



MEMORANDUM

Date: November 20, 2018 **File No.:** 8169

To: Barbara A. Lee, Director
Department of Toxic Substances Control
1001 I Street, 25th Floor
Sacramento, CA 95814

From: Department of General Services
Office of Audit Services

Subject: **AUDIT REPORT: CONTRACTING PROGRAM**

Attached is the final report on our compliance audit of the Department of Toxic Substances Control's (DTSC) contracting program. The objective of our audit was to determine compliance with the terms and conditions of Exemption Letter No. 40.06. In general, the exemption requires that the DTSC maintain an adequate and effective system of internal control over contracting and that the system be sufficient to provide reasonable assurance of compliance with the State's contracting laws, policies, and procedures.

The DTSC's written response to our draft report is included in this final report. The report also includes our evaluation of the response. We are pleased with the actions being taken to address our recommendations.

As part of its operating responsibilities, the Office of Audit Services is responsible for following up on audit recommendations. Therefore, please submit a status report on the implementation of each to us by May 22, 2019. To the extent that it is practicable, supporting documentation should include: a sample copy of the newly developed internal contract checklist now being used as a tool to aid in compliance over the areas of DFEH notice, Contractor Certification Clauses (CCCs), and ORIM approval of certificates of insurance for hazardous contracts; excerpts of the updated policies and procedures governing CCCs; and, any practical evidentiary support showing managerial review of the contract package review process Tracking Sheet as well as the updated contract closeout process designed to capture DVBE sub-contracting usage.

The necessity of any further status reports will be determined at that time. Please transmit your status report to: DGS - Office of Audit Services, 707 3rd Street, 8th Floor, West Sacramento, CA 95605 or preferably via e-mail to Dennis.Miras@dgs.ca.gov.

We greatly appreciated the cooperation and assistance provided by DTSC's personnel.

If you need further information or assistance on this report, please call / e-mail me at (916) 376-5064 / Dennis.Miras@dgs.ca.gov, or Lucy Wong, Management Auditor, at (916) 376-5049 / Lucy.Wong@dgs.ca.gov.

Dennis M Miras

DENNIS M MIRAS, CIA
Manager, Office of Audit Services

Attachment

cc: Andrew Collada, Deputy Director, Office of Administrative Services
Jessica Heinz, Procurement and Contracting Officer, Contracts/Business Services
Dan Miller, Manager, Contract Development Unit, Contracts/Business Services
Scott Leonard, Manager, Contract Administration Unit, Contracts/Business Services
Leslie Lopez, Deputy Director and Chief Counsel, Office of Legal Services, DGS

**GOVERNMENT OPERATIONS AGENCY
DEPARTMENT OF GENERAL SERVICES**

**DEPARTMENT OF
TOXIC SUBSTANCES CONTROL
(DTSC)**

**AUDIT OF
CONTRACTING PROGRAM
REPORT NO. 8169**

OFFICE OF AUDIT SERVICES

JULY 2018

**DEPARTMENT OF TOXIC SUBSTANCES CONTROL
AUDIT OF CONTRACTING PROGRAM
REPORT NO. 8169**

TABLE OF CONTENTS

	<u>PAGE</u>
AUDITOR'S REPORT.....	1
FINDINGS AND RECOMMENDATIONS.....	3
NOTIFICATION TO DFEH.....	3
CONTRACT CERTIFICATION CLAUSES.....	4
HAZARDOUS SERVICE CONTRACTS - INSURANCE REQUIREMENT	4
MISCLASSIFICATION OF CONTRACTS.....	5
REPORTING OF DVBE SUB-CONTRACTOR USAGE.....	5
CONCLUSION.....	6
DTSC'S RESPONSE.....	7
EVALUATION OF DTSC'S RESPONSE.....	10

STATE OF CALIFORNIA
DEPARTMENT OF GENERAL SERVICES
AUDITOR'S REPORT

DATE: November 20, 2018

TO: **Barbara A. Lee**, Director
Department of Toxic Substances Control

This report presents the results of our audit of the Department of Toxic Substances Control's (DTSC) contracting program. On April 16, 2015, the Director of the Department of General Services (DGS) signed Exemption Letter No. 40.06, which granted DTSC's request to process contracts without DGS review and approval. Briefly, subject to a number of limitations, the exemption allows various types of contracts under \$150,000 to be processed without DGS review and approval during the four-year period of April 1, 2015 through March 31, 2019. As a condition of the exemption, two audits are required to be performed of DTSC's contracting program during the four-year exemption period. Based on DTSC's request, the DGS Office of Audit Services (OAS) agreed to conduct the first audit required under the terms of the exemption.

The objective of our audit was to determine compliance with the terms and conditions of Exemption Letter No. 40.06. In general, the exemption requires that DTSC maintain an adequate and effective system of internal control over contracting and that the system be sufficient to provide reasonable assurance of compliance with the State's contracting laws, policies, and procedures. Our audit was conducted in accordance with U.S. generally accepted auditing standards.

Our review disclosed the following areas of noncompliance with state requirements that should be addressed by DTSC's management. The implementation of the recommendations presented in this report will assist DTSC in addressing these issues.

- Procedures are not ensuring notification to the Department of Fair Employment and Housing of contract awards over \$5,000.
- Policies and procedures are not ensuring that current Contractor Certifications, including those related to nondiscrimination program compliance and maintenance of a drug-free workplace, are obtained from contractors.
- Certificates of insurance for service contracts involving hazardous activities are not being obtained timely and are not being submitted to DGS' Office of Risk and Insurance Management for approval.
- There are no guidelines provided for contract analysts to follow to ensure that contracts are consistently and properly classified.
- Disabled Veteran Business Enterprise (DVBE) sub-contractor usage is not being obtained from prime contractors and Contractor DVBE Subcontracting Consolidation Reports (STDo 810D) are not being completed and submitted to DGS' Office of Small Business and DVBE Services as required.

During our review we also identified other matters requiring attention that we discussed with DTSC's contract management personnel. Since the degree of noncompliance noted was not significant to DTSC's overall contracting program, and we were assured that appropriate actions had been or are being taken to address our concerns, these issues are not further discussed in this report. We are pleased with the commitment shown to improve compliance with the State's contracting requirements.

It should be noted that when advised of areas for improvement during our audit fieldwork, DTSC's management took prompt actions to address our concerns. However, we did not perform effectiveness tests to determine whether the corrective actions were functioning as intended. DTSC's management has the ongoing responsibility for ensuring that its contracting program policies and procedures are functioning as prescribed and are modified, as appropriate, for changes in conditions.

Your response to each of our recommendations as well as our evaluation of the response are included in this report.

We greatly appreciated the cooperation and assistance provided by DTSC's personnel.

If you need further information or assistance on this report, please contact me at (916) 376-5064, or Lucy Wong, at (916) 376-5049.

Dennis M Miras

DENNIS M MIRAS, CIA
Manager, Office of Audit Services

Staff: Lucy Wong, Management Auditor

cc: Andrew Collada, Deputy Director, Office of Administrative Services
Jessica Heinz, Procurement and Contracting Officer, Contracts/Business Services
Dan Miller, Manager, Contract Development Unit, Contracts/Business Services
Scott Leonard, Manager, Contract Administration Unit, Contracts/Business Services
Leslie Lopez, Deputy Director and Chief Counsel, Office of Legal Services, DGS

**DEPARTMENT OF TOXIC SUBSTANCES CONTROL
(DTSC)**

CONTRACTING PROGRAM AUDIT

FINDINGS AND RECOMMENDATIONS

The following presents our detailed findings and recommendations developed based on our review of the Department of Toxic Substances Control's (DTSC) contracting program for compliance with the terms and conditions of Exemption Letter No. 40.06 granted by the Department of General Services (DGS). This report presents information on areas of noncompliance with policies governing the: notification to the Department of Fair Employment and Housing (DFEH); obtaining of required contract certification clauses; proper notice and maintenance of certificates of insurance when contracts with hazardous services are involved; proper classification of contracts; and, reporting of Disabled Veteran Business Enterprise (DVBE) sub-contractor usage.

This information was developed based on our fieldwork conducted over the period December 13, 2017 through July 20, 2018. In addition to this written report, as findings were observed and developed during our audit fieldwork, DTSC's contracting program management personnel was promptly advised of any areas of concern so that they could begin taking corrective action. Further, at our July 20, 2018 formal audit exit conference, DTSC was provided a detailed written summary of issues noted during our review.

To determine compliance, we reviewed policies and procedures, interviewed parties involved, tested contracts, records and invoice payments, and performed other tests as deemed necessary. The period covered by our testing varied depending upon the area of review and the type of transactions involved; however, the emphasis of our review and testing was with current procedures and transactions completed during the 2016/17 and 2017/18 fiscal years.

NOTIFICATION TO THE DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

Current policies and procedures are not ensuring that notification to the Department of Fair Employment and Housing (DFEH) of contract awards over \$5,000 occurs as required by State Contracting Manual (SCM), Volume 1, Section 7.15 B. For each of the eight sampled contracts reviewed, no copies of DFEH reporting documents were maintained in the contract files, even though the responsible contract analysts had checked box 18 on the STD 215 (Agreement Summary), indicating that the contracts had indeed been reported to DFEH. Further investigation revealed that the most recent notice to DFEH occurred back in March 2015.

It appears that the above condition is the result of contract analysts' mistaken understanding that these contracts were automatically reported to DFEH through the new FI\$Cal system. When advised of our findings, DTSC's contracting program management personnel confirmed with their FI\$Cal consultant that automatic notice to DFEH does not occur.

Recommendation

- 1.e Reemphasize to contract analysts the importance of utilizing the STD 16 ("Contracte Award Report") in order to inform DFEH of contracts over \$5,000 within 10 days of contract award.e

CONTRACT CERTIFICATION CLAUSES

Existing policies and procedures are not ensuring that current Contractor Certification Clauses (CCC), including those related to nondiscrimination program compliance and maintenance of a drug-free workplace, are obtained from contractors¹. Specifically, none of the CCC were current for any of the eight sampled delegated contracts reviewed; one was signed over four years prior to the contract award while the other seven were signed anywhere from one to three years prior.

SCM Vol.1, Section 4.08, A, 1d (4) provides that, "a copy of the current CCC must be separately executed by the contractor and retained in the contract file", while Section 7.65 states that, "These certifications must be made at the time a bid or proposal is submitted, or a contract renewal is executed".

Recommendation

- 2.e Modify existing internal policies and procedures to ensure that current CCC are obtained from the contractor for each contract at the time a bid or proposal is submitted, or a contract renewal is executed.e

HAZARDOUS SERVICE CONTRACTS - INSURANCE REQUIREMENT

DTSC has not implemented the policies and written procedures specified in its own Contract Handbook (p.21), which requires that liability insurance be obtained for A&E (Architectural and Engineering) contracts. Our tests of service contracts processed by DTSC revealed that certificates of insurance were not being obtained in a timely manner from contractors prior to execution. Specifically, for the two sampled A&E contracts reviewed that involved hazardous activities, the certificates of insurance on file did not cover the period from the beginning of the contract terms; instead, they covered time-frames that were four and six-and-a-half months after the contracts were signed, respectively.

In addition, each of these two contracts and certificates of insurance were not submitted to DGS' Office of Risk and Insurance Management (ORIM) for approval. Further, due to the nature of DTSC's functions, it is very likely that many contracts executed by DTSC involve hazardous activities. However, ORIM's records indicate that DTSC has not submitted any contracts and accompanying certificates of insurance to ORIM for at least eight years.

State policy provides that regardless of the contract amount, insurance is required if hazardous activities are included in the performance of a contract. And, the contracts must be submitted to ORIM for review even though they may also be of the types otherwise exempted from approval (SAM Section 1216 and SCM Vol.1, Section 3.12, B).

¹ Same issue was noted in our review performed in 2009 (Report #9174)

Recommendations

- 3.e Establish and implement additional quality assurance policies and procedures to assist in ensuring that: certificates of insurance are obtained for contracts that include hazardous activities prior to execution; cover the entire contract term; and, are submitted to DGS' ORIM for approval.

MISCLASSIFICATION OF CONTRACTS

Current processes do not ensure that contracts are classified properly and consistently. During our sample selection phases for a variety of tests rendered, we noted within DTSC's Contract Development Tracking Log several contracts that were executed with local governmental entities misclassified as Interagency Agreements rather than as Contracts while other contracts executed with state agencies improperly classified as Contracts instead of as Interagency Agreements. Additionally, contracts that were exempted from DGS approval per Health & Safety Code 25146-25149.7 were not being classified consistently; some were classified as RSRC (Remedial Site Remediation Contracts) and others were classified as service contracts.

SCM Section 1.05 states that, "Proper classification of acquisitions is necessary as a first step in determining which solicitation process is appropriate for the contract, and what elements are required to be in the contract".

We were advised that the tracking log is completed by several different contract analysts, which may serve to be a contributing factor to the misclassifications and inconsistencies involved.

Recommendation

- 4.e Develop and implement guidelines for contract analysts to follow which will facilitate the proper and consistent classification of contract types.

REPORTING OF DVBE SUB-CONTRACTOR USAGE

DTSC is not obtaining a report from the prime contractor of the actual percentage of DVBE sub-contracting usage within 60 days of receiving final payment for the contract. Furthermore, it is not submitting the State Department's Contractor DVBE Subcontracting Consolidation Report (STD 810D) to DGS' Office of Small Business and DVBE Services (OSDS).

According to SCM Vol.1, Section 8.16(c) and 8.20(h), upon completion of an awarded contract for which a commitment to achieve DVBE participation was made, an awarding department shall require the prime contractor that entered into a subcontract with a DVBE to certify to the awarding department all of the following: (1) the total amount the prime contract received under the contract; (2) the name and address of the DVBE that participated in the performance of the contract; (3) the amount each DVBE received from the prime contractor; and, (4) that all payments under the contract have been made to the DVBE.

DEPARTMENT OF TOXIC SUBSTANCES CONTROL
Findings and Recommendations, Cont'd

In addition, DGS Procurement Division Bulletin #P-19-14 requires that departments use *Prime Contractor's DVBE Subcontracting Report* for contracts issued on and after July 1, 2014. Furthermore, DGS will require awarding departments to submit the *State Department's Contractor DVBE Subcontracting Consolidation Report (STD 810D)* beginning with fiscal year 2014-15. The first report is due on November 1, 2015, and thereafter, annually on November 1st.

Recommendation

5.e Maintain a tracking log of contracts with DVBE subcontracting to assist in ensuring that: prime contractors report the actual percentage of DVBE sub-contracting usages within 60 days of receiving final payment for the contract; and, the department submit the State Department's Contractor DVBE Subcontracting Consolidation Report (STD 810D) to DGS' OSDS annually on November 1st.

CONCLUSION

Our findings and recommendations are presented to aid DTSC in administering its contracting program. DTSC should address the reported issues to assist in ensuring compliance with applicable state laws, policies and procedures.



Department of Toxic Substances Control

Matthew Rodriguez
Secretary for
Environmental Protection

Barbara Lee, Director
1001 "I" Street
P.O. Box 806
Sacramento, California 95812-0806

Edmund G. Brown Jr.
Governor

November 13, 2018

Dennis Miras, CIA
Department of General Services
707 3rd Street, 8th Floor
West Sacramento, CA 95605

Mr. Miras,

The Department of Toxic Substances Control (DTSC) has received the Department of General Services' (DGS) compliance audit of DTSC's contracting program dated October 30, 2018. DTSC appreciates DGS' audit review and welcomes the opportunity to take a closer look at how we can improve our processes to ensure compliance with the State's contracting laws, policies, and procedures.

Listed below are DGS' findings and recommendations, and DTSC's corresponding responses.

- 1.e Procedures are not ensuring notification to the Department of Fair Employment and Housing of contract awards over \$5,000.e
DGS' Recommendation: Reemphasize to contract analysts the importance of utilizing STD 16 ("Contract Award Report") in order to inform DFEH of contracts over \$5,000 within 10e days of contract award.e
DTSC's Response: DTSC currently addresses this requirement in our policies and procedures.e Furthermore, DTSC developed a new internal contract checklist for analysts and managers that includes manager verification that the STD 16 has been completed and sent to DFEH.e DTSC management will continue to monitor contracts to confirm compliance.e
- 2.e Policies and procedures are not ensuring that current Contractor Certifications, including those related to nondiscrimination program compliance and maintenance of a drug-free workplace, are obtained from contractors.e
DGS' Recommendation: Modify existing internal policies and procedures to ensure that current CCC are obtained from the contractor for each contract at the time a bid or proposal is submitted, or a contract renewal is executed.e
DTSC's Response: DTSC currently addresses this requirement in our policies and procedures.e The Contract Analyst obtains new Contractor Certification Clauses prior to execution of a new contract. These procedures include a modified checklist that must be completed fore

each contract or amendment. The checklist lists the CCCs as requirement for each contract folder. Furthermore, DTSC managers perform a quality assurance check on each contract after execution to ensure all documents, including CCCs, are accounted for.

- 3.a Certificates of insurance for service contracts involving hazardous activities are not being obtained timely and are not being submitted to DGS' Office of Risk and Insurance Management for approval.

DGS' Recommendation: Establish and implement additional quality assurance policies and procedures to assist in ensuring that: certificates of insurance are obtained for contracts that include hazardous activities prior to execution; cover the entire contract term; and, are submitted to DGS' ORIM for approval.

DTSC's Response: DTSC has been working with DGS' ORIM to obtain specific insurance requirement information for hazardous contracts, various knowledge guides and provide staff training. DTSC received in person training from ORIM on November 9th, 2018 to learn more about hazardous insurance certificates, contract requirements, and types of insurance. In addition, DTSC implemented new quality assurance policies to gather certificates of insurance from contractors prior to contract execution, when necessary. DTSC developed a new internal contract checklist for analysts and managers that includes the certificate of insurance as part of the contract review process. Furthermore, this internal contract checklist contains space to notate the date the insurance documents and contract were submitted and approved by DGS' ORIM, if required. Proof of submission and approval from ORIM are required on DTSC's internal contract checklist. Lastly, DTSC is working on developing a tickler system to notify contractors and DTSC contract managers when insurance coverage may be close to expiration.

- 4.a There are no guidelines provided for contract analysts to follow to ensure that contracts are consistently and properly classified.

DGS' Recommendation: Develop and implement guidelines for contract analysts to follow which will facilitate the proper and consistent classification of contract types.

DTSC's Response: DTSC currently addresses proper classification of contracts in the Contract Development Analyst Manual (Desk Manual). Although the audit identified occurrences of contracts being improperly logged on the Contract Development Tracking Sheet, DTSC feels this is a data entry issue only, and that all contracts were classified appropriately and developed in accordance with State contracting laws. CDU has taken steps to ensure the integrity of the data by adding manager review of the Tracking Sheet to the contract package review process.

- 5.a Disabled Veteran Business Enterprise (DVBE) sub-contractor usage is not being obtained from prime contractors and Contractor DVBE Subcontracting Consolidation Reports (STDA 810D) are not being completed and submitted to DGS' Office of Small Business and DVBE Services as required.

DGS' Recommendation: Maintain a tracking log of contracts with DVBE subcontracting to assist in ensuring that: prime contractors report the actual percentage of DVBE subcontracting usage within 60 days of receiving final payment for the contract; and, the

department submits the State Department's Contractor DVBE Subcontracting Consolidation Report (STD 810D) to DGS' OSDS annually on November 1st.

DTSC's Response: DTSC is in the process of updating the contract closeout process to include the additional steps to obtain actual percentages of DVBE sub-contracting usage for all contracts with a DVBE participation requirement. Additionally, DTSC has appointed a new SB/DVBE Advocate who can assist with this process and ensure compliance with the DVBE program.

DTSC is happy to report that both the STD 810 and STD 810D were submitted timely to DGS for the FY 17/18 period.

**DEPARTMENT OF TOXIC SUBSTANCES CONTROL
(DTSC)**

COMPLIANCE AUDIT

EVALUATION OF DTSC'S RESPONSE

We have reviewed the response by the Department of Toxic Substances Control (DTSC) to our draft report. The response to the recommendations is satisfactory and we appreciate the efforts taken or being taken by DTSC to improve its contracting program.

As part of its operating duties, we are responsible for following up on audit recommendations and will require a six-month status report on the implementation of each. To the extent that it is practicable, supporting documentation should include: a sample copy of the newly developed internal contract checklist now being used as a tool to aid in compliance over the areas of DFEH notice, Contractor Certification Clauses (CCCs), and ORIM approval of certificates of insurance for hazardous contracts; excerpts of the updated policies and procedures governing CCCs; and, any practical evidentiary support showing managerial review of the contract package review process Tracking Sheet as well as the updated contract closeout process designed to capture DVBE sub-contracting usage.