# State of Florida Contract Management

*Protecting the Investment of Florida's Taxpayers*

# Background

The State of Florida Inspectors General Enterprise Audit Plan for FY 2011-2012

➢ Contract Monitoring

# Participating Agencies

| | |
|---|---|
| AHCA | DOEA |
| DBPR | DOH |
| DCF | DOS |
| DEM | DOT |
| DEP | DVA |
| DJJ | EOG |
| DOC | FDLE |
| DOE | HSMV |

# Methodology

- ➢ Agency Contract Management Audits

- ➢ Survey of Contract Managers

- ➢ Past Contract Audit Findings

- ➢ *Road Map to Excellence in Contracting* Audit, June 2003

- ➢ Right–to–Audit Language

- ➢ DFS Reviews of Agency Contract/Grant Agreements

# Results

➤ Memorandums of Agreement/Understanding

➤ Contract Writing

➤ Right-To-Audit Language

➤ Contract Manager Identification

➤ Monitoring

➤ Reporting Vendor Performance and Convictions

➤ Closeout

➤ Training and Development

➤ Recommendations

# Memorandums of Agreement/Understanding

➢ MOAs/MOUs are not defined or regulated by the Florida Statutes or the Florida Administrative Code.

➢ Half of participating agencies
  ➢ Lacked policies and procedures regarding MOAs/MOUs; and
  ➢ Utilized MOAs/MOUs to purchase services and commodities.

➢ The lack of guidance concerning MOAs/MOUs could
  ➢ Lead agency personnel to use the convenient structure of these agreements instead of the procured contracts detailed in Chapter 287, Florida Statutes; and
  ➢ Increase the risk of poorly-written agreements, financial losses, and vendor non-performance.

# Contract Writing

➤ The lack of financial consequences and a clear scope of work in state contracts continues to be a common audit finding.

➤ Financial consequences in contracts need to be more precise to hold the vendor accountable.

➤ If the scope of work is ambiguous, the agency may have a difficult time making the vendor comply with its expectations.

# Right-to-Audit Language

➢ Agencies' policies, procedures and contract templates do not address all standard elements of right-to-audit language.

➢ Having adequate right-to-audit language within a contract can help control fraud and abuse by providing an avenue of detection, whether in the day-to-day management of a contract or in a fraud examination.

## Questions to ask when developing Right-to-Audit Language

**1. Right-to-audit Clause:**
- **Who** does the contract give the right to audit to?
- **What** records do they have the right to audit?
- **How** much, if any, notice is required prior to beginning the audit?
- **Where** do the reviewers have the right to perform the audit?

**2. Maintenance of Records Language:**
- **What** records needs to be maintained?
- **How** do the records need to be maintained (GAAP)?
- **What** is the length of time the records must be maintained?

**3. Access to Records Language:**
- **When** must the records be made available?
- **What** types of records need to be produced (electronic/hard copy)?
- **What** will be the cost, if any, for duplication and transfer of records?
- **How** long will the agency retain the right to access the records?
- **Who** has the right to access the records?
- **Which** records will be available to the public (exceptions: confidential or exempt materials)?

**4. Assignment to Subcontractors Language:**
- **What** audit requirements must the contractor require the subcontractor to comply with, in the event that any work is assigned to a subcontractor?

**5. Inspector General Language:**
- **What** laws/regulations give the Inspector General the right to audit/investigate?
- **What** additional records, if any, shall the Inspector General be granted access to?

**6. Right to Cancel/Terminate for Non-Compliance with the Right-to-audit Clause:**
- **What** are the triggers for the right to cancel/terminate?
- **What**, if any, are additional consequences of that may be levied, by this clause being initiated?

**7. Single Audit Language:**
- **What** are the state and federal requirements that apply to contracts that require Single Audits to be performed?

# Contract Manager Identification

➤ Although the State has a new contract tracking system, state agencies lack a central, online resource for contract manager demographics, certifications, and training.

➤ Identification of contract managers is an important management step to ensure contract managers are properly trained and certified to perform assigned contract management responsibilities.  It also provides a method for communication with contract managers through e-mail and/or other means.

# Monitoring

➢ The lack of appropriate contract monitoring continues to be a prevalent audit finding. Contract monitoring is essential to ensure the State receives what it pays for.

➢ Unsatisfactory performance by a vendor could jeopardize an agency's project or even an entire program. By assuming a dynamic role in contract administration, the contract manager is more likely to detect and resolve problems in the early stages of the contract and avoid "crisis management" later.

# Reporting Vendor Performance and Convictions

➢ State agencies are not rating the performance of most vendors in the MyFloridaMarketPlace (MFMP) system.

➢ Most state agencies are not reporting convicted vendors to DMS in accordance with Section 287.133(2)(b).

➢ Vendor information that is not populated or updated leaves state agencies with little resource to determine qualified vendors for purchase agreements or contracts. Consequently, agencies may unknowingly award contracts to vendors with a record of convictions, non-compliance or poor performance. These unqualified vendors place the State at risk for financial losses, missed program objectives and threats to public safety.

# Closeout

➢ Most agencies' policies and procedures do not address all the elements needed in closeout procedures.

➢ Without adequate closeout procedures, agencies' personnel may omit important closeout activities. These omissions set the agency at risk because contract funds may not be properly accounted for and performance objectives may not be met prior to closure of the agency–vendor relationship.

# Training and Development

➢ DMS has not provided contract training to state agencies since December 2011 due to lack of funding.

➢ Many contract managers indicated they were not aware of, or had not attended, contract monitoring training provided by DFS or their agency.

➢ Contract personnel who lack training are more likely
    ➢ To enter into poorly-written contracts; and
    ➢ To overlook key monitoring tasks, such as the completion of contract deliverables, the accounting for and appropriate use of funds and the meeting of program goals and objectives.

# Recommendations

## Enterprise

- ➤ Guidance and Training
- ➤ Regulatory Changes

## Agency

- ➤ Policy and Procedures
- ➤ Utilization of DMS vendor information resources
- ➤ Training

# Next Steps

➢ Publish presentation and supporting documentation to the Florida OIG website.

➢ Forward the information to the Contract Management Task Force, led by David Wilkins, Chief Operating Officer for Government Operations.

# Audit Team

Melinda Miguel (EOG)
Dawn Case (EOG)
Kim Mills (EOG)
Joe Maleszewski (DEO)
Kris Sullivan (DEM)
Karen Calhoun (AHCA)
Destin DuBose (DOT)
Patrick Craig (DOT)

Matt Wells (DOT-OIS)
Mike Bennett (DOH)
Mark Boehmer (DOH)
Ronnie Atkins (HSMV)
Doane Rohr (HSMV)
Bruce Smith (DCF)
Jerry Chesnutt (DCF)
Cynthia Hefren (DBPR)

For more information on this audit, visit the Florida Chief Inspector General website at www.floridaoig.com