

# California Highway Patrol:

It Followed State Contracting Requirements Inconsistently,  
Exhibited Weaknesses in Its Conflict-of-Interest Guidelines,  
and Used a State Resource Imprudently

January 2008 Report 2007-111

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January 22, 2008

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The Governor of California  
President pro Tempore of the Senate  
Speaker of the Assembly  
State Capitol  
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the Bureau of State Audits presents its audit report concerning the California Highway Patrol's (CHP) purchasing and contracting practices, conflict-of-interest guidelines, and use of a state resource.

This report concludes that neither the CHP nor the Department of General Services (General Services)—which often assists the CHP with its high dollar value purchases—always followed the State's procurement requirements. For example, the CHP did not include all the justifications recommended by the State Administrative Manual in its \$6.6 million handgun purchase request; nevertheless, General Services approved the request. The CHP also did not sufficiently justify the cost of its \$1.8 million purchase of patrol car electronics. General Services subsequently approved the CHP's purchase request even though its policy is to return incomplete purchase documents to the originating state agency. Although we identified deficiencies in the CHP's handgun and patrol car electronics purchases, our legal counsel advised us that those deficiencies did not violate the provision of law that would make a contract void for failure to comply with competitive bidding requirements.

The CHP also has weaknesses in its conflict-of-interest guidelines. For example, the CHP does not require all employees who deal with purchasing to make financial interest disclosures, nor has it consistently followed its procedures to annually review its employees' outside employment. As a result, the CHP cannot be fully aware of or guard against its employees' potential conflicts of interest. Finally, between 1997 and 2007, the CHP owned and operated an eight-passenger aircraft—a Beechcraft brand King Air airplane (King Air). The CHP's policies governing the King Air's use were broad, simply requiring the Office of the Commissioner's approval. However, the CHP could not substantiate that it always granted the necessary approval and some of the CHP's decisions to use the King Air were not prudent.

Respectfully submitted,



ELAINE M. HOWLE  
State Auditor

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## Summary

### Results in Brief

As a law enforcement agency, the California Highway Patrol (CHP) uses various equipment to fulfill its mission. To purchase the equipment it needs, the CHP at times is assisted by the Department of General Services (General Services), the State's oversight agency for purchasing. Since 2004 the CHP and General Services have purchased assorted goods for the CHP's use, including handguns, patrol car electronics, and helicopters. However, neither the CHP nor General Services always followed the State's procurement requirements.

For example, the CHP did not include all the justifications recommended by the State Administrative Manual in its \$6.6 million handgun purchase request, omitting a description of the handgun's unique performance factors and why the CHP required those performance factors. The State's procurement policies are designed to foster competition so that the State purchases the goods it needs at the best-offered price, and the State Administrative Manual required that the CHP justify its selection of a specific handgun make and model. Moreover, an analysis conducted in 2005 by the CHP's gun experts did not fully support the rationale that the CHP used for its handgun procurement. Even though the CHP's purchase documents did not fully justify its desired purchase, General Services approved the purchase.

In addition, when the CHP requested a purchase of \$1.8 million in patrol car electronics, General Services required the CHP to make the procurement on a noncompetitive basis because General Services rightly concluded that vendor competition did not exist. However, General Services subsequently approved the CHP's revised purchase request even though the CHP did not sufficiently justify the cost of the electronics. In this instance, General Services did not follow its policy to return the purchase documents when they are incomplete. Because the CHP and General Services did not fully comply with the State's purchasing guidelines, neither can be certain that the purchases made were in the State's best interest.

There are several ways that the State can end its contractual relationship with a contractor, two of which could be applicable for the contracts we reviewed. The State's standard contract provisions allow the State to terminate a contract for specified reasons, and state law provides that a contract that is formed in violation of law is void. Based on the contractors' performance under the handgun and patrol car electronics contracts, our legal counsel advised us that General Services would not have a basis for relying on the standard contract provisions to cancel these contracts. Moreover, even though a broadly worded contract provision permits

### Audit Highlights . . .

*Our review of the California Highway Patrol's (CHP) purchasing and contracting practices and use of state resources revealed the following:*

- » *The CHP did not include all the justifications recommended by the State Administrative Manual in its \$6.6 million handgun purchase request, nor did it sufficiently justify the cost of its planned \$1.8 million patrol car electronics purchase.*
- » *The Department of General Services approved the CHP's purchases even though the CHP's purchase documents did not provide all the requisite justifications for limiting competition or for the cost of the product.*
- » *Despite the deficiencies in the handgun and patrol car electronics procurements, our legal counsel advised us that those deficiencies did not violate the provisions of law that would make a contract void for failure to comply with competitive bidding requirements.*
- » *The CHP has weaknesses in its conflict-of-interest guidelines including not requiring employees who deal with purchasing to make financial interest disclosures, and not consistently following its procedures to annually review its employees' outside employment.*
- » *Between 1997 and 2007, the CHP owned and operated a Beechcraft brand King Air airplane (King Air), but could not substantiate that it always granted approval to use the King Air in accordance with its policy, and its decisions to use the King Air were not always prudent.*

termination of a state contract when it is in the interest of the State, our legal counsel advised us that it is unlikely that the State could successfully cancel the handgun and patrol car electronics contracts on that basis, particularly because the contractors have already performed most of their duties under the contracts.

In addition, although we identified deficiencies in the procurements of the handguns and patrol car electronics, our legal counsel advised us that those deficiencies did not violate the provisions of law that would make a contract void for failure to comply with competitive bidding requirements. The State Administrative Manual recommends, but does not require, that the statements justifying sole-brand procurements<sup>1</sup> and noncompetitive bids address certain questions, such as what other comparable products were examined and why they were rejected. Because these statements are merely recommended and not legally required, a failure to provide them did not constitute a violation of law that would make these contracts void. Nonetheless, we believe that it is important for state agencies to demonstrate to General Services that they examined other comparable products and to explain why the products were rejected or, if there are no other comparable products, to explain how the state agency reached that conclusion, to ensure that competitive bidding occurs whenever possible.

The CHP has undergone numerous internal and external reviews over the last few years, and we identified four reviews among the 102 the CHP provided in which the scope of work focused on the CHP's procurement practices. Another 24 reports mentioned certain procurement functions, but these references were part of a larger effort, and the procurement-related information in these reports primarily addressed administrative issues rather than the procurement methods. The CHP characterized all of the reviews as audits, yet we believe that the term *audit* implies that a review was performed in accordance with recognized auditing standards. Nine of the 102 reviews (8.8 percent) were performed in accordance with recognized auditing standards. The CHP was responsive to recommendations made in the four reviews, one of which was performed in accordance with audit standards, that focused on its procurement practices.

The CHP's conflict-of-interest guidelines consist of four components that work together to help employees identify financial interests that may present conflicts of interest and to periodically remind employees of the CHP's expectations regarding conflicts of interest. However, the CHP has weaknesses in its conflict-of-interest guidelines.

<sup>1</sup> Sole-brand procurements, also known as limited-to-brand procurements, are a form of competitive purchase in that multiple vendors bid to supply a state agency, such as the CHP, with a specific item identified by brand, make, or model.

For example, the CHP does not require all employees who deal with purchasing to make financial interest disclosures, nor has it consistently followed its procedures to annually review its employees' outside employment. As a result, the CHP cannot be fully aware of or guard against its employees' potential conflicts of interest. In 2006 there was a highly publicized conflict-of-interest case involving a CHP employee. In 2007 the CHP developed a new conflict-of-interest policy pertaining to employees and vendors, but the new policy does not specify the employees affected or the circumstances to which the policy applies. Moreover, the policy lacks a method for vendors to certify that they are conflict free.

General Services, too, has encountered conflicts of interest related to CHP purchases. In June 2005 General Services declared void two statewide contracts for motorcycles for use by the CHP after having determined that a General Services employee had a conflict of interest. Although General Services secured a \$100,000 monetary settlement from the motorcycle dealer, General Services let a separate settlement with the motorcycle manufacturer languish without finalizing it for 14 months. When we asked General Services why it had not settled with the motorcycle manufacturer, General Services informed us that it has reestablished negotiations. However, it is too soon to determine the benefit, if any, the State will receive from the pending negotiations.<sup>2</sup> According to the CHP, because the two motorcycle contracts were declared void, it has incurred \$11.4 million in maintenance costs and lost buyback options from October 2005 to October 2007. The estimate also reflects that the CHP and General Services were not successful in securing another motorcycle contract in 2006 that would have allowed the CHP to purchase new, replacement motorcycles.

Between 1997 and 2007 the CHP owned and operated an eight-passenger aircraft—a Beechcraft brand King Air airplane (King Air). The CHP's policies governing the King Air's use were broad, simply requiring the approval of the Office of the Commissioner. However, the CHP could not substantiate that it always granted approval in accordance with its policy for using the King Air, because the CHP lacked documentary support for some of its King Air flights. In addition, the CHP's decisions to use the King Air were not always prudent. For example, the CHP used the aircraft as transportation to cities in close proximity to Sacramento, where the CHP's headquarters are located. The cost of flying the King Air for these trips was at least \$1,980—more than 13 times the cost of driving. In addition, 14 of the King Air's flights during 2006 were authorized for purposes that were not aligned with the CHP's

<sup>2</sup> In its response to this audit, General Services disclosed that the motorcycle manufacturer had no interest in buying back the existing motorcycles. We are unaware of any other points General Services and the motorcycle manufacturer may be negotiating.

function, as its policy dictates, nor were they for state business. According to the CHP's operating cost calculation, the total cost of these flights exceeded \$24,000. In early 2007 the CHP transferred<sup>3</sup> the King Air to another government entity, citing economic reasons. However, the CHP had the necessary information in 2005 to conclude that its private air service was not cost-effective, and thus we question why two years passed before it transferred the King Air to another entity.

### Recommendations

To ensure that it protects the State's interests and receives the best products and services at the most competitive prices, the CHP should:

- Provide a reasonable and complete justification for purchases in cases where competition is limited, such as sole-brand and noncompetitive bid purchases.
- Provide a complete analysis of how it determines that the offered price is fair and reasonable when it chooses to follow a noncompetitive bid process.

To ensure that state procurements are competitive whenever possible, General Services should revise the State Administrative Manual to require that state agencies address all of the factors specified when submitting justification statements supporting their purchase estimates for noncompetitive or sole-brand procurements.

To ensure that it informs employees about and protects itself against potential conflicts of interest, the CHP should include all personnel that help to develop, process, and approve procurements as designated employees for filing the Form 700, Statement of Economic Interests; consistently follow its secondary-employment policy; and make necessary revisions to its employee and vendor statements regarding conflicts of interest.

General Services should continue negotiating with the motorcycle manufacturer regarding the canceled motorcycle contracts to develop a settlement agreement that is in the State's best interest.

To ensure that the use of state resources of a discretionary nature for purposes not directly associated with the CHP's law enforcement operations receives approval through the Office of the

<sup>3</sup> According to the CHP, it received the King Air through a federal program under which states and local governments can acquire surplus military equipment for law enforcement and drug enforcement purposes. Under the program's rules, the CHP could relinquish the aircraft only to another state or local government to use for program purposes.



Commissioner, the CHP should develop procedures for producing, approving, and retaining written documentation showing approval for these uses.

**Agency Comments**

The CHP responded that it concurred with the report's recommendations and that its staff had already begun to implement them. General Services stated that it is fully committed to promptly and completely addressing the issues in the audit report.

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## Introduction

### Background

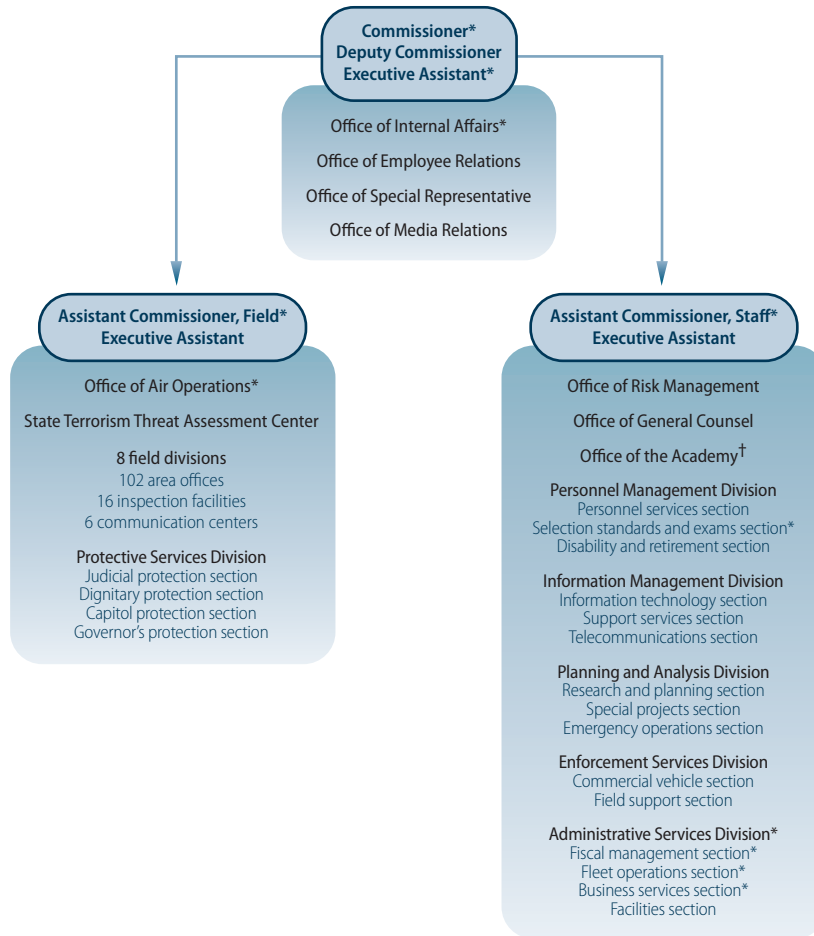
The mission of the California Highway Patrol (CHP) is to ensure the safe, convenient, and efficient transportation of people and goods across the highway system in the State of California (State) and to provide safety and security to the State's facilities and employees. To carry out this mission, the CHP performs four program functions: traffic management, regulation and inspection, vehicle ownership security, and departmental administration. The CHP's most visible function is traffic management, and its objectives in this area include minimizing deaths, injuries, and property losses due to traffic accidents; reducing traffic delays; and protecting and assisting motorists. The CHP has more than 11,000 uniformed and nonuniformed authorized positions throughout the State; a commissioner leads the CHP from the agency's headquarters in Sacramento. For fiscal year 2007–08, the CHP's budget is \$1.8 billion, consisting of nearly \$1.4 billion in salaries and benefits and about \$400 million in operating expenses.

As a state agency, the CHP's leadership begins with the Office of the Commissioner. Included in the Office of the Commissioner are the commissioner, the deputy commissioner, two assistant commissioners, and support staff. The deputy and each assistant commissioner oversee commands and functions that represent specialized offices, divisions, or geographical areas. For example, the assistant commissioner for the CHP's staff operations oversees the administrative services division. The chief of the administrative services division supervises four sections, including business services, fleet operations, fiscal management, and facilities. Within each section a commander directs the staff's day-to-day activities. The organizational chart in the Figure on the following page depicts the CHP's structure.

### The CHP's Delegated Purchasing Authority

To fulfill its mission the CHP requires various equipment, including vehicles, aircraft, electronics, handguns, and uniforms. Under the State's procurement process, the Department of General Services (General Services) authorizes the CHP to make certain purchases in-house. Through a program called delegated purchasing authority, General Services, the department responsible for overseeing purchasing at most state agencies, has granted the CHP a dollar limit under which it can purchase goods and

**Figure**  
**California Highway Patrol's Departmental Organization Chart**



Source: CHP.

\* Mentioned in this report.

† Includes the Weapons Training Unit.

services on its own. General Services periodically evaluates and reauthorizes the CHP's delegated purchasing authority. Specifically, the CHP may obtain goods such as tires and office supplies for amounts of up to \$50,000 per purchase, and it may obtain information technology goods or services for amounts of up to \$500,000 per purchase. The CHP has additional purchasing authority for other specialized goods, such as automotive parts, protective police gear, emergency medical supplies, and undercover vehicles. The CHP's delegated purchasing authority for these specialized purchases ranges from \$75,000 to \$3 million. The text box on the next page provides greater detail on the CHP's additional

purchasing authority during the audit period. When using its delegated purchasing authority, the CHP remains subject to the State's many purchasing rules and regulations.

When the cost of the goods that the CHP plans to obtain exceeds the amount specified by its delegated purchasing authority, the CHP must submit to General Services a purchase estimate. General Services then conducts the procurement on the CHP's behalf. The cost of the goods purchased by the CHP that we describe in this report generally surpassed the limit of the CHP's delegated purchasing authority. Therefore, as required by the State's procurement process, General Services helped the CHP acquire the necessary goods.

In submitting a purchase estimate, the CHP generally identifies the goods that it needs by stipulating specifications that the items must meet, the quantities needed, and the amount of money it is prepared to spend for the goods. Using this information, General Services develops a bid solicitation package, invites interested vendors to make an offer or bid on the needed goods, assesses the bids submitted, and selects a successful bidder. Typically, General Services selects the vendor that submits the lowest bid and that has also demonstrated that it can meet the bid requirements, such as possessing certain qualifications or expertise.

### The CHP's Methods for Purchasing Goods

The State's procurement system is structured to foster competition and to ensure that unless otherwise justified, state agencies secure the highest-quality goods for the lowest offered price. The scenario described at the end of the previous section is a typical procurement process using competitive bidding. In the State Administrative Manual (administrative manual) and the State Contracting Manual (contracting manual), the State provides guidance and places certain requirements on state agencies to ensure that procurements are competitive whenever possible. However, state law allows for instances in which a state agency determines that only one brand or trade name will meet the agency's needs or in which only one vendor can supply the goods needed. The administrative manual and the contracting manual refer to these two circumstances as limited-to-brand procurements and noncompetitive bid procurements, respectively.

#### CHP's Additional Purchasing Authority

- Ford automotive parts and components: \$3 million
- General Motors automotive parts and components: \$250,000
- Protective police gear, excluding body armor: \$250,000
- Emergency medical supplies: \$250,000
- Undercover vehicles: \$250,000
- Bottled drinking water: \$200,000
- Canines for drug enforcement: \$75,000

The dollar amounts are annual limits. In addition, the stated limits are per transaction, defined as a solicitation, a noncompetitively bid contract, or a special-category noncompetitively bid contract.

Source: General Services.

### ***General Services' Role in Procurements That Involve Limited Competition***

The administrative manual describes a limited-to-brand procurement as a form of competitive purchase in which multiple vendors bid to supply a state agency, such as the CHP, with a specific item identified by brand, make, or model. We refer to limited-to-brand procurements as sole-brand procurements in this report. When state agencies make sole-brand requests, General Services requires the agencies to explain and document why they cannot accommodate wider competition. General Services requires that state agencies comply with Section 3555 of the administrative manual (Section 3555) by preparing a statement fully delineating why the product is necessary for the agencies to fulfill their services and functions. Section 3555 specifies that the statement should answer at least the following questions:

- What are the item's unique performance features?
- Why are these features needed?
- What other products have been examined and rejected and why?

General Services can reject the CHP's or other agency's sole-brand request if the agency does not follow Section 3555 by offering a reasonable justification for its sole-brand request. In addition, General Services may direct the agency to use a different procurement method. In cases in which the purchase will not exceed the state agency's delegated purchasing authority, General Services may not know whether the state agency has a reasonable justification for its sole-brand purchases.

A noncompetitive bid procurement is a purchasing process that reflects its name. A state agency, such as the CHP, employs this process when it needs a specific good or service that is available from only one vendor. As in the case of a sole-brand procurement, General Services requires state agencies to justify in writing why competition for the purchase cannot take place. Specifically, a state agency must explain why only one vendor can supply the good or service and must also provide a price analysis to show how the agency determined that the price offered is fair and reasonable. If the state agency does not provide a reasonable justification for purchasing the good or service from the specified supplier, General Services can reject the agency's request or redirect the agency to a different procurement method.

### ***Information Contained in the Contracting Manual***

The contracting manual is prepared by General Services to provide policies, procedures, and guidelines to promote sound business decisions and practices for those involved in the state contracting process. The contracting manual consists of three volumes that are revised periodically. Volume 1 deals primarily with non-information technology services, consultant services contracts, legal services, subventions, grants, and interagency agreements. Volume 2 is known as the Purchasing Authority Manual and pertains to the procurement of non-information technology goods and post-contract-award activities. Volume 3 contains requirements applicable to procuring information technology goods and services. The policies, procedures, and guidelines in the contracting manual do not eliminate or override requirements imposed by statutes, executive orders, or management memos.

### ***General Services' Responsibility for Statewide Procurements***

In addition to assisting individual state agencies with their procurements, General Services may also develop specifications and contracts for goods that various agencies throughout the State will use. Known as a statewide master agreement, this procurement process requires that General Services determine that state agencies have a broad need for the same or similar products. We refer to these agreements as statewide contracts. Generally, state agencies and local entities may purchase certain goods through a statewide contract as they become necessary. For example, as we discuss in Chapter 2, General Services developed a statewide motorcycle contract and awarded it in June 2007. As a result, the CHP and local agencies may purchase motorcycles if and when these agencies need them. Another type of statewide contract is a master service agreement. This type of agreement provides a way for multiple state agencies to access a commonly needed service, as opposed to a good or commodity.

### **The CHP's Contract With Managed Health Network**

As a state entity, the CHP works with other state agencies in addition to General Services to obtain services that support CHP employees. As a part of our audit, we were directed to specifically examine the CHP's contract for counseling services. We found that the CHP began contracting directly with Managed Health Network in 2004 for services tailored to the needs of CHP personnel.

Through the Department of Personnel Administration (Personnel Administration), CHP employees and their dependents can access Employee Assistance Program benefits (employee assistance), which include services such as personal and substance abuse counseling. Personnel Administration administers the employee assistance program and contracts for employee assistance benefits through a master service agreement.

Personnel Administration's current agreement is with Managed Health Network, and it allows the CHP to contract directly with Managed Health Network for services beyond basic employee assistance. Since fiscal year 2004-05, the CHP has contracted for additional services that include critical-incident stress debriefings, which are opportunities for employees to discuss their reactions to events such as a CHP officer being killed in the line of duty, and specialized orientation, training, and stress management classes. The CHP's contract with Managed Health Network for fiscal years 2004-05 and 2005-06 totaled \$250,000. For fiscal years 2006-07 and 2007-08, the CHP again contracted with Managed Health Network to provide the same services for \$250,000 each year.

In April 2006 the CHP launched an initiative to identify available suicide prevention services and ways to better train its management and other staff about suicide prevention techniques. The CHP, in October 2006, provided a pilot program for suicide prevention and awareness training, at a cost of \$9,800, to certain staff in its Golden Gate Division, which the CHP had determined had been affected by recent suicides. If the program proved successful, the CHP would consider offering the same or similar training to its divisions statewide. To enroll participants and pay for the training, the CHP used a process called out-service training, which its own policies define as "training that meets departmental needs for scientific, technical, professional, and management skills of an employee for either required development, job-related development, upward mobility development, or career development." In early 2007 the CHP sent a letter to Managed Health Network to request assistance in developing and providing statewide training in suicide awareness and intervention.

### **State Laws Related to Conflicts of Interest and Incompatible Activities**

In reviewing the CHP's and General Services' policies for purchasing goods and services, we examined various state laws that establish the conflict-of-interest requirements for state officers and employees, and for contractors who do business with the State. The central conflict-of-interest law governing state officers and employees in California is the Political Reform Act of 1974 (political



reform act). The political reform act contains two core obligations related to state officers and employees and their personal financial interests. First, it requires designated state officers and employees to disclose certain financial interests by filing a statement of economic interests. Second, it prohibits a state officer or employee from making, participating in, or in any way attempting to influence a governmental decision in which he or she has a financial interest. A state officer or employee has a disqualifying financial interest if it is reasonably foreseeable that the governmental decision will have a material financial effect on that individual that is different from the effect the decision will have on the public generally.

In addition to the political reform act, sections 1090 and 19990 of the California Government Code prohibit conflicts of interest. Section 1090 specifies that state officers and employees cannot enter into a government contract or purchasing agreement when they have a financial interest in that contract. Section 19990 prohibits a state employee from engaging in “any employment, activity, or enterprise which is clearly inconsistent, incompatible, in conflict with, or inimical to his or her duties as a state officer or employee.” This law identifies specific incompatible activities, including using state time, facilities, equipment, or supplies for private gain or advantage and receiving money from any entity other than the State for the performance of duties as a state employee.

### **Scope and Methodology**

The Joint Legislative Audit Committee (audit committee) directed the Bureau of State Audits to review the CHP’s purchasing and contracting practices and its use of state resources. Specifically, the audit committee asked us to examine the CHP’s purchasing and contracting policies and practices to determine whether they comply with laws and regulations. In addition, the audit committee asked us to review CHP contracts awarded since January 1, 2004, for helicopters, motorcycles, guns and accessory equipment, patrol car electronics, and counseling services. We were to determine whether the CHP had complied with laws related to purchasing and whether the contracts were cost-beneficial and in the best interest of the State. In reviewing the CHP’s noncompetitive purchasing agreements, we were to ascertain whether the State could cancel any of these contracts that were not compliant with laws or in the best interest of the State and repurchase goods using competitive bidding. The audit committee also asked us to examine relevant internal audits and personnel policy or financial reviews to determine whether the CHP responded to the issues raised and took recommended corrective actions. Further, the audit committee asked us to evaluate the CHP’s contracts for specified goods and services and to determine whether conflicts of interest existed.

Finally, the audit committee asked us to identify the CHP's policies and practices for using state equipment, including aircraft. We were then to determine whether the CHP complied with these policies and laws and whether CHP employees reimbursed the State for any personal use of state property.

To assess whether the CHP complies with laws and regulations in its policies for purchasing and contracting, we identified the procurement methods that the CHP used for the types of purchases it made that relate to our audit objectives. We identified the CHP's competitive bids, noncompetitive bids, and sole-brand purchases, as well as the significant procurement requirements mandated by the Public Contract Code, the administrative manual, and the contracting manual for the procurement methods identified. We focused on the laws and regulations that pertain to the procurement methods used for the purchases that the audit committee asked us to evaluate.

To understand the CHP's purchasing and contracting policies, we obtained its policies and procedures manual containing the relevant sections related to contracting and purchasing. We compared the CHP's policies and procedures to the purchasing and contracting requirements contained in the Public Contract Code, the administrative manual, and the contracting manual.

Some CHP purchases that the audit committee asked us to review exceeded the dollar amount specified by the CHP's delegated purchasing authority, and the CHP worked with General Services to complete these purchases. Therefore, we reviewed General Services' purchasing practices for these purchases. Because General Services, not the CHP, developed, and in June 2007 awarded, a statewide contract for motorcycles, we did not review either state agency's procurement practices related to this contract.

To help us develop an overview of the CHP's purchases and the amounts the CHP spends for various categories of goods, the CHP gave us a copy of its procurement database for the period July 5, 2002, through July 18, 2007. We did not assess the reliability of these data because we are presenting them only to provide a context for the purchases we reviewed. We grouped the CHP's purchases by those the CHP made on its own and those it made with General Services' assistance between January 2, 2004, and July 18, 2007. Within these two categories, we further grouped the purchases by commodity or item type. For example, we classified purchases as vehicles, office and computer equipment and supplies, and law enforcement supplies. Many of the purchases the CHP made on its own were for items that were not identified as specific

concerns in the audit request. In our review, however, we included two contracts for patrol car electronics from the vehicle accessories and automotive supplies category.

To assess whether the CHP's purchases were justified, complied with laws, were cost-beneficial, and were executed in the best interest of the State, we reviewed certain contracts that the CHP or General Services awarded since January 1, 2004, for handguns, patrol car electronics, and helicopters. We assessed whether the CHP's and General Services' practices adhered to the applicable procurement requirements mandated by the Public Contract Code, the administrative manual, and the contracting manual for the procurement methods used to make these purchases.

In addition, we obtained and analyzed information related to specific purchases that the CHP has made since January 2004 and purchases that General Services helped the CHP make. Specifically, we analyzed issues related to defective parts in the CHP's handguns and reviewed the effect on inventory of CHP's handgun sales to retiring officers. We also assessed the actions General Services took in canceling two motorcycle contracts for conflicts of interest and its work with the CHP to secure a new motorcycle contract during 2006.

The audit committee also asked us to review the CHP's counseling services contracts. As described earlier, counseling services are available to the CHP through Personnel Administration's master service agreement with Managed Health Network. The CHP has used the master service agreement to contract with Managed Health Network for counseling services as well as for specialized services covered by the agreement. We reviewed one training request from October 2006 for \$9,800 that the CHP used to provide employees with suicide prevention and awareness training. The CHP arranged and paid for the training in accordance with its training policies.

To determine whether sole-brand and noncompetitive purchasing agreements complied with laws, whether they were in the best interest of the State, and whether the State can or should cancel them to allow for competitive bids, our legal team reviewed the State's standard contract provisions, identified and reviewed applicable sections of the Government Code and Public Contract Code, and reviewed court decisions interpreting these sections. Our legal team also interviewed the deputy director and staff counsel from the office of legal services at General Services to determine how General Services interprets these sections.

To identify relevant internal audits, personnel policy reviews, or financial reviews, we examined all the reports that the CHP's office of internal affairs provided the audit committee. We further examined the reports that focused on procurement practices and that were issued between January 2005 and November 2007. The audit committee directed us to determine an appropriate period of time from which to select reviews to examine. We narrowed the time frame for the reviews to ensure that we identified those that were most relevant to the CHP's current practices. To determine whether the CHP responds to issues raised in relevant audits, we noted whether it had developed corrective action plans and also asked the entities that conducted the reviews whether they were satisfied with the CHP's corrective actions.

To determine whether conflicts of interest existed for purchases of handguns and accessory equipment, patrol car electronics, and helicopters, we reviewed applicable laws and the CHP's and General Services' policies and processes related to conflicts of interest. Additionally, we identified staff involved in the purchases. Referring to the CHP's and General Services' policies and procedures for informing employees about conflicts of interest, we reviewed relevant employee and purchase files to determine whether the CHP and General Services followed their own guidelines.

We focused our review of the CHP's use of state equipment on the CHP's King Air aircraft manufactured by Beechcraft. Although the CHP has other aircraft, including small planes and helicopters, these aircraft are assigned to the CHP's field divisions for enforcement use. On the other hand, the King Air was available primarily to CHP's management for other uses. To determine the CHP's policies and practices for using the King Air, we identified and reviewed the CHP's air operations manual and the King Air standard operating procedures. We also reviewed the flight logs the CHP prepared for King Air flights to determine whether the flights listed complied with the CHP's policies. The CHP provided information regarding one reimbursement that the commissioner made for a flight on the King Air. To determine whether the CHP had received any additional reimbursements for flights, we asked CHP staff about the agency's reimbursement accounting process. The commander of the CHP's fiscal management section asserted that the one reimbursement that the CHP had identified for us was the only one made.

The CHP issues to its staff other types of equipment, specifically vehicles and cell phones. Although the potential exists for staff to use this equipment for personal reasons, we did not test for personal use. CHP policy and federal income tax regulations allow for some incidental personal use of employer-issued vehicles, but they specifically exclude marked law enforcement vehicles from

fringe-benefit reporting. The Internal Revenue Service defines a fringe benefit as a form of pay for performing a service, such as providing an employee with a vehicle to commute to and from work. Regarding cell phones, the CHP's policy requires staff to reimburse the CHP for personal calls and provides a process for staff to identify these calls. However, because the CHP is a round-the-clock operation, tracking the staff's personal calls would be difficult. Moreover, according to the Internal Revenue Service, de minimis benefits are excludable when the benefit has so little value that accounting for it would be unreasonable or administratively unfeasible.

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# Chapter 1

## THE CALIFORNIA HIGHWAY PATROL AND THE DEPARTMENT OF GENERAL SERVICES DID NOT CONSISTENTLY ADHERE TO STATE CONTRACTING REQUIREMENTS

### Chapter Summary

Neither the California Highway Patrol (CHP) nor the Department of General Services (General Services) always followed the procurement requirements established by the State. From January 2004 through December 2006, the period that we reviewed, the CHP and General Services bought necessary items for the CHP, including handguns, patrol car electronics, and helicopters. However, for the purchases made without competitive bidding, the CHP and General Services did not consistently follow the State's requirement that they fully justify such purchases. For example, when these state agencies worked together in 2006 to purchase handguns, the CHP did not include information in its procurement documents that was necessary to support its selection of a specific handgun make and model. General Services nevertheless approved the CHP's request without requiring the CHP to submit the recommended information. Similarly, when the CHP purchased patrol car electronics, it did not sufficiently justify the electronics' cost. Again, General Services approved the purchase request even though its own policy requires it to return incomplete purchase documents. Because the CHP and General Services did not fully comply with the State's purchasing guidelines, neither can be certain that the CHP's purchases were in the State's best interest.

Moreover, our review of the CHP's 2006 handgun procurement raised additional concerns. First, the CHP's purchasing documentation for buying \$6.6 million in handguns differed in some respects from an internal analysis that its handgun experts prepared. In addition, evidence does not support its claims that sales of used handguns to retirees helped to significantly deplete its inventory. The law allows for such sales, and the CHP calculates that it sold about 65 handguns per year over a 16-year period. However, if the CHP used sound practices for inventory management, this level of sales would not have had a detrimental effect on its handgun inventory.

There are several ways that the State can end its contractual relationship with a contractor, two of which are the State's standard contract terms that allow the State to terminate a contract for

specified reasons, and state law that provides that a contract formed in violation of law is void. Based on the contractors' performance under the contracts for handguns and patrol car electronics, our legal counsel advised us that General Services would not have a basis for relying on the standard contract provisions to cancel these contracts. Moreover, although a broadly worded contract provision permits termination of a state contract when it is in the interest of the State, our legal counsel advised us that it is unlikely that the State could successfully cancel the handgun and patrol car electronics contracts on that basis, particularly because the contractors have already performed most of their duties under the contracts.

The CHP has undergone numerous internal and external reviews over the last few years; we identified four reviews among the 102 that the CHP provided in which the scope of work focused on the CHP's procurement practices. Another 24 reports mentioned certain procurement functions, but these references were part of a larger effort, and the procurement-related information in these reports primarily described administrative issues rather than the procurement method. Although the CHP characterized the reviews as audits, we believe the term *audit* implies work that was performed in accordance with recognized auditing standards. Nine of the 102 reviews were conducted in accordance with such standards. The CHP was responsive to recommendations made in the four reviews, one of which was performed in accordance with audit standards, that focused on its procurement practices.

### Categories of CHP Purchases

1. **Vehicles:** Primarily sedans and pick-up trucks.
2. **Tires.**
3. **Vehicle accessories and automotive supplies:** Includes auto mechanic machines and supplies, as well as standard items for autos, such as oil and transmission fluid and filters. This category also includes add-ons to vehicles that are specific to the CHP's mission, such as antennas, light bars, and computer mounts.
4. **Fuel.**
5. **Law enforcement supplies:** Includes items officers use in patrol duty, safety equipment, and training equipment and supplies.
6. **Office and computer equipment and supplies:** Includes copiers, printers, furniture, computer hardware and software, and other items not specifically identifiable as law enforcement supplies.
7. **Communications and other electronics:** Includes electronic equipment such as radios and telecommunication systems, excluding those installed in vehicles.
8. **Premium and promotional supplies:** Includes items specifically identified as premium or promotional, recruiting forms and banners, and child car seats.
9. **Miscellaneous:** Includes items not specifically identifiable as belonging in other categories.

Source: Bureau of State Audits.

### The CHP Purchases a Wide Variety of Goods

The CHP gave us a copy of its procurement database, which itemizes purchases that it made on its own and purchase estimates that it submitted to General Services. We did not assess the reliability of these data, because we are presenting them only to provide context for the purchases we reviewed. Between January 2004 and July 2007 the CHP's procurement database reflects a total of \$319 million in goods the CHP purchased. Of this \$319 million, nearly \$48 million is related to purchase estimates the CHP submitted to General Services, including purchase estimates for handguns, patrol car electronics, and



other items that were specifically identified in the audit request. The remaining \$271 million relates to purchases the CHP made on its own, of which \$205 million reflects purchases the CHP made using statewide contracts. As we describe in the Introduction, General Services has the primary role in developing statewide contracts.

We reviewed the types of purchases the CHP made on its own and grouped them into the categories described in the text box. The CHP's purchases generally fell into nine categories, with amounts in two purchase categories far exceeding those in the others: vehicles amounted to \$118.7 million, and office and computer equipment and supplies totaled nearly \$48 million.<sup>4</sup> Table 1 shows the nine categories and their relative proportions. Many of the purchases summarized in Table 1 were for items that were not identified as specific concerns in the audit request. In our review, however, we included two contracts for patrol car electronics from the vehicle accessories and automotive supplies category.

**Table 1**  
**CHP Purchases by Category**  
**January 2, 2004, to July 18, 2007**

PURCHASE CATEGORY	PURCHASE TOTAL (IN THOUSANDS OF DOLLARS)	PERCENT
Vehicles	\$118,657	45%
Office and computer equipment and supplies	47,953	18
Fuel	23,969	9
Law enforcement supplies	22,810	9
Vehicle accessories and automotive supplies	18,203	7
Communications and other electronics	11,380	4
Miscellaneous	11,298	4
Tires	6,555	2
Premium and promotional supplies	4,847	2
<b>Total</b>	<b>\$265,672</b>	<b>100%</b>

Source: CHP procurement database.

Since January 2004 the CHP has submitted to General Services purchase estimates for nearly \$48 million for goods including handguns, patrol car electronics, and helicopters. We grouped

<sup>4</sup> In summarizing the CHP's purchase data, we excluded purchases of \$10,000 or less.

these purchase estimates according to the categories described in the text box on page 20. As Table 2 shows, the category having the highest amounts is vehicles. We were asked to assess the CHP's purchases for handguns, patrol car electronics, and helicopters, and the purchase estimates that we tested for these items came from three of the five categories with the highest totals: law enforcement supplies, vehicles, and vehicle accessories and automotive supplies.

**Table 2**  
**CHP Purchase Estimates by Category**  
**January 2, 2004, to July 18, 2007**

PURCHASE CATEGORY*	PURCHASE TOTAL (IN THOUSANDS OF DOLLARS)	PERCENT
Vehicles	\$10,701	22%
Communications and other electronics	10,036	21
Law enforcement supplies	9,979	21
Office and computer equipment and supplies	7,493	16
Vehicle accessories and automotive supplies	6,190	13
Miscellaneous	1,700	4
Premium and promotional supplies	1,677	3
Fuel*	0	0
Tires*	0	0
<b>Total</b>	<b>\$47,776</b>	<b>100%</b>

Source: CHP procurement database.

\* The CHP did not purchase any tires or fuel using the purchase estimate process. Instead, it made such purchases on its own, as summarized in Table 1.

As we describe in the remainder of the chapter, in making these purchases, neither the CHP nor General Services always followed the State's procurement requirements. The State has specific rules and regulations to ensure that state agencies procure necessary goods in a way that fosters competition and provides the goods and services at the lowest offered price. We reviewed the procurements the CHP and General Services made against the major components of state contracting law and found that several of these procurements were deficient. Table 3 summarizes the contracts we reviewed and the deficiencies we noted in both the CHP's and General Services' procurement practices. As the table shows, we reviewed the CHP's and General Services' helicopter procurement but did not identify any deviations from those aspects of the State's procurement practices that we tested.

The CHP also buys and uses motorcycles to fulfill its law enforcement mission. Although the CHP, with General Services' assistance, went through a motorcycle procurement and in 2005 selected a vendor, when the CHP tested the motorcycle that the vendor offered it did not meet the CHP's specifications. As a result, the CHP canceled its motorcycle procurement without awarding a contract. We discuss the motorcycle procurement further in Chapter 2.

**Table 3**  
**Summary of Contracts Reviewed and Deficiencies Identified**

VENDOR NAME	GOODS SUPPLIED	PURCHASE AMOUNT (IN THOUSANDS OF DOLLARS)	YEAR OF PURCHASE	PROCUREMENT METHOD	DEFICIENCIES IDENTIFIED (CHP, GENERAL SERVICES)	
					PROCUREMENT DOCUMENTS DID NOT MEET STATE REQUIREMENTS	PROCUREMENT DOCUMENTS DID NOT REFLECT THAT THE STATE RECEIVED THE BEST PRICE
All State Police Equipment Company, Inc.	Handguns	\$6,650	2006	Sole-brand	CHP, General Services	*
Visteon Corporation	Patrol car electronics	1,836	2005	Noncompetitive	CHP, General Services	CHP, General Services
Visteon Corporation	Patrol car electronics	900	2004	Sole-brand	CHP	*
American Eurocopter Corporation	Helicopter	3,073	2006	Competitive	*	*

Source: Bureau of State Audits' analysis of CHP's procurement documents.

\* No deficiencies identified.

The Public Contract Code contains the State's requirements for contracting and purchasing. In addition, the State Administrative Manual (administrative manual) and the State Contracting Manual (contracting manual) provide state agencies with guidance and requirements to follow for contracting and making purchases. From these statutes and state manuals, the CHP developed its own internal guidance. The State's requirements and guidance are discussed in the Introduction. We determined that the CHP's policies for contracting and purchasing mirror the major components of state contracting law, as well as those of the contracting manual and administrative manual. For example, the CHP's policy requires it to adhere to the requirements of the administrative manual, Section 3555 (Section 3555), which directs state entities to describe why a particular purchase with limited competition is in the State's best interest. The CHP's policy also incorporates applicable conflict-of-interest laws, such as two Public Contract Code sections, which define conflicts of interest for state

employees. In incorporating these laws, the CHP's policy provides a framework within which its employees can be aware of and describe any potential conflicts of interest.

### **The CHP and General Services Insufficiently Justified Awarding a \$6.6 Million Handgun Contract**

#### **CHP's Handguns**

**Smith & Wesson, model 4006:** The CHP began purchasing this handgun in 1990, and the agency has used this model through 2007. We refer to this handgun as the CHP's previous model.

**Smith & Wesson, model 4006TSW:** The CHP began purchasing this model and distributing it to its field officers in 2006. We refer to this handgun as the CHP's new model.

Source: Bureau of State Audits.

In early 2006 the CHP submitted documents to General Services to purchase more than 9,700 handguns of a particular make and model. By specifying a particular make and model, the CHP intended to make a sole-brand purchase, which required it to justify why only that make and model would fulfill its needs. However, the CHP did not fully justify the sole-brand purchase. For example, the CHP did not fully explain the handgun's unique features or describe other handguns it had examined and rejected and why. In addition, the CHP's own internal gun experts provided an analysis of the CHP's handgun needs that differed in certain respects from the CHP's procurement justification document.

Further, despite its oversight role, General Services approved the CHP's purchase request, although the CHP did not fully justify the exemption from competitive bidding requirements. Because the CHP did not fully justify the handgun purchase, and General Services did not ensure that the purchase was justified, neither can be certain that the purchase was made in the State's best interest. Moreover, since purchasing the handguns, the CHP has reported several malfunctions resulting in the manufacturer replacing defective parts as needed. The need to replace parts so soon after their purchase casts doubt on the quality of the handgun model the CHP chose to buy.

### ***The CHP Did Not Fully Justify Limiting Competition for Its Sole-Brand Handgun Purchase, and Its Rationale Differed in Some Respects From Its Experts' Analysis***

In making its February 2006 request for a sole-brand handgun purchase, the CHP did not comply with state requirements for justifying this method of purchase. The CHP and General Services worked on this procurement together because the \$6.6 million handgun purchase exceeded the CHP's delegated purchasing authority. As discussed in the Introduction, purchases exceeding a state agency's delegated authority require General Services' assistance. Because the CHP had decided that only a specified model would meet its needs, it requested a sole-brand

purchase. According to the Public Contract Code, a state agency may limit competition in cases where only one brand or model will fulfill its needs. However, in such cases, as we explain in the Introduction, General Services requires state agencies to submit a justification that satisfies Section 3555, which recommends that the justification answer three questions:

- What are the product's unique performance factors?
- Why are the unique performance factors needed?
- What other products were examined and rejected and why?

In its sole-brand justification for handguns, the CHP did not answer all the questions Section 3555 outlines. Rather than explain how the specifications and performance factors for this model of handgun were unique, the CHP focused on the projected service life of the previous-model handgun, the CHP's inventory needs, officer safety, the costs for a new weapons system, and the time it would need to procure a new weapons system.<sup>5</sup> None of these issues describe the new-model handgun's unique performance factors or why the CHP needed those specific performance factors. Further, the justification did not explain why the CHP believed the previous model and new model are essentially the same handgun. The CHP's sole-brand justification also did not explain what other handguns it examined and rejected and why. Essentially, the CHP's request to purchase only this specific handgun was based on its familiarity with its existing handgun, which it had selected in 1990 for its officers' use. As a result, the CHP did not satisfy the questions raised by Section 3555.

As a law enforcement agency, the CHP uses specialized equipment, and it relies on employees with expertise in the equipment to advise it when making necessary purchases. For handguns, the CHP's staff experts work in its Weapons Training Unit (weapons unit). Nevertheless, when the CHP prepared its sole-brand justification for its new handgun procurement, its rationale differed in several respects from a December 2005 memo its weapons unit prepared and provided to the assistant commissioner. The weapons unit was to evaluate the CHP's weapons system in place at the time and recommend a replacement if necessary. Table 4 on the following page shows the points on which the CHP's sole-brand justification differed from the weapons unit's analysis.

*Although the State Administrative Manual recommends that departments answer three specific questions in their sole-brand justifications, the CHP did not do so for its \$6.6 million handgun purchase.*

<sup>5</sup> A weapons system comprises the handgun and the ammunition the handgun fires.

**Table 4**  
**Comparison Between the CHP's Sole-Brand Justification Submitted to General Services and Its Handgun Experts' Analysis**

	CHP SOLE-BRAND JUSTIFICATION	ANALYSIS BY THE CHP'S HANDGUN EXPERTS
Officer safety	The CHP wanted to purchase the new version of its previous handgun and asserted that the total interchangeability of the weapons system components is essential to officer safety.	Noted serious safety concerns about officers using both the previous- and new-model handguns simultaneously in the field during any transition period.
Handguns' projected service life	Previous-model handguns have exceeded or will exceed their estimated useful life within the next three years.	Although both documents ultimately came to the same conclusion, the staff experts noted that the useful life for some of the previous-model handguns may extend beyond an additional three years, given the amount of ammunition purchased each year for the CHP field offices.
Purchase recommendation	The CHP asked to purchase 9,736 new-model handguns.	Without citing a specific number of handguns that the CHP should buy, staff experts advised purchasing enough handguns to convert from the previous-model handgun to the new-model handgun over a three-year period. Staff experts recommended that the CHP purchase at least enough handguns to equip officer classes graduating from the CHP training academy and to supplement its inventory of loaner weapons.

Source: Bureau of State Audits' analysis of CHP's procurement documents and internal correspondence.

In November 2007 the CHP provided us with additional perspective on the differences we noted between its sole-brand justification and the weapons unit's memo. According to the CHP, the differences between the sole-brand justification and the weapons unit memo regarding how many handguns the CHP needed to purchase reflect the fact that the weapons unit memo was recommending a strategy for deploying the new handguns. With regard to officer safety, the CHP acknowledged that its sole-brand justification and the weapons unit memo were in conflict. However, the CHP stated that to mitigate the officer safety issue of having more than one handgun model in the field at one time, it decided to deploy the new handgun division by division. According to the transition plan the CHP provided us, the CHP planned to issue the new handgun over a 15-month period; it scheduled divisions to receive the new handgun beginning in October 2006 and ending in December 2007.

In its November 2007 communication with us, the CHP also addressed the useful life of its previous handgun. The CHP calculated that each field officer and sergeant fired an average of 800 rounds of ammunition each year and stated that this average equated to a 22-year total service life for each handgun. In its weapons unit memo dated December 2005, the CHP based its average of 800 rounds of ammunition fired annually on its purchase of 5 million rounds of ammunition each year. The CHP also stated that many of its handguns are used to fire 1,200 rounds of ammunition per year rather than the 800-round average and that many handguns would thus reach the end of their useful life in three years. Our calculation shows that at the 1,200-round level, the handguns would reach the end of their useful life in 4.6 years, not three. We agree with the CHP's conclusion that its weapons were nearing the point at which they needed replacing. However, we also believe that the CHP had more time to conduct its procurement process than it stated in its sole-brand justification, and that the 4.6 year remaining service life would have provided adequate time for the CHP to thoroughly study its handgun needs.

The CHP's sole-brand justification also stated that it needed the new handguns to replenish inventory and that it anticipated depleting its existing handgun inventory by August 2006. The CHP stated in its justification that without the new handguns, it would lack inventory to issue handguns to some of its officers graduating from the CHP's training academy in 2006. Therefore, the CHP asserted that it did not have six to eight months to test, evaluate, and obtain a new weapons system as it did when it purchased the previous-model handgun. However, our review indicated that the CHP might have had additional time to evaluate other weapons if it had begun its study earlier in 2005, when it knew that it had weapons awaiting repair for extended periods. The CHP was aware at that time that the manufacturer needed at least three months to repair the previous-model handgun because it no longer manufactured that model. To make a repair, the manufacturer had to shut down its regular production to make parts specifically for the previous model.

In its sole-brand justification, the CHP also stated that sales to retirees contributed to the depletion of its handgun inventory. Between 1990 and 2006, the CHP purchased about 9,200 of the previous-model handguns, and it sold slightly more than 1,050 used handguns to retirees, as allowed by the Public Contract Code.<sup>6</sup> However, over the 16-year period, these sales to retirees amounted to an average of only 65 handguns per year, and thus they had at best a minor effect on the CHP's inventory. In addition, the law

*In its sole-brand justification, the CHP also stated that sales to retirees contributed to its depleted handgun inventory levels; however, the CHP reported it averaged 65 handgun sales to retirees per year. This low rate of handgun sales over the 16-year period had at best a minor effect on the CHP's inventory.*

<sup>6</sup> Public Contract Code, Section 10334, allows the CHP to sell to a retiring officer the handgun the officer was issued for field use. However, the officer must meet certain criteria including length of service and mental fitness.

does not require the CHP to sell handguns to retiring officers; it simply grants it permission to do so. Therefore, if these sales were depleting the CHP's handgun inventory, the CHP could have suspended the sales program to preserve its inventory.

Before purchasing the previous-model handgun beginning in 1990, the CHP engaged in a study of eight handguns, but it did not perform such an evaluation before purchasing its new handgun. In addition, information the CHP had about handguns it examined and rejected before purchasing its new handgun, does not appear to have been a part of its handgun purchase documentation. In its 1990 study the CHP outlined how it tested the eight handguns and evaluated each against more than 20 separate criteria. For example, the CHP's study tested the handguns' design characteristics, firing performance, and maintenance and repair features. Based on these criteria, the CHP rejected seven of the eight tested handguns.

In its November 2007 perspective concerning its handgun purchase, the CHP included a description of the handguns it examined and rejected for its most recent purchase, indicating its reasons for rejecting all but the model it ultimately chose. However, we did not find this information during our review of either the CHP's or General Services' procurement files. Moreover, the document the CHP provided us was not dated, and therefore we could not determine when the information was developed. We spoke with the sergeant at the CHP's weapons unit who told us he may have drafted the document but could not remember when. Because this information was not a part of the handgun purchase documentation, it was not available for General Services to consider when it made decisions about the CHP's handgun purchase request.

According to the CHP, it has recently replaced most of its previous handguns with the new-model handguns. However, through field use of the weapons, the CHP has identified two potentially widespread defects. The two defects cast doubt on the quality of the handguns that the CHP purchased. One defect has to do with the sear. A sear is a catch in the trigger mechanism that holds the hammer cocked or half-cocked until the handgun is fired; if damaged, it prevents the handgun from firing. The other defect involves the slide stop. The slide stop is a release lever that shifts to the rear of the gun after all of the rounds have been fired from the magazine. In its 1990 study the CHP noted that it rejected certain handguns for reasons that included a failure to fire and a high frequency of malfunctions, which included the slide stop prematurely locking to the rear of the handgun with rounds still in the magazine; these defects are the same as or similar to those found in the new handguns the CHP purchased. The defects the CHP has identified in its new handgun cast doubt on the efficacy

***Although the CHP's new handguns are covered by a full factory warranty, two potentially widespread defects cast doubt on the quality of the handguns that the CHP purchased.***



of the recent handgun purchase. If the CHP had further tested the new-model handguns, it might have discovered these defects before purchasing them.

According to its purchase agreement, the CHP has a full factory warranty that includes replacing parts that are damaged or broken through use for each handgun. The CHP asserted that the manufacturer has honored the warranty and provided a new sear for all the handguns. Additionally, the CHP told us that the manufacturer modified both the handgun's slide stop and its magazine by installing heavier springs and sent the replacement parts to the CHP for it to install.

### ***General Services Did Not Ensure That the CHP Adhered to State Policy When Purchasing Handguns***

As previously discussed, General Services approved the CHP's sole-brand handgun request, despite the fact that the CHP did not address all of the factors that, according to Section 3555, should appear in such a request. An acquisitions manager in the procurement division at General Services acknowledged that approving the CHP's sole-brand handgun request was not a decision the procurement division could make. According to General Services' signature authority guidelines, sole-brand purchase requests in excess of \$5 million require the director's review. According to the acquisitions manager, the director of General Services at the time made the decision to approve the CHP's request. Because sole-brand requests limit competition to those bidders who can supply the make and model specified, by not providing oversight and ensuring that the CHP's sole-brand request was complete, General Services may have unnecessarily limited competition for this procurement.

Moreover, General Services' procurement file for the CHP handgun purchase did not contain sufficient documentation showing how the CHP chose its proposed suppliers or how those suppliers would meet the bid requirements. Without adequate documentation in the procurement file, General Services could not have known whether the potential bidders met the CHP's bid requirements. According to a General Services acquisitions manager, when conducting the CHP's handgun procurement, General Services relied on a list of potential bidders supplied by the CHP and did not verify whether the bidders were factory-authorized distributors. According to the purchase request, for a vendor to qualify as a bidder, the vendor had to be an authorized distributor of the specified handgun model. In fact, General Services received only two bids for the handgun contract, and only one of the bidders was able to comply with the request's requirements. The other vendor proposed a different

***Despite weaknesses in the justification, General Services approved the CHP's sole-brand handgun request and may have unnecessarily limited competition for this procurement.***

handgun model. Because it did not adequately document how the CHP chose its proposed suppliers, General Services did not fulfill its oversight role of ensuring that various bidders could compete and that the State received the best possible value.

### **The CHP Supplied Insufficient Price Justification for Spending \$1.8 Million for TACNET™ Systems, and General Services Was Inconsistent in Approving the Purchase**

In 2005 the CHP submitted to General Services a \$1.8 million purchase estimate for a sole-brand purchase of 170 TACNET™ systems (TACNET™), which consolidate radio and computer systems in patrol cars to allow for a single point of operation. General Services appropriately denied the CHP's sole-brand request to purchase the TACNET™ when it found a lack of competition among the bidders. The CHP resubmitted the procurement as a noncompetitive purchase request but did not include an adequate cost analysis demonstrating that it had determined that the TACNET™'s unit price was fair and reasonable. Moreover, General Services did not ensure that the revised procurement documents contained the required analysis. The cost analysis is an important part of the contract justification and serves to ensure that state agencies receive a fair and reasonable price in the absence of price competition.

*The cost analysis is an important part of the contract justification and serves to ensure that state agencies receive a fair and reasonable price in the absence of price competition.*

In March 2005 General Services' procurement division began reviewing a CHP sole-brand request for 170 TACNET™ systems manufactured by Visteon Corporation (Visteon). The CHP requested General Services' approval of the purchase as a sole-brand procurement. To demonstrate that the requisite competition existed, the CHP included with the purchase document that it provided to General Services a list showing the names of two distributors and the manufacturer as vendors that could bid on the CHP's sole-brand purchase.

Because General Services concluded that two of the three vendors listed on the CHP's sole-brand purchase request for the TACNET™ were not viable bidders, General Services directed the CHP to revise its purchase request. According to the General Services buyer (buyer) who oversaw the request, she contacted the two distributors listed on the CHP's purchase request so that she could confirm that competition existed. The buyer stated that one distributor informed her that its staff had never seen nor installed the TACNET™. The buyer also learned that the distributor could not meet the bid requirements for installing a system in multiple patrol cars at a CHP location in West Sacramento; the distributor would install the

<sup>7</sup> TACNET™ stands for tactical network and is a registered trademark of Visteon.

system only at its location in Southern California. Further, the buyer stated that when she attempted to contact the second distributor, no one returned her calls. As a result, General Services concluded that neither distributor was a viable bidder. Thus, the sole-brand purchase request did not meet competitive bidding requirements. General Services then instructed the CHP to develop a competitive bid or to submit its request for the Visteon TACNET™ system as a noncompetitive bid. The CHP chose to resubmit its request as a noncompetitive bid.

In its justification for a noncompetitive bid, the CHP did not include the required cost information for the 170 TACNET™ systems. The contracting manual states that in cases in which no known competition exists, state agencies must follow the state procurement policy that defines noncompetitive bid requirements and must submit a noncompetitive bid justification (noncompetitive justification). In its noncompetitive justification, the state agency must explain, among other things, how it determined that the price of the goods is fair and reasonable. According to the contracting manual, the state agency should include four factors in its noncompetitive justification:

- Detailed information to support and justify the cost.
- Costs for similar goods and an explanation of any differences between the proposed goods and similar goods.
- Special factors affecting the cost of the purchase.
- An explanation of why the costs are appropriate.

Although the CHP's noncompetitive justification adequately addressed why the CHP had restricted procurement to the TACNET™, it did not include a sufficient cost analysis. For example, the noncompetitive justification noted that only the TACNET™ includes a display that presents information from multiple sources in full color at eye level on a vehicle's windshield. The CHP reasoned that its officers could safely read the information without having to look away from the road and indicated that this legibility would increase officers' safety on the road. The CHP also stated in its noncompetitive justification that an actual cost comparison was not possible because the TACNET™ system was not duplicated elsewhere in the industry. Thus, rather than conducting an actual cost comparison of the TACNET™ with other systems, the CHP compared the cost of the TACNET™ to the cost of separate products that offered at least one of the features of the system. The CHP then concluded that the price for a TACNET™ system was fair and reasonable.

***Although the CHP's noncompetitive justification adequately addressed why the CHP had restricted procurement to the TACNET™, it did not include a sufficient cost analysis.***

*According to General Services' policy, it will reject incomplete noncompetitive justifications, but it did not do so for the TACNET™ procurement.*

The CHP's noncompetitive justification claimed that no other manufacturer made a system that duplicated all of the features of the Visteon TACNET™ system; however, a market survey that General Services performed identified two similar systems and listed the features of the three systems, including the TACNET™, in a side-by-side comparison. Because the survey was meant to determine only whether other products could meet the CHP's needs, thereby allowing for a competitive procurement, General Services did not include system prices in its survey. After receiving the survey from General Services, the CHP should at least have used the available information to compare the price of the TACNET™ to the prices of the two similar systems, to determine whether the TACNET™'s price was reasonable. Such a cost analysis is an important part of a noncompetitive contract justification, and it serves to ensure that state agencies receive a fair and reasonable price when price competition is absent.

General Services' policy states that it will reject an incomplete noncompetitive justification, but it did not do so in this instance. Also, General Services did not fulfill its procurement oversight role by ensuring that the State received fair and reasonable pricing on a purchase contract in which the marketplace was not invited to compete.

### **The Sole-Brand Procurement Method May Sometimes Allow State Agencies to Avoid the Stricter Justification Requirements for Noncompetitive Procurements**

Although state law requires General Services to review state agencies' purchasing programs every three years, General Services cannot specifically screen for sole-brand purchases because data related to these procurements is kept only in the individual department's purchasing files. The justifications and authority needed for a sole-brand purchase are less stringent than those needed for a noncompetitive procurement. For example, state agencies must document more information for a noncompetitive bid, such as why the item's price is appropriate. In addition, state agencies are typically authorized to make sole-brand purchases with larger values than are allowed for noncompetitive purchases. For example, when making a sole-brand purchase of information technology goods and services, the purchase limit is \$500,000, but the limit for making a noncompetitive purchase is only \$25,000. As a result, the opportunity exists for state agencies to inappropriately use the sole-brand procurement method as a way to limit competition and avoid the more restrictive criteria associated with a noncompetitive bid.

When General Services reviews state agencies' purchasing programs, these reviews may not adequately ensure that state agencies' sole-brand purchases adhere to state law. Specifically, General Services does not require state agencies to report sole-brand purchases, and thus it cannot identify these purchase types before looking at an agency's purchasing files. Therefore, when it assesses a state agency's compliance with purchasing requirements, General Services cannot screen the purchases in advance and ensure that it selects sole-brand procurements for review.

According to General Services, 1999 was the last time it identified an issue with a sole-brand purchase the CHP made using its delegated purchasing authority. Further, General Services stated that when it reviewed CHP's purchases in 2003, it did not identify a similar issue, because either it did not include sole-brand purchases in its sample of CHP purchases or it did not identify any issues in the purchase sample it reviewed. However, we found problems with two sole-brand purchases the CHP made in 2004 for the Visteon TACNET™ system. These purchases occurred prior to the CHP's 2005 sole-brand request and subsequent noncompetitive bid request for 170 more of these systems, discussed in the previous section. The CHP's use of the sole-brand method for these two Visteon purchases was inappropriate because the purchases did not take place in a true competitive environment. When competition is absent in a sole-brand procurement, the result is a noncompetitive bid procurement. Although the CHP initially thought the TACNET™ purchase might be a noncompetitive purchase, the TACNET™ manufacturer identified two distributors, and the CHP subsequently determined that bids from the manufacturer and one of the distributors would be adequate competition. However, price competition between a manufacturer and its distributors is questionable because the distributors' prices are subject to the cost set by the manufacturer. In the case of the two TACNET™ purchases, the CHP determined that there was competition even though the manufacturer underbid its distributors by 19 percent to 22 percent.

The CHP's inappropriate use of the sole-brand method to buy the TACNET™ systems illustrates the need for General Services to know how often state agencies are using this purchase method. Without periodic reporting, General Services has no way of knowing this information. General Services requires state agencies to submit monthly purchase activity reports and quarterly reports delineating noncompetitive bids, in which there is only one supplier. Because General Services already requires state agencies to submit purchase information periodically about the noncompetitive procurements they make, it has an established process to obtain procurement information.

*The CHP's inappropriate use of the sole-brand method to buy TACNET™ systems illustrates the need for General Services to know how often state agencies are using this purchase method.*

As a result, General Services has an opportunity to obtain information from state agencies concerning their sole-brand purchases to evaluate how frequently and widely the sole-brand purchase method is used.

We discussed the need to review sole-brand purchases with General Services, and it agreed that the information necessary to target sole-brand procurements is not currently available. According to General Services' chief of audit services (chief), problems with sole-brand purchases at a single state agency do not necessarily mean that the problem is systemic, or statewide. The chief acknowledged that sole-brand purchases have some inherent risk because they limit competition and because delegated purchasing authority limits for these purchases are typically higher than for noncompetitive purchases. However, the chief told us that General Services recently added specific steps to its review procedures related to sole-brand purchases and indicated that if it determines that an individual state agency has risk in this area, General Services will include sole-brand purchases in its review.

### **The State Does Not Have Sufficient Justification to Cancel the CHP's Handgun or Visteon TACNET™ Contracts**

The State has several ways that it can end its contractual relationship with a contractor, two of which could be applicable for the contracts we reviewed. First, the standard terms that are included in state contracts allow the State to terminate a contract for specified reasons. Second, state law provides that a contract that is formed in violation of law is void. This second basis for terminating a contract may be triggered by a violation of various laws, including those that require competitive bidding and those that prohibit public officials from participating in a contracting decision in which they have a financial interest. When a contract is canceled through a termination provision in the contract, the State must pay for the goods received, as agreed upon in a settlement with the vendor. In contrast, when a contract is void, the State is entitled to recoup any payments made under the contract and in some cases to keep whatever the contractor provided under the contract.

*Based on the circumstances related to the performance of the handgun and Visteon TACNET™ contracts, our legal counsel advised us that General Services does not have a basis for relying on the standard contract provisions to cancel these contracts.*

Based on the circumstances related to the performance of the handgun and Visteon TACNET™ contracts, we found that General Services would not have a basis for relying on the standard contract provisions to cancel these contracts. Although a broadly worded contract provision permits termination of a state contract when it is in the interest of the State, our legal counsel advised us that it is unlikely that the State could successfully cancel the handgun and Visteon TACNET™ contracts on that basis. To have a reasonable basis to cancel either contract, General Services would need to have a sufficient justification for declaring that termination would

be in the interest of the State. Typically, canceling a contract would serve the interest of the State only if the contractor had failed to adequately perform under the contract and General Services had given the contractor a reasonable opportunity to improve its performance. In the case of the handgun and Visteon TACNET™ contracts, the contractors have already provided the goods called for under the contracts and have otherwise performed their duties.

We then assessed whether the weaknesses we identified during the audit would warrant the State's canceling these contracts. Except in certain specified circumstances, state law requires departments to comply with competitive bidding requirements for contracting. Specifically, Section 10420 of the Public Contract Code declares a contract void if it substantially violates provisions of law pertaining to competitive bids. Thus, an agreement made without regard for these requirements is void and unenforceable. The courts have concluded that public entities can recover money paid to a contractor for work and materials provided to the public entity when the work and materials violate a statute requiring competitive bidding. Further, the courts have held that if a contract is void because it exceeds the public entity's statutory powers, the contractor cannot recover payment for the work performed. Moreover, the law deems illegal any payments made to the contractor for such work, and the public entity may recover those amounts.

The purpose of competitive bidding, according to *Domar Electric, Inc. v. City of Los Angeles*, is to "guard against favoritism, improvidence, extravagance, fraud and corruption; and to secure the best work or supplies at the lowest price practicable, . . . and . . . to increase opportunity . . . by stimulating advantageous marketplace competition." The courts have held that persons dealing with a public agency are presumed to know the law with respect to competitive bidding requirements and act at their peril when they contract with public entities, such as state agencies. Thus, the purpose of the harsh remedy of making contracts void when they fail to meet provisions of law pertaining to competitive bids is to ensure that those laws are followed.

Our legal counsel considered whether the deficiencies we identified in the handgun and Visteon TACNET™ procurements would constitute a violation of the provisions in the Public Contract Code requiring competitive bidding and therefore make the contracts void. Our legal counsel has advised us that the CHP and General Services did not violate any provision of the Public Contract Code. However, our legal counsel also advised us that we must consider whether the CHP or General Services violated any regulations adopted pursuant to those provisions of the Public Contract Code and, if so, whether such a violation renders the contracts void under the Public Contract Code.

***No court has considered the issue of whether failure to comply with the competitive bidding requirements set forth in the administrative manual or the contracting manual could result in a void contract.***

Various provisions of the administrative manual and the contracting manual related to competitive bidding set forth requirements that a state agency must or, in other instances, should follow. Typically, state law requires provisions that are regulations, such as many of those in the administrative manual and the contracting manual, to be approved under the California Administrative Procedures Act (act). A primary goal of the act is to provide a process for people who will be affected by a state agency's proposed rule to voice their opinions on the merits of the proposed rule. For that reason, rules that relate only to the internal management of a state agency are not subject to the act. The act sets forth the process for adopting and approving regulations under state law. However, in 1998, legislation was enacted that exempts the administrative manual and the contracting manual from the act. It appears that the legislation was adopted in response to an appellate court opinion finding that a provision of the administrative manual was an invalid regulation because it was not approved under the act. If certain provisions in the administrative manual and the contracting manual pertaining to competitive bidding are regulations having the force and effect of law, an argument could be made that failure to comply with those provisions would result in a contract becoming void. However, our legal counsel has advised us that since that legislation was enacted, no court has definitively found that the provisions of the administrative manual and the contracting manual relating to competitive bidding are regulations having the force and effect of law. Likewise, no court has considered the issue of whether failure to comply with the administrative manual or the contracting manual could result in a void contract. In addition, it is unclear whether the exemption from the act would retroactively pertain to the administrative manual provisions, such as Section 3555, that were adopted before the enactment of the legislation creating that exemption.

With regard to the handgun procurement, Section 10301 of the Public Contract Code requires state agencies to award contracts for goods exceeding \$25,000 to the lowest responsible bidder, except when the agency seeking the goods and General Services agree that a specific brand is the only item that meets the needs of the agency. As discussed earlier, for contracts meeting this exception, the administrative manual, Section 3555, requires an agency's purchase estimate for a sole-brand or noncompetitively bid contract to be accompanied by a statement fully explaining why the product is necessary for the agency to fulfill its function. The second sentence of Section 3555 provides that this statement should include a description of (1) the unique performance factors of the product, (2) why these specific factors are required, and (3) the other products examined and why they were rejected. The word *should* is generally held to mean that something is recommended, but not required.



Because Section 3555 uses the phrase *should include* rather than *shall include*, our legal counsel has advised us that it is unlikely that a court would conclude that failure to address each of the factors identified by Section 3555 is a violation of the administrative manual. Thus, even if a court concluded that Section 3555 is a regulation with the force and effect of law, it is unlikely that a court would conclude that the CHP's failure to address all the listed factors, and General Services' failure to require the CHP to address those factors, make the contract void. Ultimately, however, only the courts can resolve the legal issues we have identified.

Although Section 3555 does not require the justification statement to address all three factors listed, we believe that all of those factors must be addressed to determine whether the request is a legitimate exception to competitive bidding requirements. We also believe that it is important for state agencies to demonstrate to General Services that they examined other comparable products and to explain why those products were rejected or, if there are no other comparable products, to explain how they reached that conclusion, to ensure that competitive bidding occurs whenever possible. Moreover, if Section 3555 required all these factors to be addressed, and if that section is a regulation with the force and effect of law, the State could have a basis for declaring the contract void if those requirements were not met. This would further the public policy of requiring competitive bidding in state procurements whenever possible.

With regard to the 2005 Visteon TACNET™ procurement, which was a noncompetitively bid contract for goods, the contracting manual requires state agencies to complete an additional document justifying the purchase. The justification requires the agency to describe, among other things, how it determined that the price offered under the contract is fair and reasonable by explaining the basis for comparison and including applicable cost analyses.

As we discussed earlier, we concluded that the CHP did not sufficiently explain in its justification why the price offered under the contract was fair and reasonable. However, even though the contracting manual requires a justification, it does not prescribe the contents of the justification. Because the justification the CHP provided did contain an explanation of why the CHP determined that the price of the TACNET™ was fair and reasonable, our legal counsel has advised us that the justification does not violate the requirements of the contracting manual, despite our conclusion that the explanation was insufficient. Our legal counsel further advised us that even if the contracting manual's provision was viewed as a regulation with the force and effect of law, it is unlikely that a court would find that the deficiencies we identified in the justification would make the contract void.

***Our legal counsel advised us that it is unlikely that a court would conclude that the CHP's failure to address all the factors listed in Section 3555 in its handgun purchase documents, and General Services' failure to require the CHP to address those factors, make the handgun contract void.***

*Our legal counsel advised us that even if the contracting manual's provision was viewed as a regulation with the force and effect of law, it is unlikely that a court would find that the deficiencies we identified in the CHP's TACNET™ purchase justification would make the contract void.*

Finally, General Services approved the documents containing the CHP's justifications for the handgun contract and the Visteon TACNET™ contract. Also, the CHP and General Services met the requirements of the Public Contract Code, Section 10301, because both agencies agreed that the handguns and the TACNET™ system were the only items that would meet the needs of the CHP. Our legal counsel has advised us that the courts would defer to General Services' approval, as the state agency charged with approving contracts for goods, unless the agency's interpretation conflicts with the clear language and purpose of the statute. Thus, our legal counsel has advised us that because General Services agreed that the requirements of the section had been met, a court would likely conclude that the insufficiencies in the contract justifications do not amount to a violation of competitive bidding requirements.

#### **The CHP's Procurement Process Has Received a Limited Number of Reviews, and the CHP Has Been Responsive to Recommendations Raised in These Reviews**

The CHP has undergone numerous internal and external reviews over the last few years; however, most of these analyses do not address its procurement process. According to statements the CHP commissioner made in early April 2007, the CHP actively conducts internal audits and has been audited by outside agencies. He also asserted that those audits have been positive in nature. To provide evidence of these internal and external audits, the CHP's office of internal affairs assembled 102 reports issued between January 2004 and November 2007. We determined that 101 of the reports represented reviews that were complete. The CHP included information related to one review that is in draft form, and the review process will not be completed until sometime in 2008.

Although the information the CHP gathered was voluminous, the number of reports that related specifically to the subject matter covered by our audit was limited. Specifically, among the 102 reviews provided, we identified four in which the scope of work focused on the CHP's procurement practices. Another 24 reports mentioned certain procurement functions, but these references were part of a larger effort, and the procurement-related information in these reports primarily described administrative issues rather than the procurement method. The remaining 74 reviews were not relevant to the subject matter of our audit; about one-half of these reports summarized reviews of citizen complaint investigations the CHP conducted to evaluate the quality of its process for investigating citizens' complaints.

The CHP characterized the reviews as audits; however, we believe the term *audit* implies work that was performed in accordance with recognized auditing standards, such as the generally accepted government auditing standards promulgated by the Comptroller General of the United States or the Institute of Internal Auditors' standards for the professional practice of internal auditing. Nine of the reviews (8.8 percent) were performed in accordance with these standards. We also noted that 12 of the 102 reviews were performed by outside agencies; the CHP performed the other 90 reviews with internal resources. The Appendix provides more information about each of the 102 reviews.

Of the three reviews and one audit we identified as focused on the CHP's procurement practices, General Services performed two and the CHP's office of internal affairs performed two. According to General Services, it is satisfied with the CHP's corrective action on the 26 recommendations it made. The CHP's office of internal affairs projects that it will follow up on the 11 recommendations in its two internal reviews in May 2008. In total, the four reviews yielded 37 recommendations for improvement. However, none of these recommendations related to the procurement issues we discuss earlier in this report. Many of General Services' recommendations focused on improving the CHP's procurement procedures allowed under the department's delegated purchasing authority. For example, General Services found that the CHP's policies and procedures did not ensure that purchase orders for commonly purchased items were combined to ensure compliance with the State's competitive bidding limits or that the vendor pool for commonly purchased items was adequately rotated. One of the reviews the CHP performed focused on its contracting and purchasing process during fiscal years 2003–04 through 2005–06. The findings for this review noted that the contracts and purchasing staff obtained services prior to approval of a contract; split purchase orders, which may have allowed the CHP to remain below its delegated purchasing authority threshold; and did not complete all file documentation.

### Recommendations

To ensure that it protects the State's interest and receives the best products and services at the most competitive prices, the CHP should:

- Provide a reasonable and complete justification for purchases in cases where competition is limited, such as sole-brand or noncompetitive bidding purchases. Further, it should plan

its contracting activities to allow adequate time to use the competitive bidding process or to prepare the necessary evaluations to support limited-competition purchases.

- Provide a complete analysis of how it determines that the offered price is fair and reasonable when it chooses to follow a noncompetitive bid process.

To promote fair and appropriate competition for procurements:

- The CHP should ensure that it fully documents its process for verifying that potential bidders are able to bid according to the requirements in the bid solicitation document.
- General Services should verify that the lists of bidders that state agencies supply it reflect potential bidders that are able to bid according to the requirements specified in the bid.

To ensure that state agencies use the sole-brand procurement method appropriately and not in a manner to avoid the stricter justification requirements for noncompetitive procurements, General Services should study the results from its review procedures related to sole-brand purchases. Based on the results of its study, General Services should assess the necessity of incorporating specific information on sole-brand purchases into its existing procurement reporting process to evaluate how frequently and widely the sole-brand purchase method is used.

To ensure that state procurements are competitive whenever possible, General Services should revise Section 3555 to require that state agencies address all of the factors listed in that section when submitting justification statements supporting their purchase estimates for noncompetitive or sole-brand procurements. In addition, if General Services believes that the law exempting provisions in the administrative manual and the contracting manual related to competitive procurement requires clarification to ensure that the requirements in those publications are regulations with the force and effect of law, General Services should seek legislation making that clarification.

## Chapter 2

### THE CALIFORNIA HIGHWAY PATROL AND THE DEPARTMENT OF GENERAL SERVICES HAVE WEAKNESSES IN THEIR CONFLICT-OF-INTEREST GUIDELINES, AND CONFLICTS AFFECTED THE STATE'S MOTORCYCLE CONTRACTS

#### Chapter Summary

The guidelines that the California Highway Patrol (CHP) uses to prevent conflicts of interest have exhibited flaws. These guidelines require CHP staff members to complete, when applicable, financial interest disclosures; requests to obtain secondary, or outside, employment; a memo acknowledging any business relationships between the employees and outside vendors with which the CHP contracts; and a statement of inconsistent and incompatible activities, in which the CHP informs employees about activities it has identified as conflicting with its mission. Collectively, these documents help employees identify financial interests that may present conflicts of interest. However, the CHP does not direct all employees who deal with purchasing to make financial interest disclosures. Further, the CHP has not consistently implemented its own procedures for secondary-employment requests. As a result, the CHP cannot be completely aware of its employees' potential conflicts of interest.

In June 2005 the Department of General Services (General Services) declared void two statewide contracts for motorcycles after determining that a General Services employee had a conflict of interest with the motorcycle dealer. The CHP estimates that declaring the motorcycle contracts void has cost the agency \$11.4 million in maintenance and other costs. Although General Services reached a \$100,000 monetary settlement with the dealer, a separate settlement it was negotiating with the motorcycle manufacturer languished without being finalized for 14 months. When we asked General Services why it had not settled with the motorcycle manufacturer, it informed us that it has reestablished negotiations. However, it is too soon to determine the benefit, if any, the State will receive from the pending negotiations.<sup>8</sup>

To prevent future problems with potential employee conflicts of interest, both General Services and the CHP have developed new conflict-of-interest policies. General Services created its policy in January 2006; however, for one of the two procurement files

<sup>8</sup> In its response to this audit, General Services disclosed that the motorcycle manufacturer had no interest in buying back the existing motorcycles. We are unaware of any other points General Services and the motorcycle manufacturer may be negotiating.

we reviewed, General Services could not demonstrate that it had followed this new policy to certify that its employees were free of conflicts of interest. In March 2007, following a highly publicized conflict-of-interest case involving one of its employees, the CHP developed a new conflict-of-interest policy that pertains to both employees and vendors. However, the new policy does not specify the employees affected or the circumstances to which the policy applies. Moreover, the policy lacks a method for vendors to certify that they have no ties to any CHP employees. For these reasons, neither General Services nor the CHP may be achieving the desired level of certainty that their purchasing agreements are free from conflicts of interest.

#### **The CHP Could Not Demonstrate That All Employees Complied With the Necessary Disclosures in Its Conflict-of-Interest Policies**

*The CHP's conflict-of-interest policies do not encompass all of the individuals involved with its purchasing and contracting process, and the CHP could not demonstrate that all required employees made the necessary disclosures.*

Although the CHP has policies on conflicts of interest, it could not show that it consistently applied those policies. The CHP's conflict-of-interest policies and procedures rely heavily on employee disclosure, yet the policies do not encompass all of the individuals involved with its purchasing and contracting process. In addition, the CHP could not demonstrate that all employees required to do so made the necessary disclosures. As a result, neither we nor the CHP is able to fully determine whether potential conflicts of interest exist at the CHP. Furthermore, the CHP's new conflict-of-interest policy does not adequately define the employees and procurements to which the policy applies, nor does the policy address vendor conflicts of interest.

The CHP carries out its conflict-of-interest procedures through employee submission of the following four documents: the Fair Political Practices Commission's Form 700, Statement of Economic Interests (Form 700); the secondary-employment request; the vendor/contractor/consultant business relationships memorandum (business relationships memo); and an inconsistent and incompatible activities statement. The Form 700 is required annually; employees complete secondary-employment requests as needed and the business relationships memo and the inconsistent and incompatible activities statement when hired. Collectively, the components work together to help employees identify financial interests that may present conflicts of interest and to remind employees at various stages throughout their employment with the CHP of the CHP's expectations.

***The CHP Does Not Require All Employees Performing Purchasing Duties to Disclose Their Financial Interests***

The CHP, like other state agencies, is responsible for designating employees who must publicly disclose certain financial interests; however, its conflict-of-interest policy does not require all employees who participate in purchasing to document this information for the State. On their Form 700, designated employees must disclose their financial interests for the previous calendar year. The California Code of Regulations, Section 18730, describes designated employees as persons who “make or participate in the making of decisions which may foreseeably have a material effect on economic interests.” For fiscal year 2006–07, the CHP entered into contracts for goods totaling \$76 million. One type of conflict of interest occurs when a state employee has a financial interest in any contract he or she makes on behalf of the State. Because the CHP purchases considerable quantities of goods and services each year, it is important for the CHP to ensure that its employees understand what conflicts of interest are and for the CHP to help mitigate potential conflicts.

Although the CHP has designated employees in certain positions within its contract services unit as being required to report their financial interests on a Form 700, it has not designated employees in other key positions with purchasing responsibility or approval authority. The CHP did not designate as Form 700 filers the staff in its purchasing services unit, a position within the Office of the Commissioner that has purchasing approval authority, or positions in which employees develop product specifications used as the basis for purchasing necessary goods. As a result, the CHP has not fully identified the positions within its organization that make or participate in procurement decisions for which the potential for conflicts of interest affecting purchasing is great.

We determined that the employees in the designated positions that we selected for review had filed their Form 700 in 2007 in accordance with the CHP’s policy. Moreover, beginning in 2006 the business manager for the CHP’s business services section required all staff in the purchasing services unit to file a Form 700 even though the CHP’s policy did not designate them as required filers. We verified that all staff in the purchasing services unit filed an annual Form 700 by the April 2007 due date, reporting their financial interests for 2006.

In September 2007 the CHP submitted a revised conflict-of-interest policy to the Fair Political Practices Commission for review and approval. In its revised policy, the CHP is proposing to include those positions in its purchasing services unit that are not currently designated as Form 700 filers. However, the CHP is also proposing to exclude certain positions, such as the purchasing services

***The CHP has not fully identified the positions within its organization that make or participate in procurement decisions for which the potential for conflicts of interest affecting purchasing is great.***

supervisor and the lieutenants and sergeants assigned to permanent positions in the CHP headquarters, from the requirement to file a Form 700. Our testing revealed that these positions can have significant influence over the goods the CHP purchases. For example, a CHP sergeant helped prepare the purchase request specifying the make and model for the CHP's 2006 handgun purchase totaling \$6.6 million. According to the commander of the CHP's selection standards and examination section, the CHP is currently considering expanding the Form 700 requirement to all employees engaged in procurement. By changing the Form 700 policy to exclude staff that influence its procurements, the CHP cannot be sure that its employees are free from potential conflicts of interest and that they are performing their duties in the State's best interest.

#### ***The CHP Has Not Followed Its Conflict-of-Interest Procedures Consistently***

The CHP's secondary-employment policy requires its employees to disclose employment outside of the CHP by submitting a request for approval of secondary employment. The requests and the CHP's reviews give the agency an ongoing opportunity to evaluate whether employees' second jobs create a conflict of interest; however, the CHP does not always adhere to this policy. The CHP also uses a business relationships memo and its inconsistent and incompatible activities statement to inform employees of their conflict-of-interest responsibilities and remind them of the policy surrounding conflicts of interest. Based on our testing, the CHP follows its procedure for having employees sign a statement regarding inconsistent and incompatible activities, but it does not always obtain a signed business relationships memo. Without adhering to all the components of its conflict-of-interest policy, the CHP may not be aware of its employees' potential conflicts of interest.

***The CHP follows its procedure for having employees sign a statement regarding inconsistent and incompatible activities, but it does not always obtain a signed business relationships memo.***

The CHP's secondary-employment policy defines conflicting activities according to the Government Code, Section 19990, in the following way: "A State officer or employee shall not engage in any employment, activity, or enterprise which is clearly inconsistent, incompatible, in conflict with, or inimical to his/her duties as a State officer or employee." For example, the CHP's policy states that employees shall not engage in certain activities such as tow truck operations, owning or working in establishments that sell alcohol, or maintaining interests in a court-referred school for traffic violators. The CHP recognizes these areas of employment as incompatible with its law enforcement and regulatory mission. In its policy the CHP sets forth a process for employees to request approval of their secondary employment and for CHP's management to review and approve or reject the request. The



CHP also requires management to periodically review and extend the approval of an employee's secondary-employment request during the employee's annual appraisal, assuming the secondary employment continues for more than one year.

We identified 37 employees who played key roles in seven purchases the CHP made for handguns, patrol car electronics, and other items and found that four of the 37 employees had secondary employment. However, for three of these four employees, the CHP did not consistently follow its policy. For example, the CHP's secondary-employment policy requires an employee to describe his or her employment duties in the request. Two of the requests we reviewed lacked the necessary job description. In addition, if the employee indicates that the duration of the secondary employment will be one year or more, the CHP's policy is to reevaluate the request during the employee's annual performance appraisal. Although one of the requests we reviewed indicated that the secondary employment was ongoing, the CHP had not periodically reviewed it. The CHP approved the employee's secondary employment request in November 2003. This employee still works for the CHP, but her personnel file showed only one performance appraisal, dated May 2005, since she requested secondary employment. Thus, although the CHP should have assessed this employee's secondary employment at least four times through November 2007, it has done so only once. Because it did not follow its process, the CHP cannot be certain that it has identified potential conflicts of interest.

The CHP's policy also requires each employee to sign both a business relationships memo and a statement of inconsistent and incompatible activities. The employee's signature indicates the employee's receipt of these policies, and the CHP retains both signed documents in the employee's file. Although we found the necessary inconsistent and incompatible activities document for all the employees we reviewed, five of the 37 employee files we tested lacked a signed business relationships memo. Because the business relationships memo is designed to inform and remind CHP employees of their conflict-of-interest responsibility, the CHP cannot guarantee that its employees have a full awareness of its expectations regarding conflicts of interest.

***The CHP Developed a New Conflict-of-Interest Requirement, but the Requirement May Not Achieve the CHP's Desired Results***

In March 2007 the CHP modified its conflict-of-interest procedures by requiring both the employees and the vendors to sign a conflict-of-interest statement for each purchase in which they participate. However, the new procedure may not extend to every employee that is involved with a purchase, and the statement is ineffective at

*The CHP's new conflict-of-interest requirement may not extend to every employee involved in a purchase and is ineffective at informing vendors about conflicts of interest.*

informing vendors about conflicts of interest. The CHP developed the new requirement after a highly publicized case involving an employee's alleged conflict of interest with a family member's business. The Sacramento County Office of the District Attorney (district attorney) concluded in August 2007 that no criminal violations occurred; nonetheless, our legal counsel has advised us that under the Penal Code, Section 832.7, we cannot comment on what, if any, personnel actions the CHP may be taking. Because the CHP's new conflict-of-interest requirement has flaws, it may not fully guard against similar future conflicts of interest.

The case involved a CHP program to outfit patrol cars with cameras that read the license plates of other cars on the road and compare the license plates against a database of reported stolen vehicles. A CHP employee had primary oversight of the program testing, as well as contracting with manufacturers and suppliers of license plate reader equipment. In 2005 the CHP awarded two contracts to support the license plate reader program to a small manufacturing company owned by the employee's adult daughter and son-in-law. In December 2006 CHP representatives contacted the district attorney regarding possible criminal conflict-of-interest violations, and the district attorney initiated a criminal investigation that same month. In August 2007 the district attorney concluded that although the employee may have directed contracts to his daughter's business, a criminal conflict of interest did not exist. California law on conflict of interest prohibits a government employee from influencing the making of a contract in which the employee has a financial interest. The district attorney determined that the employee did not have a financial interest in the company because he had no ownership or business interest in the company, and the term *financial interest* does not include the interests of an independent, adult child.

In March 2007 the CHP developed a new employee statement that requires CHP employees to certify, on a contract-by-contract basis, that they have no conflicts. The statement defines a conflict of interest according to the Government Code, Section 19990, and recommends a course of action when a conflict arises. However, the policy governing the employee statement does not explicitly state which employees must sign the statement. According to the assistant chief of the administrative services division (assistant chief), the CHP developed this new policy as a mandatory requirement for each requested procurement to ensure that CHP staff members are fully aware of their responsibilities with regard to procurements. In addition, the assistant chief stated that the CHP requires completion of the employee statement each time a commodity or service is requested, except for procurements using state contracts and procurements that do not specify a brand or vendor. The employee statement is also required when

the procurement requires the development of specifications or an evaluation panel, according to the assistant chief. Because the CHP's new policy applies to purchases outside our period of review, we did not test it. Therefore, we have not determined whether the CHP has applied the employee statement in the manner in which the assistant chief asserted.

However, the assistant chief's assertion differs from the instructions the Office of the Commissioner issued and those on the form itself. The instructions from the Office of the Commissioner require employees to complete the employee statement when entering into any contract or when preparing a purchase order. The assistant chief indicated that the employee statement is not required for contracts that have competitive bids. Furthermore, the instructions on the employee statement do not indicate the employees or circumstances to which the requirement applies. Due to the inconsistencies noted between the assistant chief's description of the CHP's practice, the Office of the Commissioner's instructions, and the instructions on the employee statement, the CHP may not have effectively conveyed to its employees its intent surrounding the employee statement. As a result, CHP employees may not be fully aware of who is required to complete the employee statement, and the CHP may not be sure that the necessary staff are appropriately informed and screened for potential conflicts of interest.

Similar to the employee statement, the vendor statement must be completed by the vendor or contractor providing goods or services to the CHP. The language in the vendor statement does not define a conflict of interest and contains no method to certify that conflicts do not exist; instead, the statement addresses disclosure of confidential information by the vendor. Therefore, the CHP is not effectively addressing potential conflicts of interest for its vendors for each procurement. We asked the CHP for its perspective regarding the inconsistent language on the vendor form. According to the assistant chief, the CHP is revising the vendor form to address both conflicts of interest and a vendor's release of confidential information.

#### **Conflicts of Interest Caused General Services to Declare Void Two Motorcycle Contracts, and Efforts to Secure a New Contract Were Unsuccessful**

During 2002 and 2004 General Services developed two statewide contracts with a single motorcycle dealership for CHP to acquire motorcycles for its use. These two contracts generally covered the period from January 2002 to April 2006 and allowed the CHP to purchase motorcycles as needed, for a total amount not to exceed \$13.7 million. Through the contracts the CHP could have purchased

*Due to the inconsistencies in the instructions it provided, the CHP may not have effectively conveyed to its employees its intent surrounding the employee statement.*

about 685 motorcycles. However, General Services determined that the contracts were entered into in violation of the Government Code, Section 1090, which prohibits state employees from having a financial interest in contracts they make. Therefore, in June 2005 General Services declared the contracts void. Although General Services secured a \$100,000 monetary settlement from the motorcycle dealer, General Services did not finalize a settlement with the manufacturer, BMW Motorrad USA, a division of BMW of North America, LLC (BMW Corporation), which had provided assurances related to the contracts. The CHP purchased motorcycles, obtained warranty services, and exercised a motorcycle buyback provision under these contracts; it estimates that it has incurred \$11.4 million in lost buyback opportunities and motorcycle maintenance costs because General Services declared the two contracts void. This estimate covers the period October 2005 to October 2007. It also reflects that the CHP and General Services were not successful in securing another motorcycle contract in 2006 as we discuss in a later section of this report.

General Services told us in November 2007 that it had reestablished negotiations with BMW Corporation; however, it is unclear when a settlement will be reached and what benefits, if any, will be derived from it.<sup>9</sup> As of June 2007 General Services had awarded a new motorcycle contract so that those state and local agencies that use police motorcycles, including the CHP, could purchase them. This award was the culmination of more than two years' effort on the part of General Services and the CHP to develop, bid, and award a motorcycle contract following General Services' actions declaring void in June 2005 the two earlier motorcycle contracts.

***After Declaring Void Two Contracts for CHP Motorcycles, General Services Failed to Finalize a Settlement With the Motorcycle Manufacturer***

In 2002 and again in 2004 General Services established contracts under which the CHP bought needed motorcycles. In both years the motorcycle contracts were awarded to the same motorcycle dealer. For each of these contracts, BMW Corporation provided written assurances to General Services that BMW Corporation would complete and fulfill the contract requirements in the event of a default on the part of the dealer. Each motorcycle contract included warranty provisions that provided the CHP with full service on each purchased motorcycle for 36 months or 60,000 miles. In addition, for those motorcycles that met certain criteria, the contract provided for the dealer to buy them back at a set price that was more

<sup>9</sup> In its response to this audit, General Services disclosed that BMW Corporation had no interest in buying back the existing motorcycles. We are unaware of any other points General Services and BMW Corporation may be negotiating.

than half of the cost of a new motorcycle. Under the two contracts, the CHP purchased 647 motorcycles for field use for more than \$12 million.

In June 2005 General Services declared both motorcycle contracts void due to a violation of the Government Code, Section 1090. General Services stated that one of its employees responsible for writing the motorcycle contract specifications and making the acquisition was at the same time a contractor for the dealer who was awarded both contracts. Therefore, the employee had a financial interest in the motorcycle dealer, which is a conflict of interest. Courts hold that when a contract is void, the State is entitled to all the goods or services provided under the agreement and the vendor must return all the money the State paid for the goods and services. In this case the motorcycle dealer disputed General Services' assertion that the contract was void. As a result, General Services sought a settlement with the motorcycle dealership and BMW Corporation.

In November 2005 General Services agreed to a \$100,000 financial settlement with the dealer. General Services was also negotiating a separate settlement with BMW Corporation; however, it did not finalize this settlement. Under the proposed settlement, BMW Corporation would continue to honor the contract warranties and the buyback provisions. According to General Services' deputy director for legal services, in May 2006, the legal office recommended to General Services' management that it approve the settlement with BMW Corporation. In October 2006 the attorneys representing BMW Corporation inquired in a letter to General Services as to why General Services never executed the agreement. The BMW attorneys stated in the letter that they had spent a great deal of time and effort negotiating a settlement agreement, which, at least to their understanding, had reached the state of finalization.

When we asked General Services why it had not finalized the settlement with BMW Corporation, the information General Services provided was inconsistent. Initially, General Services' office of legal services (legal services) informed us that the attorney negotiating the settlement was instructed by General Services' former director not to settle with BMW Corporation. However, legal services could provide no documentation to support this decision, other than an e-mail from the attorney describing her recollection of the matter. Our review of the procurement and legal files yielded no information that supported General Services' claim that the former director was not interested in settling with BMW Corporation despite General Services having negotiated a settlement agreement with BMW Corporation that its attorneys

*Under the two contracts, the CHP purchased 647 motorcycles for field use for more than \$12 million.*

indicated BMW Corporation would sign. The deputy director for legal services subsequently told us in November 2007 that it had reestablished negotiations with BMW Corporation.

In addition, the deputy director for legal services provided several reasons why General Services abandoned the settlement with BMW Corporation. According to the deputy director, the CHP advised General Services that it wanted to keep the motorcycles it had already purchased under the two contracts, rather than turn them in under the buyback program, because at that time there was no other contract in place to purchase motorcycles. Further, the deputy director for legal services stated that the buyback program did not seem feasible, citing concerns with the age and mileage of the motorcycles. Additionally, the deputy director indicated that uncertainty existed as to whether the CHP and General Services would have a new motorcycle contract in place, because product testing was not producing the desired results. The deputy director for legal services told us that due to these reasons, the impetus to settle with BMW Corporation “seemed to lose momentum and other matters appeared to take precedence, such that the settlement was never finalized.”

Although General Services told us that it has reinitiated contact with BMW Corporation and that BMW Corporation has indicated its willingness to consider a settlement of the motorcycle buyback provision, it is too soon to determine the benefit, if any, the State will receive from the pending negotiations.<sup>10</sup> According to the CHP, 69 percent of the motorcycles in its fleet as of October 2007 have more than 60,000 miles. Motorcycles at that mileage level would not meet the original 60,000-mile requirement for the buyback provision. Meanwhile, the CHP estimates that it has lost \$11.4 million as a result of the voided motorcycle contracts. The CHP’s estimate covers the period October 2005 to October 2007. This estimate covers two types of losses: a loss of \$6.9 million resulting from regular motorcycle maintenance costs for motorcycles with 60,000 or more miles and costs needed to refurbish motorcycles with high mileage for continued use, and \$4.5 million for motorcycles for which it was not able to exercise the buyback option. The estimate also reflects that the CHP and General Services were not successful in securing another motorcycle contract in 2006 as we discuss in the next section.

***The CHP estimates it has lost \$11.4 million as a result of the voided motorcycle contracts. This estimate covers the period October 2005 to October 2007 and also reflects the CHP’s and General Services’ inability to secure a new motorcycle contract.***

<sup>10</sup> In its response to this audit, General Services disclosed that BMW Corporation had no interest in buying back the existing motorcycles. We are unaware of any other points General Services and BMW Corporation may be negotiating.

***The CHP and General Services Disagreed During Their Attempt to Purchase Motorcycles in 2006, and No Contract Was Awarded***

In April 2005 the CHP and General Services began the contract development process for a motorcycle that would meet the CHP's law enforcement needs. As a part of the process, the CHP and General Services discussed contracting issues such as motorcycle specifications, time frames, and bid structure. During the contract development process, General Services declared void the existing motorcycle contract due to an employee's conflict of interest, as previously discussed. Subsequently, General Services advertised the new motorcycle contract and in December 2005 identified a Harley-Davidson motorcycle dealer as the lowest compliant bidder. Between January 2006 and July 2006, the CHP tested the Harley-Davidson motorcycle against the bid specifications and performance criteria. Despite numerous tests and the bidder's attempts to address performance issues, the CHP determined that the motorcycle did not meet its performance criteria—most critically the CHP's requirements that the motorcycle remain stable when ridden through turns and at high speeds. In October 2006 the CHP notified General Services that it was canceling its motorcycle procurement without a final contract.

The CHP and General Services recommenced the contract development process in October 2006. In December 2006 General Services continued the specification process by soliciting questions from possible bidders. However, a letter from General Services' director to the CHP commissioner dated December 7, 2006, communicated General Services' frustration with CHP's requirements for motorcycle testing. For example, General Services claimed that the CHP wanted to test motorcycles only on its test track, wanted only CHP riders to evaluate the motorcycles, and wanted to end testing at any time if it believed the motorcycle was unsafe. As a result, General Services placed the procurement on hold.

In an e-mail from the chief of CHP's administrative services division to General Services staff dated December 7, 2006, the chief stated that the CHP viewed the procurement as its own because it was the sole requestor of motorcycles. Further, the chief indicated that if the procurement was a statewide one, meaning that other state and local agencies could purchase motorcycles under the contract, the CHP would withdraw from the procurement. The e-mail also stated that the CHP, as the end user of the motorcycles, wanted to use its proven testing and evaluation procedures. General Services' purchasing manager responded in an e-mail dated December 20, 2006, that the department's executive office had directed staff to use an independent test group to determine

whether the motorcycle offered met the performance specifications that had been jointly developed and that the CHP would have the final decision as to whether it chose to purchase the motorcycle. Although these documents do not explicitly state that the CHP withdrew from the second motorcycle procurement attempt, it would appear to have done so.

In January 2007 General Services released an invitation for bid for an enforcement-type motorcycle without CHP's involvement. In June 2007 General Services awarded the statewide contract for enforcement motorcycles to a BMW dealer. The CHP has since purchased two BMW motorcycles to test them against its own specifications. Assuming that the motorcycles meet the CHP's specifications, it will be required to purchase any motorcycles through this contract. If the CHP determines that the motorcycles do not meet its specifications, it is not clear how the CHP will purchase motorcycles.

#### **General Services Could Not Demonstrate That It Always Followed Its Revised Conflict-of-Interest Policy**

After a conflict-of-interest concern arose from General Services' motorcycle procurement in 2004, General Services revised its conflict-of-interest policy effective January 2, 2006. The revised policy strengthens the previous policy by requiring General Services staff to assess potential conflicts on a contract-by-contract basis. However, General Services could not demonstrate that it had fully implemented its revised policy for one of the two procurements we reviewed, and we cannot conclude whether General Services' revised conflict-of-interest policy is effectively addressing conflicts of interest.

Under the revised policy, General Services employees involved in a procurement must prepare a conflict-of-interest affidavit (affidavit) and a conflict-of-interest transmittal (transmittal), sign these forms, and place them in the contract file. The affidavit asks employees a series of questions about their direct and indirect financial interests in, personal relationships with, and any gifts received from vendors. General Services requires all employees participating in the decision making to complete an affidavit for each procurement. The transmittal contains a statement declaring that supervisors and reviewers have no direct or indirect investments, real property, or interest in any company, business entity, or organization involved with the project or contract. The transmittal is included with the procurement documents when management staff review and approve them, and General Services allows management staff to complete a transmittal instead of the affidavit.



We found, however, that General Services lacks a formal method for tracking the employees participating in a procurement and for one of the two contract files we reviewed for procurements made after the policy took effect, General Services could not provide the necessary transmittal. In response to a question we asked about how General Services tracks the employees who work on a contract, a General Services contracts manager told us that General Services assigns a buyer to a contract according to workload level. The buyer determines whether an engineer is needed and routes the contract to the necessary managers for approval. We reviewed the files of the two CHP contracts that General Services handled after its policy change to develop a list of staff that participated in developing and reviewing each of the procurements. We found that the buyer had completed an affidavit for each contract. One of the two contracts we examined did not require management review, because the contract value was within the buyer's authorized approval level. Therefore, management was not required to complete an affidavit or a transmittal for that contract. However, the other contract did require management review, yet we did not find affidavits or a transmittal in the contract file. We asked for General Services' help in locating the missing documents, and it concurred that the documents were not in the file. General Services asserted that the documents were completed but may have been misplaced because the file was handled by many of its employees. Nevertheless, we cannot conclude whether General Services' process for administering its conflict-of-interest policy is effectively making all employees aware of and accountable for potential conflicts.

In its revised conflict-of-interest policy, General Services kept the requirement for certain employees to complete a Form 700. General Services has designated employees in key positions related to procurements as needing to file a Form 700 each year. All of the designated employees that we tested filed a Form 700, in accordance with General Services' policy.

### **Recommendations**

To ensure that it informs employees about and protects itself against potential conflicts of interest, the CHP should do the following:

- Include as designated employees for filing the Form 700, all personnel who help to develop, process, and approve procurements.
- Ensure that it documents, approves, and reviews secondary-employment requests annually in accordance with its policy.

- Revise its employee statement regarding conflicts of interest to include employees involved in all stages of a procurement.
- Reexamine its reasons for developing the conflict-of-interest and confidentiality statement for vendors, and ensure that this form meets its needs.

General Services should continue negotiating with BMW Corporation regarding the canceled contracts for motorcycles to develop a settlement agreement that is in the State's best interest.

General Services should also ensure that all of its employees involved in making decisions on contracts complete the necessary transmittals and affidavits and that the agency retains these documents in the procurement files as evidence of conflict-of-interest screening.

## Chapter 3

### THE CALIFORNIA HIGHWAY PATROL'S BROAD POLICIES FOR USING ITS KING AIR AIRCRAFT MAY HAVE LED TO SOME IMPRUDENT DECISIONS

Between 1997 and 2007 the California Highway Patrol (CHP) owned and operated an eight-passenger aircraft: a Beechcraft brand model A200 King Air (King Air). The CHP's policies for using the King Air consisted of both an air operations manual that applies to all of the CHP's aircraft and standard operating procedures specific to the King Air. These policies stated that the CHP could use the King Air for missions that supported the agency or for unofficial use, as authorized by the Office of the Commissioner. The CHP uses other aircraft, both helicopters and airplanes, for its law enforcement activities. According to the assistant commissioner for the CHP's field operations (assistant commissioner), the CHP obtained the King Air because it needed on-demand air transportation to critical incidents and employee tragedies as well as to allow management and staff to attend meetings, conferences, and funerals for which attendance would not be feasible using commercial air carrier service. The CHP used the King Air for three types of flights: missions, training, and maintenance. The CHP classified flights as missions when it used the King Air to transport personnel and equipment, as training flights to train CHP pilots to ensure that they received the necessary amount and type of flight experience in the King Air, or as maintenance flights to maintain the aircraft by checking that the King Air was functioning mechanically. Table 5 shows the types and number of flights taken by CHP personnel in the King Air from 2004 through 2007.

**Table 5**  
**Summary of King Air Flights**  
**2004 Through May 2007**

TYPE OF FLIGHT	YEAR			
	2004	2005	2006	2007
Missions	166	70	69	0
Training	23	11	23	2
Maintenance	27	19	23	1
<b>Totals</b>	<b>216</b>	<b>100</b>	<b>115</b>	<b>3</b>

Source: CHP's King Air flight summary.

*The CHP could not provide evidence that all King Air flights had the Office of the Commissioner's prior approval, as required.*

Staff in the Office of the Commissioner developed a form to aid in their confirmation of planned flight and ground transportation details with all parties involved in mission flights. No such forms existed for training or maintenance flights. Some of the information on the form includes the date, time, and purpose of the flight; which airports were used; and the names of the passengers, pilots, and those who approved the flight. Because the CHP's practice was to retain these forms only for the current and one prior year, we limited our review of the King Air flights to those occurring in 2006 and 2007.

The CHP could not provide evidence that all flights had the Office of the Commissioner's prior approval, as required. As of October 10, 2007, the commissioner's office was unable to locate forms for 11 of 69 mission flights that occurred in 2006. According to the commissioner's staff manager—whose role it was to arrange transportation via the King Air—this authorization could occur either orally or in writing. Staff members in the commissioner's office would arrange flights as directed, but they did not retain any written instruction to do so. Moreover, the staff manager also stated that staff did not prepare forms for King Air flights that originated on weekend days. This omission accounted for four of the 11 mission flights that lacked forms.

Based on our review of the CHP's flight logs from 2006 and 2007, the purposes of some flights did not seem prudent. For example, the CHP's management used the King Air for two round-trips to destinations in close proximity to Sacramento. On one occasion, personnel flew round-trip to Modesto for an officer's funeral. On another occasion, the commissioner flew round-trip to Oakland for a radio interview. Each of these cities is about a 90-minute drive from Sacramento, and since the trip to Oakland was for a radio interview, it likely could have been conducted over the telephone. Given the State's reimbursement rate at the time of 48.5 cents per mile, the cost to the State of driving to these two locations would have been about \$150. Using the CHP's calculation from January 2005 that the King Air's operating cost was \$1,528 per hour of flight time, the cost of flying the King Air was at least \$1,980 for these two round trips, more than 13 times the cost of driving.

According to the assistant commissioner, the CHP views these trips as appropriate uses of the King Air, based on travel time and other schedule commitments. The assistant commissioner stated that no distance criterion existed for the CHP to use the King Air and that a paramount consideration was that the aircraft be the most efficient means of transportation. Nonetheless, the assistant commissioner also described the CHP's need for the King Air as on-demand transportation for areas not served by commercial air carriers or when it was not feasible to use commercial air carrier service. The

proximity of both Modesto and Oakland to Sacramento is such that flying, rather than driving, is unusual, and the purpose of the Oakland trip suggests it may not have been necessary.

For 14 of the King Air's 69 mission flights during 2006, the purpose of the flight was not aligned well with the CHP's function, as its policy dictates, or for state business. For example, on one occasion, the commissioner's wife accompanied her husband and four of his staff on a round-trip flight between Sacramento and Burbank to attend a function hosted by a nonprofit organization affiliated with the CHP. Although the presence of the commissioner's wife on the flight could be questioned, the commissioner later reimbursed the State \$254, the amount of a commercial flight, for his wife's share of the flight. Furthermore, the CHP used the King Air to transport from Portland, Oregon, the family of an officer killed while on duty to that officer's memorial service and the subsequent sentencing hearing of the responsible motorist. Although we understand the CHP's desire to provide support to the officer's grieving family, the CHP's choice to use the King Air for this purpose was not the best use of a state resource. Twelve of the King Air's 69 mission flights during 2006 transported these family members to various destinations, or the flights were required to position the plane to accommodate the family's transportation. Using the CHP's operating cost calculation, the total cost of all the flights we questioned exceeded \$24,000 and, other than the reimbursement for the commissioner's wife, the CHP was not reimbursed for these costs.

According to the assistant commissioner, the trip the commissioner's wife took to Burbank was appropriate and resulted in no additional expense to the CHP—he stated that the aircraft was committed to the flight and two seats remained empty for additional passengers, if necessary. For the officer killed on duty, the assistant commissioner justified the CHP's use of the King Air as appropriate, given the gravity of the situation and to honor the officer and his family. The CHP correctly describes losing an officer as a serious concern for the agency and for the officer's family; however, its purpose for acquiring the plane and operating it at taxpayer expense was to provide on-demand transportation for CHP management and staff. Further, the CHP's policy for using the aircraft refers to missions that support the CHP, and this policy thus suggests that the flights should have a business purpose. Moreover, based on the 13 months of King Air flight data and forms the CHP provided us, we did not find evidence that the CHP provided this same support to any other officer's family. In our view, the CHP's decision to use the King Air to transport private citizens at taxpayer expense was not a prudent use of a state resource.

***For 14 of King Air's 69 mission flights during 2006, the CHP made flights for which the purpose of the flight was not aligned well with the CHP's function, as its policy dictates, or for state business.***

The CHP transferred<sup>11</sup> the King Air to the San Bernardino County Sheriff's Department in May 2007. The assistant commissioner stated that the CHP believed that, according to its most recent evaluation of the King Air's operations, it was a sound business decision to stop using the King Air and to use commercial air carrier service instead. The assistant commissioner stated that the CHP's use of the King Air had declined and that the operating cost was more than \$200,000 in 2004, a figure that increased to more than \$300,000 annually in 2005 and 2006. Given the cost to operate the King Air, the CHP's decision to use commercial air service in place of a private air service seems sound. However, the evaluation the CHP referred to was concluded in January 2005, more than two years before the CHP discontinued using the King Air. Given that the CHP had the necessary information regarding the economics of using its private air service in 2005, to reach the conclusion that owning and maintaining the aircraft was not cost-effective, we question why the CHP did not make the decision to relinquish the King Air earlier.

### Recommendation

To ensure that the use of state resources of a discretionary nature for purposes not directly associated with the CHP's law enforcement operations receives approval through the Office of the Commissioner, the CHP should develop procedures for producing, approving, and retaining written documentation showing approval for these uses.

<sup>11</sup> According to the CHP, it received the King Air through a federal program under which states and local governments can acquire surplus military equipment for law enforcement and drug enforcement purposes. Under the program's rules, the CHP could relinquish the aircraft only to another state or local government to use for program purposes.

We conducted this review under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. We limited our review to those areas specified in the audit scope section of the report.

Respectfully submitted,



ELAINE M. HOWLE  
State Auditor

Date: January 22, 2008

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For questions regarding the contents of this report, please contact Margarita Fernández, Chief of Public Affairs, at (916) 445-0255.

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## Appendix

### **SUMMARY OF THE INTERNAL AND EXTERNAL REVIEWS OF THE CALIFORNIA HIGHWAY PATROL'S FUNCTIONS FROM JANUARY 2004 TO NOVEMBER 2007**

Tables A.1, A.2, and A.3 on the following pages detail the 102 reviews that the California Highway Patrol (CHP) and other entities performed of various CHP functions. Our analysis encompassed each review that the CHP submitted to the Joint Legislative Audit Committee in April 2007 that was completed between January 2004 and November 2007. We identified and grouped these reviews by the degree to which they included an aspect of the CHP's procurement processes. As Table A.1 shows, four reviews focused on procurement; the CHP conducted two of these reviews and the Department of General Services (General Services) conducted the other two. Table A.2 shows an additional 24 reviews that included a procurement component; however, most of the content in these reviews did not focus on procurement, and the procurement-related information that these reports did contain primarily addressed administrative issues rather than the procurement method. The remaining 74 reviews in Table A.3 were not relevant to the subject matter of our audit; therefore, we did not conduct any additional work on these. Thirty-six of the 74 reviews in Table A.3 were reports on citizen complaint investigations that the CHP conducts to enhance the quality of its process of investigating citizens' complaints and that are intended for use as a management tool.

The tables also identify those reviews that were performed under recognized auditing standards, such as generally accepted government auditing standards promulgated by the Comptroller General of the United States, or the Institute of Internal Auditors' standards for the professional practice of internal auditing. Of the reports that the CHP identified, nine reviews (8.8 percent) were performed in accordance with recognized auditing standards.

**Table A.1**  
Reviews of the CHP's Procurement Process  
2004 Through 2007

TITLE	YEAR ISSUED	ENTITY PERFORMING REVIEW	INTERNAL OR EXTERNAL REVIEW	TYPE OF REVIEW*	SCOPE OF REVIEW	NUMBER OF PURCHASING-RELATED RECOMMENDATIONS	PERIOD COVERED
Contracts Audit	2007	CHP	Internal	Audit	Assessment of contract and purchase order files with a focus on sole-brand and noncompetitive bid contracts and purchases.	9	July 2003–June 2006
Light Detection and Ranging Device Review	2007	CHP	Internal	Inspection	Funding and product specifications for two canceled solicitations and one purchase order.	2	January 2005–April 2006
Delegated Purchasing Program Compliance Review	2007	General Services	External	Inspection	CHP adherence to purchasing authority requirements on sampled purchases.	4	July 2006–January 2007
Purchasing Program Compliance Review	2006	General Services	External	Inspection	CHP adherence to purchasing authority requirements on sampled purchases.	22	May 2005–November 2005
<b>Totals</b>	<b>4</b>					<b>37</b>	

Source: Bureau of State Audits' analysis of reports provided by the CHP.

\* *Audit* is the term we use to signify reviews completed in accordance with auditing standards such as generally accepted government auditing standards or standards for the professional practice of internal auditing. *Inspection* is the term we use to signify reviews that were not completed in accordance with auditing standards.

**Table A.2**  
Reviews That Mention but Do Not Focus on the CHP's Procurement Process  
2004 Through 2007

TITLE	YEAR ISSUED	ENTITY PERFORMING REVIEW	INTERNAL OR EXTERNAL REVIEW	TYPE OF REVIEW*	SCOPE OF REVIEW	NUMBER OF PURCHASING-RELATED RECOMMENDATIONS
California Governor's Office of Homeland Security Monitoring Narrative Report	2007	California Office of Homeland Security	External	Inspection	Review of five grants for adherence to grant rules and regulations, including the funds used to purchase items.	1
Financial Review of the Department of California Highway Patrol	2005	U.S. Department of Transportation	External	Inspection	Reviewed grant administration and internal control processes for federal Motor Carrier Safety Administration grants. Traced projects' costs to original source documents, including the procurement of computers and related equipment.	1
Supply Services Unit Audit and Evaluation	2004	CHP	Internal	Inspection	Review of operational areas, including the warehouse inventory system, and procurement related to emergency requisitions.	1
Examination of Critical Functions; Academy (includes three areas within the academy)†	2004	CHP	Internal	Inspection	Assessment of selected operational controls, including purchases through the delegated purchasing and CAL-Card processes.	1

TITLE	YEAR ISSUED	ENTITY PERFORMING REVIEW	INTERNAL OR EXTERNAL REVIEW	TYPE OF REVIEW*	SCOPE OF REVIEW	NUMBER OF PURCHASING-RELATED RECOMMENDATIONS
Examination of Critical Functions; Business Services Section	2004	CHP	Internal	Inspection	Assessment of selected operational controls, including compliance with the contract management and renewal processes.	5
Examination of Critical Functions; Hiring and Special Projects Section†	2004	CHP	Internal	Inspection	Assessment of selected operational controls, including procedures for supply purchases through the CAL-Card process.	1
Examination of Critical Functions; Research and Planning Section†	2004	CHP	Internal	Inspection	Assessment of selected operational controls, including purchases through the CAL-Card process.	1
Examination of Critical Functions; Special Projects Section†	2004	CHP	Internal	Inspection	Assessment of selected operational controls, including purchases through the CAL-Card process.	0
Examination of Critical Functions; Office of General Counsel†	2004	CHP	Internal	Inspection	Assessment of selected operational controls, including purchases through the CAL-Card process.	0
Examination of Critical Functions; Internal Affairs Section†	2004	CHP	Internal	Inspection	Assessment of selected operational controls, including purchases through the CAL-Card process.	1
Examination of Critical Functions; Audits and Evaluation Section†	2004	CHP	Internal	Inspection	Assessment of selected operational controls, including purchases through the CAL-Card process.	0
Examination of Critical Functions; Air Operations Section†	2004	CHP	Internal	Inspection	Assessment of selected operational controls, including purchases through the CAL-Card process.	2
Examination of Critical Functions; Investigative Services Section†	2004	CHP	Internal	Inspection	Assessment of selected operational controls, including purchases through the CAL-Card process.	2
Examination of Critical Functions; Commercial Vehicle Section†	2004	CHP	Internal	Inspection	Assessment of selected operational controls, including purchases through the CAL-Card process.	0
Examination of Critical Functions; Field Services Section†	2004	CHP	Internal	Inspection	Assessment of selected operational controls, including purchases through the CAL-Card process.	1
Examination of Critical Functions; Software Development and Support Section†	2004	CHP	Internal	Inspection	Assessment of selected operational controls, including purchases through the California Multiple Awards Schedule and CAL-Card processes.	2
Examination of Critical Functions; Northern Division (includes 17 areas within the division)†	2004	CHP	Internal	Inspection	Assessment of selected operational controls, including purchases through the CAL-Card process.	15
Examination of Critical Functions; Valley Division (includes eight areas within the division)†	2004	CHP	Internal	Inspection	Assessment of selected operational controls, including purchases through the CAL-Card process.	7
Examination of Critical Functions; Golden Gate Division (includes 12 areas within the division)†	2004	CHP	Internal	Inspection	Assessment of selected operational controls, including purchases through the CAL-Card process.	20
Examination of Critical Functions; Central Division (includes 20 areas within the division)†	2004	CHP	Internal	Inspection	Assessment of selected operational controls, including purchases through the CAL-Card process.	15

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TITLE	YEAR ISSUED	ENTITY PERFORMING REVIEW	INTERNAL OR EXTERNAL REVIEW	TYPE OF REVIEW*	SCOPE OF REVIEW	NUMBER OF PURCHASING-RELATED RECOMMENDATIONS
Examination of Critical Functions; Southern Division (includes 13 areas within the division) <sup>†</sup>	2004	CHP	Internal	Inspection	Assessment of selected operational controls, including purchases through the CAL-Card process.	8
Examination of Critical Functions; Border Division (includes 19 areas within the division) <sup>†</sup>	2004	CHP	Internal	Inspection	Assessment of selected operational controls, including purchases through the CAL-Card process.	20
Examination of Critical Functions; Coastal Division (includes 12 areas within the division) <sup>†</sup>	2004	CHP	Internal	Inspection	Assessment of selected operational controls, including purchases through the CAL-Card process.	3
Examination of Critical Functions; Inland Division (includes 14 areas within the division) <sup>†</sup>	2004	CHP	Internal	Inspection	Assessment of selected operational controls, including purchases through the CAL-Card process.	13
<b>Totals</b>	<b>24</b>					<b>120</b>

Source: Bureau of State Audits' analysis of reports provided by the CHP.

\* *Audit* is the term we use to signify reviews completed in accordance with auditing standards such as generally accepted government auditing standards or standards for the professional practice of internal auditing. *Inspection* is the term we use to signify reviews that were not completed in accordance with auditing standards.

<sup>†</sup> The majority of recommendations addressed the administrative side of CAL-Card procedures as opposed to the procurement method.

**Table A.3**  
**Reviews of the CHP That Do Not Address Procurement**  
**2004 Through 2007**

TITLE	YEAR ISSUED	ENTITY PERFORMING REVIEW	INTERNAL OR EXTERNAL REVIEW	TYPE OF REVIEW*	SCOPE OF REVIEW	NUMBER OF PURCHASING-RELATED RECOMMENDATIONS
Classification Actions for Uniformed and Nonuniformed Personnel	Various	Department of Personnel Administration	External	Inspection	Various classification actions in six-month increments from January 2002 through December 2004.	0
Uniform Crime Reporting System	Not specified	CHP	Internal	Inspection	Analysis of crimes that occurred on state property for the years 2002 through 2004.	0
Workers' Compensation Time Review Audit	NA <sup>†</sup>	CHP	Internal	Inspection	Time accounting, as specified in the California Labor Code, Section 4800.5.	0
Beverage Fund Audit	NA <sup>†</sup>	CHP	Internal	Inspection	Determine whether use of the Beverage Fund at the training academy followed good business practices.	0
Squad Club Audit	NA <sup>†</sup>	CHP	Internal	Inspection	Determine compliance with bylaws, business practices, and federal and state laws.	0
Medical Provider Review (draft)	NA <sup>‡</sup>	CHP	Internal	Audit	Assessment of the CHP's emergency medical services program, the medical services provider, and compensation of the provider.	0
Academy Audit	2007	CHP	Internal	Audit	Audit of four specific fund accounts at the training academy.	0
Audit Resolution, State-owned Housing	2006	CHP	Internal	Audit	A review of the CHP's state-owned housing in response to recommendations in the Bureau of State Audits' report, <i>Investigations of Improper Activities by State Employees</i> , dated March 2006.	0

TITLE	YEAR ISSUED	ENTITY PERFORMING REVIEW	INTERNAL OR EXTERNAL REVIEW	TYPE OF REVIEW*	SCOPE OF REVIEW	NUMBER OF PURCHASING-RELATED RECOMMENDATIONS
Undercover Drivers License Inventory	2007	CHP	Internal	Inspection	Examination of records of individuals issued undercover driver's licenses within various commands.	0
Attendance Report Discrepancy Audits	2007	CHP	Internal	Inspection	Reconciliation of discrepancies with State Controller's Office attendance information.	0
Basic Course Certification Review	2007	CHP	Internal	Inspection	On-site inspection, examination of previous certification report, interviews with staff, and comparison of the program with others in the State.	0
Commission on Peace Officer Standards and Training (POST) Compliance Inspection	2007	POST	External	Inspection	Inspection of 128 background investigations to determine adherence to minimum selection and training standards.	0
Public Agency Review	2006	California Public Employees' Retirement System	External	Inspection	Review of personnel and payroll records and reporting processes.	0
Valley Division Overtime Audit	2006	CHP	Internal	Audit	Review of reconciliation reports and 700 attendance records to determine if overtime was properly used during last quarter of fiscal year 2005-06.	0
Northern Division's Multidisciplinary Accident Investigation Team (MAIT) Audit	2006	CHP	Internal	Inspection	Review of MAIT to ensure compliance with departmental policies.	0
Enforcement Services Division; Field Support Section Change of Command/2006 Annual Inventory Combination	2006	CHP	Internal	Inspection	Change-in-command inventory and annual inventory.	0
Departmental Canine Program Evaluation	2006	CHP	Internal	Inspection	Sampling of area offices, inspection facilities, and division offices deploying canine teams.	0
2006 Credit Card Audit	2006	CHP	Internal	Inspection	Comparison of all of the CHP's active credit cards to fleet database to determine if any were assigned to vehicles no longer in service.	0
Statewide Decentralized Training Program Audit	2006	CHP	Internal	Inspection	Review and evaluation of randomly selected employee training records.	0
Motorcycle Program Audit	2006	CHP	Internal	Inspection	Inspection to determine how to reduce injuries and deaths of motorcycle officers.	0
Facility Security Audit	2006	CHP	Internal	Inspection	Compilation of information on the proposed expansion of the Headquarters Security System.	0
Headquarters Security Access Card Audit	2006	CHP	Internal	Inspection	Review of database detailing the level of security access each employee is granted.	0
Protective Services Division, Citizens' Complaint Investigations Audit	2006	CHP	Internal	Inspection	Complaint investigations and inspection of local processing and filing procedures.	0
Office of Legal Affairs, Citizens' Complaint Investigations Audit	2006	CHP	Internal	Inspection	Complaint investigations and inspection of local processing and filing procedures.	0
Office of Internal Affairs, Citizens' Complaint Investigations Audit	2006	CHP	Internal	Inspection	Complaint investigations and inspection of local processing and filing procedures.	0

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TITLE	YEAR ISSUED	ENTITY PERFORMING REVIEW	INTERNAL OR EXTERNAL REVIEW	TYPE OF REVIEW*	SCOPE OF REVIEW	NUMBER OF PURCHASING-RELATED RECOMMENDATIONS
Personnel Management Division, Citizens' Complaint Investigations Audit	2006	CHP	Internal	Inspection	Complaint investigations and inspection of local processing and filing procedures.	0
Office of Employee Relations, Citizens' Complaint Investigations Audit	2006	CHP	Internal	Inspection	Complaint investigations and inspection of local processing and filing procedures.	0
Office of Media Relations, Citizens' Complaint Investigations Audit	2006	CHP	Internal	Inspection	Complaint investigations and inspection of local processing and filing procedures.	0
Office of Air Operations, Citizens' Complaint Investigations Audit	2006	CHP	Internal	Inspection	Complaint investigations and inspection of local processing and filing procedures.	0
Office of Special Representative, Citizens' Complaint Investigations Audit	2006	CHP	Internal	Inspection	Complaint investigations and inspection of local processing and filing procedures.	0
Departmental Training Division, Citizens' Complaint Investigations Audit	2006	CHP	Internal	Inspection	Complaint investigations and inspection of local processing and filing procedures.	0
Information Management Division, Citizens' Complaint Investigations Audit	2006	CHP	Internal	Inspection	Complaint investigations and inspection of local processing and filing procedures.	0
Planning and Analysis Division, Citizens' Complaint Investigations Audit	2006	CHP	Internal	Inspection	Complaint investigations and inspection of local processing and filing procedures.	0
Enforcement Services Division, Citizens' Complaint Investigations Audit	2006	CHP	Internal	Inspection	Complaint investigations and inspection of local processing and filing procedures.	0
Administrative Services Division, Citizens' Complaint Investigations Audit	2006	CHP	Internal	Inspection	Complaint investigations and inspection of local processing and filing procedures.	0
Northern Division, Citizens' Complaint Investigations Audit	2006	CHP	Internal	Inspection	Complaint investigations and inspection of local processing and filing procedures.	0
Valley Division, Citizens' Complaint Investigations Audit	2006	CHP	Internal	Inspection	Complaint investigations and inspection of local processing and filing procedures.	0
Golden Gate Division, Citizens' Complaint Investigations Audit	2006	CHP	Internal	Inspection	Complaint investigations and inspection of local processing and filing procedures.	0
Central Division, Citizens' Complaint Investigations Audit	2006	CHP	Internal	Inspection	Complaint investigations and inspection of local processing and filing procedures.	0
Southern Division, Citizens' Complaint Investigations Audit	2006	CHP	Internal	Inspection	Complaint investigations and inspection of local processing and filing procedures.	0
Coastal Division, Citizens' Complaint Investigations Audit	2006	CHP	Internal	Inspection	Complaint investigations and inspection of local processing and filing procedures.	0
Inland Division, Citizens' Complaint Investigations Audit	2006	CHP	Internal	Inspection	Complaint investigations and inspection of local processing and filing procedures.	0
Academy Recreation Fund Audit	2006	CHP	Internal	Audit	Review of the Academy Recreation Fund for compliance with laws, regulations, and bylaws.	0
Final Personnel Audit Report	2006	State Personnel Board	External	Inspection	Examination of the promotion process for a specific supervisory position.	0

TITLE	YEAR ISSUED	ENTITY PERFORMING REVIEW	INTERNAL OR EXTERNAL REVIEW	TYPE OF REVIEW*	SCOPE OF REVIEW	NUMBER OF PURCHASING-RELATED RECOMMENDATIONS
Cadet Files Audit	2006	POST	External	Inspection	Inspection of 135 background investigations to determine compliance with minimum selection and training standards.	0
Workers' Compensation and Disability Retirement within the CHP	2005	CHP	Internal	Inspection	Evaluation of all workers' compensation cases from January 2000 through June 2004 in which a CHP employee was granted an industrial disability retirement.	0
Investigative Services Unit Evaluation; Vehicle Ownership Security Program Evaluation Checklist—Northern Division	2005	CHP	Internal	Inspection	Methodology not specified; file contains a checklist with various questions.	0
Investigative Services Unit Evaluation; Vehicle Ownership Security Program Evaluation Checklist—Golden Gate Division	2005	CHP	Internal	Inspection	Methodology not specified; file contains a checklist with various questions.	0
Investigative Services Unit Evaluation; Vehicle Ownership Security Program Evaluation Checklist—Southern Division	2005	CHP	Internal	Inspection	Methodology not specified; file contains a checklist with various questions.	0
Investigative Services Unit Evaluation; Vehicle Ownership Security Program Evaluation Checklist—Coastal Division	2005	CHP	Internal	Inspection	Methodology not specified; file contains a checklist with various questions.	0
Northern Division, Citizens' Complaint Investigations Audit	2005	CHP	Internal	Inspection	Complaint investigations and inspection of local processing and filing procedures.	0
Border Division, Citizens' Complaint Investigations Audit	2005	CHP	Internal	Inspection	Complaint investigations and inspection of local processing and filing procedures.	0
Coastal Division, Citizens' Complaint Investigations Audit	2005	CHP	Internal	Inspection	Complaint investigations and inspection of local processing and filing procedures.	0
Workers' Compensation Claims Billing Process Review	2005	CHP	Internal	Audit	Examination of the accuracy of the CHP's workers' compensation expenses.	0
CHP Museum Inventory	2005	CHP	Internal	Audit	Physical inventory of museum artifacts and development of database.	0
CHP Internal Control Review	2005	Department of Finance, Office of State Audits and Evaluations	External	Inspection	Review of internal and administrative controls related to financial reporting, operations, and compliance.	0
CHP Deputy Chief, CHP Exam	2005	State Personnel Board	External	Inspection	Review of the CHP's administration of a specific civil service examination for possible irregularities in the examination interview.	0
Audit Resolution Process for the Wireless Enhanced 911 Program	2004	CHP	Internal	Other	Corrective plans of action in response to the Bureau of State Audits' report on the CHP's information management division.	0
Supply Services Unit Inventory Control Review	2004	CHP	Internal	Inspection	Review of procedures for the proper safeguarding and management of inventory.	0

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TITLE	YEAR ISSUED	ENTITY PERFORMING REVIEW	INTERNAL OR EXTERNAL REVIEW	TYPE OF REVIEW*	SCOPE OF REVIEW	NUMBER OF PURCHASING-RELATED RECOMMENDATIONS
Audit of Southern Division, Special Driver Certificate Records	2004	CHP	Internal	Inspection	Audit of Special Driver Certificate files in the Southern Division to identify potentially unqualified bus drivers.	0
Protective Services Division, Citizens' Complaint Investigations Audit	2004	CHP	Internal	Inspection	Complaint investigations and inspection of local processing and filing procedures.	0
Personnel Management Division, Citizens' Complaint Investigations Audit	2004	CHP	Internal	Inspection	Complaint investigations and inspection of local processing and filing procedures.	0
Departmental Training Division, Citizens' Complaint Investigations Audit	2004	CHP	Internal	Inspection	Complaint investigations and inspection of local processing and filing procedures.	0
Departmental Affairs Division, Citizens' Complaint Investigations Audit	2004	CHP	Internal	Inspection	Complaint investigations and inspection of local processing and filing procedures.	0
Information Management Division, Citizens' Complaint Investigations Audit	2004	CHP	Internal	Inspection	Complaint investigations and inspection of local processing and filing procedures.	0
Planning and Analysis Division, Citizens' Complaint Investigations Audit	2004	CHP	Internal	Inspection	Complaint investigations and inspection of local processing and filing procedures.	0
Enforcement Services Division, Citizens' Complaint Investigations Audit	2004	CHP	Internal	Inspection	Complaint investigations and inspection of local processing and filing procedures.	0
Administrative Services Division, Citizens' Complaint Investigations Audit	2004	CHP	Internal	Inspection	Complaint investigations and inspection of local processing and filing procedures.	0
Northern Division, Citizens' Complaint Investigations Audit	2004	CHP	Internal	Inspection	Complaint investigations and inspection of local processing and filing procedures.	0
Valley Division, Citizens' Complaint Investigations Audit	2004	CHP	Internal	Inspection	Complaint investigations and inspection of local processing and filing procedures.	0
Golden Gate Division, Citizens' Complaint Investigations Audit	2004	CHP	Internal	Inspection	Complaint investigations and inspection of local processing and filing procedures.	0
Southern Division, Citizens' Complaint Investigations Audit	2004	CHP	Internal	Inspection	Complaint investigations and inspection of local processing and filing procedures.	0
Border Division, Citizens' Complaint Investigations Audit	2004	CHP	Internal	Inspection	Complaint investigations and inspection of local processing and filing procedures.	0
Wireless Enhanced 911	2004	Bureau of State Audits	External	Audit	Audit of efficiency improvements to the State's emergency 911 response program.	0
<b>Totals</b>	<b>74</b>					<b>0</b>

Source: Bureau of State Audits' analysis of reports provided by the CHP.

NA = Not applicable.

\* *Audit* is the term we use to signify reviews completed in accordance with auditing standards such as generally accepted government auditing standards or standards for the professional practice of internal auditing. *Inspection* is the term we use to signify reviews that were not completed in accordance with auditing standards. *Other* is the term we use to signify letters, responses, and other documents that were not original reviews.

† A final report has not been issued. The CHP considers the draft copy to be the final product.

‡ A draft report has been completed; however, an exit conference was never conducted. The report has not been discussed with the audited entity, and the audits and evaluations unit will not complete the audit process until 2008.



(Agency response provided as text only.)

Business, Transportation and Housing Agency  
980 9th Street, Suite 2450  
Sacramento, CA 95814-2719

January 9, 2008

Elaine M. Howle, State Auditor\*  
Bureau of State Audits  
555 Capitol Mall, Suite 300  
Sacramento, CA 95814

Dear Ms. Howle:

Enclosed is the Department of the California Highway Patrol's (CHP) response to your draft audit report, *California Highway Patrol: It Followed State Contracting Requirements Inconsistently, Exhibited Weaknesses in Its Conflict-of-Interest Guidelines, and Used a State Resource Imprudently* (#2007-111). The Business, Transportation and Housing Agency (BTH) and the CHP would like to thank you for providing the opportunity to respond to your audit findings and recommendations.

After a thorough evaluation of the issues identified in the audit scope, it is apparent that, overall, the CHP's purchasing policies and practices are generally sufficient. Recommendations to strengthen purchasing justifications, clarify and enhance conflict-of-interest policy, and ensure that employees have a full understanding of the proper use of state resources will further enhance and improve CHP processes. As you acknowledge in the report, the CHP has been responsive to recommendations made in past reviews. Correspondingly, the CHP is equally receptive to the findings and recommendations in this report, is addressing the areas identified, and will submit future status reports until each of the recommendations has been fully implemented.

I would like to personally join the CHP in expressing our appreciation for the professionalism and courtesy displayed by your staff during this lengthy review process. Their insight has provided invaluable recommendations to improving the CHP's purchasing procedures.

We look forward to providing you future status updates on the implementation of your office's recommendations. If you need additional information, please do not hesitate to contact me, or Michael Tritz, BTH Deputy Secretary for Audits and Performance Improvement, at (916) 324-7517.

Sincerely,

(Signed by: M M Buto for)

DALE E. BONNER  
Secretary

Enclosure

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\* California State Auditor's comment appears on page 73.

**THE CALIFORNIA HIGHWAY PATROL RESPONSE  
TO THE BUREAU OF STATE AUDITS REPORT TITLED  
*CALIFORNIA HIGHWAY PATROL:  
IT FOLLOWED STATE CONTRACTING REQUIREMENTS INCONSISTENTLY,  
EXHIBITED WEAKNESSES IN ITS CONFLICT-OF-INTEREST GUIDELINES,  
AND USED A STATE RESOURCE IMPRUDENTLY***

The California Highway Patrol (CHP) concurs with the recommendations presented by the Bureau of State Audits (BSA), and staff has already begun the correction and implementation process. The CHP, like all state agencies, strives to comply with complex rules and regulations, while protecting the best interests of the state and the public. During the two-year period covered in the audit, CHP staff processed 10,598 purchase orders. Given this number, CHP is generally pleased with the findings of the report and believes they reflect the CHP's overall commitment and diligence in complying with state rules and guidelines. Finally, CHP is pleased BSA recognized staff for their responsiveness to the audit. The CHP utilizes audits, reviews, and inspections as mechanisms to enhance efficiencies and ensure compliance with law and policy. The BSA audit was welcomed in this light and we appreciate the diligence of the Legislature in allowing us the opportunity to review and improve our internal procedures.

Although the CHP fully embraces the findings and recommendations of the report, CHP feels some additional clarification would be beneficial.

**Report Findings:**

**Chapter 1 - THE CHP DID NOT CONSISTENTLY ADHERE TO STATE CONTRACTING REQUIREMENTS.**

**Weapons** - The CHP's sole-brand documents for its handgun purchase did not fully justify limiting competition and differs in some respects from its expert analysis.

The CHP had responsibility for preparing a compliant sole-brand justification in accordance with the State Administrative Manual (SAM), Section 3555. Every effort was made to prepare a justification which the CHP felt met the spirit and intent of policy and law. After discussion with BSA staff, it is agreed that additional information would have provided clarification on the unique performance factors of the selected item. CHP has already implemented a more thorough review process, as well as a training program for personnel involved in the procurement process in an effort to enhance understanding and compliance with law and policy. This training program is being expanded to include those involved in the review and approval process.

**Weapon Repairs** - BSA expressed concern regarding the level of quality in the weapon selection due to the number of warranty repairs that have been completed on the guns. The CHP feels it is important to note the warranty obtained through the procurement process provides lifetime replacement of all parts and materials, regardless of the reason or cause for replacement. Because of this exceptional warranty, the CHP has requested the manufacturer replace parts in all purchased weapons even though a defective part was found in only a small number of weapons. For example, the CHP discovered a problem with the "sear" in two firearms. The problem was immediately brought to the attention of the manufacturer, who determined it was related to a defect which occurred in a specific lot during the manufacturing process. The CHP requested, and the manufacturer agreed, to replace sears in all purchased weapons. The CHP remains

confident in the weapon purchased and believes the few problems noted to date are indicative of those found with any large-scale purchase of a mass-produced item. Moreover, the weapon purchased has met and continues to meet standards for semi-automatic pistols contained in the California Penal Code and those developed by the National Institute of Justice.

①

## **Chapter 2 - CHP HAS WEAKNESSES IN ITS CONFLICT-OF-INTEREST GUIDELINES AND CONFLICTS AFFECTED THE STATE'S MOTORCYCLE CONTRACTS.**

**Conflict-of-Interest** - The CHP currently requires all employees to complete various state and internal forms which deal with conflicts of interest. These forms include; secondary employment, conflict of interest, statement of inconsistent and incompatible activities, financial disclosure, and a memo acknowledging business relationships. The conflict-of-interest policies within the CHP exceed those required by law and those of many other state agencies. Given the CHP mission to enforce the law, violations of state or internal conflict-of-interest policies are investigated and, when appropriate, corrective action is taken. For this reason, CHP has embraced the recommendation of BSA to require all employees involved in the procurement process to comply with reporting requirements outlined by the Fair Political Practices Commission (FPPC). This change in CHP procedures will require that appropriate employee bargaining units be noticed and afforded the opportunity to meet and confer. Given this change may have statewide applicability; CHP will work closely with the Department of Personnel Administration and the FPPC in implementing the BSA recommendation.

## **Chapter 3 - THE CHP'S BROAD POLICIES FOR USING ITS KING AIR AIRCRAFT MAY HAVE LED TO SOME IMPRUDENT DECISIONS.**

The CHP is currently in the process of reviewing all policies related to the appropriate use of state resources. Modification and/or revisions will be made, if necessary, to ensure there is a clear understanding that state resources are to be used for business purposes only.

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## Comment

### **CALIFORNIA STATE AUDITOR'S COMMENT ON THE RESPONSE FROM THE BUSINESS, TRANSPORTATION AND HOUSING AGENCY, CALIFORNIA HIGHWAY PATROL**

To provide clarity and perspective, we are commenting on the response to our audit report from the California Highway Patrol (CHP). The number below corresponds to the number we have placed in the margin of the CHP's response.

In the report we acknowledge that the CHP obtained a lifetime warranty on its handguns. We do not question the decision the CHP made to replace the defective sears. However, as we also state in the report, the problems the CHP had with the sears and the slide stops were the same or similar to problems that caused it to reject certain handgun models from purchase consideration following its 1990 handgun evaluation. Therefore, despite the warranty and the CHP's ability to replace the parts, the fact that the handguns the CHP purchased had defects is significant and illustrates the importance of product testing before a significant purchase is made.

①

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*(Agency response provided as text only.)*

State and Consumer Services Agency  
915 Capitol Mall, Suite 200  
Sacramento, CA 95814

January 10, 2008

Ms. Elaine Howle, State Auditor\*  
Bureau of State Audits  
555 Capitol Mall, Suite 300  
Sacramento, CA 95814

Dear Ms. Howle:

Thank you for giving me the opportunity to respond to your audit addressing the Department of General Services (DGS) role in past procurements with the California Highway Patrol (CHP). I understand that the audit concludes that neither CHP nor DGS has always followed the State's procurement requirements. Your audit makes recommendations.

I directed the DGS' new director and management team to review the findings, conclusions, and recommendations of your report. They plan to take appropriate actions to address your recommendations. Please find attached the DGS' response to the recommendations of the report. Additionally, they will report to you on their follow-up actions.

I recognize your recommendations represent an opportunity for the new DGS director to improve on the State's procurement of goods and services. I truly appreciate your support of our efforts.

Most Sincerely,

(Signed by: Michael Seregore for)

Rosario Marin, Secretary  
State and Consumer Services Agency

Attachment

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\* California State Auditor's comments begin on page 81.

**Date:** January 10, 2008

**To:** Rosario Marin, Secretary  
State and Consumer Services Agency  
915 Capitol Mall, Suite 200  
Sacramento, CA 95814

**From:** **Will Bush, Director**  
**Department of General Services**

**Subject:** **RESPONSE TO BUREAU OF STATE AUDITS' REPORT NO. 2007-111**

Thank you for the opportunity to respond to the Bureau of State Audits' (BSA) Report No. 2007-111 which addresses recommendations to the Department of General Services (DGS) resulting from the BSA's audit of the California Highway Patrol's (CHP) purchasing and contracting practices and its use of State resources. The following response addresses each of the recommendations.

#### OVERVIEW OF THE REPORT

The DGS has reviewed the findings, conclusions and recommendations presented in Report No. 2007-111. The DGS will take appropriate actions to address BSA's recommendations.

① In summary, the BSA concludes that neither CHP nor DGS has always followed the State's procurement requirements. For DGS, this conclusion is based on the BSA's review of handgun and patrol car electronic purchases conducted by DGS' Procurement Division (PD) for the CHP in May 2006 and June 2005, respectively. Since major portions of the draft report that was provided for review and comment were redacted, we had difficulty understanding all of the circumstances that led to BSA's conclusion.

Regarding the two purchases, BSA's concern was that the purchase documents submitted by the CHP justifying the purchases were incomplete and should have been returned. At the time of these two purchases, PD buyers developed or worked with departments to obtain additional information to justify a purchase that may not have been included in the department's original purchase request package. That practice has been revised to require that purchase requests submitted without adequate information in support of limited or non-competitive bidding be returned to the originating agency.

The PD has also revised its procedures to require that all sole-brand purchase requests in excess of \$500,000 be reviewed and approved by both the Assistant Deputy Director and Deputy Director of Procurement. These additional approvals supplement approvals already in place to ensure the proper justification of these types of requests. Since early 2006, buyers have been required to submit for approval all sole-brand purchase requests to three high-level members of PD's acquisition management team, i.e., managers of the One Time Acquisitions Unit; Acquisitions and Contracts Section and Acquisitions Branch. This level of review shows that DGS takes very seriously its role in ensuring that competitive procurement processes are used.

In the report's summary, the BSA also expresses concern that DGS has not finalized a settlement agreement with a motorcycle manufacturer, BMW Corporation, regarding buyback provisions within two voided contracts with a BMW motorcycle dealer. In October 2007, DGS contacted the manufacturer and inquired as to its current interest in buying back existing motorcycles. On January 3, 2008, the manufacturer informed DGS that it had no interest in initiating a buyback program.



Rosario Marin

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January 10, 2008

The BSA's report states that the CHP incurred costs of \$11.4 million<sup>1</sup> due to two voided motorcycle contracts which had included a "buyback" option at 60,000 miles. This number includes estimated maintenance costs for 40,000 miles of additional operation and lost buyback options. However, DGS estimates, through the continued operation of the motorcycles eligible for a buyback option, the State avoided spending \$12.8 million during the same period.

As a result of the continued operation of the motorcycles for an additional 40,000 miles, DGS estimates that had the motorcycles been replaced, the State would have spent \$12.8 million as follows: \$8.7 million for the replacement of the buyback motorcycles (481 new @ \$18,034 each); and \$4.1 million for normal maintenance of the new motorcycles during the first 40,000 miles.<sup>2</sup>

②

Each State agency is ultimately responsible and accountable for its own acquisitions. Placing responsibility with departments is a key ingredient in ensuring that the procurement process is streamlined to avoid repetitive, resource intensive, costly and time consuming processes. In administering its oversight responsibility, DGS continually strives to balance the appropriate level of control and oversight to ensure the quality and openness of the State's acquisition process with the need for departments to have effective and efficient methods of procuring goods and services. Obtaining an appropriate balance of control and oversight without unnecessarily restricting the acquisition process is particularly important at a time of limited State fiscal resources.

The DGS and CHP have developed a positive, open and constructive working relationship which should assist in ensuring that future acquisitions are conducted in full compliance with State requirements.

The following response addresses the BSA's recommendations regarding DGS. The DGS appreciates the BSA's in-depth audit and is fully committed to promptly and completely addressing the issues identified in the audit report.

## RECOMMENDATIONS

### CHAPTER 1

#### **RECOMMENDATION # 1:**

***General Services should verify that the bidders lists that state agencies supply it reflect potential bidders that are able to bid according to the requirements specified in the bid.***

<sup>1</sup> Per information provided by BSA and CHP, the estimated amount of \$11.4 million breaks down as follows: \$6.9 million for maintenance costs totaling \$6.6 million (503.5 motorcycles x 40,000 miles @ \$0.33/mile) and refurbishing costs of \$279,116 for 50 high mileage motorcycles; and, \$4.5 million for 481 motorcycles for which the CHP was not able to exercise the buyback option.

<sup>2</sup> The \$4.1 million estimated amount for maintenance costs is calculated as follows: \$3.8 million for normal maintenance within the first 40,000 miles for a new motorcycle (503.5 motorcycles x 40,000 miles @ \$0.19/mile and refurbishing costs of \$279,116 for 50 high mileage motorcycles. The \$0.19/mile figure is based on BMW's estimated operating cost for this model when new, not including gasoline.

Rosario Marin

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January 10, 2008

**DGS RESPONSE # 1:**

The verification of bidder list information by buyers represents existing procedure and best practices at the DGS. By January 15, 2008, the PD will issue instructions to acquisition staff reemphasizing the necessity of verifying that potential bidders listed by State agencies are able to bid according to the requirements specified in the bid.

**RECOMMENDATION # 2:**

*To ensure that state agencies use the sole-brand procurement method appropriately and not in a manner to avoid the stricter justification requirements for noncompetitive procurements, General Services should study the results from its review procedures related to sole-brand purchases. Based on the results of its study, General Services should assess the necessity of incorporating specific information on sole-brand purchases into its existing procurement reporting process to evaluate how frequently and widely the sole-brand purchase method is used.*

**DGS RESPONSE # 2:**

Within the next 60 days, the PD's Purchasing Authority Management Section will develop a survey plan which includes provisions for contacting State departments that have delegated purchasing authority regarding the frequency of their sole-brand procurements. By September 1, 2008, the DGS will determine whether a process should be established for State departments to report their use of sole-brand procurements to the PD.

**RECOMMENDATION # 3:**

*To ensure that state procurements are competitive whenever possible, General Services should revise Section 3555 to require that state agencies address all of the factors listed in that section when submitting justification statements supporting their purchase estimates for noncompetitive or sole-brand procurements. In addition, if General Services believes the law exempting provisions in the State Administrative Manual and the State Contracting Manual related to competitive procurement requires clarification to ensure that the requirements in those publications are regulations with the force and effect of law, General Services should seek legislation making that clarification.*

**DGS RESPONSE # 3:**

The PD has assigned staff to promptly review and determine if a revision to SAM Section 3555 to require agencies to submit specific justification statements and supporting information is necessary to improve the State's purchasing program. As previously stated, at the time of the two purchases, PD buyers developed or worked with departments to obtain additional information to justify a purchase that may not have been included in the department's original purchase request package. That practice has been revised to require that purchase requests submitted without adequate information in support of limited or non-competitive bidding be returned to the originating agency.

Rosario Marin

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January 10, 2008

## CHAPTER 2

**RECOMMENDATION # 1:** *General Services should continue negotiating with BMW Corporation regarding the cancelled contracts for motorcycles to develop a settlement agreement that is in the State's best interests.*

### DGS RESPONSE # 1:

BMW Corporation (BMW Motorrad USA) was not a party to either of the voided contracts that were with a BMW motorcycle dealership. Pursuant to the Invitation for Bid, BMW provided a "written commitment" that it "will complete and fulfill the requirements of the contract/purchase order in the event of a default" on the part of the dealer. Without that written commitment, the contractor's bid would have been rejected. Since the contract was void as a matter of law, it became impossible for the contractor to perform under the voided contract. Demands for reimbursement of the contract were made to both the contractor and BMW. The contractor refused to acquiesce to the demand and another demand was made to BMW because of the contractor's failure to perform.

Settlement was, however, reached with the contractor at the same time discussions were occurring with BMW. In the settlement with the contractor, the contractor agreed to pay the State \$100,000. The settlement released all obligations under the contract with the contractor. Therefore, since under the settlement agreement all parties were released of their obligations under the void contract, there was no further cause of action against BMW as a result of the settlement.

As discussed in the BSA's report, the DGS attempted to continue discussions with BMW regarding the contract's buyback provisions but they were not pursued to resolution in a timely manner. In October 2007, DGS contacted the BMW Corporation and inquired as to BMW's current interest in buying back existing motorcycles. On January 3, 2008, BMW informed DGS that it had no interest in initiating a buyback program.

**RECOMMENDATION # 2:** *General Services should ensure that all of its employees involved in making decisions on contracts complete the necessary transmittals and affidavits and that the agency retains these documents in the procurement files as evidence of conflict-of-interest screening.*

### DGS RESPONSE # 2:

In January 2006, the PD implemented policies that require all project team members to complete conflict of interest affidavits for each individual acquisition. These affidavits are also required to be reviewed and approved by the project's supervisor. Further, if required for the specific purchase request, a conflict of interest transmittal form is to be approved by applicable PD management personnel.

During its review the BSA developed concerns with the lack of a formal method to ensure that all applicable employees complete the conflict of interest forms and that completed forms are maintained within the purchase files. To ensure that conflict of interest affidavits are completed and included in the purchase files, the PD recently added a section to its purchase file index form, which staff is required to complete, to

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document that an affidavit has been completed and included within the purchase file. By January 31, 2008, the PD will revise the file index form to also include a notation related to the completion of the conflict of interest transmittal form.

### ***CONCLUSION***

The DGS is firmly committed to effectively and efficiently overseeing the State's procurement program. As part of its continuing efforts to improve this process, the DGS will take appropriate actions to address the issues presented in the report.

If you need further information or assistance on this issue, please call me at (916) 376-5012.

(Signed by: Will Bush)

Will Bush, Director  
Department of General Services

## Comments

### **CALIFORNIA STATE AUDITOR'S COMMENTS ON THE RESPONSE FROM THE STATE AND CONSUMER SERVICES AGENCY, DEPARTMENT OF GENERAL SERVICES**

To provide clarity and perspective, we are commenting on the response to our audit report from the Department of General Services (General Services). The numbers below correspond to the numbers we have placed in the margin of General Services' response.

In compliance with our statutes, we do not share audit report language specific to one state agency with the others when more than one agency is the focus of our work. We provided General Services with a redacted draft report that included all of the text relevant to the issues related to General Services. In addition, during General Services' draft review period, we responded to each of its inquiries for clarification in a manner consistent with our statutes.

As we note on page 50 of the report, there is a cost to the State for General Services' declaring void the two motorcycle contracts: It did not follow through on a settlement with the motorcycle manufacturer nor were General Services and the California Highway Patrol (CHP) successful in promptly securing another motorcycle contract. We provided CHP's estimate in the report for context only and did not audit the amount. Similarly, we did not audit the dollar estimate General Services provided in its response.

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cc: Members of the Legislature  
Office of the Lieutenant Governor  
Milton Marks Commission on California State  
Government Organization and Economy  
Department of Finance  
Attorney General  
State Controller  
State Treasurer  
Legislative Analyst  
Senate Office of Research  
California Research Bureau  
Capitol Press