

DEPARTMENT OF ENVIRONMENTAL QUALITY
CONTRACT MANAGEMENT



PERFORMANCE AUDIT
ISSUED AUGUST 12, 2009

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LOUISIANA LEGISLATIVE AUDITOR
STEVE J. THERIOT, CPA

August 12, 2009

The Honorable Joel T. Chaisson, II,
President of the Senate
The Honorable Jim Tucker,
Speaker of the House of Representatives

Dear Senator Chaisson and Representative Tucker:

This report provides the results of our performance audit of the Louisiana Department of Environmental Quality's contract management system. The audit was conducted under the provisions of Title 24 of the Louisiana Revised Statutes of 1950, as amended.

The report contains our findings, conclusions, and recommendations. Appendix A contains the response of the Louisiana Department of Environmental Quality. I hope this report will benefit you in your legislative decision-making process.

We would like to express our appreciation to the management and staff of the department for their assistance during this audit.

Sincerely,

Steve J. Theriot, CPA
Legislative Auditor

SJT/sr

LDEQ09

Office of Legislative Auditor

Steve J. Theriot, CPA, Legislative Auditor

Louisiana Department of Environmental Quality, Contract Management

August 2009



Audit Control # 40070031

Executive Summary

We conducted a performance audit of the Louisiana Department of Environmental Quality's (LDEQ's) contract management system at the request of the department. Our audit covered fiscal years 2006 through 2008. The objective of the audit and overall results are summarized below.

Objective: Does LDEQ Manage Contracts According to State Laws and Best Practices?

Results: LDEQ has implemented some components of an effective contract management system, but the department should implement additional controls to further mitigate risks associated with contracting for services. Our audit findings describe areas we identified as deficient and include recommendations for how LDEQ can improve. The results of our audit are as follows:

- Contracts we examined included all provisions required or recommended by authoritative sources.
- LDEQ has implemented some controls over its Request for Proposal and contract approval processes but should implement additional controls to strengthen these processes.
- We identified various reasons for time lags experienced in obtaining contract approvals.
- LDEQ should improve documentation of how and why it selects contractors for noncompetitive contracts.
- LDEQ should improve documentation of how it determines contract amounts.
- LDEQ has implemented some components of an effective contract monitoring system but should make improvements to strengthen the system.

Introduction

Audit Initiation, Objective, and Scope and Methodology

We conducted this audit in response to a request from the Louisiana Department of Environmental Quality (LDEQ). The department asked that we conduct a performance audit of its contracts function located within the Office of Management and Finance (OMF). After conducting a risk assessment, we determined that we would focus the audit on LDEQ's contract management system. We carried out the audit under the provisions of Title 24 of the Louisiana Revised Statutes of 1950, as amended. The objective of the audit was to answer the following question:

Does LDEQ manage contracts according to state laws and best practices?

In conducting the audit, we followed the generally accepted government auditing standards promulgated by the United States Government Accountability Office (GAO). These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. The period covered by the audit was fiscal years 2006 through 2008.

To address the audit objective, we performed the following procedures:

- Researched state laws, rules, and regulations relating to contract management
- Identified LDEQ contracts executed during fiscal years 2006 through 2008 using the state's Business Objects database and LDEQ's internal database and analyzed the data
- Interviewed LDEQ management and staff and examined applicable documents and contract files to determine the department's contract functions
- Researched criteria and best practices relating to contract management
- Selected and examined a statistically valid random sample of contracts executed during fiscal years 2006 through 2008 to determine if they include critical provisions required or recommended by authoritative sources
- Analyzed the statistically valid random sample of contracts to determine how long it took to obtain approvals of departmental staff and management, other state agencies, and the contractors and identified the reasons for any time lags experienced
- Interviewed LDEQ staff and examined available documentation concerning selection of contractors for noncompetitive contracts

- Interviewed Office of Contractual Review management within the Division of Administration regarding contract management issues
- Examined the statistically valid random sample of contracts to determine if LDEQ monitored them according to state law and best practices

Overview of the Louisiana Department of Environmental Quality

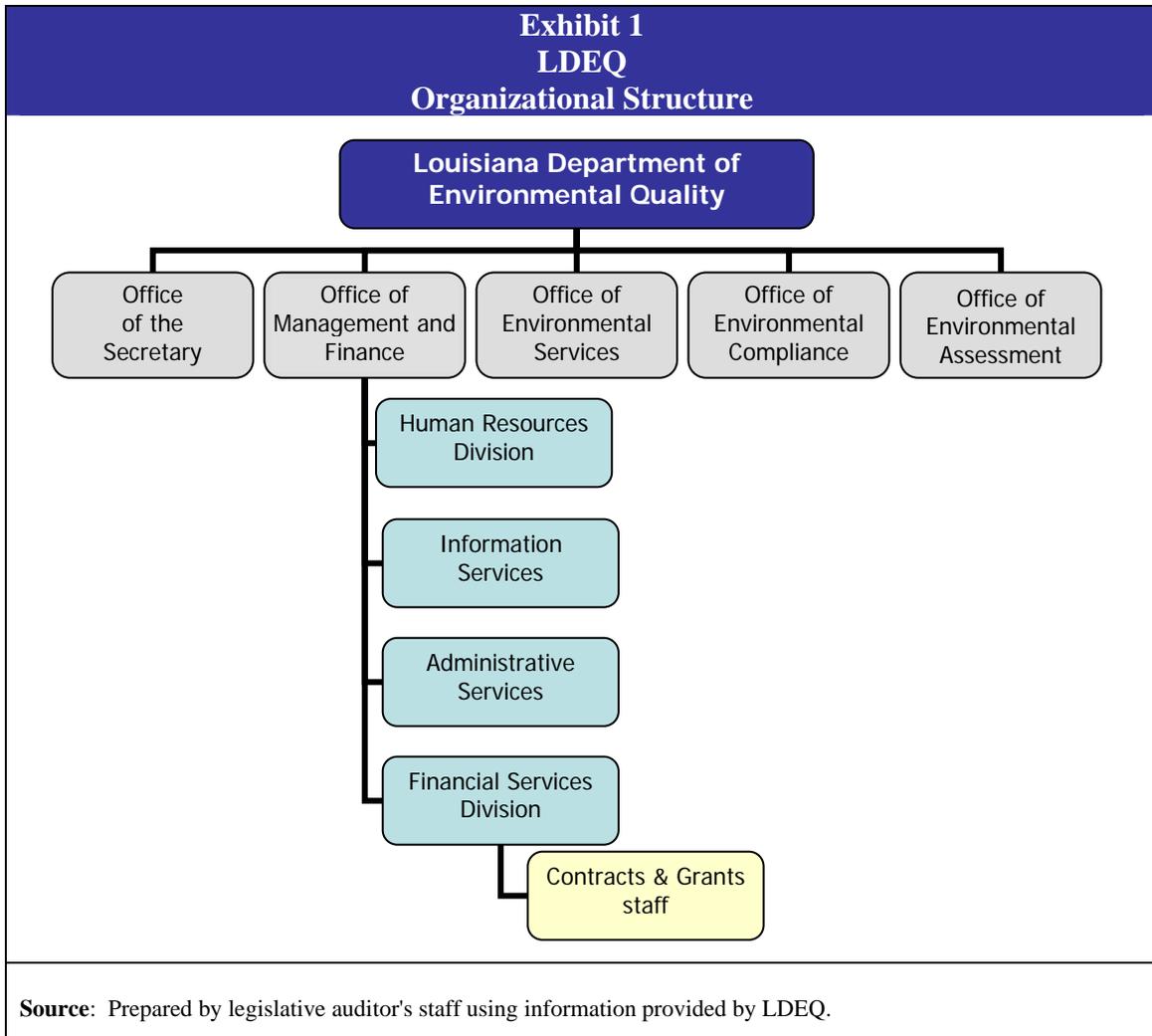
Legal Authority. Louisiana Revised Statute (R.S.) 30:2011(A) establishes LDEQ. State laws give LDEQ powers and duties over the following areas:

- Air control
- Water control
- Nuclear energy and radiation control
- Solid waste management and resource recovery
- Hazardous waste control
- Inactive and abandoned hazardous waste sites
- Hazardous substance remedial action including Brownsfields clean-up

Organizational Structure. LDEQ accomplishes its duties through five main offices. These offices are as follows:

1. Office of the Secretary (OS)
2. Office of Management and Finance (OMF)
3. Office of Environmental Services (OES)
4. Office of Environmental Compliance (OEC)
5. Office of Environmental Assessment (OEA)

OMF houses the Financial Services Division (FSD). Contracts & Grants staff, located within FSD, manage the administrative aspects of LDEQ contracts. Exhibit 1 on the following page shows the organizational structure of LDEQ with a focus on OMF.



Overview of LDEQ’s Contracts

Number and Dollar Amounts of Contracts. The number and dollar amounts of contracts LDEQ enters into varies from year to year. In fiscal year 2008, LDEQ entered into 78 contracts worth almost \$9 million. Exhibit 2 on the following page summarizes the number and dollar amounts of LDEQ contracts for fiscal years 2006 through 2008 for each LDEQ office.

Exhibit 2 LDEQ Number and Amounts of Contracts Per Office Per Year Fiscal Years 2006 Through 2008						
	2006		2007		2008	
LDEQ Office	Number of Contracts	Contract Amount	Number of Contracts	Contract Amount	Number of Contracts	Contract Amount
OEA	32	\$3,770,955	33	\$5,400,248	42	\$5,741,393
OEC	5	\$34,114	3	\$303,750	3	\$122,999
OES	2	\$57,295	4	\$308,750	4	\$559,000
OMF	8	\$346,650	8	\$5,806,215	19	\$2,218,984
OS	5	\$308,500	5	\$772,780	10	\$331,875
Total	52	\$4,517,514	53	\$12,591,743	78	\$8,974,251
Source: Prepared by legislative auditor's staff using information provided by Division of Administration and LDEQ.						

Types of Contracts. LDEQ entered into various types of contractual agreements during the audit period. Exhibit 3 summarizes the number of each type of contract LDEQ entered into during fiscal years 2006 through 2008.

Exhibit 3 Types and Number of LDEQ Contracts Fiscal Years 2006 Through 2008		
Contract Type	Number of Contracts	Percentage of Total
Consulting Services Contracts	101	55
Cooperative (Endeavor) Agreements	42	23
Governmental (Intergovernmental) Contracts	1	1
Inter-Agency Agreements	21	11
Miscellaneous Contracts*	7	4
Personal Services Contracts	3	2
Professional Services Contracts	8	4
Total	183	100%
*Include letter and emergency contracts. Source: Prepared by legislative auditor's staff using information from Business Objects and data provided by LDEQ staff.		

Overview of LDEQ's Contracting System

Contracting Functions. LDEQ's contracting system includes four general functions. These functions are summarized below. Appendix B contains flowcharts that detail the major functions of LDEQ's contracting system.

1. **Contractor Selection** - Depending on the type and amount of a contract, LDEQ staff select the contractor through either noncompetitive or competitive procurement. LDEQ uses the Request for Proposal (RFP) process for competitively procured contracts. During the RFP process, LDEQ solicits proposals from contractors, which its staff then evaluate and score, with the highest scoring proposal winning the contract.
2. **Contract Approval** - Once LDEQ staff have selected a contractor, they prepare a proposed contract and route it to the appropriate departmental staff and management, other state agencies, and the contractor for their review and approval.
3. **Contract Amendments** - During the course of a contract, LDEQ staff may request to extend the term of the contract, increase the contract amount, and/or change the contract's scope of work.
4. **Contract Monitoring** - Contract monitoring begins after the approval of a contract. The purpose of monitoring is to ensure that contractors comply with contract terms and that performance expectations are achieved. Monitoring processes include verifying invoices, approving payments, accepting or rejecting contract deliverables, and preparing post-contract performance evaluations of the contractors.

Staff's Roles. Various LDEQ staff play a role in the department's contracting functions. An overview of these staff and their roles is found in the following paragraphs, and Exhibit 4 on the next page provides a detailed list of the staff's duties.

1. **Contracts & Grants Staff** - Contracts & Grants staff are located within FSD and are supervised by FSD staff. Before April 2009, the staff had their own division, which was organizationally located within OMF. The division's administrator retired in December 2008, and in April 2009, LDEQ abolished the division and placed the staff under FSD supervision. The staff are organized into the following two groups:
 - a. **Contract Managers** - Generally, contract managers oversee the administrative aspects of contract management. Contract managers verify contract invoices and work with project managers during the RFP process. Contract managers also play a role in the contract and contract amendment approval processes.

- b. **Contract Reviewers** - Contract reviewers oversee the contract approval and contract amendment processes and play a role in the RFP process. They also oversee grant processing.
- 2. **FSD** - FSD staff perform budget reviews of proposed contracts, review companies' financial statements during the RFP process, and pay invoices.
- 3. **Project Managers** - Project managers are located within various offices and programs. They oversee the technical aspects of contracts. Project managers decide whether contracts are necessary and initiate the contracting process.

Exhibit 4 LDEQ Staff's Roles in Contracting Functions	
Staff Group	Roles
Contract Managers	<ul style="list-style-type: none"> • Work with project managers to compile new contracts and contract amendment request documents including scopes of services and other contract-specific information • Act as point of contact for administrative matters related to executed contracts • Review and verify contract invoices to ensure completeness (including all necessary documentation), accuracy, and compliance with contract terms; ensure LDEQ project managers approve invoices • Ensure that project managers verify and approve monitoring reports and other deliverables • Assist project managers in writing RFPs and compiling RFP request documents • Oversee evaluation of proposals and selection of contractors during RFP process • Ensure that project managers complete performance evaluations of contractors after contract completion

<p>Contract Reviewers</p>	<ul style="list-style-type: none"> • Oversee new contracts and contract amendment approval processes; route contracts and contract amendments to appropriate departmental staff and management, state agencies, and contractors for approvals and signatures • Enter contract data into state’s Business Objects database and internal contract database and spreadsheets • Write contracts by placing contract-specific information including scope of services into contract templates • Review contract content for completeness • Distribute copies of signed contracts to appropriate parties
<p>Financial Services Division</p>	<ul style="list-style-type: none"> • Verify that funding for proposed contracts is in LDEQ budget • Receive invoices and forward to contract managers for verification • Pay invoices once work is verified and approved by appropriate parties (i.e., contract managers and project managers) • Review financial statements of companies during RFP process
<p>Project Managers</p>	<ul style="list-style-type: none"> • Serve as point of contact for technical matters related to contracts • Prepare contract request forms • Prepare technical materials to be included in contracts such as scopes of services, goals and objectives, deliverables, and monitoring plans • Oversee technical aspects of signed contracts • Participate in scoring proposals during RFP process • Verify and approve contractor deliverables (i.e., that work was done properly per contract requirements) • Prepare performance evaluations after contract completion
<p>Source: Prepared by legislative auditor’s staff using information provided by LDEQ staff.</p>	

Does LDEQ Manage Contracts According to State Laws and Best Practices?

LDEQ has implemented some components of an effective contract management system, but the department should implement additional controls to further mitigate risks associated with contracting for services. Management should strengthen its RFP, contract and contract amendment approval processes; documentation of the selection of contractors for noncompetitive contracts; documentation of how it determines contract amounts; and contract monitoring function. The following sections describe in detail the areas LDEQ should improve and include recommendations to assist the department in improving its contract management system.

Contracts We Examined Included All Provisions Required or Recommended by Authoritative Sources

We found that 31 of 32¹ (96.9%) contracts we examined include all applicable contract provisions required or recommended by authoritative sources. The 12 provisions used in our analysis are either required or recommended by various sources including state law, the Louisiana Office of Contractual Review (OCR), and the National State Auditors Association (NSAA). The only contract that did not include all applicable provisions lacked only one of the provisions. Exhibit 5 on the following page contains a list of the 12 required or recommended provisions and the results of our analysis. The exception is highlighted in green.

LDEQ's Contracts & Grants staff use a contract template when writing contracts, which helps ensure that each contract contains all necessary information. In addition, two Contracts & Grants staff conduct separate reviews of each contract to ensure that all contracts contain all necessary provisions before they send them for final approval. Including these provisions in contracts helps LDEQ to effectively monitor contractors' performance and protect the interests of the department and state.

¹ We selected a sample of 34 contracts and requested the contract reviewers' files to examine. The contract reviewers could not locate two of the files, thus we were only able to examine 32 files.

Exhibit 5 LDEQ Provisions Included and Not Included in Contracts Fiscal Years 2006 Through 2008		
Provisions	Number and Percent of Contracts that Include Provision	
	Number	Percent
1. Contractor and contact information	32 of 32	100%
2. Beginning and ending dates of contract	32 of 32	100%
3. Scope of work/services	32 of 32	100%
4. Description of reports or other deliverables and due dates	32 of 32	100%
5. Methods of payment and payment schedules, including maximum amount of compensation	32 of 32	100%
6. Language that ties payment to the acceptance of deliverables or final products	32 of 32	100%
7. Contract monitoring plan*	30 of 31	96.77%
8. Contract termination provision(s)	32 of 32	100%
9. If a competitive contract, incorporation of RFP within contract*	3 of 3	100%
10. Requirement for maintaining adequate accounting records that comply with applicable federal and state laws	32 of 32	100%
11. Audit and inspection guidelines	32 of 32	100%
12. Appropriate signatures, approvals, acknowledgement, or witnesses	32 of 32	100%
*Criterion 7 (contract monitoring plan) is not applicable to one of the 32 contracts, and criterion 9 (RFP for competitive contracts) is not applicable to 29 of the 32 contracts. Source: Legislative audit staff's analysis of contracts provided by LDEQ.		

LDEQ Has Implemented Some Controls Over Its RFP and Contract Approval Processes but Should Implement Additional Controls to Strengthen These Processes

We assessed LDEQ’s management controls over its RFP and contract approval processes, including contract amendments. Our assessment identified controls the department has implemented and control deficiencies the department should address. By implementing all recommended management controls over its programs and operations, LDEQ can provide reasonable assurance that it achieves efficient and effective operations and program results as well as compliance with applicable laws and regulations.

Management controls LDEQ has implemented are as follows:

Contracts & Grants staff use forms and checklists as controls, guidance to project managers, and documentation of the RFP and approval processes. Project managers include various forms when submitting proposed RFPs, contracts, and amendments to the Contracts & Grants staff. The forms provide guidance to the project managers and document that proposed RFPs, contracts, and amendments comply with

state laws and meet other requirements. For example, one of the required forms is the Contract Request Expenditure Form. This form lists the contract budget by year and is used to ensure that appropriate funding exists for all proposed contract years.

Contracts & Grants staff also use internal checklists to guide them through the RFP and approval processes. The checklists enable them to track the RFP process and proposed contracts and amendments throughout the approval process. For example, the Contract Approval Process Checklist lists all appropriate department staff and management, other state agencies and the contractors who must approve contracts. The staff enter the dates they send contracts to each party for review and approval. They then enter the dates they receive the documents back from each party. Contracts & Grants staff also have an RFP Procedures Checklist and an Amendment Approval Process Checklist to help guide them through the processes.

Contracts & Grants staff document that appropriate LDEQ staff and management review and approve proposed RFPs, contracts, and amendments. Appropriate LDEQ staff and management must sign the Request for RFP and Request for Contract/Amendment forms after they review and approve proposed RFPs, contracts, and amendments. They must also sign any accompanying documentation. The Contracts & Grants staff keep these documents in their contract files.

Multiple Contracts & Grants staff review proposed contracts to ensure that they contain all necessary provisions. Contract reviewers within the Contracts & Grants staff review the content of proposed contracts before they send the documents to the appropriate parties for approval. A contract reviewer told us that they pay particular attention to scope of services provisions. In addition, the contract reviewers conduct two separate reviews of the final documents before they send them to the department's undersecretary or OCR for final approval.

Contracts & Grants staff document the RFP process used to select contractors from approval of RFPs to awarding of contracts. The staff keep pertinent information relating to the RFP process in their files. These documents include RFP approval documents, RFP advertisements, and evaluations of proposals. The evaluations include LDEQ's score sheets for each proposal and final ranking reports. The staff retain the information in an RFP Master File.

Control deficiencies LDEQ should address are as follows:

Supervisors do not formally review the Contract & Grants staff's work and files on a regular basis. No supervisor formally reviews the contract reviewers' and contract managers' work or files. Contract reviewers told us that they instead rely on the checklists they use to catch errors. They also said that before the last Contracts & Grants administrator retired in December 2008, she would informally review all contracts.

According to the contract managers' supervisor, her duties include managing some general contracts, assigning contracts to the managers, and handling personnel issues such as time sheets. She does not review the staff's work. The supervisor also has no involvement in the RFP process, which means that since the Contracts & Grants administrator retired, no one has overseen the contract managers' work in this area.

It is important for LDEQ to have someone formally review the Contracts & Grants staff's work and files on a regular basis. According to the GAO, an organization should have mechanisms in place to monitor and review operations and programs. By doing so, LDEQ management would help ensure that the staff's work is adequate and that files contain all necessary documentation.

The Contracts & Grants staff's filing system is inconsistent and confusing, and they could not locate the files for contracts a former employee oversaw. We had difficulty determining the types of files staff kept, who kept what files, where the files were located, and what types of documents the files were supposed to contain. The contract reviewers oversee the contract and contract amendment approval files. In addition, each of the four contract managers keeps her own files and has her own filing system for the contracts she manages. Each contract manager also maintains a file for the RFPs she oversees, but the contract reviewers also maintain a Master RFP File.

In addition, Contracts & Grants staff could not locate three files we requested, which the former Contracts & Grants administrator oversaw. For one of these files, the contract managers said that the contract reviewers should know where the file was located. The contract reviewers, however, said that the contract managers should know where the file was located. We also noted that on multiple occasions, the contract managers had difficulty locating files for recently expired contracts. These examples occurred because the staff are not required to maintain a uniform filing system. According to the GAO, all contract documentation and files should be properly managed and maintained, and the accountability for their custody should be assigned.

LDEQ lacks a comprehensive set of formal policies and procedures covering the RFP, contract, and contract amendment approval processes. We had a difficult time determining the various processes LDEQ uses because Contracts & Grants staff could not provide us with comprehensive documentation describing the processes. We pieced together the processes from multiple sources including interviews with staff and examination of various documents and files. No one could provide us with all necessary information.

We did note that the Contracts & Grants staff have created some informal internal procedures and checklists to guide them through the processes. Each contract manager has also created a list of her duties. However, these documents do not cover all of the processes, and the staff have not compiled them into one formal document. Creating and implementing policies and procedures is very important. According to the GAO, appropriate internal control activities include policies and procedures for an

organization's activities and programs. Policies and procedures provide a continuance of a program or activity when key staff turnover occurs.

Recommendation 1: LDEQ management should develop and implement a system to formally review the Contracts & Grants staff's work and files on a regular basis.

Summary of Management's Response: LDEQ concurs with this recommendation.

Recommendation 2: LDEQ management should develop a consistent filing system for the Contracts & Grants staff, including the archiving of files for expired contracts.

Summary of Management's Response: LDEQ concurs with this recommendation.

Recommendation 3: LDEQ management should develop and implement a comprehensive set of formal policies and procedures that accomplish the following:

- Detail the complete RFP, contract approval, and contract amendment approval processes to be used
- Delineate all LDEQ staffs' specific responsibilities throughout these processes, especially the Contract & Grants staff's responsibilities
- Define other specific management controls to be used, including supervisory review of staff's work and files
- Specify what documentation staff should retain, where staff are to house files for active and expired contracts, and which staff should oversee those files.

Summary of Management's Response: LDEQ concurs with this recommendation.

We Identified Various Reasons for Time Lags Experienced in Obtaining Contract Approvals

Depending on the type and amount of a contract and the services to be contracted, up to 10 individuals and entities must review and approve LDEQ contracts. These individuals and entities are LDEQ staff and management, the contractors, and other state offices. Appendix B contains flowcharts of LDEQ's RFP, contract, and contract amendment approval processes.

We analyzed the files for a sample of 32² contracts to determine how long it took each contract to be reviewed and approved by the appropriate individuals and entities. We determined that it took an average of 91.9 days,³ or approximately three months, for the contracts to be reviewed and approved. This calculation includes three competitive contracts that also went through the RFP process. It took an average of 175 days, or approximately 5.8 months, for the three competitive contracts to go through the RFP process and the contract review and approval process. Ten of the contracts took over 100 days (i.e., over three months) to obtain final approval. It is important for LDEQ contracts to be approved as quickly as possible so that contracted services are started and completed in a timely manner.

Reasons for time lags in obtaining final contract approval. We identified various reasons for time lags experienced in obtaining final approval of the contracts in our sample. The reasons are summarized in the following paragraphs.

- Contractors did not sign contracts in a timely manner.* For six (18.8%) of the 32 contracts, the contractors took over 40 days to sign the contracts. Exhibit 6 lists these contract numbers and the number of days it took the contractors to sign the contracts. Overall, the time it took the contractors to sign the contracts averaged 55.1% of the total time it took to obtain final approval. As can be seen from the exhibit, one contractor’s approval time comprised 67.0% of the total review and approval time for the contract.

Exhibit 6 LDEQ Contractor Approvals Over 40 Days			
Contract Number	Number of Days for Contractor to Sign Contract	Total Number of Days for Review and Final Approval of Contract	Percentage of Total Approval Time Attributable to Contractor Approval
638138	80	154	51.9
641440	42	102	41.2
653440	183	273	67.0
659129	90	136	66.2
659772	163	216	75.4
664261	48	218	22.0
Total	606	1,099	55.1
Source: Legislative audit staff’s analysis of data gathered from LDEQ contract files.			

² Our original sample was 34 contracts, but contract reviewers could not locate two of the contract files.

³ Figures represent calendar days, which include weekends and holidays.

- *OCR approvals took longer than average.* In our analysis, we determined that it took an average of 30 days to obtain OCR approval for the 32 contracts we examined.⁴ For nine of the contracts, it took over 30 days to obtain OCR approval. We examined the files for these nine contracts and found the following:
 - For five (55.5%) of the contracts, the approval time exceeded 30 days because OCR staff requested additional information from LDEQ or modifications to the contracts.
 - For two (22.2 %) of the contracts, we did not locate any clear documentation indicating why the OCR approval time exceeded 30 days. We found no evidence that OCR requested additional information or modifications to these contracts.
 - For two (22.2%) of the contracts, the approval time exceeded 30 days because of time lags that occurred between the dates OCR approved the contracts and the dates LDEQ's contract staff received the approved contracts from OCR. For example, OCR approved one of these contracts on January 24, 2008, but LDEQ's timestamp on the approval letter was not until February 7, 2008.

We discussed OCR approval times with OCR management. OCR management said that its performance indicator for contract reviews is three weeks and that if a review takes longer than three weeks, it usually means there were issues with the contract. The fact that the average OCR approval time in our analysis was over three weeks indicates that there could be even greater time lags than we identified.

In addition, we identified four additional contracts⁵ for which technical staff did not initiate the RFP process early enough to ensure that new contracts were in place before old contracts expired. In these cases, staff did not submit RFP request documents to Contracts & Grants staff early enough to ensure that new contracts were in place when needed. Therefore, the staff entered into interim contracts to ensure that services were not interrupted. For example, in one case, a new contract had to be in place by September 1, 2007. However, the technical staff did not submit the RFP request documents to Contracts & Grants staff until May 3, 2007, which did not allow enough time to award the contract through an RFP and obtain final contract approval. Ultimately, it is up to the technical staff to initiate the RFP, contract, and contract amendment processes.

Optimal time for contract reviews and approvals. According to OCR management, the optimal time for contract review and approval will vary by agency because agencies' procedures and the types of services they contract vary. OCR also said that agency management should examine its internal procedures and communicate to its staff what it determines are adequate review and approval times. In addition, OCR said that agency management should ensure that its staff are aware of and follow the agency's procedures.

⁴ Approval times are based on the dates LDEQ staff sent contracts to OCR to be approved and the dates LDEQ staff received the approved contracts back from OCR.

⁵ These four contracts are in addition to the sample of 32 contracts we examined. We identified them through other audit procedures.

Recommendation 4: LDEQ management should examine the department’s RFP and contract approval processes to determine if they need to be revised or adjusted. As a part of this examination, management should discuss contract approval times with OCR management. Management should also determine a targeted time frame for each process and develop performance indicators to reflect those targets. Management should then direct its staff to document instances when contracts take longer to be approved than the time frame reflected in the performance indicators and make any necessary adjustments.

Summary of Management’s Response: LDEQ concurs with this recommendation.

Recommendation 5: LDEQ management should research whether other methods to streamline the RFP and contract approval processes, such as obtaining electronic approvals, are available and practical to implement.

Summary of Management’s Response: LDEQ concurs with this recommendation.

LDEQ Should Improve Documentation of How and Why It Selects Contractors for Noncompetitive Contracts

During fiscal years 2006 through 2008, LDEQ procured a majority of its contracts through noncompetitive means. However, staff are not required to document how or why they chose the contractors they selected for noncompetitive contracts. In addition, the department does not have sufficient department-wide policies and procedures governing how or why its staff select contractors for noncompetitive contracts. It is important for LDEQ to document this information to help ensure that the most qualified contractors are selected.

LDEQ procured most contracts noncompetitively. Of the 183 contracts that LDEQ entered into during fiscal years 2006 through 2008, 162 (88.5%) were noncompetitive contracts. In general, LDEQ procures the following types of contracts through noncompetitive selection:

- Agency and inter-agency agreements
- Cooperative (endeavor) agreements
- Inter-governmental agreements
- Emergency contracts
- Letter contracts (i.e., contracts under \$2,000)
- Consulting services contracts under \$50,000

- Under special circumstances, sole source consulting agreements greater than \$50,000
- Professional services contracts
- Personal services contracts

Each LDEQ office or program decides how it selects contractors for noncompetitive contracts. We requested LDEQ's policies and procedures for selecting contractors for noncompetitive contracts. The LDEQ undersecretary informed us that the department does not have formal policies and procedures in this area and that it is up to each office to decide how it chooses contractors. Since the department has no such policies and procedures, we interviewed staff, including the division administrators, from nine offices and/or programs to determine how they select contractors and document their selections.

The individuals we interviewed said that how they select contractors varies by contract and/or depends on the types of services for which they are contracting. Most said that they select contractors based on individual contractors' prior experience or LDEQ staff's knowledge that certain contractors are experts in particular fields. Individuals from two offices/programs said that they may get informal bids from prospective contractors. Individuals from four offices/programs said that because of the technical nature of their work, they may have either a limited number of contractors to choose from or only one contractor with the ability to perform the necessary services and availability to perform the work.

LDEQ should improve its documentation justifying the selection of contractors. LDEQ requires its staff to complete the Noncompetitive Selection Form when submitting noncompetitive contracts for approval. We examined this form as a part of our audit procedures. The form asks if the selected contractor has the capability and/or work experience, facilities and equipment, and adequately trained key personnel to perform the contracted work. The form does not ask why the contractor was the best or only contractor able to perform the contracted services. It also does not ask if or why other contractors were considered and rejected. Including this additional information would provide clear justification for why selected contractors were the most qualified.

Other than this form, LDEQ has no formal guidance for its staff to follow when documenting the selection process used for noncompetitive contracts. Staff we interviewed from two offices/programs said that they include a brief justification for their selections in their Proposed Contract Request forms. Individuals from the other seven offices/programs said that they do not document how or why they choose contractors for noncompetitive contracts. There is no mechanism in place to ensure that all staff consistently document their justification for each contractor selection.

State laws and best practices provide guidance regarding the selection of contractors for noncompetitive contracts. State law (R.S. 39:1499) requires agencies to negotiate with the highest qualified persons for contracts for professional, personal, or those

consulting services for less than \$50,000. The law requires agencies to choose contractors using the following criteria (in order of importance):

- Professional or technical competence
- Technical merits
- Compensation for which the services are to be rendered (including fees)

In addition, according to OCR management, a best practice for contractor selection for any contract is to document the selection process used, including why selected contractors were chosen over other prospective contractors. OCR cited the Louisiana Department of Natural Resources, which uses a specific form for certain noncompetitive contracts. We examined this form and found that, in part, it documents why the selected contractor is the most desirable contractor in the contractor's field or why competition is not feasible.

Because LDEQ does not have sufficient department-wide policies and procedures governing the selection of contractors for noncompetitive contracts, its staff do not have adequate formal guidance in this area. Not having complete records justifying how or why contractors were chosen can have the following effects:

- The department has no formal record of how or why previous agency staff chose certain contractors.
- Management does know how or why its staff chose certain contractors.
- Management cannot ensure that its staff contracted with the most qualified contractors.
- Management cannot justify to state officials, the public, or others why its staff selected certain contractors.

Recommendation 6: LDEQ management should improve the guidance it has given staff on the selection of contractors for noncompetitive contracts by developing and implementing formal policies and procedures in this area. The policies and procedures should specify the process to be used when selecting contractors. The policies and procedures should also include a requirement for staff to maintain records documenting the following information:

- How staff chose the selected contractor
- Why the selected contractor was the best or only contractor able to perform the contract services
- Whether other potential contractors were considered and why they were rejected

Summary of Management's Response: LDEQ concurs with this recommendation.

LDEQ Should Improve Documentation of How It Determines Contract Amounts

During our interviews with LDEQ staff concerning noncompetitive contracts, we learned that staff are not required to formally document how they determine the dollar amounts of certain contracts. Our examination of LDEQ policies and procedures noted no policies and procedures relating to this issue. According to staff in three offices/programs, they have sometimes priced contracts to avoid OCR's review and the RFP process. Avoiding the OCR review can result in executing contracts that lack critical provisions designed to protect the department and state. Avoiding the RFP process can result in not contracting with the most qualified contractors.

State laws and regulations regarding the RFP process and OCR approval. State laws and regulations (R.S. 39:1508 and LA-ADC 34:106) allow individual state agencies within the executive branch of government, rather than OCR, to approve professional, personal, and consulting contracts worth \$20,000 or less. Contracts above that amount must be reviewed and approved by OCR. In addition, state law [R.S. 39:1496(B)] requires agencies to award consulting contracts worth \$50,000 or more using the RFP process. Agencies are not allowed to artificially divide contracts to avoid using the RFP process. These controls were designed to mitigate risks associated with contracting services.

According to LDEQ staff, they have sometimes priced contracts to avoid going through the OCR review and RFP process. Specifically, LDEQ staff said that they have sometimes priced contracts at \$20,000 or less to avoid OCR's approval process. LDEQ staff also said that they have sometimes priced contracts below \$50,000 to avoid the RFP process. The reasons they cited for strategically pricing contracts are as follows:

1. *To speed up procurement times.* Pricing contracts at \$20,000 or less, thereby avoiding the OCR approval process, allows them to issue contracts faster. Staff said that they must meet certain EPA deadlines, and the OCR review takes too long.
2. *To create a negotiating tool.* For consulting contracts, they can negotiate lower prices with contractors by pricing the contracts under \$50,000. Staff said that they have sometimes informed potential contractors that if they did not lower their prices, they will have to go through the RFP process and as a result, the contractors may not be awarded the contracts.
3. *To avoid interruption of services.* They issue interim or temporary consulting contracts worth less than \$50,000 to avoid an interruption of services. Staff said that they have issued smaller interim contracts, which they refer to as "stop-gap" contracts, to temporarily get work done until permanent contracts could go through the RFP and contract approval processes.

LDEQ staff have not always initiated the RFP and contract approval processes in a timely manner. The staff provided us with four examples of interim (stop-gap) contracts worth \$50,000 or less that they issued while permanent contracts went through the RFP process and OCR review. According to the staff, for two of these contracts there was a delay in the RFP process, so they had no option but to enter into interim contracts. We examined the related files for all four contracts and found, however, that in each case, the project manager did not begin the RFP process early enough to ensure that new contracts were in place before the old contracts expired. Therefore, the staff did not issue the interim contracts because of problems with the RFP process or OCR review. Rather, they issued them to avoid an interruption of services caused by technical staff not initiating the RFP process in a timely manner.

In our review of the state's Business Objects data detailing LDEQ contracts, we noted that of the 183 contracts LDEQ issued during fiscal years 2006 through 2008, 25 were for amounts between \$49,000 and \$49,999. Another 19 contracts were for amounts between \$19,000 and \$20,000. If staff priced any of these contracts to avoid the RFP process and OCR review, they may have circumvented the intent of the state laws and regulations. Because LDEQ does not require staff to document how they determine contract amounts, management has no way of knowing whether they priced contracts to avoid the important controls established in state law to mitigate risks associated with contracting services.

Recommendation 7: LDEQ management should require staff to document how they determined the price for each contract.

Summary of Management's Response: LDEQ concurs with this recommendation.

Recommendation 8: LDEQ management should implement internal controls to ensure that staff do not artificially divide contracts or price contracts to avoid the RFP process or OCR review.

Summary of Management's Response: LDEQ concurs with this recommendation.

Recommendation 9: LDEQ management should require technical staff to initiate the RFP process and/or OCR review in a timely manner to avoid unnecessarily entering into interim or temporary contracts.

Summary of Management's Response: LDEQ concurs with this recommendation.

LDEQ Has Implemented Some Components of an Effective Contract Monitoring System but Should Make Improvements to Strengthen the System

LDEQ has implemented several components of an effective contract monitoring system as recommended by NSAA and GAO. However, we identified some deficiencies in LDEQ's contract monitoring functions, which management should address. Implementing a fully effective contract monitoring system would help LDEQ mitigate risks associated with contracting for services.

We examined 33⁶ contract files and identified the following areas in which LDEQ met NSAA's and GAO's recommended monitoring guidelines.

The contracts clearly state measurable expectations that can be used to evaluate contractors' performance. All 33 (100%) of the contracts we examined contain performance standards and outcomes that the contractors were required to meet. This practice meets NSAA contract monitoring guidelines stating that agencies should clearly define performance standards and measurable outcomes for contractors.

LDEQ identified staff responsible for monitoring the contracts. The department is to assign a project manager to monitor the technical aspects and a contract manager to monitor the administrative aspects of each contract. LDEQ clearly identified staff responsible for monitoring each of the 33 (100%) contracts we examined. The contract request documents clearly identify the project and contract managers assigned to the contracts. This practice complies with NSAA contract monitoring guidelines stating that an agency should identify the staff who will be responsible for monitoring contract performance.

In most cases, evidence was present in the contract files showing that contract managers tracked budgets and compared invoices to contract terms. In 31 (93.9%) of the 33 files we examined, we found documentation⁷ showing that the contract managers tracked budgets and compared invoices to contract terms. Many of the contract managers' files included charts that tracked the budgets, showing each invoice amount deducted from the balance of the contracts and amounts still available for future invoices. This practice is in agreement with NSAA monitoring guidelines, which state that an agency should track budgets and compare invoices and charges to contract terms and conditions.

In most cases, LDEQ evaluated contractors' performance after contract completion and retained the performance evaluations. Twenty-three of the contracts we selected for examination had expired. The others were still ongoing. Project managers are supposed to evaluate contractors' performance after contract completion, using a standardized form. In addition, Contracts & Grants staff are supposed to retain the completed evaluations in their files. The files for 21 (91.3%) of the 23 expired contracts contained completed evaluation forms. This

⁶ We selected a sample of 34 contracts and requested the contract managers' files to examine. The contract managers could not locate one of the files, thus we were only able to examine 33 files.

⁷ We did not compare each invoice to contract terms or check mathematical calculations to verify that each payment amount was correct.

practice is in agreement with NSAA monitoring guidelines. Evaluating contractors' overall performance after contract completion aids LDEQ staff in making decisions when awarding future contracts.

The files for the other two contracts did not contain contractor evaluations. For one of these contracts, the contract manager said that she did not know why the files did not contain an evaluation. For the other contract, the contract manager said that the evaluation had not been submitted by the new project manager.

We also identified three deficiencies that LDEQ should address to strengthen its contract monitoring system. These deficiencies are as follows:

Some contract managers' files were incomplete. Twenty-six of the 33 contracts we examined required monitoring reports or other reporting deliverables. The contract managers' files for these 26 contracts did not contain all required monitoring documents. Six (23.1%) files did not contain reporting deliverables, such as monitoring reports. Two (8.7%) other files did not contain completed performance evaluations. According to NSAA, it is important to ensure that all deliverables are received on time and that organizations keep documentation of all monitoring activities.

As discussed earlier in this report, no one formally or regularly reviews the Contract & Grants staff's files to ensure that they contain all necessary documents. If LDEQ's staff do not retain all pertinent monitoring documentation, management cannot be sure that the staff adequately perform their monitoring duties. In addition, the department cannot ensure that its contractors meet all contract terms.

Contract managers used inconsistent methods to show technical staff's approval of invoices and deliverables, and which technical staff approved invoices and deliverables varied. Contract managers are supposed to document that project managers and program management have approved contract invoices and deliverables. Our examination of the files for the 33 contracts showed that how the contract managers documented these approvals varied. Three of the four contract managers intermittently used either approval stamps on the invoices or routing slips to document the approvals of the technical staff. In some cases, the project managers and division administrator signed the documents, while in other cases only the project managers signed the documents.

In contrast, the fourth contract manager's files contained approval forms and memos that multiple technical staff were required to sign when approving invoices and other documents. For example, the technical staff signed specific forms indicating that they had approved the invoices and related deliverables. The contract managers also signed these forms. In addition, the project managers sent memos addressed to the department's FSD stating that they had authorized the payment of invoices. This contract manager manages contracts for a division that requires its staff to use these forms and memos.

We learned from the contract managers that they still perform monitoring duties in the same manner as before the Contracts & Grants Division was created. At that time, they were

located within each LDEQ office. Contract managers who have left their positions have taught their replacements their individual procedures. According to GAO, internal control activities such as approvals, verifications, and reconciliations are essential to achieving efficient and effective program results. If LDEQ staff do not consistently and adequately document these activities, management may not be able to ensure that they monitor contracts properly.

LDEQ lacks a formal, comprehensive set of detailed policies and procedures for contract monitoring functions. LDEQ does not have formal policies and procedures that clearly specify contract managers’ and project managers’ monitoring duties, including collecting and verifying deliverables. Instead, each office is responsible for ensuring that its project managers properly monitor the technical aspects of contracts.

LDEQ officials provided us with a copy of its *2008 Quality Management Plan* as evidence of policies and procedures governing contract monitoring. The plan lists project managers’ and contract managers’ general responsibilities, but it does not delineate their specific responsibilities. For example, the plan states that the project managers’ duties include “monitoring the effectiveness of a project.” It does not specify what monitoring includes. The plan also states that project managers are to ensure that management and contract managers are informed of changes, revisions, or additions to a project, but it does not specify the procedures relating to these duties. This plan also does not include procedures concerning approving or rejecting contract deliverables by project managers or what monitoring documents project managers are to retain. Overall, the plan greatly resembles a job description rather than the department’s policies related to contract monitoring and detailed procedures describing how to carry out those policies.

Contract & Grants staff also provided us with an informal document they created that lists the contract managers’ and project managers’ monitoring duties. In addition, three programs within OEA have created limited policies relating to contract management. Although these documents provide some guidance to staff concerning contract monitoring, they do not constitute a formal, comprehensive set of detailed policies and procedures.

According to the GAO, establishing policies and procedures is essential for achieving efficient and effective program results. Policies and procedures provide guidance to programs and staff. Without formal policies and procedures relating to contract monitoring, management cannot ensure that staff properly monitor contracts and that monitoring practices used by staff are consistent.

Recommendation 10: LDEQ management should develop and implement a formal, comprehensive set of detailed policies and procedures covering all aspects of contract monitoring. Once adopted, management should implement controls to ensure that all divisions and programs adhere to the policies and procedures. The policies and procedures should cover, at a minimum, the following:

- Contract managers’ and project managers’ monitoring responsibilities and duties. The responsibilities and duties should include detailed procedures for all staff to follow in carrying out their duties.

- Documentation of staff's monitoring activities, specifically:
 - Acceptance or rejection of deliverables
 - Retention of documentation supporting charges against contracts
 - Supervisory review of staff's monitoring work and files

Summary of Management's Response: LDEQ concurs with this recommendation.

APPENDIX A: MANAGEMENT'S RESPONSE

BOBBY JINDAL
GOVERNOR



HAROLD LEGGETT, Ph.D.
SECRETARY

State of Louisiana
DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF THE SECRETARY

July 9, 2009

Steve J. Theriot, CPA
Legislative Auditor
Post Office Box 94397
Baton Route, LA 70804-9397

Dear Mr. Theriot:

I would like to thank you for accepting our request to conduct a performance audit on the contract management system of the Louisiana Department of Environmental Quality (LDEQ) for the 2006 - 2008 fiscal years. We have reviewed the draft of the performance audit report and ask that you consider this our written response.

The recommendations from the performance audit findings are very instructive on how the LDEQ can improve upon its contract management system. We have and will continue to implement these recommendations in the policies and procedures of this system to be more consistent and efficient in the awarding of contracts and grants.

I would also like to thank your staff for meeting with us on the audit findings and recommendations. As a result of these informative meetings, we are not requesting an exit conference as all of our questions have been addressed in the July 8, 2009 draft. I have enclosed the checklist you provided which is complete with our responses.

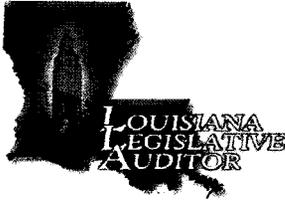
If you have any questions, please contact my Undersecretary, Vince Sagnibene, at 225-219-3840 or myself at 225-219-3950.

Sincerely,

A handwritten signature in black ink, appearing to read "Harold Leggett".

Harold Leggett, Ph.D.
Secretary

Enclosure



Louisiana Legislative Auditor
Performance Audit Division

Checklist for Audit Recommendations

Instructions to Audited Agency: Please check the appropriate box below for each recommendation. A summary of your response for each recommendation will be included in the body of the report. The entire text of your response will be included as an appendix to the audit report.

RECOMMENDATION(S)	AGREE	PARTIALLY AGREE	DISAGREE
<p>Recommendation 1: LDEQ management should develop and implement a system to formally review the Contracts & Grants staffs' work and files on a regular basis.</p> <p>(p. 13 of the report)</p>	/		
<p>Recommendation 2: LDEQ management should develop a consistent filing system for the Contracts & Grants staff, including the archiving of files for expired contracts.</p> <p>(p. 13 of the report)</p>	/		
<p>Recommendation 3: LDEQ management should develop and implement a comprehensive set of formal policies and procedures that accomplish the following:</p> <ul style="list-style-type: none"> • Detail the complete RFP, contract approval, and contract amendment approval processes to be used • Delineate all LDEQ staffs' specific responsibilities throughout these processes, especially the Contract & Grants staffs' responsibilities. • Define other specific management 	/		

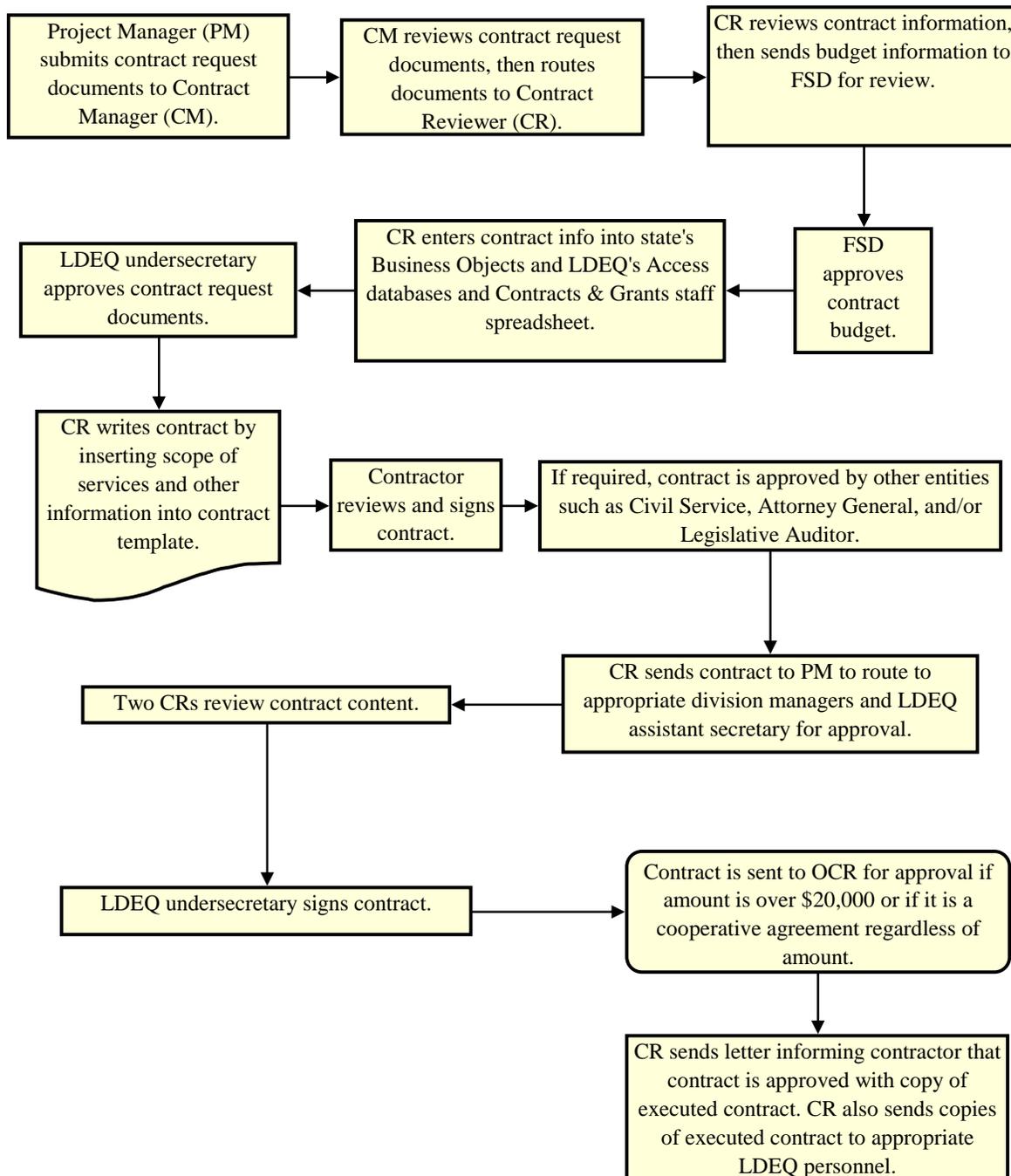
<p>controls to be used including supervisory review of staff's work and files</p> <ul style="list-style-type: none"> Specify what documentation staff should retain, where staff is to house files for active and expired contracts, and which staff should oversee those files. <p>(p. 13 of the report)</p>	/		
<p>Recommendation 4: LDEQ management should examine the department's RFP and contract approval processes to determine if they need to be revised or adjusted. As a part of this examination, management should discuss contract approval times with OCR management. Management should also determine a targeted timeframe for each process and develop performance indicators to reflect those targets. Management should then direct its staff to document instances when contracts take longer to be approved than the timeframe reflected in the performance indicators and make any necessary adjustments.</p> <p>(p. 15 of the report)</p>	/		
<p>Recommendation 5: LDEQ management should research whether other methods to streamline the RFP and contract approval processes, such as obtaining electronic approvals, are available and practical to implement.</p> <p>(p. 16 of the report)</p>	/		

<p>Recommendation 6: LDEQ management should improve the guidance it has given staff on the selection of contractors for noncompetitive contracts by developing and implementing formal policies and procedures in this area. The policies and procedures should specify the process to be used when selecting contractors. They should also include a requirement for staff to maintain records documenting the following information:</p> <ul style="list-style-type: none"> • How staff chose the selected contractor • Why the selected contractor was the best or only contractor able to perform the contract services • Whether other potential contractors were considered and why they were rejected <p>(p. 18 of the report)</p>	✓		
<p>Recommendation 7: LDEQ management should require staff to document how they determined the price for each contract.</p> <p>(p. 20 of the report)</p>	✓		
<p>Recommendation 8: LDEQ management should implement internal controls to ensure that staff do not artificially divide contracts or price contracts to avoid the RFP process or OCR review.</p> <p>(p. 20 of the report)</p>	✓		
<p>Recommendation 9: LDEQ management should require technical staff to initiate the RFP process and/or OCR review in a timely manner to avoid unnecessarily entering into interim or temporary contracts.</p> <p>(p. 20 of the report)</p>	✓		

<p>Recommendation 10: LDEQ management should develop and implement a formal, comprehensive set of detailed policies and procedures covering all aspects of contract monitoring. Once adopted, management should implement controls to ensure that all divisions and programs adhere to the policies and procedures. The policies and procedures should cover, at a minimum, the following:</p> <ul style="list-style-type: none"> • Contract managers' and project managers' monitoring responsibilities and duties. The responsibilities and duties should include detailed procedures for all staff to follow in carrying out their duties. • Documentation of staff's monitoring activities, specifically: <ul style="list-style-type: none"> • Acceptance or rejection of deliverables • Retention of documentation supporting charges against contracts • Supervisory review of staff's monitoring work and files <p>(p. 23 of the report)</p>	/		
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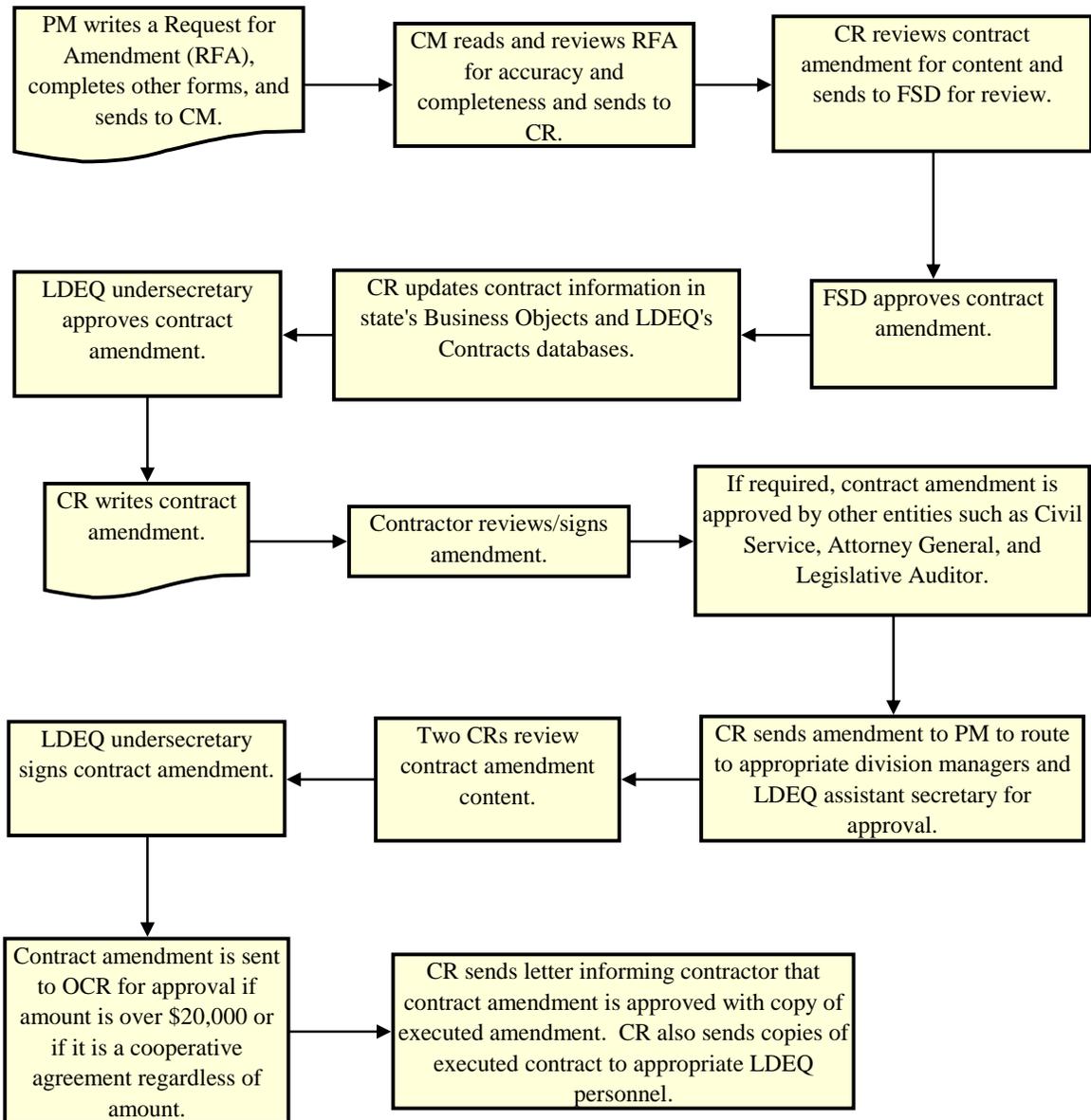
APPENDIX B: LDEQ Contracting Functions

OVERVIEW OF CONTRACT APPROVAL PROCESS



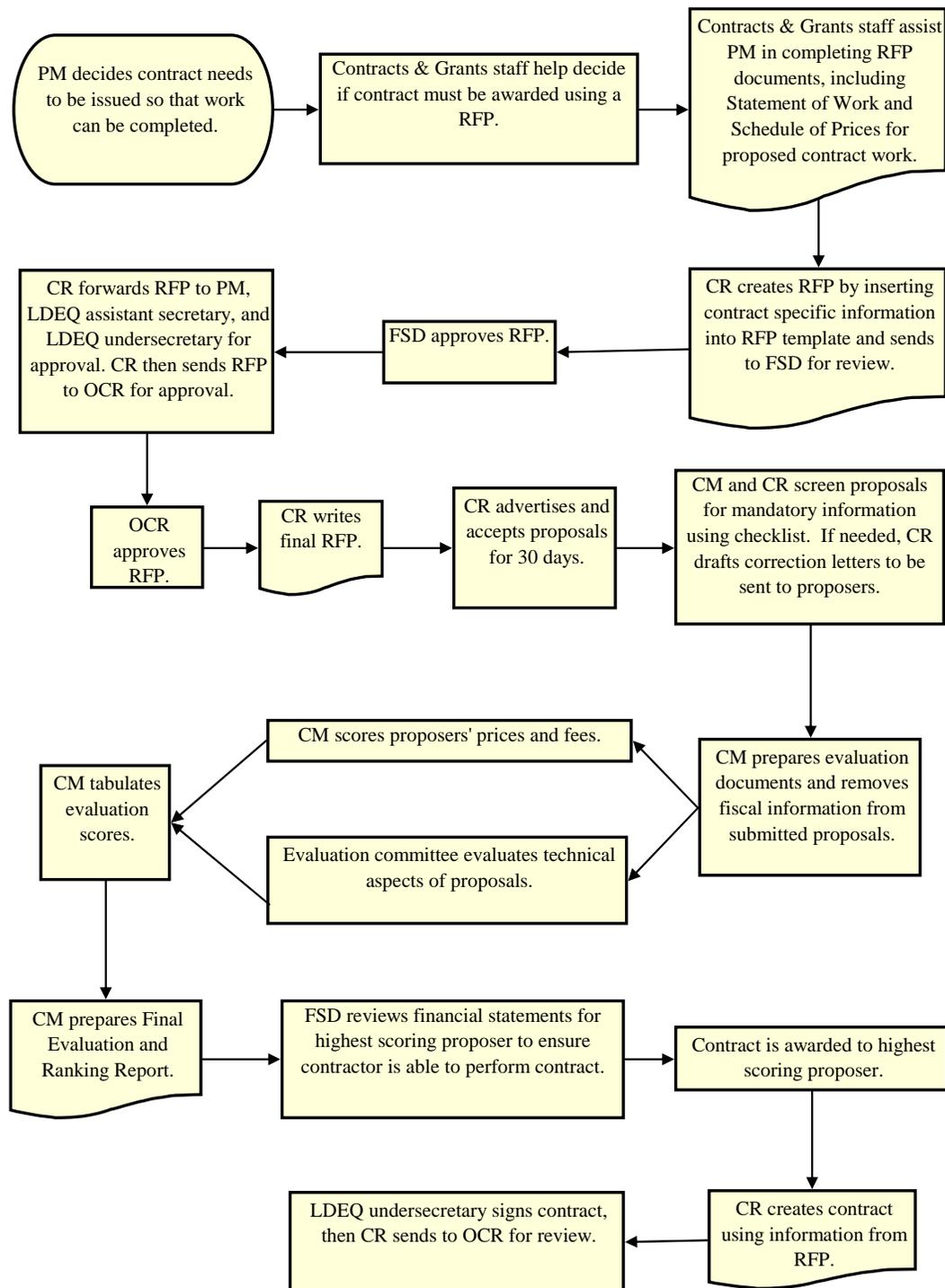
Source: Created by legislative auditor's staff based on LDEQ documents and interviews with LDEQ staff.

OVERVIEW OF CONTRACT AMENDMENT PROCESS



Source: Created by legislative auditor's staff based on LDEQ documents and interviews with LDEQ staff.

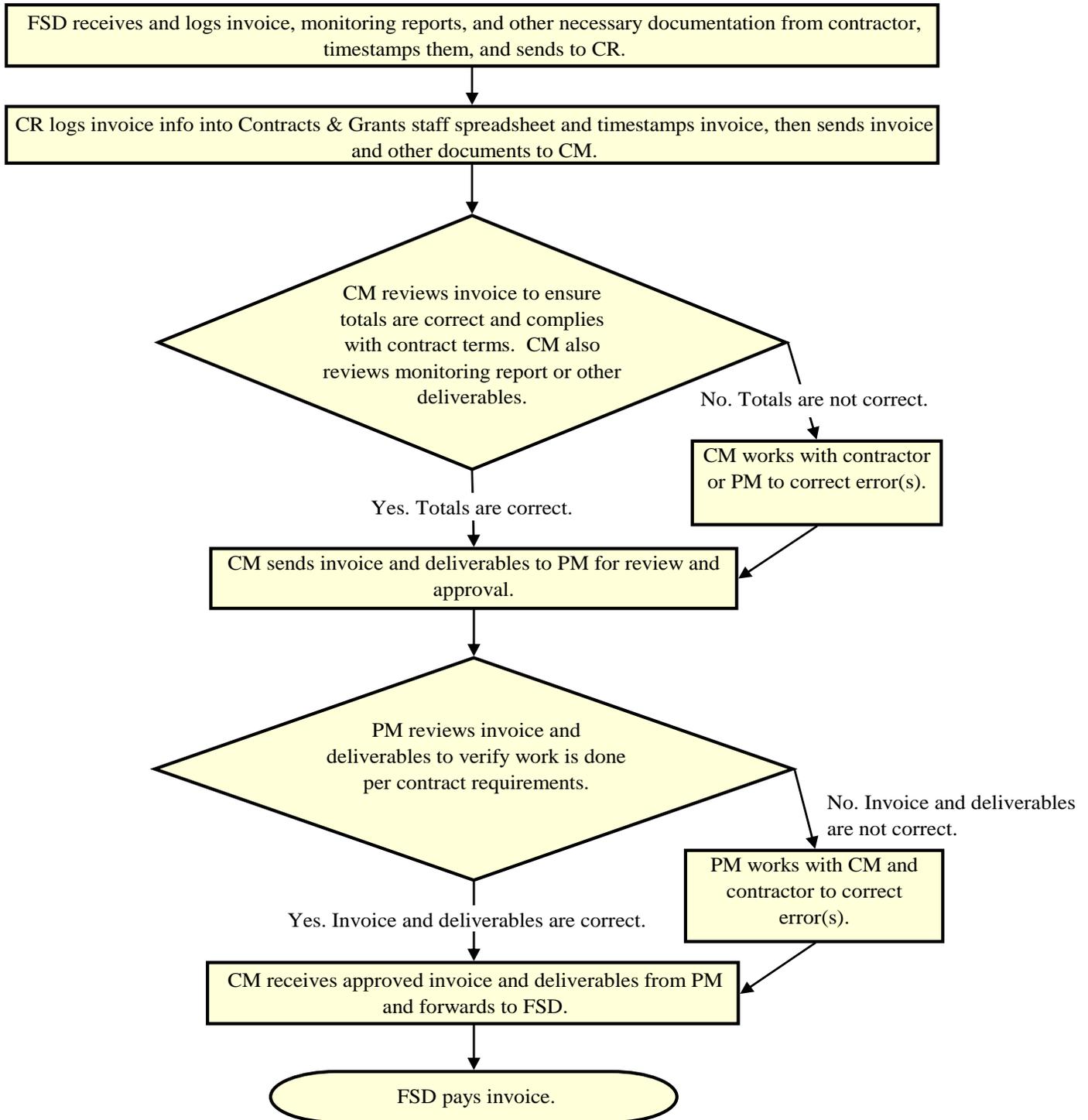
OVERVIEW OF RFP PROCESS



Note: This is a general overview of the RFP process. The process may require other steps, such as site meetings with prospective proposers, oral presentations by proposers, and consensus building meetings for the evaluation committee.

Source: Created by legislative auditor's staff based on LDEQ documents and interviews with LDEQ staff.

OVERVIEW OF INVOICE PROCESS



Source: Created by legislative auditor's staff based on LDEQ documents and interviews with LDEQ staff.