Services (OAS) guide, and the two audit reports are to be submitted to OAS. This audit is the second of the two required audits.

Key Findings

Our audit disclosed that Caltrans policies and procedures to process, execute, and manage contracts are adequate and in compliance with DGS requirements and state laws and regulations; however, the audit also found the following areas for improvement:

- Contract Administration and Tracking System (CATS) data lacks accuracy and consistency.
- Non-compliance of Cal-Card payment requirements.
- Four out of 13 contractors started work before contract approval.
- Conflict of interest statement not signed consistently by the required Legal Division staff.

Key Recommendations

Division of Procurement and Contracts:

- Review, modify, and simplify the contract category code descriptions to ensure accurate and consistent categorization of contracts.
- Remind Contract Managers to obtain the ADM-3059 from the prime contractors within 60 days from receipt of final payment.
- Work with the Division of Maintenance to establish departmental procedures for processing Hazardous Material Spill contracts. Once contract processing procedures are established, determine if payments could be made within the 45-day Cal-Card requirement. If unable to meet this requirement, consider an alternative payment method.
- Ensure contractors start work only after the contract receives all appropriate approvals.
- Provide training to the Legal division staff on conflict of interest.
TABLE OF CONTENTS

Summary ...................................................................................................................................1

Objectives................................................................................................................................1

Scope .......................................................................................................................................2

Methodology ............................................................................................................................2

Audit Background ....................................................................................................................3

DPAC Contracting Process......................................................................................................3

Views of Responsible Officials...............................................................................................4

Findings and Recommendations...............................................................................................5

Finding 1 - CATS Data Lacks Accuracy and Consistency.......................................................5

Finding 2 – Contract Managers Are Not Submitting Reports of Utilization of
Small/Micro Business and Disabled Veteran Business Enterprises .....6

Finding 3 – Non-Compliance of Cal-Card Payment Requirements ...............................7

Finding 4 – Four of 13 Contractors Started Work Before Contract Approval...............9

Finding 5 – Conflict of Interest Statement Not Consistently Signed by All Required
Legal Division Staff................................................................................................................10

Attachment A

Audit Response from the Division of Procurement and Contracts
Summary, Objectives, Scope, Methodology, and Background

Summary

The Independent Office of Audits and Investigations (IOAI) completed an audit of the California Department of Transportation’s (Caltrans) contract delegation as required by the Department of General Services’ (DGS) Exemption Letter 13.0 dated June 17, 2016. The purpose of the audit was to determine if the Division of Procurement and Contracts’ (DPAC) procedures for processing, executing, and managing procurement and contracts are adequate and in compliance with DGS requirements, state laws, and regulations.

The audit determined that Caltrans policies and procedures to process, execute, and manage contracts are adequate and in compliance with DGS requirements and state laws and regulations. Additionally, DPAC has implemented corrective actions in response to previous audit findings. However, as noted in Findings 1 and 2, some issues had not been fully resolved. The audit also found the following areas for improvement:

- Contract Administration and Tracking System (CATS) data lacks accuracy and consistency.
- Non-compliance of Cal-Card payment requirements.
- Four out of 13 contractors started work before contract approval.
- Conflict of interest statement not signed consistently by the required Legal Division staff.

Objectives

The audit objectives were to:

- Determine whether the contracting program is complying with the legal requirements for exemption.
- Determine and document (or update) the system of internal controls.
- Determine whether the contracting system, if followed, can be reasonably relied upon to provide adequate internal controls and produce contracts in accordance with law, state policies, and the best interests of the state.
• Test the effectiveness of the internal controls through evaluation of a sample of contracts awarded since the last audit.

• Determine whether appropriate corrective actions have been implemented in response to previous audit findings.

Scope

The audit includes a general compliance test of contracts awarded, which is required as a measure of performance under the DGS delegation/exemption authority. In addition, an evaluation of the current internal controls governing the management of DPAC’s contracting process was performed. The scope of the audit was limited to specific compliance requirements as contained in the DGS Contracting Program Audit Guide required for the conduct of this audit. We sampled contracts and contract amendments processed by DPAC from October 1, 2017, to June 27, 2019. Changes after the completion of the audit fieldwork on November 15, 2019, were not considered, and accordingly, our conclusion does not pertain to changes arising after this date.

Methodology

The audit was performed in accordance with the International Standards for the Professional Practice of Internal Auditing (ISPPIA) as required by the DGS Office of Audit Services (OAS). Audit 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 the audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on the audit objectives.

We reviewed policies and procedures, inspected pertinent and relevant documentation both provided by DPAC and obtained via Caltrans’ and DPAC’s websites, collected and analyzed data, and interviewed DPAC staff with direct knowledge of areas relevant to the audit objectives. The audit included performing surveys and tests prescribed by the DGS Contracting Program Audit Guide.
Audit Background

Public Contract Code (PCC) Section 10335 requires all state contracts to be approved by DGS with certain exceptions. DGS may exempt from its approval contracts under $150,000 if the awarding state agency meets all the requirements set forth in PCC 10351. DGS Office of Legal Services (OLS) is responsible for recommending that the DGS Director grants, renews, or denies such exemptions after reviewing the request to ensure that the requirements are met.

DGS issued Caltrans an Exemption Letter dated June 17, 2016, covering the period July 1, 2016, through June 30, 2020, and requiring two audits during this exemption period. These audits must be conducted in accordance with DGS/OAS audit guide, and the two audit reports are to be submitted to OAS by June 30, 2018, and April 30, 2020. This audit is the second of the two audits and the report from this audit is due to DGS/OAS by April 30, 2020.

DPAC Contracting Process

The DPAC contracting process starts with the receipt of a contract request form from a Requester (Contract Manager) sent to a dedicated email. The Office Technician enters the contract details into the Contract Administration and Tracking System (CATS) before forwarding the contract request to a Contract Officer (Branch Chief). The Branch Chief reviews the contract package for completeness using checklists and assigns the contract package to a Contract Analyst. The contract package is peer reviewed by another Contract Analyst before sending it to Caltrans Legal Division for approval, if applicable. Then the contract is sent back to the Contract Manager for review. After the Contract Manager has concurred with the completed package, then, depending on the contract solicitation type (e.g. Invitation for Price Quote (IFPQ) or Invitation for Bid), the Contract Analyst sends the contract out for bid, and it is posted for a minimum of 10 business days on Cal eProcure.
At the end of the solicitation period, bids received are opened by the bid unit (or Contract Analyst if IFPQ) and the lowest bidder (for non-architectural and engineering contracts) is determined. The bid opening is open to the public; they can participate in person or via a conference call. After the bid opening, the bid results are posted online, and the bid packages for the top three bidders are also uploaded. The lowest bidder package/proposal is sent to the Caltrans Office of Civil Rights to determine if the participation goal is met for Disadvantaged Business Enterprises (DBE) and/or Disabled Veteran Business Enterprise (DVBE). The DBE/DVBE percentage is determined by the Contract Manager. The contract is then forwarded to the selected Contractor for signature before the final package is sent to the DPAC Contract Officer who uses a checklist to review the contract package for completeness. Once the contract package is complete, the Contract Officer will sign the contract or send it to DGS/OLS for approval, if required. A DGS/OLS approval is required when a contract is not exempt under the DGS/OLS Exemption letter.

This report is a matter for public record and will be placed on the IOAI’s website, which can be viewed at <https://ig.dot.ca.gov>.

**Views of Responsible Officials**

We requested and received a written response to our findings from Caltrans Division of Procurement and Contracts. These officials concurred with our findings. Please see Attachment A for their response.
Findings and Recommendations

The audit determined that Caltrans policies and procedures to process, execute, and manage contracts are adequate and in compliance with DGS requirements and state laws and regulations. Additionally, DPAC has implemented corrective actions in response to previous audit findings. However as noted in Findings 1 and 2, some issues have not been fully resolved. The audit also found the following areas for improvement:

Finding 1 - CATS Data Lacks Accuracy and Consistency

The Contract Administration and Tracking System (CATS) contains misclassified contracts. This system is used by DPAC to generate statistical reports on the type of contracts awarded for oversight authorities such as the Governor, Legislature, and Caltrans Director’s Office. We selected 24 contracts that were classified as interagency agreements and noted that eight were misclassified. For example, contracts between Caltrans and local governments, institutes of higher learning, or the Federal Government were misclassified as contracts between California state agencies (Interagency Agreements). In addition, we noted 11 contracts that were described as pothole repair service; however, four different category codes were used. A similar finding was noted in our previous audit reports dating back to 2010. As noted in our prior audit report, DPAC acknowledged that the category codes are an issue and do not allow for accurate classification. CATS is limited on the category codes, and they may not be accurate. In DPAC’s corrective action plan to the prior audit report, they stated that they will include comments/notes to remedy this issue until such time that the CATS II system is implemented.

Caltrans Non-IT Service Contract Manual section 2.5.2 C, states that “DPAC Branch Chiefs are responsible for ensuring CATS data entries are complete and accurate prior to signing a contract or an amendment.”

Additionally, during the period between October 2017 and June 2019, over 500 contract records were reopened in CATS to make changes to contract details such as Contract Category, Contract Amount, and Name of Contractor. These changes were made without obtaining prior authorization from the Branch Chief as required. Additionally, there is no process to track the types of changes made in the system.
Per Caltrans Non-IT Service Contract Manual section 2.5.2 C, “Contract Analyst must obtain the DPAC Branch Chief approval prior to submitting a request to the CATS Administrator” to reopen an executed contract in CATS.

The inconsistencies in categorizing contracts and the reopening of executed contracts without adequate controls to track and approve changes create a data integrity risk. Inaccurate data in CATS can result in incorrect management reports and inappropriate decisions made based on the reports.

**Recommendations**

a. Review, modify, and simplify the contract category code descriptions to ensure accurate and consistent categorization of contracts.

b. Ensure executed contracts are only reopened in CATS to make changes approved by Branch Chiefs and such changes are tracked to preserve data integrity.

**Division of Procurement and Contracts’ Response**

The Division of Procurement and Contracts concurs with the finding and recommendations. Please see Attachment A.

**Finding 2 – Contract Managers Are Not Submitting Reports of Utilization of Small/Micro Business and Disabled Veteran Business Enterprises**

24 of the 26 sampled contracts with targeted Disabled Veteran Business Enterprises (DVBE) goals, did not have the required Report of Utilization of Small/Micro Business and Disabled Veteran Business Enterprise State-Funded Contracts Only form (ADM-3059) to show that the prime contractor submitted DVBE utilization achieved. A similar finding was noted in our prior audit reports dating back to 2014.

According to Caltrans, they are unable to enforce the requirement for prime contractors to submit the ADM-3059 form because the law did not provide a consequence for lack of submission. As noted in Caltrans’s corrective action plan to our prior audit report, DPAC and the Office of Civil Rights continue to partner on efforts to ensure contract managers obtain and submit the completed ADM 3059.
Government Code 14841 requires contractors to report to the awarding department the actual percentage of SB/DVBE participation achieved.

The Military and Veterans Code 999.5 states that Caltrans should require prime contractors that entered into a subcontract with DVBE to certify the information on the total amount that the prime contractor received and the amount received by each DVBE subcontractor. DPAC contract boilerplate includes language stating, “The Contractor shall prepare and submit the Report of Utilization of Small/Micro Business and Disabled Veteran Business Enterprise State-Funded Contracts Only (ADM-3059) Form to the Caltrans Contracts Manager within 60 days from receipt of final payment.”

Contract managers not submitting the required ADM-3059 in accordance with DPAC’s contract requirements may cause Caltrans to lose the DGS contract delegation authority.

**Recommendations**

a. Remind Contract Managers to obtain the ADM-3059 from the prime contractors within 60 days from receipt of final payment.

b. Continue to partner with the Office of Civil Rights on efforts to ensure contract managers obtain and submit the ADM-3059.

**Division of Procurement and Contracts’ Response**

The Division of Procurement and Contracts concurs with the finding and recommendations. Please see Attachment A.

**Finding 3 – Non-Compliance of Cal-Card Payment Requirements**

During the test of acquisitions of services paid with a Cal-Card, we found 21 of the 43 sampled Hazardous Material Spill contracts had past due invoices paid with the Cal-Card. Caltrans cannot process invoices without an executed contract. Therefore, we expanded our review and selected six of the 21 contracts to determine if an executed contract was in place. As noted in Table 1, all six Hazardous Material Spill contracts were not executed timely causing the past due invoice payments. For example, work for contract XXXXX316 started on April 25, 2017. The district contract manager submitted the contract package to DPAC on August 4, 2017. However, the contract was not executed until March 28, 2018, which is 208 days after the required 28-day timeline. This 28-day
timeline requirement was from DPAC’s internal memo to the Division of Maintenance, dated April 28, 2006. For Hazardous Material Spill contracts, a contract manager can enter into a temporary agreement with the contractor to perform work via a Confirmation of Verbal Agreement for Highway Spills form. However, a permanent contract must be executed as soon as time allows.

Table 1 – Contracts Exceeding the 28-day Contract Execution Requirement

<table>
<thead>
<tr>
<th>Contract Number</th>
<th>Amount</th>
<th>Work Start Date (A)</th>
<th>Contract Package Received by DPAC Date (B)</th>
<th>Contract Executed Date (C)</th>
<th>Days Taken to Execute Contract (including DGS approval) (D) = (C – B)</th>
<th>Lateness More than 28 days to Execute Contract (E) = (D- 28)</th>
</tr>
</thead>
<tbody>
<tr>
<td>xxxx337</td>
<td>$27,961</td>
<td>5/19/2017</td>
<td>8/28/2017</td>
<td>2/5/2018</td>
<td>161</td>
<td>133</td>
</tr>
</tbody>
</table>

The State Contracting Manual (SCM) Volume 2, Section 9.B3.7 (5) states that “CAL-Card cannot be used to pay for past-due invoices.” In addition, Public Contract Code Section 10335 et. seq., requires contracts over $5,000 to be approved (executed) before any payment can be made. Further, DPAC’s Memorandum to the Division of Maintenance, “Emergency Contracts and Cal Card use for Hazardous Material Spills on State Highways” dated April 12, 2006, established a timeline between 0 and 28 days for the contract approval process for Emergency Contracts under $75,000. DPAC stated that the 0-28 days contract processing timeline from this 2006 memorandum should have never been in place, because all hazardous contracts require DGS approval. In addition, the timeline reflects regular emergency contracts and not Hazardous Material Spill contracts. DPAC plans to rescind the memorandum and distribute a new policy. Based on the 2006 memorandum titled, “Emergency Contracts and Cal Card use for Hazardous Material Spills on State Highways” the timeline was clearly intended to apply to Hazardous Material Spills contracts.

Non-compliance with contracting requirements for services acquired by CAL Card could result in Caltrans’ loss of CAL-Card and contract delegation authority from DGS.
**Recommendations**

a. Work with the Division of Maintenance to establish departmental procedures for processing Hazardous Material Spill contracts to include a timeline for contract managers to submit complete contracts packages for DPAC's approval. In addition, DPAC should establish a timeline for contract execution.

b. Once contract processing procedures are established, determine if payments could be made within the 45-day CalCard requirement. If unable to meet this requirement, consider an alternative payment method.

**Division of Procurement and Contracts' Response**

The Division of Procurement and Contracts concurs with the finding and recommendations. Please see Attachment A.

**Finding 4 – Four of 13 Contractors Started Work Before Contract Approval**

For contracts requiring the Department of General Services Office of Legal Services (DGS/OLS) approval, DGS requires such contracts to be submitted with a sufficient amount of time before the contract start date. DGS Administrative Order 06-05.1 specifically defines the time required for contract submission for approval. When DGS/OLS approval is required, contracts for services are not allowed to begin before approval and payment for services may not be made until the contract is approved by DGS/OLS or, in the case of an Exempt / Delegated contract, until the contract is appropriately approved by DPAC management.

We tested six contract invoices that require DGS/OLS approval and seven contract invoices exempt from DGS/OLS approval for evidence that payment was made only for the work done after appropriate approvals have been received. Four of the 13 invoices sampled indicated contractors billed and were paid for work done prior to contract approval. In addition, five of the six contracts that required DGS approval were not timely submitted to DGS, as required by the DGS Administrative Order 06-05.1, which affected the start time of the contracts.
Per SCM Vol. 1 Section 4.09 D, “Contracts are not valid unless and until approved by DGS/OLS if such approval is required by law” and “If the contract is not approved and the contractor has begun work, the contractor may be considered to be a volunteer, or the contractor may have to pursue a claim for payment by filing with the Government Claims Program. The State has no legal obligation unless and until the contract is approved.”

DPAC contract boilerplates include standard terms of the agreement that requires contracts to commence on the contract start date or upon receipt of the formal approval, whichever is later. Considering the legal requirements for contract approvals, Caltrans may not have the authority to pay for work done by contractors prior to approval which could lead to payment disputes.

Recommendations

a. Ensure contractors start work only after the contract receives all appropriate approvals.

b. Design a process to ensure timely submission of contracts to approvers with a sufficient amount of time before the contract start date.

Division of Procurement and Contracts’ Response

The Division of Procurement and Contracts concurs with the finding and recommendations. Please see Attachment A.

Finding 5 – Conflict of Interest Statement Not Consistently Signed by All Required Legal Division Staff

The Chief Counsel of Caltrans Legal Division was delegated the authority to oversee the processing of Legal Expert Witness Contracts. This delegation of authority from DPAC applies solely to Legal Expert Witness Contracts and is predicated upon the Legal Division’s acceptance of and compliance with set criteria in the DPAC Delegation Agreement. Part of the criteria requires the Legal Division to establish a complete official contract file for each Legal Expert Witness Contract and amendment. It also requires the Legal Division to adhere to DPAC guidelines, State Contracting Manual, and applicable laws and regulations.

During the test of contracts that require DGS/OLS approval, five of the 26 sampled contract files were Expert Witness Contracts processed by Caltrans’ Legal Division. Two of these five sampled Expert Witness contracts were above
$100,000. We noted that in these two Expert Witness Contracts tested, the Conflict of Interest (COI) statement was not signed by the required Caltrans Legal Division staff. Specifically, we noted that the Legal Division Acquisition Analysts and Contract Officers did not sign the COI statement as required by DPAC Delegation Agreement 2018 LGL EW 1. During the inquiry, an interviewed Legal division staff responsible for approving contracts stated that he was unaware of the requirement to sign a COI statement.

DPAC Delegation Agreement 2018-LGL-EW-1 states that “Prior to each contract award, Legal shall obtain a completed Conflict of Interest (COI) Statement Certification (ADM-3043) form for any contract $100,000 or more. This applies to staff involved in preparing procurement documents, approving procurement documents, receiving goods/services, approving payment, and/or making the payment. Legal staff is required to maintain the signed COI Statement Certification in the file for review by DGS and/or Internal Audits.”

Employees lack of fully complying with conflict of interest requirements, could render a contract void per SCM Vol. 1 Section 7.10 (2).

**Recommendations**

a. Provide training to the Legal division staff on conflict of interest.

b. Remind Caltrans Chief Counsel to ensure that any Legal Division staff involved in the processing of contracts over $100,000 sign the COI statement per DPAC Delegation Agreement.

**Division of Procurement and Contracts’ Response**

The Division of Procurement and Contracts concurs with the finding and recommendations. Please see Attachment A.
Attachment A

Audit Response from the Division of Procurement and Contracts
Memorandum

To: WILLIAM E. LEWIS
    Assistant Director
    Independent Office of Audits and Investigations

From: DAVID L. PRIZMICH
    Chief
    Division of Procurement and Contracts

Subject: Response to Draft Report – Department of General Services Contract Delegation Audit

The Division of Procurement and Contracts (DPAC) agrees with the draft report for the Department of General Services Contract Delegation Audit. We will provide our corrective action plan within 60 days.

If you have any questions regarding this response, please contact Kimberly Fox at (916) 227-0774.

Approved

DAVID L. PRIZMICH
Chief
Division of Procurement and Contracts

Date: May 27, 2020
File: P3000-0430

c: Kevin Yee, Office Chief, Independent Office of Audits and Investigations
    Jose Camacho, Audit Manager, Independent Office of Audits and Investigations
    Tracy Gentry, Assistant Division Chief, DPAC
    Lindy Wilson, Assistant Division Chief, DPAC
    Rajit Sharma, Assistant Division Chief, DPAC
    Charles Gray, Office Chief, DPAC
    Kimberly Fox, Branch Chief, DPAC

“Provide a safe, sustainable, integrated and efficient transportation system to enhance California’s economy and livability”