

GOVERNMENT & ADMINISTRATION COMMITTEE

Purchase of a Doctor's Services for a "Fitness for Duty" Evaluation

Citizen Complaint #C5-02/03

Reason for the Report

The complaint alleges that the process and procedures used to obtain the services of a consulting doctor contracted by the Department of Human Resources were inappropriate and improper. (The employee has a great disadvantage in this process of separation from service.)

Scope of the Investigation

The Grand Jury interviewed the following persons:

- Complainant;
- Director, Department of Human Resources, El Dorado County;
- Manager, Procurement and Contracts, Department of General Services, El Dorado County.

The Grand Jury also reviewed the following items:

- A memo from the Director of Human Resources regarding fitness-for duty examinations;
- Statistics of fitness for duty 2000/01 and 2001/02;
- Purchase Order for doctor's services;
- County's policies and procedures regarding purchases and contracts;
- Total Purchase Order List for every Department from Fiscal Year 2001-02 through 2002-03;
- General Services Department memos issued to all County Departments regarding confirming purchase orders, purchasing procedures, and new contracts.

Background

There are approximately 1800 El Dorado County employees. In fiscal years 2000/01 and 2001/02 ten fitness for duty examinations were conducted in Sacramento for County employees.

The El Dorado County Personnel Management Resolution 228-84 1105(b) authorizes a departmental representative to request a fitness-for-duty examination. The section states:

“An appointing authority who has reasonable cause to believe that there are physical or mental health conditions present in an employee which endanger the health or safety of the employee, other employees, or the public, or which impair the employee’s performance of duty, may order the employee to undergo at County expense and on the employee’s paid time a physical, medical, and/or psychiatric examination by a licensed physician and receive a report of the findings on such examination. If the examining physician recommends that treatment for physical or mental health problems, including leave, are in the best interest of the employee or the County in relation to the employee overcoming any disability and/or performing his or her duties, the appointing authority may direct the employee to take such leave and/or undergo such treatment.”

Fitness for duty examinations are to be used as last resort. They are initiated when an appointing authority observes serious performance and behavior difficulties and where they believe there may be a medical cause for employee’s non-performance. A manager initiates the process by contacting the Department of Human Resources where upon an alternative course of action may be recommended to them. If an alternate action is not recommended, the Community Nursing/Occupational Health Division Manager in the Department of Public Health performs a second review. If the opinions agree, the Department of Human Resources will initiate the evaluation process and schedule an appointment with the appropriate physician.

Employees must attend the appointment. If an employee fails to attend, they can be disciplined. To date, records indicate that no employee has ever refused. In some instances, the evaluating doctor may request medical records from an employee’s treating physician. In other cases, the evaluator may refer an employee back to the treating physician or health care provider for follow-up and/or additional treatment. If at the conclusion of the evaluation an employee requests a second doctor’s opinion, he may do so at his own expense. To date no employee has made the request for a second evaluation.

In fiscal year 2000/01, five fitness for duty examinations were conducted. One employee was found fit and returned to service; two employees were found not fit and separated from service (one of the two employees was evaluated initially, and subsequently reevaluated as a result of new information); and the fourth employee was found fit but subsequently separated from service.

In fiscal year 2001/02, five fitness for duty examinations were conducted. Three of the five employees were found not fit and separated from service; one was found fit, returned to work, and subsequently separated from service; one employee returned to work after initial review.

The Grand Jury investigated broader issues related to the County’s handling of purchase orders and contracts. The investigation revealed doctors currently being used for evaluations do not have a contract with the County, yet the County purchase orders are approved to pay them as individuals. The County claims they are using an existing contract with Sutter Occupational Health Services (SOHS). It includes services of a physician who can conduct a fitness-for-duty examination. Additional testing can be referred to specialists within the SOHS system. SOHS is not identified for payment on purchase orders for the evaluations. It appears therefore, the County is circumventing the contracting and purchase order system. Since no contract monitor is identified in the SOHS contract, the Public Health Occupational Health Manager reviews the services received and

evaluates invoices. It is our understanding a flat fee is charged by these doctors at a rate of \$300 per hour. The fee includes analysis of testing data and the report.

Since contracts and purchase order procedures were addressed by the previous Grand Jury, we followed up with County staff to determine if former recommendations had been followed. Most purchase orders in past years were prepared after the fact. At the time of this report, the problem appears to be corrected. Regarding “fitness for duty” evaluations, the Director of Human Resources is currently working with the County’s Purchasing Agent to determine the viability and feasibility of having contracts with the individual doctors.

Findings

F1. Of the nine County employees tested during 2000/01 and 2001/02, five were found unfit for duty.

Response to F1: The respondent agrees with the finding.

F2. Employees must travel to the doctor’s office in Sacramento, including employees who reside and work in South Lake Tahoe.

Response to F2: The respondent agrees with the finding.

F3. Some departments do not consistently follow purchase order and contract procedures and policies set forth by the Board of Supervisors.

Response to F3: The respondent agrees with the finding.

F4. Department Directors are not held accountable for following policies and procedures related to purchase orders and contracts by the CAO and the Board of Supervisors.

Response to F4: The respondent disagrees wholly with the finding. Department Directors are charged with managing the departments overall administration which includes fiscal management, administration oversight, and work standards as well as implementing Board of Supervisor and CAO directives, policies, and procedures. The current evaluation instrument includes as a performance factor “use of financial resources”, which would include the procurement of goods and services.

F5. The County did not appropriately contract for the doctor’s services directly and therefore the County was probably not protected from liability and potential litigation.

Response to F5: The respondent disagrees partially with the finding. The County has potential exposure to litigation regardless of the existence of a written contract or purchase order. A contract or purchase order that contains indemnity language and insurance coverage helps transfer exposure risk to the contractor. The County’s standard indemnity language requires the contractor to hold the County harmless for any activity related to the contractor’s services, even without express indemnity language, the County could recover

under the doctrine of equitable indemnity. In addition, the County's standard insurance language requires that the contractor's insurance name the County as "additional insured" and be primary. This means that the contractor's insurer would act in the County's stead to defend the County and pay for the cost of defense and that the contractor's insurance would be used prior to the County's.

Regardless of the existence of indemnity language and/or insurance coverage in the contract or purchase order, it would be the County's position that the contractor is still responsible for actions related to the service; however, the Court could decide differently. Without the insurance, the contractor may not have sufficient funds to pay a large claim and the County may then be at risk. Without the additional insured language, the County would be responsible for its own defense costs.

The County purchases medical malpractice insurance and is therefore limited in its exposure to a medical claim. However, a large medical claim paid by our insurers would affect the future cost, and availability, of insurance. The County is self-insured for general liability claims and purchases excess insurance to pay for claims exceeding \$1 million.

Recommendations

- R1. The Board of Supervisors, with the assistance of the County Counsel and the Manager of Procurement and Contracts' Office, should establish and enforce a procedure for departments to meet legal specifications and to be in compliance with procedures in awarding contracts for services.

Response to R1: The recommendation has been implemented. County Counsel, Risk management, and the Procurement and Contracts office do have procedures in place providing departments with direction for how to meet legal specifications and to be in compliance with procedures for awarding contracts for services. These procedures are embedded in the Purchasing Ordinance, Board of Supervisors Policy, Purchasing Operating Practices Manual, and a Contract Manual prepared by County Counsel. County Counsel and the Procurement and Contracts Division are currently working to update this material, distribute, and conduct training for all departments.

- R2. The Board of Supervisors and the CAO should hold all County departments accountable for the policies and procedures established by the Manager of Procurement and Contracts' Office.

Response to R2: The recommendation has been implemented. As stated above in F4 Department Directors are charged with managing the departments overall administration which includes fiscal management, administration oversight, and work standards as well as implementing Board of Supervisor and CAO directives, policies, and procedures. The current evaluation instrument includes as a performance factor "use of financial resources", which would include the procurement of goods and services. The Interim Chief Administrative Officer is currently working with a group of Department Heads to review/revise the evaluation instrument and criteria. Performance factors may be revised,

however, these financial and administrative factors, which include following Board of Supervisors and Chief Administrative Officer policies and procedures, will remain a priority.

- R3. The Department of General Services and the Procurement and Contracts' Office personnel should design and provide a series of training programs on purchase orders and contract procedures for County staff.

Response to R3: The recommendation has not yet been implemented, but will be implemented in the future. Although the last formal department-wide, county-training on contracts occurred in 1999, administrative departments (Risk Management, County Counsel, and General Services) involved in the contracting process continually work with and train departments one-on-one. In addition the Procurement and Contracts Division does offer departmental training on purchase order procedures concurrently with training on the automated purchasing system on an "as requested" basis. A contract binder was developed and given to departments at the 1999 training. County procedures emanating from General Services, Risk Management, and County Counsel are added to the various sections of that binder.

Unless future budget and staff reductions prevent it, General Services will coordinate with Risk Management and County Counsel to conduct department-wide training annually. The first annual training will be developed subsequent to Board approval and adoption of the revised Purchasing Ordinance and conducted by June 2004.

- R4. Department Directors should be evaluated on their adherence to County procedures and their attendance at required training sessions.

Response to R4: The recommendation been implemented. As stated above in F4 Department Directors are charged with managing the departments overall administration which includes fiscal management, administration oversight, and work standards as well as implementing Board of Supervisor and CAO directives, policies, and procedures. The current evaluation instrument includes as a performance factor "use of financial resources", which would include the procurement of goods and services. The Interim Chief Administrative Officer is currently working with a group of Department Directors to review/revise the evaluation instrument and criteria. Performance factors may be revised, however, these financial and administrative factors, which include following Board of Supervisors and Chief Administrative Officer policies and procedures, will remain a priority.

- R5. Confirming purchase orders (after the fact purchases) should not be acceptable. A memo signed by the Department Director explaining the nature of the "confirming" requisition should accompany all confirming purchase orders. The CAO should be required to approve retroactive purchases not authorized by the Purchasing Agent.

Response to R5: The recommendation has been implemented. During the 2001/2002 fiscal year, the Purchasing Agent issued a series of memoranda requiring departments to adhere to purchasing procedures. While there was some improvement, the Purchasing Agent remained very concerned that departments continued to order goods and services without the

appropriate Purchasing Agent authority. On October 3, 2002, the Purchasing Agent issued an “all department” memorandum requiring all confirming, or after-the-fact, requisitions to be accompanied by a memo, written and signed by the department head, providing an explanation for the nature of the “confirming” requisition. Confirming requisitions not authorized by the Purchasing Agent now require Board of Supervisors approval. Any unauthorized fixed asset purchase, within the Purchasing Agent’s signature authority, must be approved by the Chief Administrative Officer. Any unauthorized purchase, in excess of the Purchasing Agent’s signature authority, must be approved by the Board of Supervisors.

During the 2000/2001 fiscal year, the Purchasing Agent determined that 74% of all requisitions were confirming and after-the-fact. At the close of the third quarter of the 2002/2003 fiscal year, statistical data showed that confirming requisitions were reduced to 1%. This is very encouraging as confirming purchase orders or requisitions should be the exception to procurement practices and not the rule. The Purchasing Agent would like to express thanks and appreciation to the Grand Jury for all of the support and encouragement it has provided to the Procurement and Contracts Division in correcting this deficiency in purchasing practices during the last two fiscal years.

Commendations

The Grand Jury wishes to commend Bonnie Rich, Manager of Procurement and Contracts, and her assistant, Donna Cademartori, for their commendable efforts to reduce the County’s confirming purchase orders from 74 percent in 2000-01 to less than 3 percent during 2002-03.

Responses Required for Findings

F1 through F5	El Dorado County Board of Supervisors El Dorado Chief Administrative Officer
---------------	---

Responses Required for Recommendations

R1 through R5	El Dorado Board of Supervisors
R1, R2 and R5	El Dorado Chief Administrative Officer
R1, R2 and R3, R5	Director, Department of General Services, El Dorado County
R1	El Dorado County Counsel