

LEGISLATIVE AUDIT DIVISION

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MEMORANDUM

TO: Legislative Audit Committee Members
FROM: Joe Murray, Performance Audit Manager
DATE: June 2011
CC: Mike Ferriter, Director, Department of Corrections
RE: Performance Audit Follow-up (11SP-28): Contract Management, Department of Corrections (09P-08)
ATTACHMENT: Original Performance Audit Summary

Introduction

In March 2010, we presented our performance audit on Contract Management at the Department of Corrections (department). The audit made nine recommendations to the department. In April 2011, we began gathering preliminary information from the department on its progress in implementing the recommendations. This memo summarizes the results of our follow-up work.

Overview

This report featured information on the procurement and monitoring of contracts at the department and also addressed organizational controls. Our recommendations included taking action to comply with existing procurement laws, developing agency policies and procedures to improve transparency and documentation, and elevating the importance of contract management functions within the department. The department has implemented three of the recommendations but five are still being implemented and one has been partially implemented. The Legislative Audit Committee may request additional follow-up work in approximately six months to determine if the department has fully implemented these recommendations.

Background

Operating the modern Montana Department of Corrections requires more than the ability to manage state-run institutions and probation and parole offices. Many functions in the current corrections environment are supplied by private vendors, so the department must also be able to procure and monitor contracted goods and services. The department has entered into contracts for a private prison, regional prisons, prerelease centers, and specialized treatment and sanction facilities in addition to a wide variety of other goods and services, ranging from property leases to medical service providers. The total expenditure on contracted goods and services was approximately \$74 million in fiscal year 2009. Our audit sought to determine if the department had internal controls in place to ensure efficient and effective contract management, and if the organizational structure of the department promoted effective contract management.

Audit work identified three primary areas in which contract management improvements were needed: procuring contracted facilities, monitoring contractor performance, and emphasizing contract management through organizational changes. Recommendations addressed the need to:

- ▶ Ensure fair and equitable treatment of all vendors in procurement processes by complying with state procurement laws
- ▶ Ensure all contracts are set forth in writing
- ▶ Develop a policy regarding procurement evaluation committee composition
- ▶ Amend administrative rules to clarify the prerelease siting process
- ▶ Update contract monitoring tools and policies to ensure all contracts are adequately monitored
- ▶ Emphasize the importance of contract management through changes to the department's organizational structure.

Follow-Up Audit Findings

In response to the original audit report the department concurred with eight of the recommendations and partially concurred with the ninth. As part of audit follow-up work, we requested an implementation status update from the agency, reviewed agency documents relating to the audit recommendations and interviewed agency staff. The department has implemented three of the recommendations but five are still being implemented and one has been partially implemented. For recommendations not yet implemented, additional follow-up work in approximately six months would be needed in order to determine if the department has fully implemented these recommendations. The implementation status of each recommendation is discussed in the following sections.

RECOMMENDATION #1

We recommend the Department of Corrections comply with state law when entering into contracts for new facilities by:

- A. Contracting with Montana nonprofit corporations for prerelease centers as required in §53-1-203, MCA.**
- B. Procuring all facilities according to the provisions of the Montana Procurement Act when Title 53, MCA is silent.**

Implementation Status – Being Implemented

There have been no new prerelease facilities opened since the time of the audit, so it is not possible to follow-up on part A of this recommendation. To address part B, the department sought legislation (SB72) revising Title 53, MCA and its authority to contract for community corrections programs. The bill was passed by the legislature and the statute becomes effective October 1, 2011. The statute provides the department with rulemaking authority to govern the expansion of treatment facilities or programs which were originally established through a competitive bid process. Some community corrections facilities were established via competitive processes while others were not. The department plans to draft rules and submit them for public comment but has not yet completed these steps.

RECOMMENDATION #2

We recommend the Department of Corrections amend ARM 20.7.501-511 to clarify the order in which prerelease center site approval and procurement steps are to be completed.

Implementation Status – Being Implemented

The department has drafted amendments to ARM 20.7.501-511. The proposed new rule appears to clarify the steps required to ascertain public support for the location of a prerelease center. The department plans to hold public hearings on the proposed rule in summer 2011.

RECOMMENDATION #3

We recommend the Department of Corrections comply with the Montana Procurement Act by:

- A. Developing and following a policy that ensures fair and equitable treatment of all vendors during procurement.**
- B. Developing and following a policy to demonstrate the basis upon which procurement awards are made.**

Implementation Status – Implemented

The Department has revised its policy for department procurement. We obtained and reviewed request for proposal (RFP) award documents and verified the basis of award was demonstrable.

RECOMMENDATION #4

We recommend the Department of Corrections develop a policy to assure selection and composition of request for proposal evaluation committees avoids potential conflicts of interest.

Implementation Status – Implemented

The department has revised policy 1.2.8 for department procurement. We reviewed the revised policy and verified it addresses the composition of RFP evaluation committee and potential conflicts of interest.

RECOMMENDATION #5

We recommend the Department of Corrections ensure all contracts are executed in writing.

Implementation Status – Implemented

The department indicated that, when required, all contracts have been executed in writing and new controls have been implemented that are designed to ensure vendors are not paid if a written contract is absent. We verified those agreements which lacked a written contract during the audit have been executed in writing. We also interviewed agency staff and obtained documentation that controls are in place to ensure written contracts are in place when necessary. Future financial-compliance audits may include steps to verify controls are in place and are effective.

RECOMMENDATION #6

We recommend the Department of Corrections:

- A. Update and revise its compliance monitoring tools to better suit each type of facility to be monitored.**
- B. Require results of Compliance Monitoring Unit compliance reviews be shared with the appropriate contract liaison and reviewed contracted facility.**

Implementation Status – Being Implemented

The Compliance Monitoring Unit was transferred to the Administrative and Financial Services Division in September 2010. The department reports it was making significant progress in updating monitoring

tools, however, it has encountered challenges with funding and staff turnover. The department indicates that it plans to work with staff members from the Contract Placement Unit and Adult and Community Corrections to implement this recommendation by September 2011.

RECOMMENDATION #7

We recommend that the Department of Corrections develop a comprehensive contract monitoring process for community corrections facilities by:

- A. Developing tools for use by facility contract monitors that will promote the evaluation and documentation of contractor performance.**
- B. Adopting a policy regarding the frequency of facility monitoring activities.**

Implementation Status – Being Implemented

The Adult Community Corrections Division has developed monitoring tools to be used by contract liaisons and has developed a schedule for regular facility monitoring. The department has developed a draft policy related to the use of monitoring tools by contract managers; however, a final policy has not yet been completed.

RECOMMENDATION #8

We recommend the Department of Corrections improve monitoring of miscellaneous contracts by developing policies and procedures which:

- A. Define expectations related to contract monitoring activities including types of monitoring activities to be conducted, frequency of monitoring, and how contract monitoring activities should be documented.**
- B. Require formal evaluations of contractor performance prior to renegotiating or renewing contracts which are supported with documentation compiled through formal contract monitoring activities.**

Implementation Status – Being Implemented

The department has begun to address this recommendation through revision of department policy for administration of contracts. Further, it has developed a contract justification form to be used for new contracts and amendments. We verified contract justification forms contain information related to the need for a new or amended contract. The agency also plans to require periodic contractor evaluations. It has developed a form to be used by liaisons but will not start collecting evaluations until 2012. Proposed contractor evaluation forms appear to provide the ability to support determinations related to contractor performance.

RECOMMENDATION #9

We recommend the Department of Corrections:

- A. Re-evaluate its existing contract management structure.**
- B. Make changes to centralize and strengthen contract management activities.**

Implementation Status – Partially Implemented

The department has made changes to emphasize the importance of contract management but has made few structural changes to centralize contract management activities. Instead, the department indicates its primary step to emphasize the importance of contract management has been through the routine

discussion of the topic at management team meetings and during one-on-one meetings between the director and division administrators. Management meeting agendas typically include only subjects of high importance to the department and support the conclusion that contract management is regularly discussed at such meetings. The completion rate for contract management reports has improved since the time of the audit. Structurally, the Compliance Monitoring Unit was transferred to the Administrative and Financial Services Division, which also contains the Contracts Management Bureau in September 2010. This move was made primarily due to the dissolution of another division within the department but may have the effect of improving coordination of various aspects of contract management. If additional follow-up work is completed we will evaluate whether the steps taken by the department adequately strengthen contract management.

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