

**BEFORE THE STATE PERSONNEL BOARD OF THE STATE OF CALIFORNIA**

In the Matter of the Appeal by )  
)  
**DEPARTMENTS OF HEALTH CARE** )  
**SERVICES AND PUBLIC HEALTH** )  
)  
from the Executive Officer's March 3, )  
2008, Disapproval of Eight (8) Personal )  
Services Contracts for Information )  
Technology Services )  
)  
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PSC No. 08-06

**RESOLUTION**

September 3, 2008

**WHEREAS**, the State Personnel Board (Board) has considered carefully the findings of fact and Decision issued by the Executive Officer in SPB File No. 07-025(b) on March 3, 2008, concerning the above-entitled matter, as well as the written and oral<sup>1</sup> arguments presented by the Departments of Health Care Services and Public Health (Departments) and Service Employees International Union, Local 1000 (SEIU), during the Board's July 8, 2008, meeting; and

**WHEREAS**, by said Decision the personal services contracts for Information Technology services proposed or executed by the Department were disapproved;

**IT IS RESOLVED AND ORDERED** that:

1. The findings of fact and conclusions of law of the Executive Officer in said matter are hereby adopted by the State Personnel Board as its Decision in the case on the date set forth below;

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<sup>1</sup> The Department of Health Care Services and SEIU stipulated to submit the matter on the briefs, thereby waiving oral argument as to seven (7) of the eight (8) disapproved contracts. The Department of Public Health and SEIU presented oral arguments relating to the remaining contract.

2. A true copy of the Executive Officer's Decision shall be attached to this Resolution for delivery to the parties in accordance with the law; and
3. Adoption of this Resolution shall be reflected in the record of the meeting and the Board's minutes.

**STATE PERSONNEL BOARD<sup>2</sup>**

Sean Harrigan, President  
Richard Costigan, Vice-President  
Patricia Clarey, Member  
Maeley Tom, Member

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The foregoing Resolution was made and adopted by the State Personnel Board in PSC No. 08-06 at its meeting on September 3, 2008, as reflected in the record of the meeting and Board minutes.

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<sup>2</sup> Member Anne Sheehan did not participate in this Decision.



CALIFORNIA STATE PERSONNEL BOARD

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ARNOLD SCHWARZENEGGER, Governor



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March 3, 2008

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Re: Request for Review of Proposed or Executed Contracts for Informational Technology Services at the Department of Health Care Services (Contract Nos. 85192-06-2380 (Equanim Technologies); 82055-06-5404 (Capital Technology Associates); 82114-06-5461 (R Systems, Inc.); 76481-06-9912, 76482-06-9912, HC85220-06-2341 (Enos Technical Consultants); 85067-06-2352 (Powell Consulting Group); 82126-06-9912, 82071-06-5461 (Eclipse Solutions); 76420-06-4460 (Clearbest, Inc.); 82113-06-5461 (Arsenal Information Security); 85137-06-2352 (Wright On-Line Systems); 76458-06-5461 (Hubbert Systems Consulting); 70413-06-5461 (VPN Technologies); 85051-06-2352 (CCK Design); 82025-06-5310 and Contract No. Unknown<sup>3</sup> (Staff Tech, Inc.)  
**[SPB File No. 07-025(b)]**

Dear Ms. Giese and Mr. Burke:

By letter dated October 23, 2007, Service Employees International Union (SEIU), Local 1000 (SEIU) asked, pursuant to Gov. Code § 19132 and Title 2, Cal. Code Regs., § 547.59 *et seq.*, the State Personnel Board (SPB) to review for compliance with Gov. Code

<sup>3</sup> Subsequently identified by the Department as Contract No. 30147-06-2341.

§ 19130(b), 17 contracts (hereinafter “Contracts”) proposed or entered into by the Department of Health Care Services (Department) for Information Technology (IT) services (Contract Nos. 85192-06-2380 (Equanim Technologies); 82055-06-5404 (Capital Technology Associates); 82114-06-5461 (R Systems, Inc.); 76481-06-9912, 76482-06-9912, HC85220-06-2341 (Enos Technical Consultants); 85067-06-2352 (Powell Consulting Group); 82126-06-9912, 82071-06-5461 (Eclipse Solutions); 76420-06-4460 (Clearbest, Inc.); 82113-06-5461 (Arsenal Information Security); 85137-06-2352 (Wright On-Line Systems); 76458-06-5461 (Hubbert Systems Consulting); 70413-06-5461 (VPN Technologies); 85051-06-2352 (CCK Design); 82025-06-5310 and Contract No. 30147-06-2341 (Staff Tech, Inc.) (hereinafter “Contracts”).

On October 26, 2007, the SPB notified the Department that SEIU had requested that SPB review the Contracts, and informed the Department that it had until November 13, 2007, to submit its response to the SPB. The SPB received the Department’s response on November 13, 2007. On November 19, 2007, the SPB granted SEIU’s request for an extension of time until December 3, 2007, to file its reply. The SPB received SEIU’s reply on December 3, 2007, after which the matter was deemed submitted for review by the Executive Officer.

For those reasons set forth below, I find that Contract Nos. 70413-06-5461 and 30147-06-2341 are exempt from review, as those contracts had expired prior to SEIU seeking review of them. I further find that Contract Nos. 85192-06-2380, 82144-06-5461, 82071-06-5461 and 85137-06-2352 are permissible under one or more of the provisions of Gov. Code § 19130(b) and, as a result, those Contracts are approved. Finally, I find that Contract Nos. 82055-06-5404, 76481-06-9912, 76482-06-9912, HC85220-06-2341, 85067-06-2352, 82126-06-9912, 76420-06-4460, 82113-06-55461, 76458-06-5461, 85051-06-2352 and 82025-06-5310 are not permissible under one or more of the provisions of Gov. Code § 19130(b) and, as a result, those Contracts are disapproved.

### **Legal Standard**

In *Professional Engineers in California Government v. Department of Transportation*,<sup>4</sup> the California Supreme Court recognized that, emanating from Article VII of the California Constitution, is an implied “civil service mandate” that prohibits state agencies from contracting with private entities to perform work that the state has historically and customarily performed and can perform adequately and competently. Government Code section 19130 codifies the exceptions to the civil service mandate recognized in various court decisions. The purpose of SPB’s review of contracts under Government Code section 19130 is to determine whether, consistent with Article VII and its implied civil service mandate, state work may legally be contracted to private entities or whether it must be performed by state employees.

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<sup>4</sup> (1997) 15 Cal.4th 543, 547.

Government Code section 19130(b)(3)

Government Code section 19130(b)(3) authorizes a state agency to enter into a personal services contract when:

The services contracted are not available within civil service, cannot be performed satisfactorily by civil service employees, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the civil service system.

The Board's decision, *In the Matter of the Appeal by SEIU*, made clear that, in asserting the exemption contained in Section 19130(b)(3), the burden is on the department to establish either: (1) that there are no civil service job classifications to which it could appoint employees with the requisite expertise needed to perform the required work; or (2) that it was unable to successfully hire suitable candidates for any of the applicable classifications.<sup>5</sup>

Government Code section 19130(b)(5)

Gov. Code § 19130(b)(5) authorizes a state agency to enter into a personal services contract when:

The legislative, administrative, or legal goals and purposes cannot be accomplished through the utilization of persons selected pursuant to the regular civil service system. Contracts are permissible under this criterion to protect against a conflict of interest or to insure independent and unbiased findings in cases where there is a clear need for a different, outside perspective. These contracts shall include, but not be limited to, obtaining expert witnesses in litigation.

Government Code section 19130(b)(10)

Government Code section 19130(b)(10) authorizes a state agency to enter into a personal services contract when:

The services are of such an urgent, temporary, or occasional nature that the delay incumbent in their implementation under civil service would frustrate their very purpose.

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<sup>5</sup> PSC No. 05-03, at p. 8.

In order to justify a personal services contract under Section 19130(b)(10), the Department must provide sufficient information to show: (1) the urgent, temporary, or occasional nature of the services; and (2) the reasons why a delay in implementation under the civil service would frustrate the very purpose of those services.<sup>6</sup>

### **Analysis**

This case involves the review of 17 separate contracts for a wide variety of IT services. Accordingly, the positions of the respective parties, and the analysis concerning each Contract, will be conducted separately.

### **Contract Nos. 70413-06-5461 (VPN Technologies) & 30147-06-2341 (Staff Tech, Inc.)**

The Department asserts that because Contract Nos. 70413-06-5461 and 30147-06-2341 expired on September 30, 2007, prior to SEIU seeking review of those Contracts on October 23, 2007, the SPB does not possess the requisite jurisdiction to review those Contracts for compliance with the requirements of Gov. Code § 19130(b). SEIU has not disputed the Department's assertion.

Because SEIU did not seek review of Contract Nos. 70413-06-5461 and 30147-06-2341 prior to those Contracts expiring, it is found that the SPB does not possess the requisite authority to review those Contracts for compliance with the provisions of Section 19130(b).<sup>7</sup> As a result, those Contracts are dismissed from the instant case.

### **Contract No. 85192-06-2380 (Equanim Technologies)**

#### **Department Position:**

The Contract is to provide assistance for the reorganization and enhancement of the Department's intranet website, and is designed to assist the Department's Information Technology Services Division (ITSD), Planning and Project Management Branch (PPMB), in those tasks. During 2006, the PPMB engaged the services of a team of content management and internet development consultants to reorganize the content of the PPMB website. This engagement was terminated after the planning for the website was developed, but before the website changes were made. In 2007, the technical direction for the Department's intranet website was determined and the PPMB was able to move forward with its plans for an improved PPMB intranet website. The term of the Contract is from June 4, 2007, through January 31, 2008 (originally scheduled to conclude on October 5, 2007), and the scope of the work includes: making technical changes to the website

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<sup>6</sup> PSN No. 05-04, at p. 7.

<sup>7</sup> See PSC 04-01, 04-02, (*CSEA / Dept. of Health Services*) (finding that the SPB has no jurisdiction to review contracts for compliance with the provisions of Gov. Code § 19130 in those cases where the contract had expired prior to an employee organization seeking review of the contract).

using Microsoft SharePoint; soliciting feedback from PPMB and program staff; ensuring compliance with ITSD standards; and creating a guide for maintenance of the PPMB website.

Due to the variety of experience required for the scope of the work, the Department determined that a team of individuals, not one person, would be required to perform the job duties. The Department also determined that the collective experience necessary to successfully perform the work consisted of:

- At least two years experience providing IT project planning, management, and oversight services to state agencies or departments.
- At least three years experience in presenting/conveying IT project management-related content to both technical and non-technical audiences (e.g., creating a PMO website; creating informational architecture for websites; developing training, courses, or curricula; writing presentations or brochures, writing for publication in books, articles, or professional journals.
- At least three years of technical experience in website development and maintenance using CDHS standard software technologies and MS SharePoint.

Existing Department staff did not have the full range of necessary experience to perform all necessary duties, and the goal of the Contract was to provide the necessary transfer of information to Department staff to enable them to maintain the website independently, without the need to rely on outside consultants for the work. The “temporary and intermittent nature of the work would severely hinder the Department’s ability to obtain a state resource to fulfill the requirements of the Department’s efforts.” Consequently, the Contract is permissible under the provisions of Gov. Code § 19130(b)(3) and (b)(10).

#### SEIU Position:

SEIU asserts that the PPMD had an intranet site developed by state employees before the Contract work started; consequently, the Department’s assertion that only contractors have the sufficient skill to perform the work contemplated under the Contract is incorrect. Moreover, other offices within the Department have websites developed and maintained by state employees, as that is a typical task for state civil service IT employees, and the SharePoint technology being employed under the Contract is commonly utilized by state employees. Moreover, in the Department’s justification for using contractors (DHS 2319M – Supplement M), the Department asserted that civil service employees could perform the requisite work under the Contract if additional positions/resources were available.

In addition, most state civil service IT employees are assigned to work on a wide variety of projects, and commonly work on teams. As a result, multiple Department staff can be assigned to perform those duties contemplated under the Contract.

Finally, this is a “follow on” to a previous contract and, as such, constitutes work that is neither temporary or occasional in nature. Nor is there any urgency to the Contract, as the previous web site developed by state employees can be utilized and any information

needed, whether from the existing website or newly developed, can easily be provided from the old website by e-mail upon request.

### Analysis

The Department failed to present sufficient facts to establish that there were no civil service job classifications to which it could appoint employees with the requisite expertise needed to perform the required work. Nor did the Department present sufficient facts to establish that, despite having made reasonable, good faith efforts to recruit civil service IT employees, it has been unable to find suitable candidates to perform the Contract functions. Indeed, the Department presented no information as to those recruitment efforts it made prior to entering into the Contract. As a result, the Department failed to establish that the Contract is justified under Gov. Code § 19130(b)(3).

With respect to the Department's assertion that the work is "temporary" and "intermittent" in nature, a total of six-months of work will be required under the Contract, during which time a transfer of knowledge is required to take place between contractor staff and Department staff so as to enable Department staff to effectively maintain the website. Although the Department failed to present sufficient information to establish that existing staff are not able to perform the Contract duties, it also appears that the Contract is designed to perform a one-time only function that will not displace existing civil service staff. Consequently, I find that, given the limited duration of the Contract, it is justified under Section 19130(b)(10).

### **Contract No. 82055-06-5404**

**(Capital Technology Associates)**

#### Department Position:

This Contract requires the vendor to evaluate and advise the Department on the appropriate means for implementing IT projects as they relate to the California Discount Prescription Drug Program (CDPDP), using accepted industry best practices for IT projects, and to use Independent Validation and Verification (IVV) services to examine whether Department services are in compliance with existing CDPDP requirements. The CDPDP is designed to allow the Department to negotiate with drug manufacturers and pharmacies for rebates and discounts to reduce prescription drug prices for uninsured and underinsured low to moderate income Californians.

The vendor is required to implement and operate the CDPDP system, and to oversee the publication and dissemination of provider publications related to the CDPDP, such as manuals, bulletins, and forms as directed by the Department. The IVV will assist in the development of a telephone service center to answer calls and conduct research concerning implementation of the CDPDP program, and will assist in the execution of an outreach program to inform California residents of their ability to participate in the program. In addition, a claims processing subsystem will be developed for claims processing, adjudication and payment. The IVV will also assist the Department with the design, development and implementation of a CDPDP rebate accounting and information system,

which will interface with the claims processing system. Finally, the IVV will assist with the creation and maintenance of a website specific to the CDPDP.

The CDPDP program is a unique concept to the state and, as such, the requirements and implementation efforts of the Fiscal Intermediary contractor rebate information system and oversight functions have not been clearly identified. It is imperative that the program fulfill the requirements of the legislation in a manner that will be conducive to both the state and the Fiscal Intermediary contractor, so an unbiased, neutral third party was chosen to define the operations and oversight functions. Consequently, the vendor will have to identify deficiencies, correct weaknesses, verify requirements for each initiative, and validate that the system requirements and deliverables meet state objectives.

The services are to be rendered on a part-time, and/or intermittent basis. Because the service includes an evaluation, independence is necessary. The project requires the involvement of the vendor, the Department's IT staff, the Department of Technology Services (DTS) to host the new system, and occasionally staff from the Department of General Services (DGS) to assist with the Statement of Work/RFP. The project is also being built with technology that is new to the State, and Department IT staff will acquire the requisite experience with the new technology while working with the vendor on the system's installation.

Given the foregoing, the Contract is permissible pursuant to the provisions of Gov. Code § 19130(b)(3), (5), and (10).

SEIU Position:

This Contract is for a total of 2,100 hours of service, which exceeds the definition of "temporary" provided by DGS (e.g., any contract exceeding 1,548 hours in any 12-month period is not temporary). [No citation provided.]

The justification under Section 19130(b)(5) is not satisfied because the work is not treated as it would be if there were a true conflict of interest, nor as if there is a clear need for a different perspective, in that the contractor is reporting directly to the Project Manager, not to a control agency. Further, there is no indication that the reports prepared by the contractor are provided to the Department of Finance (DOF). Finally, if there truly was a concern about either a conflict of interest or a clear need for a different, outside perspective, then the same contractor who developed the system would not be used to evaluate the system, which is precisely what the Department is permitting.

In addition, contrary to the Department's assertion, other state departments, such as the Department of Managed Health Care, the Office of State Health Planning and Development, and the Emergency Medical Services Authority, currently deal with technical drug policies. The type of work performed under the Contract is needed by all state departments for approved IT development projects, and the work performed by the contractor is consistent with the specifications described for the Information Systems Analyst (ISA) and System Software Specialist (SSS) classifications. Although the

Department asserts specialty work is being performed, it appears that the technology referred to in the Department's justification is standardized and relates to the "ICD 9/10 medical code book."

Finally, the current software being utilized by the Department's fiscal Medi-Cal claims processing is common and not specialized, and the Department could use staff from a different division to perform the work. An oversight team could also be established at the Agency level to provide these services for all departments within the Agency's control.

### Analysis:

The Department failed to present sufficient facts to establish that there were no civil service job classifications to which it could appoint employees with the requisite expertise needed to perform the required work. Nor did the Department present sufficient facts to establish that, despite having made reasonable, good faith efforts to recruit civil service IT employees, it has been unable to find suitable candidates to perform the Contract functions. Indeed, the Department presented no information as to those recruitment efforts it made prior to entering into the Contract. As a result, the Department failed to establish that the Contract is justified under Gov. Code § 19130(b)(3).

In addition, contrary to the Department's assertion, it does not appear that the work to be performed under the Contract entails the utilization of cutting edge software or IT skills. Instead, it appears that the software and skills necessary to perform the Contract work are similar to those routinely employed by state civil service IT staff. Nor did the Department present sufficient information to establish that no Department IT staff possess the requisite skill sets necessary to perform the Contract duties, as the Department made only a blanket statement to that effect, without specifying why its current IT staff cannot utilize the "new technology" that is employed under the Contract.

Although the Department asserts that work product created under the Contract requires an independent, outside evaluator, the Department failed to submit sufficient information to establish that such a requirement is necessary here. As SEIU correctly points out, there is no indication that the DOF required that an independent evaluation be conducted for the program, nor does it appear that any other administrative control entity has mandated that an outside evaluation be conducted. In addition, because the contractor is reporting directly to the Department's Project Manager, and the Department has complete control over the work product produced by the contractor, it is difficult to see why such work could not just as easily have been performed by Department IT staff. It is concluded, therefore, that the Contract is not authorized under the provisions of Section 19130(b)(5).

Finally, it is difficult to imagine that a contract that requires the provision of 2,100 service hours constitutes a "temporary" contract, as that is the number of hours ordinarily provided by one full-time employee over the course of an entire year. As a result, I find that the Contract is not authorized under the provisions of Section 19130(b)(10).

Department Position:

The Contract is for a temporary, senior programmer to provide technical support and implementation of the Department's Health Insurance Portability and Accountability Act (HIPAA) National Provider Identifier (NPI) within the Cancer Detection section's "Every Woman Counts" program. The Contract is for a single, 700-hour project, that will be completed within seven months. Failure to achieve HIPAA compliance within established deadlines can result in civil and monetary penalties, including the loss of federal funding.

Each HIPAA rule has a unique start and end date, and the Department treats each rule as a separate project. In addition, each rule has multiple sub-projects to address different areas or functions within the Department. Each rule that is implemented also has on-going work associated with maintaining HIPAA compliance. Because the remediation work to achieve HIPAA compliance is often complex, and because additional HIPAA rules have yet to be published by the federal government, the Department currently uses a combination of baseline budget and permanent or limited term positions to fund and staff HIPAA assessment and remediation work.

Once the changes have been implemented by the Cancer Detection section, the Contract services will not longer be needed. Moreover, it would have been unreasonable to attempt to hire a civil service employee to perform those duties contemplated under the Contract within the time period in question. As a result, the Contract is authorized under the provisions of Gov. Code § 19130(b)(3), and (10.)

SEIU Position:

Although the hours for this Contract are limited, it is still easily possible to staff such a project with civil service workers, as state staff typically have multiple assignments each month. Many IT state workers balance a number of projects at any given time, and it is rare that a state worker is assigned to a single project or function. Consequently, the Contract work could be performed by existing staff if existing workloads were properly prioritized.

Nor is HIPAA work beyond the ability and knowledge of state employees. Staff within the Department have been working with HIPAA requirements for years, and the Department and Agency have offices specializing in compliance with HIPAA requirements. Therefore, the state does not need to seek this expertise from the private sector, particularly as the Department requires all state employees and contractors to have yearly HIPAA compliance training.

It is also a fallacy that an IT programmer must be a world renowned expert in the underlying subject of the program, and Department IT programmers need not be experts in HIPAA law. Programming is done to business rules and system requirements based on law. It is the role of the business subject matter experts (SME) to interpret the law and

define the requirements. Every business has rules specific to that business. Every IT application that is developed has to meet those rules and requirements. IT project managers need to know the processes of managing projects rather than HIPAA law. Project management is a discipline of applying repeatable processes to effectively manage projects. The Department has numerous staff throughout the Department who have received certification from the Project Management Institute as Project Management Professionals. Many of these staff are in the Programmer Analyst (PA), ISA, and SSS classifications.

Analysis:

The Department failed to present sufficient facts to establish that there were no civil service job classifications to which it could appoint employees with the requisite expertise needed to perform the required work. Nor did the Department present sufficient facts to establish that, despite having made reasonable, good faith efforts to recruit civil service IT employees, it has been unable to find suitable candidates to perform the Contract functions. Indeed, the Department presented no information as to those recruitment efforts it made prior to entering into the Contract. As a result, the Department failed to establish that the Contract is justified under Gov. Code § 19130(b)(3).

With respect to the Department's assertion that the Contract is authorized under the provisions of Section 19130(b)(10), it is noted that the Contract is for a single, 700-hour project, that will be completed within seven months, and that once the changes have been implemented by the Cancer Detection section, those services performed under the Contract will no longer be needed. Therefore, although the Department failed to present sufficient information to establish that existing staff are not able to perform the Contract duties, it also appears that the Contract is designed to perform a one-time only function that will not displace existing civil service staff. Consequently, I find that, given the limited duration of the Contract, it is justified under Section 19130(b)(10).

**Contract No. 76481-06-9912**

**(Enos Technical Consultants)**

Department Position:

This is a one-time, workload Contract that will be implemented until state civil service support can be established. The Contract is designed to provide support to the County Organized Health Systems (COHS) Claims Reconciliation efforts by analyzing requirements to reconcile "PBM" files with the COHS files received by the state to improve the quality of the COHS drug claims data, and to develop program specifications to enhance the front-end edits of the Medi-Cal Drug Reporting System.

This specific job function requires extremely detailed knowledge of the System Development Life Cycle (SDLC) to perform requirements analysis, develop program specifications, assessment of HIPAA compliance, Medi-Cal Managed Care Division (MMCD) policy, and federal requirement impacts on the pharmacy claims and rebate processing. The position requires an individual with strong experience in taking the efforts

from the planning stages through the implementation of system modifications as they relate to the COHS Claims Date Reconciliation/Improvement Project. The Department advertised for the position at the Senior Programmer Analyst (SPA) level which required similar expertise, and did not find qualified applicants. Additionally, the Department has participated in three job fairs during the previous 18 months and has not located a qualified applicant, due to the very high demand in the private industry for these skill sets. Upon the successful recruitment of a civil service employee, the Department will terminate the Contract.

Given the foregoing, the Contract is justified under the provisions of Section 19130(b)(3) and (10).

SEIU Position:

The skills described in the Contract are equivalent to the specifications for the PA, SSS and ISA civil service classifications. Moreover, there are a number of state employees currently working with these systems within the Department. The technology referenced in the Statement of Work is COBOL, VSAM, CICS and MVS. These are all mainframe technologies from the 1960s for which programming staff is readily available within state service.

It is unlikely that the work is temporary, as the contractor has been providing consulting services to the Department for ten years, thereby demonstrating that the Department has been utilizing the contractor to meet its on-going IT services needs. The work involved in this particular Contract has been on-going for several years and exceeds the DGS' and constitutional definitions of temporary (*i.e.*, nine months out of any twelve month period). [No citation provided.]

The Department acknowledges that state staff should be performing this work by stating in its documentation (DHS 2319) that contractors will only be used until state positions are established and filled. However, the efforts referenced in the Department's declarations concerning its recruitment efforts occurred in 2006. Little effort has been made since that time to hire civil service IT employees. In addition, the job announcements released for these positions make it appear that the selected candidate will have to perform many more duties at a much higher level than what appears in the contractor's Statement of Work. As such, it appears that there is a disconnect between the job announcement and the Statement of Work.

Additionally, the job announcement is apparently drafted in a way to artificially decrease the pool of candidates and the desirability of the job, and is refined to contrive the worst combination of an undesirable position and an over-worked employee. By contrast, the Statement of Work reflects the actual, more reasonable and more desirable requirements of the job.

Finally, the Department conducted an independent review approximately five years ago regarding the Medi-Cal Eligibility Data System (MEDS). That review determined that the

system is too big and the Department is rapidly losing the essential knowledge base to maintain the system due to the aging of the Department's IT workforce. The report also stated that the Department was hiring too many contractors. As a result, knowledge was not being transferred to state employees and the Department was not training and developing its current IT staff. In short, the report criticized the Department for a lack of workforce and succession planning.

Analysis:

The Department failed to establish that existing civil service classifications are inadequate for purposes of hiring civil service employees who could perform the requisite Contract functions. Indeed, the fact that the Department made some effort to recruit SPA candidates demonstrates the Department's belief that existing civil service classifications are adequate for purposes of performing the Contract duties.

With respect to its recruitment efforts, the Department asserts that on an unspecified occasion, it advertised in an unspecified medium, for a vacant SPA position, and that it participated in three job fairs over an 18 month period. Despite those efforts, however, it was unsuccessful in locating a qualified civil service candidate.

The Department, however, presented no information demonstrating how or when its job announcement was made; consequently, it cannot be determined whether only an intra-departmental job announcement was made, whether the job announcement was placed on the Department's website, whether the job announcement was placed on the SPB's VPOS website, or whether other reasonable advertising efforts were made for the position, such as advertising the job vacancy in a newspaper or IT-related publication. Nor does it appear that the Department made any effort to reach out to any university, college, or technical school campus in an effort to recruit for its vacant IT position. In short, the Department demonstrated that it has made minimal efforts, at best, to recruit for its vacant IT position. As such, the Department failed to prove that it engaged in legitimate, good faith recruitment efforts prior to entering into the instant Contract for IT services. The Department, therefore, failed to present sufficient information to establish that the Contract is authorized pursuant to the provisions of Section 19130(b)(3).

Although the Department asserts that the Contract is a one-time, work load contract and, as such constitutes an urgent, temporary, or occasional Contract, the Department also maintains that the Contract will be implemented until state civil service support can be established to perform the Contract functions. It necessarily follows, therefore, that the Contract is not urgent, temporary or occasional in nature for purposes of Section 19130(b)(10). Instead, it is clear that the needed services are predictable, permanent and constant, and that the Department's need for the services is occasioned because the Department has not hired one or more civil service employees to perform those duties contemplated under the Contract. Consequently, I find that the Contract is not justified under the provisions of Section 19130(b)(10).

**Contract No. 76482-06-9912**

**(Enos Technical Consultants)**

**Department Position:**

This is a one-time, workload Contract that will be implemented until state civil service support can be established. The Contract is designed to assist the Department, the Medi-Cal Managed Care Division (MMCD), the Payment Systems Division (PSD), the Medi-Cal Policy Division (MPD) and the ITSD, with: requirements analysis, development of program specifications, testing and support of the COHS Claims Reconciliation/Improvement project to improve the quality of the COHS drug claims data; to develop new communication feedback loops to report the results of the COHS reconciliation to impacted parties; to modify or develop reports for Department staff to evaluate effectiveness; to review the Medi-Cal Drug Reporting system current front-end edits, and identify, develop and implement improvements; as well as to perform other related functions.

This specific job function requires extremely detailed knowledge of System Development Life Cycle (SDLC) activities in order to successfully manage the COHS Claims Data Improvement effort. The main focus of the position is to reconcile files to improve the quality of the COHS drug claims data, and requires an individual who is highly experienced in functioning in a lead capacity to oversee the development of a crosswalk between the National Council for Prescription Drug Programs Standard and the S-35 Standard formats. In addition, the individual must be knowledgeable enough to ensure that project activities such as timelines, goals and objectives are met in support of the COHS. The Department's experience has been that no state employee is experienced in service as a liaison and subject matter expert interacting with various Department staff COHS counties, and vendors. The Department advertised for the position at the SPA level which required similar expertise, and did not find qualified applicants. Additionally, the Department has participated in three job fairs during the previous 18 months and has not located a qualified applicant, due to the very high demand in the private industry for these skill sets. Upon the successful recruitment of a civil service employee, the Department will terminate the Contract.

Given the foregoing, the Contract is justified under the provisions of Section 19130(b)(3) and (10).

**SEIU Position:**

This Contract, and Contract No. 76481-06-9912, *supra*, appear to be services for the same type of work. It also appears that the Department purposely "split" the Contracts to cover a single consultant in each in Contract order to bypass the required review by the Department's Director and Agency if the Contract amount exceeds \$250,000, which would have happened if the Contract was for multiple consultants, for this reason, and for those reasons set forth with regard to Contract No. 76481-06-9912, *supra*, this Contract should be disapproved.

Analysis:

The Department failed to establish that existing civil service classifications are inadequate for purposes of hiring civil service employees who could perform the requisite Contract functions. Indeed, the fact that the Department made some effort to recruit SPA candidates demonstrates the Department's belief that existing civil service classifications are adequate for purposes of performing the Contract duties.

With respect to its recruitment efforts, the Department asserts that on an unspecified occasion, it advertised in an unspecified medium, for a vacant SPA position, and that it participated in three job fairs over an 18 month period. Despite those efforts, however, it was unsuccessful in locating a qualified civil service candidate.

The Department, however, presented no information demonstrating how or when its job announcement was made; consequently, it cannot be determined whether only an intra-departmental job announcement was made, whether the job announcement was placed on the Department's website, whether the job announcement was placed on the SPB's VPOS website, or whether other reasonable advertising efforts were made for the position, such as advertising the job vacancy in a newspaper or IT-related publication. Nor does it appear that the Department made any effort to reach out to any university, college, or technical school campus in an effort to recruit for its vacant IT position. In short, the Department demonstrated that it has made minimal efforts, at best, to recruit for its vacant IT position. As such, the Department failed to prove that it engaged in legitimate, good faith recruitment efforts prior to entering into the instant Contract for IT services. The Department, therefore, failed to present sufficient information to establish that the Contract is authorized pursuant to the provisions of Section 19130(b)(3).

Although the Department asserts that the Contract is a one-time, work load contract and, as such constitutes an urgent, temporary, or occasional Contract, the Department also maintains that the Contract will be implemented until state civil service support can be established to perform the Contract functions. It necessarily follows, therefore, that the Contract is not urgent, temporary or occasional in nature for purposes of Section 19130(b)(10). Instead, it is clear that the needed services are predictable, permanent and constant, and that the Department's need for the services is occasioned because the Department has not hired one or more civil service employees to perform those duties contemplated under the Contract. Consequently, I find that the Contract is not justified under the provisions of Section 19130(b)(10).

**Contract No. HC85220-06-2341 (Enos Technical Consultants)**

Department Position:

Under the Contract, the vendor will use REXX, COBOL, CICS, TSO and SQL to improve two functions of the Medi-Cal application systems within the ITDS. The applications are Medi-Cal Eligibility Data Systems (MEDS) and the Test Data Management Systems Services Division (TDMSSD). The MEDS Test Unit conducts regression and acceptance

testing enhancements and maintenance changes to MEDS and its related systems supporting the Medi-Cal program.

TDMSSD was created to centralize functions used to maintain the many MEDS testing environments. The Department considers this to be a mission critical position because of the existing legislative deadlines, and MEDS and TDMSSD support ExITE MEDS testing, which assists MEDS to properly test their system changes impact on MEDS prior to installing the same. ExITE ensures the external entities' changes do not adversely impact production eligibility data. If the Department is unable to obtain those services rendered under the Contract, requisite modifications and enhancements will not be completed, which may result in failures in Medi-Cal eligibility, provider access to data, beneficiary access to services, claims processing, and other fiscal issues.

The resources requested for the Contract were for a one-time workload effort, to be utilized until state civil service support could be established. Due to current workloads and the governing legislative deadlines, civil service positions could not have been recruited or trained in the time frame required without negative impacts to existing workloads. The Department advertised positions at the SPA (Technical) level which required similar experience, but no applications were submitted for either position. In addition, the Department has participated in three job fairs (two in Sacramento, one in San Francisco) during the previous 18 months, but was unable to locate any qualified applicants for the positions. This is due to the highly specialized skill set, coupled with a very high demand in the private sector for those skills. The Contract will also be utilized to provide knowledge transfer and training to existing Department IT staff to ensure maintenance and future operations. Without the contracted experience, state civil service employees will not be able to become proficient nor be able to protect the Department's IT systems and data based upon their limited skill set and experience. In short, the Department has determined that the critical skills needed are not available within current civil service classifications.

Given the foregoing, the Contract is justified under the provisions of Section 19130(b)(3) and (10).

SEIU Position:

The work described in the Statement of Work for this Contract establishes that the work is currently being performed by state employees, and should continue to be performed by state employees. Medi-Cal is the largest program administered by the Department, which has been administering the program since 1960. There are a large number of IT employees with experience working on various aspects of programming to support the Medi-Cal Eligibility Data System (MEDS).

Indeed, in its supporting declaration the Department even enumerates skills that are often performed by non-IT staff, such as non-advanced or specialized skills in Microsoft Word, Excel, MS Office, etc. The requirement for a consultant to have knowledge of MS Office is equivalent to an Office Technician. Nevertheless, such skills could not seriously be contemplated or alleged to be more important than some of the programming skills.

Moreover, the technology referenced in the Department's declaration is commonly used in the state (*i.e.*, "dB2").

The Department has acknowledged that it has an on-going need for the services contemplated under the Contract, as it states that it is trying to establish a permanent IT position to perform those duties. Additionally, as the Department describes the work, it is not temporary in nature, but rather requires the maintenance of a system, which is ongoing in nature.

#### Analysis:

The Department failed to establish that existing civil service classifications are inadequate for purposes of hiring civil service employees who could perform the requisite Contract functions. Indeed, the fact that the Department made some effort to recruit SPA candidates demonstrates the Department's belief that existing civil service classifications are adequate for purposes of performing the Contract duties.

With respect to its recruitment efforts, the Department asserts that on an unspecified occasion, it advertised in an unspecified medium, for its vacant SPA positions, and that it participated in three job fairs over an 18 month period. Despite those efforts, however, it was unsuccessful in locating a qualified civil service candidate.

The Department, however, presented no information demonstrating how or when its job announcement was made; consequently, it cannot be determined whether only an intra-departmental job announcement was made, whether the job announcement was placed on the Department's website, whether the job announcement was placed on the SPB's VPOS website, or whether other reasonable advertising efforts were made for the position, such as advertising the job vacancy in a newspaper or IT-related publication. Nor does it appear that the Department made any effort to reach out to any university, college, or technical school campus in an effort to recruit for its vacant IT positions. In short, the Department demonstrated that it has made, at best, minimal efforts to recruit for its vacant IT positions. As such, the Department failed to prove that it engaged in legitimate, good faith recruitment efforts prior to entering into the instant Contract for IT services. The Department, therefore, failed to present sufficient information to establish that the Contract is authorized pursuant to the provisions of Section 19130(b)(3).

Although the Department asserts that the Contract is a one-time, work load contract and, as such constitutes an urgent, temporary, or occasional Contract, the Department also maintains that the Contract will be implemented until state civil service support can be established to perform the Contract functions. It necessarily follows, therefore, that the Contract is not urgent, temporary or occasional in nature for purposes of Section 19130(b)(10). Instead, it is clear that the needed services are predictable, permanent and constant, and that the Department's need for the services is occasioned because the Department has not hired one or more civil service employees to perform those duties contemplated under the Contract. Consequently, I find that the Contract is not justified under the provisions of Section 19130(b)(10).

**Department Position:**

This Contract is for professional database administration services, and is responsible for all aspects of database administration and support for commercial software and in-house application database servers. The vendor is required to install, configure, maintain and support database software in all environments, including development, quality assurance, test, and production in cooperation with system administrators, developers, database administrators, architects, and Department ITSD project members. The vendor is responsible for applying specialized skills in the areas of technical analysis, planning and operational functions that are fundamental to the availability and security of Department data which is vital to the Department's employees, business partners, and the general public.

The highly specialized skills required to perform those duties contemplated under the Contract includes extremely detailed knowledge of Microsoft SQL Server, and specifically focuses on expert level database administration services for all aspects of database management and support for commercial software and in-house application database servers. The main focus of the duties is to administer database security, including setting and modifying permissions within an SQL Server database, and using Integration Services (SSIS) to extract, transform and load data into enterprise databases. This requires an individual who is highly experienced in data transformation programming utilizing SQL Server Integration Services, and designing, maintaining, and securing SQL database systems such as those found in the highly complex Department environment.

It has been the Department's experience that no other state department or datacenter has staff that is experienced in maintaining shared as well as stand-alone SQL servers in a combined multi-stage Extranet and Intranet environment with the complexity of the Department. In addition, the Department has advertised one position at the SSS II (Technical) level which required similar SQL Server ETL expertise, but no applications have been submitted to date. In addition, the ITSD has participated in three job fairs within the last 18 months and has not found any qualified applicants for the position, due to the highly specialized skill set required and the very high demand in the private industry for a person with those skills. The Contract will, however, be terminated as soon as the Department is able to hire an individual with the requisite skills.

Given the foregoing, the Contract is justified under the provisions of Section 19130(b)(3) and (10).

**SEIU Position:**

The tasks described and qualifications listed under the Contract are equivalent to those specified in the SPA, Senior ISA (SISA), SSS and/or Staff Programmer classifications. The Department's argument that someone possessing the minimum qualifications for the

position would not be qualified to perform the Contract duties is erroneous, as previously found by the SPB in SPB File No. 05-026(b).

In addition, the number of hours included in the Contract (2,100 hours), exceeds the definition of “temporary” promulgated by the Department of General Services (DGS). Nor are the tasks under the Contract emergency in nature, but instead reflect daily, on-going duties.

Moreover, the Department’s job announcements are typically very complex and cover a broad range of detailed tasks and responsibilities, which seem very intimidating when compared to the qualifications and tasks described in the Contract’s Statement of Work. The job announcements released for these positions make it appear that the selected candidate would have to perform many more duties, and at a much higher level, than what appears in the Statement of Work. As a result, it appears that the job announcement is drafted in a way to artificially decrease the pool of candidates and the desirability of the job. It is, seemingly, drafted to contrive the worst combination of an undesirable position and an over-worked employee, as opposed to the more reasonable Statement of Work. In short, it appears that the Department is asking for applicants to possess skills that cross state classifications in order to justify contracting out, even though the mix of skills will not be required for contract employees under the Contract. Furthermore, the Department’s supporting documentation clearly states that the use of the consultant is for the “augmentation of staff,” which seems to admit that the level of work performed under the Contract is close to or consistent with civil service IT duties.

Finally, the declaration submitted by the Department references job fairs conducted in 2006; however, at the time of the job fairs, no testing was being conducted by the Department for IT positions on an on-going basis. Additionally, the Department failed to indicate whether contact letters were sent to candidates on existing IT eligibility lists, nor did the Department indicate what other efforts have been made to recruit candidates, such as additional testing or providing training opportunities to existing staff. This recruitment problem is exacerbated by the Department only offering eligibility testing at the Associate level, which has a pay level that is insufficient to attract qualified candidates for state employment. In short, the Department’s actions have served to artificially discourage otherwise eligible candidates from applying for state IT positions.

#### Analysis:

The Department failed to establish that existing civil service classifications are inadequate for purposes of hiring civil service employees who could perform the requisite Contract functions. Indeed, the fact that the Department made some effort to recruit SSS candidates demonstrates the Department’s belief that existing civil service classifications are adequate for purposes of performing the Contract duties.

With respect to its recruitment efforts, the Department asserts that on an unspecified occasion, it advertised in an unspecified medium, for a vacant SSS position, and that it

participated in three job fairs over an 18 month period. Despite those efforts, however, it was unsuccessful in locating a qualified civil service candidate.

The Department, however, presented no information demonstrating how or when its job announcement was made; consequently, it cannot be determined whether only an intra-departmental job announcement was made, whether the job announcement was placed on the Department's website, whether the job announcement was placed on the SPB's VPOS website, or whether other reasonable advertising efforts were made for the position, such as advertising the job vacancy in a newspaper or IT-related publication. Nor does it appear that the Department made any effort to reach out to any university, college, or technical school campus in an effort to recruit for its vacant IT position. In short, the Department demonstrated, at best, that it has made minimal efforts to recruit for its vacant IT position. As such, the Department failed to prove that it engaged in legitimate, good faith recruitment efforts prior to entering into the instant Contract for IT services. The Department, therefore, failed to present sufficient information to establish that the Contract is authorized pursuant to the provisions of Section 19130(b)(3).

Although the Department asserts that the Contract is a one-time, work load contract and, as such constitutes an urgent, temporary, or occasional Contract, the Department also maintains that the Contract will be implemented until state civil service support can be established to perform the Contract functions. It necessarily follows, therefore, that the Contract is not urgent, temporary or occasional in nature for purposes of Section 19130(b)(10). Instead, it is clear that the needed services are predictable, permanent and constant, and that the Department's need for the services is occasioned because the Department has not hired one or more civil service employees to perform those duties contemplated under the Contract. Moreover, it is difficult to imagine that a contract that requires the provision of 2,100 service hours constitutes a "temporary" contract, as that is the number of hours ordinarily provided by one full-time employee over the course of an entire year. Consequently, I find that the Contract is not justified under the provisions of Section 19130(b)(10).

**Contract No. 82126-06-9912**

**(Eclipse Solutions)**

**Department Position:**

The Legislature has mandated that the Department provide a Feasibility Study Report to the Legislature for the Child Health and Disability Prevention (CHDP) Gateway Project. The program provides complete health assessments for the early detection and prevention of disease and disabilities in children and youth. The Gateway Project provides an electronic version of the pre-enrollment paper application, and serves as the entry point for qualified children to enroll in on-going health care coverage through Medi-Cal or within "HFP."

The Contract requires the vendor to provide IT project planning consulting services to assist the Department with the project. Those duties include: identifying the business opportunities associated with the Gateway Project and documenting those opportunities in

a Scope Assessment document that will be presented to the Department for review; conducting a feasibility study to include identifying functional requirements, analyzing alternative technology solutions, procurement approaches and implementation approaches; assessing the interdependencies and integration needs of the major business functions, and writing the “FSR” and the “ITPP;” and assisting in obtaining project approval from the fiscal and health policy committees of the Legislature, the DOF/”OTROS” and the DGS.

Data systems are the foundations for ensuring that Medi-Cal is correctly determined for applicants; for identifying those who are eligible so they can receive the Medi-Cal coverage they are entitled to; and for guaranteeing that their providers will be paid. Department Medi-Cal Eligibility Division (MED) staff, while experienced and skilled in eligibility issues, are not experienced with the intricacies and technical requirements of data systems. Although MED staff may know that an eligibility process must eventually be part of a data system, MED staff do not have the experience needed to complete the complex evaluations that are statutorily required before data systems can be modified or newly developed to accommodate new policy processes.

Because of the unique technological needs of this project, along with the background needed to understand state government regulations, civil service candidates were not a practical solution. Additionally, the need to comply with a legislative deadline only one year distant mandated the use of an outside provider. As a result, the Contract is justified under the provisions of Section 19130(b)(3) and (10).

#### SEIU Position:

The development of a Feasibility Study Report (FSR) is a basic function required to get an IT project approved by the DOF, as approval from that department and the applicable Agency is required prior to any necessary budget augmentation being approved. Although this is a time consuming process, it is a typical business function, and state employees in the ISA classification series routinely conduct feasibility studies and write FSRs. Indeed, the FSR activity is included in the specifications for the ISA classification.

Current state employees have specialized knowledge concerning those duties to be performed under the Contract, as employees in the Medi-Cal Services Division have knowledge of the clients they serve. The Gateway system is meant to achieve a one-stop approach and to make the eligibility process easier for applicants to navigate. Instead of using state workers individually or in a team approach to implement the process, the Department chose to enter into the Contract, whereby seven consultants have been retained to conduct the feasibility study and produce the report.

#### Analysis:

The Department failed to establish that existing civil service classifications are inadequate for purposes of hiring civil service employees who could perform the requisite Contract functions. While the Department appears to contend that civil service IT classifications do

not require civil service applicants and employees to possess the experience and certifications necessary to provide the skills being provided by the contractor, the Department ignores that fact that those qualifications are mere minimums, and that at least some current state employees or applicants will possess more than the minimum qualifications for appointment to the classification. In short, the Department failed to explain why broad IT classifications with certain specified minimum qualifications somehow preclude the Department from hiring IT staff that possess qualifications above those minimally required for appointment to a particular IT classification.

The Department also failed to establish that it engaged in any recruitment efforts in an attempt to hire civil service IT staff prior to entering into the Contract. The Department, therefore, failed to present sufficient information to establish that the Contract is authorized pursuant to the provisions of Section 19130(b)(3).

Similarly unpersuasive is the Department's assertion that its need to comply with a one-year distant legislative deadline rendered the appointment of a state civil service employee impractical. Had the Department been able to establish that it has been unsuccessful in its IT recruitment efforts, despite having engaged in reasonable, good faith attempts to recruit civil service employees, its argument might be more persuasive. As evidenced in other portions of this decision, however, the Department failed to prove that it expended anything more than nominal efforts to recruit civil service IT staff. As such, the "urgent" need to contract for IT services to meet the legislative deadline appears to a dilemma of the Department's own creation. Consequently, I find that the Contract is not authorized under the provisions of Section 19130(b)(10).

**Contract No. 82071-06-5461**

**(Eclipse Solutions)**

**Department Position:**

The vendor will provide IVV services for the HIPAA Short-Doyle Medi-Cal (SD/MC) Phase II Project. The SD/MC Phase II Project is to design, develop and implement a HIPAA complaint system to adjudicate claims on behalf of the Department of Mental Health (DMH) and the Department of Alcohol and Drug Program, (DADP), and to appropriately reimburse counties and individual direct providers for services rendered.

The scope of work under the Contract requires the vendor to: determine whether the products of a particular phase in the development process are consistent with the requirements of that phase and the preceding phase; evaluate all SD/MC Phase II deliverables and determine if they meet requirements and if they are consistent with Department standards; and provide assurance that the final product satisfies the system requirements. The project has been identified by the DOF as "high risk" in accordance with the Information Technology Project Oversight Framework (ITPOF) requiring IVV services. Because the DOF requires the use of professionals who can neutrally evaluate projects, it is necessary to obtain outside contractors who have no concern or interest in the outcome of an IVV. For purposes of this Contract, the Department ensures the requisite independence in two ways: by securing the services of a team of highly qualified

IVV consultants with no connection to the project; and by placing responsibility for managing IVV services within the ITSD PPMB.

Once the project is implemented, no further services will be performed under the Contract. As such, the Contract is temporary in nature. In addition, the IVV services are part-time and intermittent, as the IVV consultants are not required to be on-site for a pre-determined period of time.

In addition, due to the variety of experience required for the scope of work, a team of individuals, not one person, is required to perform the Contract duties. The temporary and intermittent nature of the work would severely hinder the Department's ability to obtain a state resource to fulfill the requirements of the IVV effort.

As a result, the Contract is justified under the provisions of Section 19130(b)(3), (5) and (10).

SEIU Position:

The stated justification for the Contract under Section 19130(b)(5) is not satisfied because the work is not treated as it would be if there were a conflict of interest, nor as if there exists a true need for an objective, outside perspective. Payment to the contractor is conditioned upon the Department approving the contractor's report. As such, the Department has control over the contractor's report; consequently, the report does not meet the test for an unbiased report, because the contractor is reporting to the Project Manager who is responsible for the project, not to an oversight control agency. In addition, there is no indication in any of the Contract documents that the reports prepared by the contractor are being provided to the DOF, as is often required if IVV is a condition of project approval.

Moreover, the Department has twisted the meaning and purpose of IVV through the on-going and widespread use of consultants, as the Department now appears to be using IVV consultants to review the work of other consultants. This practice, in turn, helps perpetuate the revolving door use of consultants. In order to satisfy the alleged goal of obtaining a new or different perspective, the Department could simply use staff from a different division in the ISA or SSS classifications to do the work. Similarly, an oversight team could be developed at the Agency level to provide IVV services for all departments within the Agency's control.

Nor is the work under the Contract specialized, as the technology involved is legacy (COBOL) and Project Management, expertise for both of which is readily available within the state civil service. While the contract solicitation discusses "walk-throughs" (code reviews), such work is duplicative of what is already required by ITSD staff and other contractors.

Analysis:

The Department failed to establish that existing civil service classifications are inadequate for purposes of hiring civil service employees who could perform the requisite Contract functions. The Department also failed to establish that it engaged in any recruitment efforts in an attempt to hire civil service IT staff prior to entering into the Contract. The Department, therefore, failed to present sufficient information to establish that the Contract is authorized pursuant to the provisions of Section 19130(b)(3).

SEIU did not, however, rebut the Department's assertion that the Contract is temporary in nature, as no further services will be required once the project is implemented. Nor did SEIU rebut the Department's assertion that the services performed under the Contract are part-time and intermittent. As such, I find that the Contract is authorized under the provisions of Section 19130(b)(10). Having so determined, no decision need be reached as to whether the Contract is also authorized under the provisions of Section 19130(b)(5).

**Contract No. 76420-06-4460**

**(Clearbest, Inc.)**

Department Position:

The vendor will provide IVV services for the Web Confidentiality Report (WCR) and Electronic Laboratory Reporting (ELR) Projects. Both projects serve a vital need for the Department to collect information necessary to continue with its mission and to serve the public without compromising confidentiality. It is anticipated that the projects will enhance reporting protocol and procedures for collecting information about communicable diseases, which are outdated, and standardize the reporting methods and formats. The overall objective is to enhance and strengthen state and local disease surveillance capacity and to promote public health.

The Department has determined that by evaluating products against system requirements and user needs, IVV activities serve to provide an early warning of technical risks and deviations from requirements, thereby allowing the project team to take the necessary corrective measures. By their very nature, IVV services require the use of professionals outside the civil service.

As a result, the Contract is justified under the provisions of Section 19130(b)(3), (5) and (10).

SEIU Position:

Because the Contract is for a term of two-years, it is not a "temporary" contract under Section 19130(b)(10). Similarly, the stated justification for the Contract under Section 19130(b)(5) is not satisfied because the work is not treated as it would be if there were a conflict of interest, nor as if there exists a true need for an objective, outside perspective. Payment to the contractor is conditioned upon the Department approving the contractor's report. As such, the Department has control over the contractor's report; consequently,

the report does not meet the test for an unbiased report, because the contractor is reporting to the Project Manager who is responsible for the project, not to an oversight control agency. In addition, there is no indication in any of the Contract documents that the reports prepared by the contractor are being provided to the DOF, as is often required if IVV is a condition of project approval.

In addition, the IVV consultant cannot fit the definition of “independent” if the consultant is performing or bidding on other contracts within the Department. Here, Clearbest Inc. is bidding on other contracts within the Department and, as such, has a vested interest in pleasing the Department. As such, its views cannot be considered to be unbiased.

Finally, the Department failed to identify any special skills sets needed to perform the Contract that are not readily available within the state civil service. The Department could use staff from a different division in the ISA or SSA classifications to perform the Contract functions, and an oversight team could also be established at the Agency level to provide those IVV services for all departments within the Agency’s control.

Analysis:

The Department failed to establish that existing civil service classifications are inadequate for purposes of hiring civil service employees who could perform the requisite Contract functions. The Department also failed to establish that it engaged in any recruitment efforts in an attempt to hire civil service IT staff prior to entering into the Contract. The Department, therefore, failed to present sufficient information to establish that the Contract is authorized pursuant to the provisions of Section 19130(b)(3).

Although the Department asserts that work product created under the Contract requires an independent, outside evaluator, the Department failed to submit sufficient information to establish that such a requirement is necessary here. The Department cited to no statutory or regulatory requirement demonstrating that an outside evaluator was needed for the Department’s WCR and ELR projects. In addition, because the contractor is reporting directly to the Department’s Project Manager, and the Department has complete control over the work product produced by the contractor, it is difficult to see why such work could not just as easily have been performed by Department IT staff. It is concluded, therefore, that the Contract is not authorized under the provisions of Section 19130(b)(5).

Finally, it is difficult to imagine that a contract of two-years duration can reasonably be construed as a “temporary” contract. As a result, I find that the Contract is not authorized under the provisions of Section 19130(b)(10).

**Contract No. 82113-06-5461**

**(Arsenal Information Security)**

Department Position:

The position is funded by the Office of HIPAA Compliance (OHC), which coordinates funding for Department-wide HIPAA assessment and remediation efforts. The law outlines

a process to achieve uniform national health data standards and health information privacy within the United States. "Administrative Simplification" standards require all covered organizations, including the Department, to standardize the way they transmit and code health information for billing and record keeping purposes, and to protect the privacy and security of that information. Failure to achieve HIPAA compliance by the established deadlines can result in federal civil and monetary penalties, including the loss of federal funding.

The vendor is required to operate and perform an enterprise vulnerability auditing solution for the Department to meet federal and state regulations and Department policy requirements. The vendor will design, test and modify enterprise vulnerability auditing solutions based on Department requirements. Those services are to be conducted to accommodate the Department's reorganization, with the technical infrastructure remaining in place for the foreseeable future and directly managed by the Department.

This specific job requires extremely detailed knowledge of information security auditing techniques and tools, with a focus on auditing against multiple regulatory compliance rules. It requires in-depth knowledge of these compliance rules and the typical issues related to implementation. It requires highly technical knowledge in auditing for vulnerabilities from a wide variety of vendors and technologies, and performing risk assessments to identify the highest priority risks.

The Department has advertised for two positions at the SSS II (Technical) level which required similar security expertise, but no applications were submitted for either position. Additionally, the Department has participated in three job fairs during the previous 18 months, but did not locate any qualified applicants for the positions. This is due to the highly specialized skill set required for the positions, coupled with the very high demand in the public sector for those skills.

In addition, two additional state civil service positions were recently obtained by the Department, and this Contract will be utilized to provide knowledge transfer and training to the two new state positions, and one existing state position. Without the contracted expertise, the Department's IT employees will not become proficient in security technologies, nor be able to protect the Department's IT systems and data based on their limited skill set and experience. In short, the Department has been unable to find candidates in the civil service who possess the requisite skill set to perform those duties contemplated under the Contract.

As a result, the Contract is justified under Section (b)(3) and (10).

SEIU Position:

For policy and practical reasons, it makes no sense for the Department's information security to be dependent on consultant staff who may change at the next bid. Instead, it is in the public's interest for the Department's information security to be built on a

dependable foundation of state civil service employees who have a vested interest in the Department's infrastructure.

All state departments are required to have an Information Security Office (ISO). Therefore, the skills needed to perform the Contract functions exist within the state civil service and are included in the civil service IT classification specifications. Currently, the Department's entire ISO consists of contractors, with the exception of one state manager and one state employee. Despite this extensive use of contractors, there appears to be no realistic plan on the Department's part to transfer knowledge to state employees, which was an issue previously discussed with the Department as part of the resolution of SEIU's challenges to Department IT contracts during 2006. In addition, the use of contractors in the ISO give private companies access to confidential state information, without the contract employees being required to sign an oath of allegiance to the state, which is required for state employees.

Finally, the Department has clearly admitted that the Contract work can and should be performed by state employees, and is not temporary in nature, as the Department has asserted that the Contract will be terminated as soon as qualified civil service employees are appointed to the position.

#### Analysis:

The Department failed to establish that existing civil service classifications are inadequate for purposes of hiring civil service employees who could perform the requisite Contract functions. Indeed, the fact that the Department made some effort to recruit SSS candidates demonstrates the Department's belief that existing civil service classifications are adequate for purposes of performing the Contract duties.

With respect to its recruitment efforts, the Department asserts that on an unspecified occasion, it advertised in an unspecified medium, for two vacant SSS positions, and that it participated in three job fairs over an 18 month period. Despite those efforts, however, it was unsuccessful in locating a qualified civil service candidate.

The Department, however, presented no information demonstrating how or when its job announcement was made; consequently, it cannot be determined whether only an intra-departmental job announcement was made, whether the job announcement was placed on the Department's website, whether the job announcement was placed on the SPB's VPOS website, or whether other reasonable advertising efforts were made for the position, such as advertising the job vacancy in a newspaper or IT-related publication. Nor does it appear that the Department made any effort to reach out to any university, college, or technical school campus in an effort to recruit for its vacant IT position. In short, the Department demonstrated that it has made, at best, minimal efforts to recruit for its vacant IT positions. As such, the Department failed to prove that it engaged in legitimate, good faith recruitment efforts prior to entering into the instant Contract for IT services. The Department, therefore, failed to present sufficient information to establish that the Contract is authorized pursuant to the provisions of Section 19130(b)(3).

Similarly unpersuasive is the Department's assertion that its need to comply with HIPAA requirements within a specified time period rendered the appointment of a state civil service employee impractical. Had the Department been able to establish that it has been unsuccessful in its IT recruitment efforts, despite having engaged in reasonable, good faith attempts to recruit civil service employees, its argument might be more persuasive. As evidenced in other portions of this decision, however, the Department failed to prove that it expended anything more than nominal efforts to recruit civil service IT staff. As such, the "urgent" need to contract for IT services to meet HIPAA reporting requirements appears to be a dilemma of the Department's own creation. Consequently, I find that the Contract is not authorized under the provisions of Section 19130(b)(10).

**Contract No. 85137-06-2352**

**(Wright On-Line Systems)**

**Department Position:**

The vendor is required to develop applications into the Department's web hosting environment, and shall assist the Department to: implement key deliverables relating to essential business functions; assess products and their impact on existing infrastructure; develop technical requirements; release management; develop technical specifications and procedures; and, administer systems and products supporting the application environment system health management through monitoring and proactive response and capacity planning. The vendor shall also support 75 servers serving the internet, intranet and extranet, that contains 250 sites and on-line services (custom, commercial, and modified commercial applications) that: transport data for over 30 different business needs; house millions of documents; and, support internal authors and developers and 4,000 health professions.

This job function requires extremely detailed knowledge of database design concepts, administration, and stored procedures. In addition, the individual performing those duties must understand code construction, and review applicable security concepts. Security concepts must address security for web services in order to protect the confidential data used by Department websites and applications.

The Department advertised for the vacant position on VPOS, and directly advertised in the Capitol Weekly and on the Department's intranet. Department staff also participated in two job fairs and collected over 100 resumes, but only one candidate was qualified for appointment to the position. Upon the successful recruitment of a state civil service employee for the position, the Department will terminate the Contract.

As a result, the Contract is justified under Section 19130(b)(3) and (10).

**SEIU Position:**

All state departments have the need for state civil service staff to establish and maintain websites and web hosting environments, as all state departments have websites and web

servers, and the current standard for new applications developed within the state is for web-enabled technology. Consequently, the Department failed to identify any specialized skills required under the Contract that are not available within the state civil service. Most web hosting involves such common applications as SharePoint, JAVA, and ASP.net services. State employees regularly perform all design, administration and storage functions involved with web hosting as described in the classification specifications for ISAs, PAs, and SSS'. State employees understand the code construction, review, and security necessary for the websites and hosting environments for the Department. Moreover, the work described under the Contract is for the maintenance of web-hosting servers, which is an on-going function that is neither temporary nor urgent in nature, but instead is a daily task to be performed.

Those recruitment efforts referenced by the Department occurred in 2006. The Department, however, failed to mention any efforts it has made since that time to recruit staff to perform the Contract functions, such as offering testing or sending recruitment letters to all candidates on current eligibility lists, nor did the Department indicate where it released its job announcements. Finally, although the Department asserts that the needed skills are not available within the state civil service, the Department also asserts that it has attempted to recruit for vacant positions to perform the Contract functions. Those statements are mutually contradictory.

#### Analysis:

The Department's recruitment efforts for the vacant civil service position that would otherwise have performed the Contract duties consisted of the following: advertising for the vacant position on VPOS, in the Capitol Weekly and on the Department's intranet; and participating in two job fairs during which over 100 resumes were collected. Despite those recruitment efforts, only one candidate was qualified for appointment to the position.

In this instance, I find that the Department has established that it made reasonable, good faith efforts to hire a civil service employee prior to entering into the Contract, but despite those efforts, it was unable to locate a qualified applicant for appointment to the position. Consequently, I find that the Contract is authorized under the provisions of Section 19130(b)(3).

The Department's assertion that the Contract is authorized under the provisions of Section 19130(b)(10) is, however, unpersuasive, as the Department also maintains that the Contract will be implemented until state civil service support can be established to perform the Contract functions. It necessarily follows, therefore, that the Contract is not urgent, temporary or occasional in nature for purposes of Section 19130(b)(10). Instead, it is clear that the needed services are predictable, permanent and constant, and that the Department's need for the services is occasioned because the Department has not hired one or more civil service employees to perform those duties contemplated under the Contract. As a result, I find that the Contract is not authorized under Section 19130(b)(10).

**Department Position:**

The Department's Office of HIPAA Compliance (OHC) operates an extremely complicated project comprised of multiple sub-projects that, in turn, generally have multiple "end-to-end" sub-projects. HIPAA contains a complicated set of regulations that directly incorporate specific technical specifications for systems into federal law. The Contract services provide subject matter expertise to perform the project that is immediately available to the Department. It has been the Department's experience that HIPAA expertise is a limited commodity that is concentrated in the private sector. While the OHC has successfully trained its state employees over time to have HIPAA expertise, no candidates that applied for the vacant positions have had the necessary qualifications to perform the Contract duties.

While some state employees could perform some of the tasks required under the Contract, no Department staff or applicant possesses all of the requisite knowledge, skill or abilities to perform all of the Contract duties. Indeed, it is difficult to even locate staff within outside consulting firms that possess the requisite experience to perform those duties.

The Department has actively pursued recruitment of qualified IT staff for state positions, including participation in three job fairs during the previous 18 months. The Department has also advertised for numerous un-established positions<sup>8</sup> for IT prior or concurrent to procuring contract services.

As a result, the Contract is justified under Section 19130(b)(3) and (10).

**SEIU Position:**

Project management work is a regular function of state employees, as described in the ISA classification specifications. In fact, there are a number of Department staff who have received Project Management Professional certification. Project management expertise involves using a set of processes to manage a project effectively. The Project Manager does not need to be a subject matter expert, but rather an expert on managing projects, with the requisite skills to "manage the project to schedule, scope and resources, and to control risk." Additionally, although not required to perform the Project Manager function, many state employees who are certified Project Managers also have extensive expertise concerning HIPAA requirements.

Although the Department asserts that, given the extensive HIPAA knowledge requirements involved, civil service IT staff are not qualified to perform the Contract duties, the majority

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<sup>8</sup> Although the Department has been authorized several Limited-Term IT positions to help address its IT needs, the Department is still seeking to have permanent positions authorized to perform those functions.

of the duties to be performed under the Contract do not require specific HIPAA knowledge (such as development of scope of work, development and maintenance of project plans, Project Manager services, deliverables coordinator, mentoring of team projects, development of cost and procurement management processes). Clearly, the Department has an overwhelming need to develop HIPAA expertise in its own civil service staff rather than remaining dependent on a highly fluctuating private sector to provide that expertise, especially when the state is faced with a growing deficit. The Department's repeated reliance on contract IT staff, particularly with respect to HIPAA related IT projects, leads one to believe that the Department is creating a separate HIPAA Project Management Office utilizing private contractors.

Analysis:

The Department failed to establish that existing civil service classifications are inadequate for purposes of hiring civil service employees who could perform the requisite Contract functions. Indeed, the fact that the Department made some effort to recruit IT candidates demonstrates the Department's belief that existing civil service classifications are adequate for purposes of performing the Contract duties.

In addition, while the Department appears to contend that civil service IT classifications do not require civil service applicants and employees to possess the experience and certifications necessary to provide the skills being provided by the contractor, the Department ignores that fact that those qualifications are mere minimums, and that at least some current state employees or applicants will possess more than the minimum qualifications for appointment to the classification. In short, the Department failed to explain why broad IT classifications with certain specified minimum qualifications somehow preclude the Department from hiring IT staff that possess qualifications above those minimally required for appointment to a particular IT classification.

With respect to its recruitment efforts, the Department asserts that on unspecified occasions, it advertised in an unspecified medium, for numerous IT positions, and that it participated in three job fairs over an 18 month period. Despite those efforts, it was unsuccessful in locating a qualified civil service candidate.

The Department, however, presented no information demonstrating how or when its job announcement was made; consequently, it cannot be determined whether only an intra-departmental job announcement was made, whether the job announcement was placed on the Department's website, whether the job announcement was placed on the SPB's VPOS website, or whether other reasonable advertising efforts were made for the position, such as advertising the job vacancy in a newspaper or IT-related publication. Nor does it appear that the Department made any effort to reach out to any university, college, or technical school campus in an effort to recruit for its vacant IT position. In short, the Department demonstrated that it has made, at best, minimal efforts to recruit for its vacant IT positions. As such, the Department failed to prove that it engaged in legitimate, good faith recruitment efforts prior to entering into the instant Contract for IT services. The

Department, therefore, failed to present sufficient information to establish that the Contract is authorized pursuant to the provisions of Section 19130(b)(3).

Similarly unpersuasive is the Department's assertion that its need to comply with HIPAA requirements rendered the appointment of a state civil service employee impractical. Had the Department been able to establish that it has been unsuccessful in its IT recruitment efforts, despite having engaged in reasonable, good faith attempts to recruit civil service employees, its argument might be more persuasive. As evidenced in other portions of this decision, however, the Department failed to prove that it expended anything more than nominal efforts to recruit civil service IT staff. As such, the "urgent" need to contract for IT services to meet HIPAA reporting requirements appears to be a dilemma of the Department's own creation. Consequently, I find that the Contract is not authorized under the provisions of Section 19130(b)(10).

**Contract No. 85051-06-2352**

**(CCK Design)**

**Department Position:**

The vendor is required to: "provide professional consulting services to apply knowledge of Microsoft software to solve business process and enterprise issues; architects and develops business solutions on the 'NET' platform, providing database security perspective for new Enterprise Architectural standards, and assist with large systems implementations; responsible for data audit, authorization, access control and encryption authentication procedures and responsible for the identification of threats and vulnerabilities to the database systems."

The civil service SPA classification is only required to have 2-3 years of general IT analytical experience in designing systems to meet business requirements. The duties under this Contract, however, require extremely detailed knowledge of Microsoft server-based technologies and specifically the SQL Server product, security options, and interface requirements. "Since the Department utilizes the Microsoft SQL server as the primary database system for environment," this position requires an individual who is highly experienced in designing, maintaining and securing SQL database systems, such as those found in the highly complex Department environment. It has been the Department's experience that no other state department or data center have staff who are experienced in maintaining shared as well as standalone SQL servers in a combined Extranet and Intranet environment with the complexity of the Department. As such the abilities and experience needed to meet the full scope of the work to be performed under the Contract is well outside the skill set required for any applicable civil service IT classification.

In addition, the Department has advertised for one position at the SSS II (Technical) level which required similar SQL Server Security expertise, but no applications have been submitted to date. The Department has also participated in three job fairs within the previous 18 months, but has not found any qualified applicants for the position due to the highly specialized skill set required, and due to the very high demand in private industry for

those skills. Upon successful recruitment of a civil service employee to perform the Contract duties, the Contract will be terminated. As a result, the Contract is justified under Section 19130(b)(3).

SEIU Position:

All state departments are required to have an ISO. Therefore, the skills needed to perform the Contract functions exist within the state civil service and are included in the civil service IT classification specifications. Currently, the Department's entire ISO consists of contractors, with the exception of one state manager and one state employee. Despite this extensive use of contractors, there appears to be no realistic plan on the Department's part to transfer knowledge to state employees, which was an issue previously discussed with the Department as part of the resolution of SEIU's challenges to Department IT contracts during 2006. In addition, the use of contractors in the ISO give private companies access to confidential state information, without the contract employees being required to sign an oath of allegiance to the state, which is required for state employees.

In addition, the consultant performing the services to the Department under the Contract is the same consultant who has been performing this same service since approximately 2003. Consequently, the work cannot fit the definition of "temporary" work.

The stated technology utilized under the Contract (Microsoft .net, SQL Server), is commonly used throughout the state, and the duties to be performed under the Contract are within the specifications for both the PA and SSS classifications. State employees in many departments use Microsoft server-based technology, including SQL servers. The Microsoft .net platform referenced by the Department is the current standard platform in both the state and private sectors. Thus, the requisite skill set to perform the Contract functions are readily available within the state civil service, as state employees regularly perform all functions related to the .NET platform, including those advertised in the Contract.

Although the Department declares that the minimum qualifications for the Senior PA and SSS classifications were too low to hire a civil service employee to perform the Contract functions, the Department fails to realize that many applicants for civil service positions possess skill sets well above the minimum qualifications. The minimum level of skills is not the maximum level of skills you can obtain through sufficient recruitment efforts.

While the Department references recruitment efforts it has made in 2006, it fails to mention any recruitment efforts it has made since that time, such as offering testing or sending recruitment letters to all candidates on current eligibility lists, nor did the Department indicate where its job announcements were released or where interviews were conducted for job applicants.

In addition, the Department's job announcements are typically very complex and cover a broad range of detailed tasks and responsibilities, which seem very intimidating when compared to the qualifications and tasks described in the Contract's Statement of Work.

The job announcements released for these positions make it appear that the selected candidate would have to perform many more duties, and at a much higher level, than what appears in the Statement of Work. As a result, it appears that the job announcement is drafted in a way to artificially decrease the pool of candidates and the desirability of the job. It is, seemingly, drafted to contrive the worst combination of an undesirable position and an over-worked employee, as opposed to the more reasonable Statement of Work. In short, it appears that the Department is asking for applicants to possess skills that cross state classifications in order to justify contracting out, even though the mix of skills will not be required for contract employees under the Contract.

Analysis:

The Department failed to establish that existing civil service classifications are inadequate for purposes of hiring civil service employees who could perform the requisite Contract functions. Indeed, the fact that the Department made some effort to recruit an SSS II candidate demonstrates the Department's belief that existing civil service classifications are adequate for purposes of performing the Contract duties.

In addition, while the Department appears to contend that civil service IT classifications do not require civil service applicants and employees to possess the experience and certifications necessary to provide the skills being provided by the contractor, the Department ignores the fact that those qualifications are mere minimums, and that at least some current state employees or applicants will possess more than the minimum qualifications for appointment to the classification. In short, the Department failed to explain why broad IT classifications with certain specified minimum qualifications somehow preclude the Department from hiring IT staff that possess qualifications above those minimally required for appointment to a particular IT classification.

With respect to its recruitment efforts, the Department asserts that on an unspecified occasion, it advertised in an unspecified medium, for an SSS II position, and that it participated in three job fairs over an 18 month period. Despite those efforts, it received no applications and was unsuccessful in locating a qualified civil service candidate.

The Department, however, presented no information demonstrating how or when its job announcement was made; consequently, it cannot be determined whether only an intra-departmental job announcement was made, whether the job announcement was placed on the Department's website, whether the job announcement was placed on the SPB's VPOS website, or whether other reasonable advertising efforts were made for the position, such as advertising the job vacancy in a newspaper or IT-related publication. Nor does it appear that the Department made any effort to reach out to any university, college, or technical school campus in an effort to recruit for its vacant IT position. In short, the Department demonstrated that it has made, at best, minimal efforts to recruit for its vacant IT positions. As such, the Department failed to prove that it engaged in legitimate, good faith recruitment efforts prior to entering into the instant Contract for IT services. The Department, therefore, failed to present sufficient information to establish that the Contract is authorized pursuant to the provisions of Section 19130(b)(3).

**Department Position:**

The mission of the Department's Medi-Cal applications Section is to provide quality application and data services for Medi-Cal and related health programs, in order to help safeguard and improve the health and welfare of all Californians. The Medi-Cal Eligibility Data System (MEDS) is critical to the continued operations of the Medi-Cal program services provided to six to eight million Californians. If the Department does not obtain the services of the contractor, failures may result in Medi-Cal eligibility, provider access to data, beneficiary access to services, claim processing, and other fiscal issues.

The vendor will provide support for implementing legislative changes for the Targeted Case Management System (TCMS) by performing multiple systems development life cycle activities, including analysis, design, development, coding, testing, and implementation using WebSphere, JAVA programming, as well as DB2 and mainframe environment.

The Contract is for a one-time workload effort until state civil service support can be established. Due to current workload and the governing legislative deadlines, civil service positions could not have been recruited or trained in the timeframe required without negative impacts to existing workloads.

The Department has advertised for two positions at the SPA (Technical) level, which did not produce any qualified candidates. Additionally, the Department has participated in three job fairs (two in Sacramento, one in San Francisco) within the previous 18 months, but was unable to locate any qualified applicants due to the highly specialized skill set required for the position, and due to the high demand for such a skill set in the private sector.

The Contract will also be utilized to provide knowledge transfer and training to existing ITSD civil service staff to ensure maintenance and future operations. Without the contracted expertise, Department IT staff will not be able to become proficient nor be able to protect Department IT systems and data based upon their limited skill set and experience. In short, the critical skills needed under the Contract are not available in current civil service classifications. As a result, the Contract is justified under Section 19130(b)(10).

**SEIU Position:**

In the normal course of business, a state employee is rarely assigned to a single task one hundred percent of the time. Therefore, multiple staff could have been assigned to accomplish the Contract functions. Working in a team concept is common in state service and is done whenever a variety of skills is needed for a particular task. The legislative deadline referenced by the Department is not dispositive because employees can be re-directed and can handle multiple projects.

The work described under the Contract fits easily into the PA, ISA, and/or SSS classification specification series. The technology referenced by the Department is not new, nor is it even the current version of the software in use. In addition, because the Department asserts that knowledge transfer will be made to state staff for on-going maintenance and operations, SEIU expects that no such Contract will be made in the future.

#### Analysis:

The Department failed to establish that existing civil service classifications are inadequate for purposes of hiring civil service employees who could perform the requisite Contract functions. Indeed, the fact that the Department made some effort to recruit SPA candidates demonstrates the Department's belief that existing civil service classifications are adequate for purposes of performing the Contract duties.

With respect to its recruitment efforts, the Department asserts that on an unspecified occasion, it advertised in an unspecified medium, for two vacant SPA positions, and that it participated in three job fairs over an 18 month period. Despite those efforts, however, it was unsuccessful in locating a qualified civil service candidate.

The Department, however, presented no information demonstrating how or when its job announcement was made; consequently, it cannot be determined whether only an intra-departmental job announcement was made, whether the job announcement was placed on the Department's website, whether the job announcement was placed on the SPB's VPOS website, or whether other reasonable advertising efforts were made for the position, such as advertising the job vacancy in a newspaper or IT-related publication. Nor does it appear that the Department made any effort to reach out to any university, college, or technical school campus in an effort to recruit for its vacant IT position. In short, the Department demonstrated, at best, that it has made minimal efforts to recruit for its vacant IT position. As such, the Department failed to prove that it engaged in legitimate, good faith recruitment efforts prior to entering into the instant Contract for IT services. The Department, therefore, failed to present sufficient information to establish that the Contract is authorized pursuant to the provisions of Section 19130(b)(3).

Although the Department asserts that the Contract is a one-time, work load contract and, as such constitutes an urgent, temporary, or occasional Contract, the Department also maintains that the Contract will be implemented until state civil service support can be established to perform the Contract functions. It necessarily follows, therefore, that the Contract is not urgent, temporary or occasional in nature for purposes of Section 19130(b)(10). Instead, it is clear that the needed services are predictable, permanent and constant, and that the Department's need for the services is occasioned because the Department has not hired one or more civil service employees to perform those duties contemplated under the Contract. Consequently, I find that the Contract is not justified under the provisions of Section 19130(b)(10).

## **Conclusion**

Contract Nos. 70413-06-5461 and 30147-06-2341 are exempt from review, as those contracts had expired prior to SEIU seeking review of them. Consequently, those Contracts are dismissed from this decision. The Department presented sufficient information to establish that Contract Nos. 85192-06-2380, 82144-06-5461 and 82071-06-5461 are justified as temporary contracts under Section 19130(b)(10), and those Contracts are approved. The Department also presented sufficient information to establish that Contract No. 85137-06-2352 is justified under Section 19130(b)(3), in that the Department made reasonable, good faith efforts to recruit a civil service employee to perform the Contract duties prior to executing the Contract, and that Contract is also approved. The Department did not, however, present sufficient information to establish that Contract Nos. 82055-06-5404, 76481-06-9912, 76482-06-9912, HC85220-06-2341, 85067-06-2352, 82126-06-9912, 76420-06-4460, 82113-06-55461, 76458-06-5461, 85051-06-2352 and 82025-06-5310 were authorized under the provisions of Section 19130(b)(3), (5) or (10) and, as a result, those Contracts are not approved.

This letter constitutes my decision to dismiss Contract Nos. 70413-06-5461 and 30147-06-2341 from this decision, to approve Contract Nos. 85192-06-2380, 82144-06-5461, 82071-06-5461 and 85137-06-2352, and to disapprove Contract Nos. 82055-06-5404, 76481-06-9912, 76482-06-9912, HC85220-06-2341, 85067-06-2352, 82126-06-9912, 76420-06-4460, 82113-06-55461, 76458-06-5461, 85051-06-2352 and 82025-06-5310. Any party has the right to appeal this decision to the five-member State Personnel Board pursuant to SPB Rule 547.66. Any appeal should be filed no later than 30 days following receipt of this letter in order to be considered by the Board.

Sincerely,

SUZANNE M. AMBROSE  
Executive Officer