

Washington State Auditor's Office
Whistleblower Report

Department of Corrections

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WASHINGTON
BRIAN SONNTAG
STATE AUDITOR



**Washington State Auditor
Brian Sonntag**

October 11, 2010

Department of Corrections
Olympia, Washington

Report on Whistleblower Investigation

Attached is the official report on Whistleblower Case No. WB 10-042 at the Department of Corrections.

The State Auditor's Office received an assertion of improper governmental activity at the Department. This assertion was submitted to us under the provisions of Chapter 42.40 of the Revised Code of Washington, the Whistleblower Act. We have investigated the assertion independently and objectively through interviews and by reviewing relevant documents. This report contains the result of our investigation.

Questions about this report should be directed to Senior Investigator Sandy Miller at (360) 902-0378 or Director of Special Investigations Jim Brittain at (360) 902-0372.

Sincerely,

BRIAN SONNTAG, CGFM
WASHINGTON STATE AUDITOR

BS: sym

cc: Ms. Kathy Smith, Internal Audit Manager, Department of Corrections

Whistleblower Investigation Report

State of Washington Department of Corrections

ABOUT THE INVESTIGATION

On March 23, 2010, a whistleblower asserted to our Office that the administrator for chemical dependency programs at the Department of Corrections inappropriately contracted with a residential chemical dependency provider. The assertion stated the contract guaranteed payment before services were provided and the subject terminated contracts with other vendors to reduce competition for the vendor in question.

We referred the case to the Department to investigate. The Department reported back its findings to our Office. We concur with the Department's findings.

BACKGROUND

In 2007 the Department entered into an inter-agency agreement with the Department of Social and Health Services to provide residential chemical dependency treatment services to drug offenders under the Department's supervision.

In March 2007, the Department asked vendors to indicate if they were interested in providing beds for offenders needing residential, or in-patient, treatment for chemical dependency. Of the five vendors that provide this service in Washington, two responded. The Department awarded contracts for 50 beds each to those two vendors.

In 2009 one of the vendors lost its license to operate. The Department transferred that vendor's contract for 50 beds to the second vendor, which is the one named in the assertion. In early 2010, the Legislature passed a bill that required the Department to add 115 beds to accommodate additional offenders. The Department signed a contract amendment with the vendor in June 2010 for the additional beds.

ASSERTIONS

1. The administrator for chemical dependency programs with the Department of Corrections Division of Health Services did not use proper bid procedures when awarding a contract to a vendor.
2. The administrator for chemical dependency programs with the Department of Corrections Division of Health Services guaranteed contract payments prior to the vendor providing services.

RESULTS

Assertion 1

We found no reasonable cause to believe an improper governmental action occurred.

State law does not require agencies to solicit bids for client services contracts. The Department, therefore, did not violate state contracting law.

The contracts reviewed during the investigation were signed by the Department Secretary, Contracts Manager or Contracts Administrator. We found no documentation to show the subject instructed the contract to be awarded to the vendor or authorized the contract.

Assertion 2

We found no reasonable cause to believe an improper governmental action occurred.

The contract in place at the time of the assertion allowed the Department to pay the vendor for up to 75 unoccupied beds for up to three months to cover the costs of increasing capacity to 115 beds. An amendment dated June 23, 2010, extended the contract's length by one year and increased how much the Department can pay the vendor for occupied beds. It does not contain language allowing the Department to pay for unoccupied beds. Because the amendment supersedes the original contract, we found no evidence the Department is paying the vendor for services not rendered.

STATE AUDITOR'S OFFICE REMARKS

We thank Department officials and personnel for their assistance and cooperation during the investigation.

Whistleblower Investigation Criteria

State of Washington Department of Corrections

We came to our determination in this investigation by evaluating the facts against the criteria below:

State Administrative and Accounting Manual, 16.10.25 Contract Procurement, states:

- (a) Agencies need flexibility in selecting contractors to effectively and efficiently meet the needs of state clients, Therefore, agencies may select client service contractors by using procurement methods most appropriate to their needs, e.g., competitive, non-competitive (direct award) or sole source methods.
- (b) Non-competitive or sole source award processes for client service contracts are appropriate to use since competition is not required for these services pursuant to RCW 39.29.040(6)

RCW 42.52.070, Special Privileges, states:

Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents, or other persons.

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