



**AUDITOR GENERAL**  
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**DEPARTMENT OF MANAGEMENT SERVICES**  
**PEOPLE FIRST**  
Operational Audit

July 2002 Through February 2004,  
Prior Related Planning Actions Resulting in the Issuance of the  
Invitation to Negotiate (ITN No. 32-973-400-Z), and  
Other Selected Actions Through August 31, 2004

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**OBJECTIVES, SCOPE, AND METHODOLOGY**

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This operational audit focused on Department management of People First contracts during the period July 2002 through February 2004, prior related planning actions resulting in the issuance of the Invitation to Negotiate (ITN No. 32-973-400-Z), and other selected actions through August 31, 2004. People First is a Statewide outsourcing project that encompasses an enterprise-wide suite of services to support the management of the State's workforce through Human Resource Administration, Benefits Administration, Payroll Administration, and Staffing Administration functions. The audit included a review of selected controls, policies, and procedures over the evaluation, negotiation, and contract processes. Also, the audit included a review of contract provisions and deliverables for the People First service provider and third-party monitor.

Our objectives were to determine the appropriateness of the Department's planning and decision-making processes supporting the decision to outsource, evaluate the performance of management's compliance with procurement laws and rules, and assess the effectiveness of the Department's contract management practices.

In conducting our audit, we interviewed appropriate Department staff, observed Department processes and procedures, reviewed documentation, and performed other audit procedures as determined necessary to evaluate controls and compliance related to People First.

To promote accountability in government and improvement in government operations, the Auditor General makes operational audits of selected programs, activities, and functions of State agencies. This operational audit was made in accordance with applicable **Government Auditing Standards** issued by the Comptroller General of the United States. This audit was conducted by Aileen B. Peterson, CPA, and supervised by Nancy Tucker, CPA. Please address inquiries regarding this report to Dorothy R. Gilbert, CPA, Audit Manager, via e-mail ([dorothygilbert@aud.state.fl.us](mailto:dorothygilbert@aud.state.fl.us)) or by telephone (850-488-5444).

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## DEPARTMENT OF MANAGEMENT SERVICES

## PEOPLE FIRST

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**BACKGROUND**


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The Department of Management Services was created by Section 20.22, Florida Statutes. The head of the Department is the Secretary, who is appointed by the Governor and subject to confirmation by the Senate. The Secretaries who have served the Department of Management Services during the audit period are as follows:

<u>Secretary</u>	<u>Period of Service</u>	<u>Referred To In Report As</u>
Thomas D. McGurk	January 5, 1999, to August 14, 2000	(Not Referenced in Report)
Cynthia Henderson	September 5, 2000, to January 7, 2003	Former Secretary
Simone Marstiller (Interim)	January 7, 2003, to April 13, 2003	Former Interim Secretary
William S. Simon	April 14, 2003, to Present	Current Secretary

The 2002 Legislature appropriated funding<sup>1</sup> for the outsourcing of State human resource (HR) services, one of the Governor's key initiatives. The decision to outsource HR services culminated efforts that began five years earlier to replace the State's aging Cooperative Personnel Employment Subsystem or COPES (now called the Personnel Information System). In 1997, a pilot project was initiated to replace COPES and the payroll portions of the Florida Accounting Information Resource Subsystem (FLAIR) with a commercial-off-the-shelf (COTS) enterprise resource planning (ERP) system. The pilot was later discontinued because of escalating cost estimates.

In 1999, the Department engaged KPMG to develop a business case study for modernizing all State financial management information systems, including personnel, and associated business processes. The business case study, released in February 2000, considered the functionality that would be provided under five defined options: as-is, enhanced, custom, COTS, and best-of-breed (primarily the COTS option that left in place some systems that rated well during the study). KPMG recommended, in part, that the State pursue implementation of the best-of-breed option whereby an ERP system would be used to replace accounting and personnel subsystems and to partially replace budgeting, cash management, and purchasing subsystems. According to the business case study, the best-of-breed option would have an estimated \$281.3 million implementation cost over five years and a net fiscal impact of \$358.5 million in technology-related savings over 15 years. The business case study also showed that, by reengineering business processes, the State could realize an additional \$467.9 million in nontechnology-related savings over the same period, no matter which option was selected.

Because of budgetary constraints, the transformation to an ERP system did not occur as envisioned by the business case study. In the Fall of 2000, the Department was directed by the Executive Office of the Governor to determine the feasibility of outsourcing HR functions. As discussed in this report (see Finding No. 1), a business case study issued February 21, 2001, concluded that outsourcing HR services would save the State "several million dollars." Accordingly, in the Spring of 2001, the Department issued an Invitation to Negotiate for the outsourcing of HR functions.

On August 21, 2002, the Department entered into a contract with the Convergys Customer Management Group, Inc., to provide a Web-based enterprise suite of services to manage human capital to include the administration of payroll, benefits, human resources, and staffing. The project, named People First, is funded largely through a human resource assessment to State entities. Assessment rates provided in the Appropriations Act for the 2004-05 fiscal year are:

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<sup>1</sup> Chapter 2002-394, Laws of Florida.

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Full-Time Equivalents	\$338.73
Other Personal Services	\$130.48
Justice Administrative Commission	\$285.43
State Court System	\$247.54
County Health Department	\$285.43

In accordance with specified law,<sup>2</sup> the Department appointed the Director of the Division of Human Resource Management, Frances Brooks, as the People First Project/Contract Manager on August 21, 2002. Ms. Brooks served until May 30, 2003. Subsequently, Taylor Smith, the current Director of the Division of Human Resource Management, was appointed as the People First Project/Contract Manager on July 7, 2003.

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<sup>2</sup> Section 287.057(15), Florida Statutes.

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**SUMMARY OF FINDINGS**

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Annually, entities of State Government expend millions of dollars on contractual services contracts. The dynamics relating to governmental purchasing and contracts are not only complex but many are newly emerging. The processes that are involved consist of various interrelationships that factor in technology and human resources, competition and fairness, as well as costs and related savings. Utilization of the applicable processes should contribute to: (1) forging relationships between the public and private sectors; (2) deriving the best contractual prices, terms, and conditions; and (3) establishing effective operating procedures that promote accountability.

The People First project is an outsourcing initiative of State Government where the issues are complex and investments of time and money are great. Current contracts for this project total over \$350 million (including the third-party monitor). The Department's *Long-Range Program Plan for Fiscal Years 2003-2004 Through 2007-2008, dated January 3, 2003*, states that "DMS [Department of Management Services] is committed to developing and implementing key initiatives which focus on increasing citizen access to government, delivering cost effective products and services, promoting and supporting economic development in Florida and improving government productivity. . . . These initiatives cut across agency lines and help create partnerships with other government entities and the private sector. . . . Several of the key initiatives are eProcurement, HR outsourcing, and the modernization of the human resource infrastructure."

Realizing the importance of this initiative and its Statewide implications, we performed an audit of the Department, the State contracting agency for this project. As noted in the **OBJECTIVES, SCOPE, AND METHODOLOGY**, our audit included a review of selected controls, policies, and procedures over the evaluation, negotiation, and contract processes. The design of this project, whereby critical human resource management functions and responsibilities are to be transferred to contracted entities, necessitates a strong monitoring function to ensure that services provided are efficiently and effectively contributing to the desired outcomes. Therefore, our audit also included a review of contractual provisions and deliverables relevant to the selected contractor and third-party monitor. State law<sup>3</sup> provides that each agency shall establish and maintain management systems and controls that promote and encourage compliance; economic, efficient, and effective operations; reliability of records and reports; and safeguarding of assets. This must be done while ensuring that service delivery is not disrupted.

Effective operating procedures must be established that promote accountability for public resources. Our audit determined that the Department is fully committed to implementing this initiative; however, we noted control deficiencies in areas relating to planning; evaluations and negotiations; contract provisions; deliverables; financial compliance; conflicts of interest and restrictions on executive lobbyists; and contract administration that should be addressed to ensure compliance with current legal requirements, enhance internal controls, and improve the economic and efficient performance of this important initiative of State government and other projects that cut across agency lines and partnership with other governmental entities and the private sector. These control deficiencies are noted below:

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<sup>3</sup> Section 215.86, Florida Statutes.

### Planning

Proper planning is a necessity for ensuring the success of a project, especially one as important as the People First initiative. The Department planning process did not include the timely completion of cost-benefit analyses, a risk analysis, or a needs assessment. Also, the documentation utilized in the planning phase could have been more accurately depicted to provide a better projection of the potential savings. Further, the Department has not established a system to track Statewide costs associated with the Project and necessary to determine the actual cost savings. Similarly, Department management failed to make sufficient inquiry of a product (Project Monitoring Web-based Tool) prior to purchase; and, as a result, the item is no longer being utilized for purposes intended. **(Finding Nos. 1, 8, and 12)**

### Evaluations and Negotiations

Greater reliance can be placed on information that is complete and well documented, and supports the final decisions made by management. The Department failed to adequately document the competence and independence of the evaluators and negotiators who participated in the review process. Additionally, evaluation forms of the ITN responses did not always include the signatures and dates of the evaluators, or cross-references on the ITN responses to support the decisions and requirements. Furthermore, when a contractor was selected, it was not always evident that the best vendor received the contracting award. Neither was it evident that the State obtained the best prices, terms, and conditions in contracting the required services. **(Finding Nos. 2 and 9)**

### Contract Provisions

Contractual agreements are legal documents that include provisions and stipulations to help identify the terms and conditions of an arrangement. In general, we noted that the contractual agreement entered into by the Department as the State contracting agency failed to include sufficient provisions that addressed a definition of "material obligation," identification of the State's legal requirements for records retention, consent authority over new or changes in subcontractors, and background history checks for subcontractors. Further, there was no documentation to support the decisions made by Department management relative to the default and termination provisions of the contractual agreement. Lastly, the contract specified that changes, modifications, or deletions should be signed by the Department Secretary. Contrary to this provision, these items were signed, in some instances, by the Chief of Staff and Director of the Division of Human Resource Management. **(Finding Nos. 3, 4, and 5)**

### Deliverables

Many contract deliverables were not timely provided. Additionally, three of the four primary functions did not "Go-Live" as planned. The Convergys contract has been amended six times and, although no payments had been made to Convergys under the contract as of August 31, 2004, the contract totals \$349.9 million. (Subsequently, on September 9, 2004, a \$11,162,326.33 payment was made.) Also, the Department paid additional amounts to the third-party monitor (Acclaris) for performing services already required. Likewise, additional amounts were paid to the third-party monitor when the required services and deliverables were reduced. **(Finding Nos. 7 and 10)**

**Financial Compliance**

Contrary to State law,<sup>4</sup> the Department entered into a contract with a third-party monitor to spend more money than the amount that was appropriated by the Legislature. Additionally, the amounts expended under this contract exceeded the total amount approved by the Legislature for the 2002-03 and 2003-04 fiscal years. Further, some disbursements under the contract were made from trust funds and categories other than that authorized by the General Appropriations Act. Also, the Department attempted to acquire a loan payment under the Florida Minority Business Loan Mobilization Program for the third-party monitor although the vendor was not eligible to participate in the Program. **(Finding Nos. 11 and 13)**

**Conflicts of Interest and Restrictions on Executive Lobbyists**

Department management did not establish policies and procedures that defined organizational conflicts of interest including procedures for disclosure provisions in all solicitations and contracts and steps to be taken to avoid or mitigate actual organizational conflicts of interest. In addition, the Department's general employment procedures do not inform Department staff how to avoid an improper lobbying relationship and how to report such, should it occur. Such procedures and training would reasonably ensure that employees are fully cognizant of the postemployment restrictions on executive lobbyists. **(Finding Nos. 14 and 16)**

**Contract Administration**

The proper administration of contractual services includes, but is not limited to, ensuring compliance with contractual provisions and maintaining adequate contract files. Contrary to law,<sup>5</sup> the Department failed to designate a contract administrator to maintain contract files and financial information. In addition, the Department has not established an effective contractual services monitoring program that includes written policies and procedures for monitoring contractor performance. **(Finding Nos. 6, 15, and 17)**

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<sup>4</sup> Section 216.311, Florida Statutes.

<sup>5</sup> Section 287.057(16), Florida Statutes.



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**FINDINGS AND RECOMMENDATIONS**

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*The Secretary, in his written response, states that the findings and recommendations in our report reiterate issues made by his Office of Inspector General in Internal Audit Report No. 2004-01, dated April 19, 2004. We acknowledge that the Department issued a report on contract management and procedures as discussed in Finding No. 17 and we believe that the reported lack of accountability and control over the Department's contracting process may affect many of its current contracts. However, this report provides specific details relating to our audit of the People First outsourcing initiative of State Government (Convergys and Acclaris contracts) where the issues are complex and investments of time and money are great. Current contracts for this initiative total over \$350 million and the Department has not audited these contracts.*

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**CONVERGYS**

On August 21, 2002, the Department signed a seven-year, \$278.6 million contract with Convergys Customer Management Group, Inc. (Convergys), an Ohio corporation with corporate headquarters in Cincinnati and an office in Jacksonville, Florida, to provide an enterprise-wide suite of services to manage human capital including the administration of payroll, benefits, human resources, and staffing through an interactive Web-based system. The Convergys outsourcing contract has been identified as potentially saving the State as much as \$173.1 million over the seven-year term. The Convergys contract has been amended six times through July 21, 2004; the term has been extended to nine years; and the contract totals \$349.9 million. It should be noted that, as of August 31, 2004, no payments had been made to Convergys under the contract. (Subsequently, on September 9, 2004, a \$11,162,326.33 payment was made.)

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**Finding No. 1: Planning**

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Proper planning provides the foundation for a successful contract experience. To ensure that the State is obtaining the best value for the dollar, the agency planning an outsourcing initiative should conduct meaningful cost-benefit and risk analyses of all viable project alternatives. Planning should include developing mechanisms to capture all costs associated with the outsourcing initiative to facilitate the measurement of cost savings. Our review of the People First project disclosed deficiencies with the Department's planning process, as described below:

- Prior to releasing the Invitation to Negotiate<sup>6</sup> (ITN) on March 22, 2001, a cost-benefit analysis was not completed. As the KPMG business case study (see **BACKGROUND**) did not consider or recommend outsourcing human resource (HR) functions, the KPMG analysis did not provide the Department with the information necessary to analytically compare the advantages and disadvantages of outsourcing.
- Directed by the Executive Office of the Governor to research the feasibility of outsourcing the HR function, the Department hired a consultant, Mevatec Corporation (Mevatec). On February 21, 2001, the former Secretary forwarded Mevatec's *DMS Outsourcing Project, Business Case (Business Case)* to the Governor. The *Business Case* indicated that Mevatec, working with the Department and other impacted State agencies, had gathered and compiled massive amounts of cost data to identify the State's HR, payroll, and benefits operating costs. As a result of the *Business Case*, Mevatec concluded that the State, by retaining 15 percent or less of the HR workforce, would experience a savings of "several million dollars." The *Business Case* did not provide any cost estimates for the outsourcing as this was to be obtained through the ITN process.

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<sup>6</sup> ITN No. 32-973-400-Z.

- On September 25, 2001, 25 days after the Department determined that negotiations with Convergys should begin, Mevatec issued its *Business Plan – Human Resource Outsourcing Initiative (Business Plan)*. The *Business Plan* stated that it was developed through the efforts of a project team consisting of Mevatec, functional subject matter experts, acquisition personnel, and representatives from affected agencies. The *Business Plan* indicated that the project team collected and analyzed extensive cost and other quantifiable data and reviewed HR functions and tasks to identify those that were “government-in-nature.” The *Business Plan* stated that four alternatives were considered for the HR functions: “As-Is” (Alternative 1); “As-Is” plus the cost of replacing COPEs (Alternative 2); outsourcing COPEs and HR functions while utilizing existing staff for support services (Alternative 3); and outsourcing the majority of HR services and technology while retaining only policy and managerial decisions through a residual organization (Alternative 4). The *Business Plan* indicated that its cost-analysis model was based on Convergys’ best and final offer and compared, over a seven-year period, the costs of Alternatives 2 and 4. The costs and benefits associated with Alternative 3 were not discussed or quantified by the *Business Plan*.
- Exhibit A is an excerpt from the *Business Plan*, an analysis titled *Estimated Potential Program Savings*, that compared Alternative 2 with Alternative 4. By choosing Alternative 4, Exhibit A shows that the State would have potential costs savings of \$173.1 million over the seven-year term of the Convergys contract primarily through the reduction of full-time equivalent (FTE) positions and the costs avoided by not having to replace COPEs.<sup>7</sup> We reviewed Exhibit A, the *Business Plan* narrative, and other documentation, made inquiries of Department staff, and analyzed certain Exhibit A line items. As explained below, we noted some differences in how amounts were considered:
  - The *Business Plan* shows “Current FTE Salaries & Benefits” increasing over time. On August 31, 2000, State agencies were directed by the Executive Office of the Governor to “examine and provide the impact of reducing the workforce by 25 percent over a five-year period.” In response to audit inquiry, the current Director of the Division of Human Resource Management (Director) stated, “There were no projections to increase or decrease the number of FTE in the agency HR Personnel offices in the Business case.” Additionally, the Director stated “We simply took a snapshot of the existing salaries and benefits cost associated with the 1287.5 existing FTE and calculated a 2.5% increase based on cost of living estimates, anticipated bonuses, and the rising cost of insurance benefits for the SES [Selected Exempt Services] HR employees.” Given the Executive Office of the Governor’s instructions for State agencies to reduce the workforce by 25 percent over a five-year period, it would appear that some reduction in “Current FTE Salaries & Benefits” should have been included in the *Business Plan*.
  - Alternative 2 costs did not recognize savings resulting from business process reengineering. The February 2000 business case study by KPMG identified annual cost savings of over \$8 million associated with business process reengineering of agency payroll processes that would be possible with a new system. Since Alternative 2 included the cost of replacing COPEs with a new system, the business process reengineering cost savings should also have been considered. Adjusting for differences in populations used by the KPMG and Mevatec studies (KPMG included universities and the legislative branch), we conservatively estimate that approximately \$5.4 million in additional savings should be credited to Alternative 2.
  - The *Business Plan* estimates the cost of the COPEs replacement/upgrade to be \$80 million. In correspondence dated January 26, 2001, Department managers stated that the cost to replace COPEs would be between one-fourth and one-fifth of the cost of replacing all the State’s financial management information systems as determined by the KPMG business case study. However, the \$361.6 million cost used from the KPMG business case study by the project team included operating costs that were already accounted for in Exhibit A *FTE Salaries and Benefits and Current Expenditures* and technology-dependent savings that did not appear to specifically pertain to COPEs replacement. Thus, the one-fourth and one-fifth estimates should have been derived from the study’s implementation cost total of \$281.3 million, yielding a COPEs replacement estimate between \$70.3

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<sup>7</sup> See Exhibit C for detailed information regarding the actual reduction of FTE.

million and \$56.3 million (\$63.3 million average estimate). In response to our audit inquiry, the Director stated “in response to the \$80 million estimate to replace COPES – we knew it could be between \$60 - \$90 million and used \$80 million as an average.”

- The HR outsourcing contract was credited with abolishing 49.5 HR positions for an annual savings of \$2.1 million. However, the reduction of the 49.5 positions had already been accounted for in the calculation of transition and residual workforce and should not have been separately deducted from the Subtotal State Workforce as shown in Exhibit A.
- The *Business Plan* did not identify estimated costs should the State have to resume HR functions in the event the service provider failed to meet its contractual obligations.
- A risk analysis that considered the legal, financial, and technical risks and liabilities of HR outsourcing was not prepared until January 2003, five months after the Convergys contract was signed.
- The justification for outsourcing HR functions was derived in part from the estimated potential cost savings as shown in the *Business Plan* that included salaries and benefits costs pertaining to HR personnel, as well as costs pertaining to other items such as facilities, computers and other equipment, maintenance, travel, and telephone. However, the Department did not establish an effective mechanism to capture and track all Statewide costs incurred since People First began; and thus, any actual cost savings attributable to People First have not been determined.

The need to replace the aging COPES is generally agreed upon by stakeholders. However, absent complete and objective cost-benefit and risk analyses during the planning phase of the project, the Department did not demonstrate that viable alternatives, potential hazards, and costs of outsourcing had been fully considered prior to launching the procurement process. Cost-benefit and risk analyses provide assurances that State resources will be prudently used, stakeholder uncertainty will be minimized, user needs will be met, and contract terms will be equitable and comprehensive. Also, not establishing a mechanism for capturing and tracking all Statewide costs incurred in the implementation of People First prevents the measurements of any actual cost savings. Such information is both crucial and fundamental to Department managers and other stakeholders in making informed decisions regarding the People First project.

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**Recommendation:** The newly created Governor’s Center for Efficient Government (Center), housed within the Department, is in the process of developing a Gate Management Process through which each outsourcing project will be evaluated at key milestones by the Center. This process has the potential for providing greater oversight and accountability for future outsourcing initiatives. In conjunction with this effort, the Department should develop internal policies and procedures that require objective cost-benefit and risk analyses during the planning phase of outsourcing proposals. Also, in analyzing the costs and benefits of an outsourcing solution, attention should be given to identifying costs associated with the loss of State institutional knowledge along with the capacity to take work back or move to another provider should the outsourcing initiative be discontinued. Also, to facilitate determining the extent of cost savings attributed to the People First project, the Department, as the State contracting agency, should, in consultation with the Center, establish a mechanism to capture and track all Statewide costs incurred with the People First project.

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*The Secretary, in his written response to Finding No. 1, concurs with our recommendation. However, he states that “We will determine the most cost-effective approach to capturing costs incurred and savings resulting from the People First project after full implementation.” We believe that the capturing of costs incurred and resultant savings should be performed as the contract progresses and not after full implementation as this information is essential to the Department in managing the contract and to others, such as legislative and Executive Office of the Governor (Office of Planning and Budgeting) staff, in making informed decisions regarding this initiative and other future initiatives.*

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**Finding No. 2: Evaluations and Negotiations**

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The HR Outsourcing ITN No. 32-973-400-Z, for the \$278.6 million contract eventually awarded to Convergys, enumerated the process to be used in evaluating responses including the scoring weight allocated to cost and non-cost factors. Performance requirements categorized by the Department as critical, essential, or desired were identified in the ITN Statement of Objectives. A three-step approach for evaluations was undertaken whereby: (1) the potential service providers' Statements of Qualifications were analyzed; (2) for those potential service providers deemed qualified, an Executive Summary, Technical and Management/Cost Responses, and Financial Information were submitted; and (3) submitted responses were evaluated by an evaluation team.

The Statements of Qualifications of 20 potential service providers were reviewed and rated by seven evaluation team members comprised of representatives from the Departments of Revenue, Management Services, Corrections, Community Affairs, the State Technology Office, and the Executive Office of the Governor. At the conclusion of this analysis, all the potential service providers were advised in writing whether they were considered to be a viable competitor for the project based upon the strengths and weaknesses noted. Of the 20, only 12 submitted the Executive Summary, Technical and Management/Cost Responses, and Financial Information. These responses were scored based on the predetermined criteria identified in the ITN. Following the scoring of the responses by the evaluation team, the top five vendors conducted oral presentations to clarify their written Technical and Management/Cost Responses and discussions on pricing, terms, and conditions commenced. Vendors then provided their best and final offer, scoring was adjusted for pricing considerations, and recommendations were made for negotiations to begin.

The negotiation team was also comprised of seven members, one from the Department of Business and Professional Regulation and six from the Department, including the former Secretary. Mevatec Corporation, headquartered in Huntsville, Alabama, provided consulting services during this period of time (see Finding No. 14).

Our review of the ITN evaluation and contract negotiation processes disclosed that several deficiencies existed, as discussed below.

- To ensure that ITN responses are effectively scrutinized and critically reviewed, an agency should ensure that the evaluation and negotiation teams have the collective experience and knowledge in the program area where the services are sought. State law<sup>8</sup> provides that, for a contract in excess of the threshold amount for CATEGORY FOUR (\$150,000), the agency head shall appoint at least three persons to evaluate proposals and replies who collectively have experience and knowledge in the program areas and service requirements for which commodities or contractual services are sought, and at least three persons to conduct negotiations during a competitive sealed reply procurement who collectively have experience and knowledge in negotiating contracts, contract procurement, and the program areas and service requirements for which commodities or contractual services are sought. In response to audit inquiry, the Director indicated that the Department did not have knowledge of any requirement to maintain documentation of the qualifications of the evaluation team or negotiation team that would evidence the teams' collective knowledge and experience. While the law described above does not specify documentation requirements, Section 287.001, Florida Statutes, recognizes that documentation of the acts taken in a public procurement is an important means of curbing any improprieties and establishing public confidence in the process by which commodities and contractual services are procured.

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<sup>8</sup> Section 287.057(17), Florida Statutes.

- To ensure the integrity of the procurement process, it is imperative that individuals involved in the process be free from conflicts of interest. Conflicts of interest may occur when individuals are in a position to make decisions that affect their personal financial interest. Although not required by State law<sup>9</sup> for competitively procured contracts, a written attestation by individuals involved in the evaluation and negotiation of agency contracts that they are independent of, and have no conflict of interest in, the entities evaluated and selected serves to remind such individuals of the objectivity required for such activities. In response to audit inquiry requesting copies of such attestations, the Director indicated that the Department was unaware of any requirement that individuals assigned to evaluation and negotiation teams must indicate they have no interest in the entity awarded the contract. Interestingly, *Attestation Conflict of Interest and Non-Disclosure Statements* were signed by the evaluators of the Department's other outsourcing initiative, MyFloridaMarketPlace, that was being evaluated and negotiated concurrently to the People First initiative.
- Not all evaluation forms were signed and dated by the evaluators. Each evaluator was responsible for completing one or more evaluation forms for the Statement of Qualifications and the Executive Summary, Technical and Management/Cost Responses, and Financial Information for each vendor. Our review of all the evaluation forms for the five top-rated potential service providers disclosed that, while all evaluators signed and dated the Statement of Qualifications, four of the seven did not sign and date all of the evaluation forms, even though all the forms contained a signature line. Additionally, upon completion of the oral presentations, evaluators adjusted the evaluation forms for any scoring changes, but three of the seven did not initial such changes. Greater reliance can be placed on the accuracy and completeness of evaluation forms that are to be signed and initialed by evaluators.
- Evaluation forms included blank columns for the reviewer to reference specific criteria to the ITN Statement of Objectives (Objectives) and to the applicable potential service provider response. None of the seven evaluators completed references to the Objectives and only four substantially completed references to the responses. Since the references to the Objectives would be the same for every evaluation, it is not clear why the references were not preprinted on the evaluation forms by those overseeing the process. Such references would assist all evaluators in identifying the performance requirements that pertain to the evaluation criteria. References to the potential service providers' responses by the evaluators would document the quality and completeness of the evaluations.
- Not all evaluation criteria were suitable for yes-or-no responses. For example, on the Statement of Qualifications, questions such as, "To what extent has the potential SP [Service Provider] presented material concerning its ability to identify performance problems?" are more appropriately answered with a rating-type scale, such as from 1 to 5, rather than yes or no.

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**Recommendation:** The Department should establish written policies and procedures to ensure that evaluation and negotiation teams are competent and independent of, and have no conflict of interest in, the entities being considered for outsourcing and other ITN initiatives. Additionally, to evidence the teams' collective knowledge and experience, the qualifications and work history of each evaluator and negotiator should be concisely documented and incorporated into the contract files. The Department should also develop instructions for evaluators that clearly state that all evaluators should sign and date all evaluation forms, initialing any changes made during the process. Also, to reasonably ensure higher quality evaluations, the Department should provide cross references from evaluation criteria to performance requirements and evaluators should be instructed to reference evaluation criteria to the ITN response. Additionally, the Department should carefully weigh how questions posed of evaluators should be answered, selecting a suitable rating-type scale for questions that cannot appropriately be answered yes or no.

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<sup>9</sup> Section 287.057(20), Florida Statutes.

*The Secretary, in his written response to Finding No. 2, states that “if the Auditor General believes it is necessary to create and maintain extensive documentation for all public procurements as stated in the recommendation, it should recommend that the Legislature revise Chapter 287 Florida Statutes.” Our recommendation regarding documentation was that the qualifications and work history of each evaluator and negotiator should be concisely documented and incorporated into the contract files. We do not consider this to be extensive and continue to believe, as stated in Chapter 287.001, Florida Statutes, that documentation of the public procurement acts taken is an important means of curbing any improprieties and establishing public confidence in the procurement process.*

### **Finding No. 3: Contract Provisions**

All contracts should have complete, well-defined clauses that identify all the terms and conditions of the agreement. This fundamental principle is even more critical in State outsourcing projects where issues are complex and investments of time and money are great.

Our review of the Convergys contract disclosed the following contract deficiencies:

- **No definition of “material obligation.”** Section 7.4.1 of the contract provides that a breach of “material obligation” under the contract was considered an event of default; however, no definition of “material obligation” was included in the contract. In response to audit inquiry, the Department’s Deputy General Counsel related that “a definition of material obligation was originally included in the contract, however, this definition was removed by the former Secretary.” Without clearly-defined terms, resolutions of contract disputes become more difficult. Good business practices dictate that contract terms be stated clearly and in sufficient detail.
- **No provision identifying the State’s legal requirements for records retention.** The Department’s Director indicated that the requirement for records retention is covered by Section 9.32 of the contract, “Other Compliances.” However, as authorized by Chapter 119, Florida Statutes, the Department of State maintains retention schedules for State and local governmental entities. The duration of a particular record’s retention is according to the type of record and its administrative, legal, fiscal, and historical value. For example, personnel records including applications for employment, resumes, personnel action reports, directly related correspondence, oaths of loyalty, fingerprints, medical examination reports, performance evaluation reports, workers’ compensation reports, and other related materials within the Florida Retirement System are to be maintained for 25 years after separation or termination of employment, while payroll records are to be held only 4 years provided applicable audits have been released. The contract does require that the Service Provider maintain personnel records, including 3 years of personal data on-line for access via self-service. However, no other retention periods are defined or clarified in the contract. Given the wide variety of State records to be maintained by the Service Provider, State interests would have been better served with contract provisions specifically identifying all record retention requirements, or alternatively, including an appropriate contract deliverable requiring the identification of such records or a methodology to ensure compliance.
- **No provision for the Department to have consent authority over new or changes in subcontractors utilized in the People First project.** We noted that the evaluation criteria of the potential Service Provider responses did consider the relevance of major subcontractor contracts in the proposed solutions. For example, one evaluator commented that Convergys “has a strategic partner, Arthur Anderson, that enhances its services.” However, although the choice of subcontractor was considered in the evaluation of responses, once People First was underway, Convergys was able to change its subcontractor without having to provide notice or obtain Department approval.

- **No provision for subcontractors to obtain background history checks.** While the contract does require the Service Provider to ensure that background history checks are conducted on all current and prospective Service Provider employees on the People First project prior to their obtaining access to State agency confidential information exempt from Chapter 119, Florida Statutes, the contract is silent in this regard for subcontractors. The Department's Deputy General Counsel related that, because subcontractors and suppliers contracted by the Service Provider are the responsibility of the Service Provider, the Service Provider is responsible for such background history checks. However, it is the State's responsibility to safeguard the confidential information included in State employee personnel records and, therefore, contract provisions should clearly state, rather than imply, that anyone allowed access to sensitive information, including subcontractor employees, should be subject to background history checks.

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**Recommendation:** The Department should determine the steps that can be taken to mitigate the contract deficiencies identified above and ensure proper consideration of such deficiencies is given in other existing and future contracts.

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*The Secretary, in his written response to Finding No. 3, does not concur with our recommendation and states that "The Department believes that other contract provisions and/or statute adequately address the deficiencies noted." Since the Secretary did not cite any specific contract provisions or statutes that address the deficiencies noted in our comment and we are unaware of any, we again recommend that the existing contract be amended or other specific steps be taken to address reported deficiencies.*

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#### **Finding No. 4: Default and Termination Provisions**

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Since the People First project is an outsourcing initiative whereby the Service Provider performs the HR functions, at the expiration of the Convergys contract, the State will own only the HR data and not any system or property. However, there are contractual provisions that facilitate the acquisition and migration of certain hardware, software, and intellectual property to the State in the event of default by the Service Provider or upon termination for reasons other than Service Provider default, including expiration of the contract. Our review of these provisions disclosed that Department policies and procedures were not effective in ensuring that documentation clarifying agency decisions pertaining to the default and termination provisions were maintained in contract files, as set forth in the original contract and as later amended, as enumerated below:

##### **Service Provider Defaults**

- In the event of Service Provider default, the Department may purchase from the Service Provider items considered the minimum requirements for continuity of service, for each of the four primary functions of the People First project: Staffing Administration; Payroll Administration; Human Resource Administration; and Benefits Administration. These items are enumerated in the Item Fee List of the contract and have a total cost of \$41.6 million. Relating to this cost, beginning month 16 of the contract (November 2003), the fee to purchase items decreases by \$450,000 each month. Beginning month 37, the monthly decrease is \$656,000. For example, if a default occurred in December 2004, month 29 of the contract, the cost to the State to purchase all the items on the Item Fee List would be \$35.3 million.
- The Convergys contract as amended (Amendment No. 6) on July 14, 2004, provides that the Item Fee List has a total cost of \$51.6 million or \$10 million higher than the original contract. The increase pertains to changes as shown below:

Item	Cost Per Original Contract	Cost Per Amended Contract	Difference
Implementation of HR/Payroll Administration	\$12,530,738	\$17,280,738	\$4,750,000
Training Plan/Development for HR/Payroll Administration	2,005,200	3,155,800	1,150,600
User Acceptance Test Plan for HR/Payroll Administration	651,105	3,289,099	2,637,994
HR Personnel Records Imaged	2,273,594	3,550,000	1,276,406
User Acceptance Test Plan for Benefits Administration	89,500	274,500	185,000
Total	\$17,550,137	\$27,550,137	\$10,000,000

Additionally, Amendment No. 6 provides that beginning month 16 and continuing through month 36, the fee to purchase the items decreases by \$450,000 each month and that beginning month 37 and continuing through month 108 (the end of 9 years), the fee to purchase the items decreases by \$585,118 each month. To compare with the example used above, if a default occurred in December 2004, the cost to the State to purchase all the items on the Item Fee List would be \$45.3 million.

- Provided that the Department elects to purchase the items listed on the Item Fee List, the Service Provider shall provide the Department with any or all of the Migration Goods and Services as set forth in the contract or the cash equivalent. The Migration Goods and Services include costs associated with the procurement or transfer of license for HR software; software maintenance cost for initial 12 months; costs associated with ITN for new Service Provider and establishment of the State's configuration with that Service Provider; procurement of hardware, system software, tools, and other software; business transition plans; realization of migration through the transfer of software, batch processes, and interaction management data; training plans and acquisition of staff; and final preparations including contingency plans, user acceptance, and end-user training.
- Up to 180 days after termination of the contract, the Department may elect to purchase interim services from the Service Provider such that all the same services provided prior to contract termination will continue at the same monthly cost.
- If the Service Provider has ceased to render all services or the level of services are so poor that the Department is in effect not receiving the services, the Department shall seek full compensation for all damages incurred, which includes, but is not limited to, all reprourement costs and costs to provide services during transition to either the Department or another provider.

#### **Termination Other Than Service Provider Default or Expiration**

For contract termination other than Service Provider default:

- The Department may elect to purchase any or all of the Migration Goods and Services as set forth in the contract for a cost of \$25,500,000.
- The Department must purchase all the items listed in the Item Fee List of the contract for the fee set forth in the contract, as described above.
- Up to 180 days after termination of the contract, the Department may elect to purchase interim services from the Service Provider such that all the same services provided prior to contract termination will continue at the same monthly cost.

In response to audit inquiry regarding the development of the original cost estimates for the Migration Goods and Services and the Item Fee List described above, the Director indicated that the estimates were prepared by a former Deputy Secretary of the Department and a former Chief Policy Analyst from the Executive Office of the Governor and that he did not have knowledge of the methodology used to develop the cost estimates.



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**Recommendation:** Whereas detailed documentation can clarify the factors and assumptions behind cost estimates and other financial provisions within the contract, the Department should develop policies and procedures that require documentation explaining the development of key contract provisions be maintained in contract files.

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**Finding No. 5: Delegation of Authority**

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Section 9.22 of the Convergys contract provides that any changes, modifications, or deletions to the contract shall be in writing and must contain the signatures of the Service Provider's President, or authorized representative, and the Secretary. The term "Secretary" is also defined in the contract as the Secretary of the Department of Management Services.

Since the contract's execution in August 2002, six amendments to the contract have been initiated. The first three amendments were signed by the Department's Chief of Staff. In response to audit inquiry, the current Secretary indicated that he authorized the Chief of Staff to sign the amendments to the contract; however, we were not provided any supporting documentation. Subsequently, we received and reviewed Amendment Nos. 4, 5, and 6 to the contract. Amendment Nos. 4 and 6 were signed by the current Secretary on January 29, 2004, and July 14, 2004, respectively, but Amendment No. 5 was signed on July 21, 2004, by the current Contract Manager (i.e., the Director of the Division of Human Resource Management).

State law<sup>10</sup> provides that a department head has the authority, without being relieved of responsibility, to execute any of the powers, duties, and functions vested in the department or in any administrative unit thereof through administrative units and through assistants and deputies designated by the head of the department from time to time, unless the head of the department is explicitly required by law to perform the same without delegation. Florida case law supports that when the government enters into a contract that includes a provision that the contract may only be modified in a certain way, the government must strictly adhere to that provision. The contract could have been written to allow contractual modification to be executed by an authorized representative of the Secretary, but it was not. While the contract specifically allows for the Service Provider to use an authorized representative, the Secretary is not so authorized.

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**Recommendation:** All future amendments to the Convergys contract should be signed by the Secretary.

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*The Secretary, in his written response to Finding No. 5, does not concur with our recommendation. We disagree with the Secretary's contention that, because the law allows the Secretary to delegate signature authority, the express terms of the contract may be ignored. We continue to recommend that the Department comply with the terms of the contract or amend the contract to reflect the Department's actual practice.*

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<sup>10</sup> Section 20.05(1), Florida Statutes.

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**Finding No. 6: Monitoring Contract Compliance**

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To ensure compliance with contractual provisions, the Department's Contract Manager should ensure that procedures are in place to monitor key requirements. Although the Department hired a consultant<sup>11</sup> to provide support for performance monitoring of the People First project, certain administrative provisions of the Convergys contract did not appear to have been monitored by the Department as discussed below:

- Section 3.1 of the contract, Organizational Responsibility Matrix, provides that, in addition to maintaining an organizational responsibility matrix that denotes the key personnel and their duties relating to the contract, the "Service Provider shall not replace or reassign or substitute any key personnel for 2 years from the effective date [August 21, 2002] unless the Department consents in writing to such reassignments or replacement, which written consent shall not be unreasonably withheld or delayed." In response to audit inquiry, the Director stated that a change in key personnel was made; however, there were only verbal communications between Convergys and the Department regarding this change in key personnel.
- Section 4.5 of the contract provides that, within 30 days after execution and delivery of the contract by both parties, the Service Provider shall provide the Department a performance bond in the amount of \$30 million. A performance bond guarantees full performance of a contract with the proceeds to be used to complete the contract or compensate for the owner's loss in the event of nonperformance. Our review of contract files disclosed a copy of a performance bond obtained by Convergys dated August 21, 2002, the date of contract execution, and continuing through August 21, 2003. Subsequent to audit inquiry, the Department obtained, and provided for our review, a Certificate of Continuation facsimile documenting coverage through August 21, 2005. Although the Service Provider was in compliance with the contract, the Department had not effectively monitored this provision and would have been unaware of any noncompliance had it occurred.
- Section 6.1 of the contract provides that no later than five days after execution of the contract, the Service Provider shall secure and continuously maintain insurance coverage as required by law and explicitly required by the contract, including: commercial general liability, workers' compensation, automobile liability, and professional indemnity that covers professional liability and errors and omissions. The contract further states that the Service Provider shall provide proof of such insurance to the Department for approval and that performance may not commence until such time as insurance is secured by the Service Provider and approved by the Department. In response to audit inquiries, the Director stated on April 26, 2004, that "To date, we have not requested the documentation." While the Department subsequently obtained documentation of current insurance coverage for Convergys, it did not provide documentation to support that the Service Provider had secured and maintained insurance coverage commencing within five days of execution of the contract. Additionally, it was apparent that the Department had not monitored the Service Provider's compliance with these contractual requirements.
- Section 6.2 of the contract provides that any subcontractor of the Service Provider shall provide insurance as follows: general liability, workers' compensation, automobile liability (with umbrella), and errors and omissions. In response to audit inquiries, the Director indicated that ensuring the maintenance of subcontractor insurance is the responsibility of the Service Provider. While the contract does provide that subcontractors are the responsibility of the Service Provider, prudent business practice dictates that the Department obtain proof of subcontractor coverage via the Service Provider, if possible.

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<sup>11</sup> Acclaris LLC.

**Recommendation:** The Department should develop and implement policies and procedures to ensure that contract managers are fully informed of their responsibilities to monitor contract performance. Additionally, the Department should take immediate steps to ensure that subcontractor insurance coverage is continually maintained.

### Finding No. 7: Deliverables

The Convergys contract described three types of deliverables: plans, Go-Live dates, and performance metrics. Our review of these deliverables disclosed that contractual provisions relating to the receipt and acknowledgement of the deliverables were not always followed, as discussed below:

#### Plans

Section 2.2 of the contract provided for the delivery of various plans that describe the methodologies, activities, and requirements necessary for the efficient and successful transfer of HR functions from the State to the Service Provider. The table below briefly summarizes the planning deliverables required:

Plan Name	Number of Deliverables	Purpose of Plan	Due Date
Transition Plan	1	Describes the methodology and general timeline for transitioning the State's workforce and personnel information system to the Service Provider.	Due within 10 days of contract execution.
Work Plan	4	Includes a Work Plan for each function: Staffing Administration, Payroll Administration, Human Resource Administration, and Benefits Administration. Purpose is to maintain control over the transition of services. Describes the detailed activities to be performed by the Service Provider and timelines associated therewith.	Due within 10 days of receipt of Department approval of the Transition Plan.
Business Blueprint Phase	4	Assesses any gaps between the State's current operations and the Service Provider's Best Practice Model. Each Work Plan includes a Business Blueprint Phase.	Due with the Work Plans.
Change Management Plan	1	Identifies the management efforts and internal changes required of State agencies (and other covered entities) in order to transition their functions to the Best Practice Model.	Due with the Work Plans.
Training Plan	1	Describes how the Service Provider will train its staff on State rules, policies, and procedures.	Due with the Work Plans.
Interface Plan	1	Describes the flow of data to and from the State-sponsored computer systems and identifies the business and system requirements for the HR software by function.	Due with the Work Plans.
Business Continuity Plan	1	Details the methodology and timelines associated with business continuity in the event of a disaster or major system outage.	Due with the Work Plans.
Security Plan	1	Describes the procedures for the protection of sensitive user-related information that is processed and stored by the Service Provider. Details the standards and guidelines that apply to all State agency information when providing services.	Due within 10 days of contract execution.
Migration and Interim Services Plan	1	Details the activities that will occur in the event of contract termination or expiration in order for the services to be transferred back to the Department or its alternative Service Provider.	Due within 180 days of contract execution.

According to Section 3.5 of the contract, the Department's review process is to identify whether each deliverable is acceptable or materially fails to conform to the requirements of the contract. Within 10 days of delivery, the Department is to acknowledge acceptance or notify the Service Provider of the "nonconformity." The Department has at its discretion "an additional pool of 30 days that it may use to acknowledge its acceptance or rejection of one or more of the deliverables." Once noticed, the Service Provider has 30 days to correct any nonconformity or to proceed on another mutually acceptable basis as set forth in writing. If the Department does not timely acknowledge its acceptance or rejection of a deliverable, it is deemed accepted. Should the Service Provider fail to provide any of the deliverables by the established dates, the contract provides that, unless excused by other provisions in the contract, the Service Provider shall pay the Department stipulated damages of \$2,000 per day per deliverable.

Our review of Department records disclosed that many of the planning deliverables were not received timely and many were not accepted or rejected in accordance with contractual provisions as discussed below:

- 6 of the 15 deliverables were received timely and accepted from 23 to 28 days after the allotted time period (not considering the additional pool of 30 days). These included the Transition Plan, 4 Work Plans, and the Security Plan.
- 9 of the 15 deliverables were received from 14 to 28 days late:
  - 2 of the 9 deliverables were not acknowledged by the Department (Change Management Plan and Migration and Interim Services Plan). The contract deliverables required a Transition Plan and a Change Management Plan. The Transition Plan was to include a Communication Plan. In response to audit inquiry, the Director provided us with documentation that stated that "the Transition Plan accepted on October 25, 2002 contained the Communication Plan referenced as Exhibit C. This Communication Plan was considered the Change Management Plan until we received an updated plan on December 3, 2002, which specifically was referenced as a Change Management Plan." No reason was provided for the failure to acknowledge the Migration and Interim Services Plan.
  - 7 of the 9 deliverables were conditionally accepted after the allotted time period. Pursuant to contract provisions, if the Department does not timely acknowledge its acceptance or rejection of a deliverable, it is deemed accepted.
  - 4 of the 7 conditionally accepted deliverables remained in conditional status as of August 13, 2004. The 4 include the Benefits Administration Business Blueprint and the Training Plan that received conditional acceptance on December 23, 2002, and the Interface Plan and the Business Continuity Plan that received conditional acceptance on February 19, 2003.
- The term "conditional acceptance" is not defined or provided for in the acceptance provisions of the contract and, therefore, it is unclear whether conditional acceptance would preclude the Department from collecting stipulated damages. Failure to document the deliverable nonconformity in the manner required by the contract may result in the deemed acceptance of the nonconforming deliverable by the Department.

**Go-Live Dates**

Section 2.1 of the contract provided the “Go-Live” dates for the four primary functions of the HR outsourcing initiative. Additionally, the contract provided that stipulated damages are due on a per-day basis for staffing costs associated with the failure to meet the due date. The functions, Go-Live dates, and stipulated damages per day are described in the table below:

Function	Go-Live Date	Stipulated Damages Per Day
Staffing Administration	May 1, 2003	\$3,848
Payroll Administration	June 1, 2003	\$12,958
Human Resources Administration	June 1, 2003	\$12,958
Benefits Administration	January 1, 2004	\$2,653

As of August 13, 2004, the Service Provider has only taken over the operation (Go-Live) for the Staffing Administration function, that occurred on May 1, 2003, when scheduled. For the remaining three functions, the Service Provider has not met its contractual obligations.

In correspondence to the Service Provider on May 21, 2003, the current Secretary stated “The System [Staffing Administration System] developed by Convergys became operational on May 1, 2003, but is currently running in parallel with the State’s JobsDirect system because of several outstanding System defects. . . . In furtherance of our partnership the State will begin to initiate payment to Convergys. I am, however, concerned about the continuing Systems defect situation.” Further, the Secretary indicated that Convergys presented the State with project defect resolution dates of May 16, 2003; May 23, 2003; May 30, 2003; June 2, 2003; June 23, 2003; and July 21, 2003. Finally, the current Secretary stated, “If the System defects are not resolved to the State’s satisfaction by these dates, then the State of Florida reserves the right to exercise its remedial options under the contract between the parties.” Accounting records indicate that the Convergys May 2003 invoice totaling \$3,333,333 was approved for payment by the Department’s Chief of Staff on June 24, 2003, and the Department processed a voucher for payment on June 26, 2003. According to the Chief of the Bureau of Financial Management Services, the Department of Financial Services questioned services the payment covered and it was later determined that “the payment was not due yet and the invoice was an example of what the invoice would look like.” In addition, the Department recorded a certified forward payable for May and June 2003 totaling \$6,666,666.

In correspondence to the Service Provider on July 24, 2003, the current Secretary expressed his concerns with the Service Provider not meeting agreed-upon deliverables and deadlines regarding the Payroll Administration function. Additionally, the current Secretary stated, “Given the factors noted . . . we have no other recourse than to notify you that if the September 1, 2003, deadline is not met the State will be required to assess fees and is prepared to seek actual delay damages and pursue the default remedies available under the Contract.” In response to audit inquiry, the Director indicated on April 29, 2004, that the Department had not requested payment from the Service Provider for failure to meet its contractual obligations and that any stipulated damages will be considered and deducted from any payments made to Convergys.

On July 14, 2004, the Department and Convergys signed Amendment No. 6 to the contract that included major changes to the contract's terms. The amendment asserts that delays in implementation caused both parties to incur unforeseen costs and, in an effort to avoid protracted and costly litigation on the issues surrounding the delays, both parties agree that an adjustment to the contract is necessary to achieve the overall objectives and intent of the contract. A summary of the amendment terms follows:

- Provisions for the failure to meet due dates were revised. New provisions state that, after the successful completion of the pilot test of the Human Resources, Benefits, and Payroll Administration system at the Department of Management Services, the parties to the contract will establish a mutually agreed-upon implementation schedule for the remaining State agencies. Failure to meet the deadlines set out in the schedule shall result in the Department withholding monthly payments. No payment is to be withheld based upon a delay caused by circumstances outside the control of the Service Provider, and nothing precludes the Department from seeking actual delay damages caused by the Service Provider's failure to meet the mutually agreed-upon schedule. However, stipulated damages as set forth in the original contract were deleted.
- Provisions regarding the payment schedule of the contract were revised. Amended terms state that "the Service Provider has invoiced the Department \$50,473,971 for outsourcing services rendered through June 2004. The Department agrees to pay the Service Provider \$33,486,979, and to use its best efforts to pay that sum as soon as reasonably possible. In exchange for a two year renewal of the contract, the Service Provider agrees to provide a credit of \$10,300,000 against the outstanding invoices. Additionally, the Service Provider agrees to waive the remaining \$6,686,992 invoiced to cover incremental costs incurred by the Department through June 2004." In response to audit inquiry, the Department's General Counsel indicated that the \$10,300,000 credit was nonpayment for services not received.
- Provisions for the term and renewal of the contract were revised. New provisions now provide that the State shall renew the contract for two years at the end of the original seven-year term upon the same terms and conditions, subject to appropriation and provided that the Service Provider has met performance metrics. The Department's General Counsel stated that "the original Convergys contract contemplated a 7 years of use. With the delay, the state would not have received the term of use originally contemplated. In addition, the contract has a 7 year option to renew. In an attempt to receive the services under the contract for the entire 7 year period, DMS agreed to exercise 2 years of the 7 year renewal option." The cost of the two-year extension to the contract is \$3,679,452 per month or \$88,306,848. Factoring in amounts waived and credited, the total cost of the amended Convergys contract is \$349.9 million.
- Provisions regarding the Item Fee List, of the contract were revised. These revisions are explained in Finding No. 4, Default and Termination Provisions.

In summary, the July 14, 2004, contract amendment allowed the Department to recover \$6.6 million in costs incurred due to the project delays, to receive \$10.3 million in credits, and to extend the contract period for two years at a cost of \$88.3 million. The contract now provides that the Department can withhold payment for failure to meet deadlines, which it was already doing, and removes provisions for stipulated damages, which the Department had not imposed. Documentation provided by the Department to support how the \$33,486,979 payment, \$10,300,000 credit, and \$6,686,992 waived fees were derived, was not in sufficient detail to determine the reasonableness of these amendment terms. Lastly, it should be noted that, as of August 31, 2004, no payments had been made to Convergys under the contract. (Subsequently, on September 9, 2004, a \$11,162,326.33 payment was made.)

### **Performance Metrics**

Section 2.8 of the Convergys contract describes the performance metrics applicable to the delivery of services to the State by the Service Provider during the term of the contract. Provisions state that, upon the completion of the Blueprint Phase, the Department shall approve the methodology and calculation of the performance metric definition and shall agree with the Service Provider to a specific standard of performance within the standard range set forth in the contract for each performance metric. In the event the Service Provider fails to meet the performance metric, the Department's monthly invoices are to be credited specified amounts. For example, if the Service Provider fails to meet the same critical performance metric for three consecutive months, the Department's next monthly invoice will be credited \$20,000. By the 5<sup>th</sup> day of each month, the Service Provider is to report to the Department supporting data for each performance metric. The contract states that inclusion of performance metrics and related credits in the contract is intended to cite unsatisfactory performance in the context of ongoing operations without resorting to the default remedies set forth elsewhere in the contract.

Our review disclosed that, at the completion of the Blueprint Phase, the Department did not approve the methodology and calculation of the performance metric definition. As of August 13, 2004, no performance metric reports have been received and no monthly invoices have been credited for performance metric failures. In response to audit inquiries, the Department first provided correspondence with Convergys from May 2003 indicating that performance metrics had not yet been finalized. The Director later stated that "Performance Metric reports will begin after all state agencies have been transitioned to People First." However, the contract states that, upon completion of the transition operations for each function, the Service Provider shall take over the operations of the function and that the date which this occurs is the Go-Live date. Therefore, it would appear performance metric reports should have been received for performance metrics pertaining to the Staffing Administration function.

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**Recommendation:** The Department should continue to pursue obtaining all deliverables. To promote transparency and fairness in the contract process, the Department should establish policies and procedures requiring that the methodologies used and management decisions made in executing contract amendments are clearly documented in the contract files. Additionally, the Department should ensure that contract managers and administrators are fully aware of their contractual responsibilities and cognizant of the possible consequences to the People First project if acceptance or rejection of deliverables is not made in accordance with contractual provisions.

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### **ACCLARIS**

In 2001, legislation was enacted requiring the Department to submit a plan for the outsourcing of human resource (HR) services to the Executive Office of the Governor, the President of the Senate, the Speaker of the House of Representatives, the Chairman of the Senate Appropriations Committee, and the Chairman of the House Fiscal Responsibility Council. Upon approval of the plan, the Department was authorized to contract with a Service Provider for HR services on behalf of all State agencies.<sup>12</sup> Subsequently, the Department submitted its *2002-03 Legislative Budget Request* (LBR) to the Executive Office of the Governor (Office of Policy and Budget) dated September 18, 2001, requesting \$450,000 in recurring funds in the State Personnel System Trust Fund's Special Category, Contracted Services, to secure a third-party performance monitor. The LBR indicated that the Division of Human Resource Management would be responsible for managing the Service Provider contract but, as one of

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<sup>12</sup> Chapter 2001-254, Laws of Florida.

the key issues in measuring the success of this initiative was to ensure that the accuracy and reliability of the information was not compromised, an independent third-party monitor would need to be secured to assess the Service Provider's compliance with the agreed-upon performance standards and minimum service levels. Further, in a letter dated October 18, 2001, to the Senate Committee on Appropriations, the former Secretary stated, "We also anticipate third-party monitoring of any resultant contract will be the most successful method of monitoring the [HR outsourcing] contract. . . . The third party monitor will serve as an independent advocate under the direction of the Department and ensure that services are correct, efficient, and performed within cost and schedule limitations." The \$450,000 request was approved and included in the 2002-03 fiscal year budget and subsequently, on September 17, 2002, the Department entered into a contract with Acclaris LLC (Acclaris), a Delaware corporation, with its corporate office located in Tampa, Florida, to provide third-party consulting support for implementation and performance monitoring of the HR outsourcing contract.

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**Finding No. 8: Planning**

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Thoughtful planning is necessary for efficient and economical procurement of contractual services. Although requested, we were not provided with any documentation that demonstrated that a needs assessment or cost-benefit analysis had been performed during the planning phase of the HR outsourcing project to support the decision to utilize consultant services for the monitoring function.

Our review of Department records regarding the decision to secure a third-party monitor disclosed the following:

- The Department requested \$450,000 in its 2002-03 LBR, Exhibit D3-A, dated September 18, 2001, for a third-party contract monitor.
- On October 18, 2001, the former Secretary sent a letter to the Senate Committee on Appropriations stating, "We also anticipate third-party monitoring of any resultant contract will be the most successful method of monitoring the contract."
- On January 29, 2002, the Department made a presentation to the Senate Committee on Governmental Oversight and Productivity identifying the need for a third-party contract monitor.

A needs assessment is a systematic process for documenting the relevant needs of an organization, setting priorities, and making decisions regarding the allocation of resources. A cost-benefit analysis provides a process for identifying the advantages or benefits and the disadvantages or costs of a proposed solution. Absent a needs assessment or cost-benefit analysis, the Department is unable to show how it determined that utilizing a third-party contract monitor would be advantageous to the State; whether costs and benefits of contracting with a third-party contract monitor were compared to the costs and benefits of hiring an in-house contract monitor, especially when considering the magnitude and complexities of the HR outsourcing project; and how third-party monitor costs would be affected by the progress of the HR outsourcing project.

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**Recommendation: To ensure State resources are used efficiently and effectively, the Department should perform and document a needs assessment or cost-benefit analysis before entering into any contracts with significant costs.**

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**Finding No. 9: Request for Quotes**

Our review of Department records pertaining to the Acclaris third-party monitoring contract disclosed that the Department could not adequately demonstrate that its procurement process used to select the vendor was administered in a fair and equitable manner.

Our review of the Acclaris contract files and other Department records disclosed the occurrence of the following events:

Date	Event
August 14, 2002	Acclaris was added to the <i>Professional Consulting Services for Management Skills</i> State term contract by the Director of State Purchasing.
August 29, 2002	The President of Acclaris e-mailed a draft copy of a document titled <i>Contract By and Between Acclaris LLC And the State of Florida Acting Through the Department of Management Services</i> to the Assistant Deputy Secretary of the Department. In this e-mail, the President of Acclaris stated, "Attached is a draft contract, along with proposed scope, for our work on the PMO [Project Management Office] monitoring for the HR Outsourcing initiative. We have followed an earlier draft prepared by Mevatec, with very few changes, although we did expand the description of services and deliverables a bit. . . . Acclaris and Mevatec are excited about this opportunity to work with you and assure you we understand the significance of this project and will give this engagement our close attention." The draft contract stated, "The Parties have entered into this Contract whereby the Service Provider agrees to provide HR Outsourcing Program consulting services and Service Provider personnel, where necessary, all in accordance with and pursuant to the terms of the Contract."
September 5, 2002	The Department issued a Request for Quotes (RFQ) to obtain professional consulting support services for the implementation and performance monitoring over the life of the HR outsourcing contract. State law <sup>13</sup> provides that "agencies and eligible users may use an [RFQ] to obtain written pricing or services information from a state term contract vendor for commodities or contractual services available on state term contract from that vendor. The purpose of an [RFQ] is to determine whether a price, term, or condition more favorable to the agency or eligible user than that provided in the state term contract is available. Use of an [RFQ] does not constitute a decision or intended decision that is subject to protest." This RFQ was sent to all vendors listed on the <i>Professional Consulting Services for Management Skills</i> State term contract. The RFQ instructed vendors to present costs on an annualized basis except for one-time costs. Vendors were required to respond to the RFQ no later than 5:00 pm on September 10, 2002 (or five days/three business days later). Acclaris submitted a quote for \$407,230 <sup>14</sup> to cover the period through June 30, 2003.
September 17, 2002	The Department entered into a contract with Acclaris titled <i>Contract By and Between Acclaris LLC And the State of Florida Acting Through the Department of Management Services</i> for the performance of HR Outsourcing Program consulting services and Service Provider personnel, where necessary. The original contract provided for payments to Acclaris totaling \$1,775,000 through the term of the contract which was from September 17, 2002, through January 1, 2006.

The events enumerated above led to related audit inquiries of the current Director of the Division of Human Resource Management (Director) regarding the following issues of concern:

<sup>13</sup> Section 287.056, Florida Statutes.

<sup>14</sup> The Statement of Work in Acclaris' response showed \$193 per hour for 2,110 hours which equals \$407,230, as tabulated by the Department. However, included in Acclaris' response is narrative that also states the cost of services will be \$450,000 for the period beginning on September 16 [2002], and ending on June 30, 2003, corresponding to the State's fiscal year. Thereafter, fees totaling \$450,000 would be estimated annually for ongoing monitoring activities. On September 17, 2002, the contract was signed by the Department at a total cost of \$1,775,000 that included payments totaling \$650,000 for the 2002-03 fiscal year (\$450,000 for support services and a one-time payment of \$200,000 for a Project Monitoring Web-based Tool); payments totaling \$450,000 for each of the 2003-04 and 2004-05 fiscal years; and payments totaling \$225,000 for the 2005-06 fiscal year.

- The e-mail sent from the President of Acclaris to the Assistant Deputy Secretary on August 29, 2002, gives the appearance that Acclaris had been selected as the contractor although the RFQ was not issued until September 5, 2002. Additionally, this e-mail indicated that Acclaris had discussions with Department management about the contract before the other vendors were notified via e-mail on September 5, 2002. As a result, it appears that Acclaris may have been given an unfair advantage in responding to the RFQ. In response to audit inquiries, the Director stated, “[A] contract was contemplated with Acclaris when they were selected from the state term contract. A decision to issue an RFQ was made prior to finalizing the contract with Acclaris in order to determine whether better prices, terms or conditions might be available. . . . Negotiations with Acclaris were normal and expected as they were the vendor of choice. The RFQ was an additional (an un-required) step. Acclaris was not afforded a competitive advantage as the RFQ was merely a tool to determine whether better prices, terms or conditions existed.”
- The language included in the draft contract submitted to the Department by Acclaris on August 29, 2002, was almost identical to the language included in the RFQ dated September 5, 2002. As a result, it appears that the vendor that was selected as the contractor played a significant role in preparing the RFQ that was submitted to all vendors on the *Professional Consulting Services for Management Skills* State term contract listing. In response to audit inquiry, the Director stated, “The draft contract/scope of work submitted by Acclaris was based on discussions with the Department regarding the requirements for the third party monitor for the HR outsourcing project, and as such, was a good example for an RFQ. There was no reason to recreate an RFQ when an example was readily available.”
- The e-mail sent from the President of Acclaris to the Assistant Deputy Secretary on August 29, 2002, indicates that the Department had made the decision to award the contract to Acclaris. It is not clear why the Department would issue an RFQ on September 5, 2002, and have vendors incur costs in responding to the RFQ if the decision to award the contract to Acclaris had already been made. In response to audit inquiry, the Director stated, “The decision to engage Acclaris as the third-party monitor was not made at the time the RFQ was issued. The RFQ was simply to determine whether the Acclaris proposal was the right decision and whether better prices, terms or conditions existed.”
- The RFQ allowed vendors five days (three business days) to respond. However, as demonstrated by the draft copy of the contract submitted to the Department by Acclaris on August 29, 2002, and the fact that the RFQ language was taken from the draft contract, Acclaris was provided more time than the other vendors to prepare their response to the RFQ. In his response to audit inquiry, the Director stated, “The RFQ was issued as a last step prior to actually selecting the third-party monitor. In fact, the RFQ was an additional step which was not required. Acclaris had been tentatively selected from the state term contract and discussions had been ongoing for some time before the RFQ was issued. We are unaware of any requirements as to the appropriate number of working days a vendor should have to respond to an RFQ, as an RFQ is an informal process.”
- Although a summary was prepared by the Department listing the vendors who responded to the RFQ, no documentation was provided to demonstrate that the responses were evaluated. The table below shows the RFQ results as tabulated by the Department:

Vendor	Hours	Rate	Total Cost
Acclaris LLC	2,110	\$193.00	\$407,230.00
Camber Corporation	1,248	\$103.90	\$129,667.20
ICATT Consulting, Inc.	1,500	\$100.00	\$150,000.00
Mevatec Corporation	2,322	\$211.04	\$490,034.88
MGT of America, Inc.	5,200	\$85.00	\$442,000.00
PKV Management Consulting, Inc.	7,250	\$95.00	\$688,750.00

In response to our request for an explanation of who selected Acclaris and the basis for the selection, the Director stated, "The ultimate decision to select Acclaris was made by Secretary Henderson. The basis for the selection was that Acclaris was selected from the state term contract. The RFQ ultimately had nothing to do with the selection of Acclaris as the third-party monitor."

While State agencies are authorized to select management consultants from State term contracts, the Department's actions in selecting Acclaris appear not to have been most fair and equitable as summarized below:

- The Director's statement that "the decision to engage Acclaris as the third-party monitor was not made at the time the RFQ was issued" appears contrary to his statement that "Acclaris had been tentatively selected from the state term contract and discussions had been ongoing for some time before the RFQ was issued."
- The Director's statement that "a decision to issue an RFQ was made prior to finalizing the contact with Acclaris in order to determine whether better prices, terms, or conditions might be available" seems contrary to his statement that "the RFQ ultimately had nothing to do with the selection of Acclaris as the third-party monitor."
- The fact that the Department tabulated quotes from all vendors showing several lower rates than those provided by Acclaris and that the quotes were not evaluated or further considered invokes concerns as to whether the Department actually obtained the best prices, terms, and conditions in acquiring the contractual services.
- As RFQ responses were due from all vendors within five days (three business days) of issuance, it is questionable whether the vendors were provided a fair and equitable opportunity to submit responses comparable to Acclaris. The fact that Mevatec, who was heavily involved in the People First *Business Case* and vendor evaluations and negotiations from late 2000 (see Finding Nos. 1 and 14), and Acclaris were planning to work collaboratively on the third-party monitor project indicates that Acclaris had prior knowledge of the project and, thus, a longer time to prepare its response.

*Subsequent to the delivery of our preliminary and tentative findings to the Department, the Director informed us that his responses to our inquiries during audit field work and discussed above in this report pertaining to the RFQ and procurement of the Acclaris contract were based on information provided to him from the Deputy Secretary and other staff members involved in the RFQ and procurement process for the Acclaris third-party monitor contract. He stated that he merely transmitted the information to us in his capacity as the contact person during the audit of the People First contract. He further stated that "As the Auditor General staff are well aware, I was not employed by the Department of Management Services during the procurement and therefore would have no first hand knowledge pertaining to actions taken by DMS during this time. I was present during two interviews, along with the Deputy Secretary, conducted by the Auditor General staff regarding the procurement of the Third Party Monitor in which the Deputy Secretary related the facts involved in the procurement and use of the RFQ."*

State law<sup>15</sup> supports that documentation of Department acts taken and an effective monitoring mechanism are important means of curbing any improprieties and establishing the public’s confidence in the procurement process. Prudent business practices dictate that the evaluation and selection of a vendor be adequately documented to support that the Department exercised good judgment and showed accountability in obtaining the best prices, terms, or conditions when procuring the contract and expending State funds.

**Recommendation: The Department should establish policies and procedures that ensure sufficient documentation supporting management’s decision-making process pertaining to vendor selection is maintained. Additionally, the issuance of an RFQ results in the use of resources on the part of staff and responsive vendors. Therefore, once an RFQ is issued, the Department should utilize it appropriately to negotiate the best prices, terms, and conditions for Department contracts.**

**Finding No. 10: Contract Amendments**

The Department has the responsibility to ensure that daily business practices are exercised in a prudent manner and that State funds are judiciously expended. Our audit of the third-party monitor contract disclosed that the Department paid additional amounts to Acclaris although deficiencies regarding the third-party monitor’s performance had been identified, services required to be performed either remained the same as provided for in the original contract or had been reduced, and the required deliverables had been reduced.

As shown below, the Acclaris contract, which has a term of September 17, 2002, through January 1, 2006, has been amended six times since the contract was executed. The original contract was for a total cost of \$1,775,000 and stated that the Department “requires consulting support to assist DMS with the HR Outsourcing Project. The State has requested the Service Provider provide the State consulting support for implementation and performance monitoring for the HR Outsourcing Contract.”

Document/Date	Service	Amount
<b>Original Contract (9-17-2002)</b>	Monthly Services	\$1,575,000
	PMO Tool	200,000
<b>Total – Original Contract</b>		<b>\$1,775,000</b>
Amendment No. 1 (12/10/2002)	Monthly Services	\$(7,500)
	Risk Assessment	45,000
Amendment No. 2 (03/12/2003)	Monthly Services	(37,500)
Amendment No. 3 (06/24/2003)	Monthly Services	46,618
Amendment No. 4 (08/08/2003)	Monthly Services	631,000
Amendment No. 5 (12/04/2003)	Monthly Services	155,200
Amendment No. 6 (04/08/2004)	Monthly Services	191,200
<b>Total – Amendments</b>		<b>\$1,024,018</b>
<b>Total Contract Amount</b>		<b>\$2,799,018</b>

The table above shows the six contract amendments. Our review of these amendments disclosed that Amendment Nos. 3, 4, 5, and 6 increased the cost of the original contract by \$1,024,018, which resulted in a total contract cost of \$2,799,018. However, as discussed below, the cost increases resulting from Amendment Nos. 4, 5, and 6, totaling \$977,400, were approved by the Department although Department management had identified deficiencies regarding the third-party monitor’s performance and the services and deliverables required by the original contract had been reduced.

<sup>15</sup> Section 287.001, Florida Statutes.

Documentation shows that on April 14, 2003, the current Secretary responded to an e-mail dated April 13, 2003, from a Deputy Secretary identifying concerns and recommending changes related to the third-party monitor contract. In this e-mail, the Deputy Secretary stated, "Attached is a relatively short document following up on our conversation of Wednesday of last week [April 8, 2003]." The e-mail included a document titled *People First 3<sup>rd</sup> Party Monitor/Implementation Support, Current Scorecard and Change Recommendations, As of April 11, 2003*. This document identified the name of the resource and for each resource listed concerns and change recommendations. This document also included the following statement:

"The State of Florida contracted with ACCLARIS in late September of 2002 to provide 3<sup>rd</sup> Party Monitoring services for People First. ACCLARIS was asked to work with BAE Systems (formerly MEVATEC) because of their experience with DMS, enterprise-wide projects in the State of Florida, and experience with large scale systems implementations. These services were provided on a part-time basis until the State followed the ACCLARIS recommendation, based on a project assessment, to change the terms of the arrangement to allow ACCLARIS to support the State in a day to day implementation role. The team is concerned with many areas of the project in terms of some of the 3<sup>rd</sup> Party Monitor's resource productivity, accountability, flexibility, professional experience, and overall dedication to project success."

Some of the comments concerning the third-party monitor listed in this document include the following:

- Struggles to maintain detailed control of project issues, risk and work tasks with a seeming lack of big project implementation management experience.
- Has not demonstrated the ability to produce a daily status report to monitor program status.
- Spends most of time helping inexperienced team members with their responsibilities.
- Has very little experience with staffing, the State of Florida, and public sector.
- Has no demonstrated experience with HR administration, the State of Florida, and public sector clients.
- Has no understanding of performance measurement and its value to the "Go-Live" efforts.
- Has not met minimum expectations for HR administration support.
- Have not participated in project activities since about mid-February.

This document also included the statement that the document was "created to discuss the current state of the 3<sup>rd</sup> Party Monitoring resources and to provide change recommendations to improve vendor performance. These change recommendations are provided in two forms: minimum and maximum. Due to the inherent risk and potential threats to DMS in the current situation, the team does not feel staying the course is an option." This document listed several recommendations including: maintain the resource but expect an increase in vendor performance (minimum change), add additional resources for HR administration and user acceptance testing (minimum change), and remove the resource from the third-party team and provide a new resource via another vendor (maximum change). It appears that the Department adopted the recommendation for adding additional resources for HR administration and user acceptance testing by executing Amendment No. 3 on June 24, 2003, in the amount of \$46,618, that required the third-party monitor to provide additional support resources and to perform additional services between the dates of April 17, 2003, and June 6, 2003. (Also see Finding No. 14 regarding the Department's contractual relationship with Mevatec/BAE.) However, significant amendments (Nos. 4, 5, and 6 totaling \$977,400) were executed on August 8, 2003; December 4, 2003; and April 8, 2004; although deficiencies regarding the third-party monitor had been previously identified by Department management in April 2003.

Also, our review of Amendment Nos. 4, 5, and 6 disclosed that the third-party monitor was paid additional amounts totaling \$977,400 although the services and deliverables were reduced, as discussed below:

- Amendment No. 4, dated August 8, 2003, totaling \$631,000 – This amendment modified payments and increased the cost of the contract by \$631,000. This amendment revised the responsibilities assigned to Acclaris in the original contract, deleting the requirement for Acclaris to perform implementation services. The amendment stated that Acclaris would provide program monitoring related to the HR outsourcing contract and revised the required deliverables by deleting the requirement for Acclaris to provide agendas/minutes for weekly status meetings and for monthly agendas/minutes for the monthly Steering Committee meetings. In response to audit inquiry, the Director stated, “Due to the fact that the People First project had missed the ‘Go Live’ dates it was required that the third party monitor continue to provide the level of service, less the implementation portion, necessary in the extended development and implementation phase of the project. By necessity, a third party monitor has the bulk of their responsibilities before and during the actual development and implementation.” However, since the original contract required Acclaris to perform monitoring services through January 1, 2006, and since this amendment no longer required Acclaris to perform implementation services, it does not appear necessary or reasonable to pay increased costs for reduced services or services that were already required. Also, it does not appear to be an efficient use of State funds to increase compensation to Acclaris when the Department no longer required Acclaris to deliver weekly agendas/minutes and monthly agendas/minutes.
- Amendment No. 5, dated December 4, 2003, totaling \$155,200, and Amendment No. 6, dated April 8, 2004, totaling \$191,200 - Both of these amendments required Acclaris to provide additional monitoring resources and to receive additional payments. However, the original contract already required Acclaris to provide monitoring performance for the HR outsourcing contract. As a result, it is not apparent as to what “additional monitoring resources” were provided and why additional payments totaling \$346,400 were necessary. In response to audit inquiry regarding these amendments, the Director stated, “To address the delay in People First implementation, DMS prudently approved the sustained level of resources for the People First implementation. The extended resource requirement for monitoring implementation beyond the original Go-Live dates resulted in additional funds for Acclaris.” However, in response to our memorandum dated April 27, 2004, requesting documentation of hours worked by Acclaris to determine Acclaris’ sustained level of resources, the Director stated, “Acclaris is paid based on deliverables, regardless of hours.” This statement appears contrary to justifications that amendment payment increases were a result of the level of resources required.

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**Recommendation:** The practice of providing additional payments to Acclaris because of failures relating to the People First project should be discontinued. The Department should take all necessary steps to ensure that State funds are only used for essential and valid purposes.

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*The Secretary, in his written response to Finding No. 10, does not concur with our recommendation. He states that “The Auditor General’s conclusions do not fully consider all facts surrounding the Department’s efforts to develop and implement the HR Outsourcing initiative.” We disagree with the Secretary’s statement. We fully considered all facts and documentation provided to us by the Department on this important outsourcing initiative. Additionally, while Department managers apparently determined that continuing the Department’s relationship with Acclaris to ensure continuity during critical functions in project development and implementation outweighed the deficiencies noted in the Deputy Secretary’s e-mail dated April 13, 2003, the Secretary’s response does not explain why Acclaris was paid an additional \$977,400 when services and deliverables were reduced. Furthermore, with regard to the Secretary’s statement that “the Department deducted the additional contract costs from payments due to Convergys,” the table included in his response to Finding No. 11 does not provide*

*any additional information on how the Convergys contract costs were impacted and merely shows the \$155,200 approved budget amendment referred to in our Finding No. 11 as well as Exhibit E. We continue to recommend that the Department take the actions specified in our recommendation.*

### **Finding No. 11: Legislative Budget Requests and Use of Appropriated Funds**

Our review disclosed that, contrary to law,<sup>16</sup> the Department entered into a contract with the third-party monitor in an amount that exceeded the specific legislative appropriation for those services. Our review further disclosed that disbursements to the third-party monitor exceeded the amounts approved by the Legislature. Additionally, we noted that the Department made payments to the third-party monitor from funds and categories other than the fund and category from which the appropriation for the third-party monitor was established. As a result, Department records do not provide a mechanism that readily identifies all expenditures incurred relating to the third-party monitor.

The Florida Constitution states that “No money shall be drawn from the Treasury except in pursuance of appropriation made by law.”<sup>17</sup> Accordingly, State law<sup>18</sup> provides that an appropriation is a legal authorization to make expenditures for specific purposes within the amounts authorized in the Appropriations Act. Further, this law states that an Appropriations Act is the authorization of the Legislature, based upon legislative budgets or legislative findings of the necessity for an authorization when no legislative budget is filed, for the expenditure of amounts of money by an agency for stated purposes in the performance of the functions it is authorized by law to perform.

Additionally, State law provides that “No agency or branch of state government shall contract to spend, or enter into any agreement to spend, any moneys in excess of the amount appropriated to such agency or branch unless specifically authorized by law, and any contract or agreement in violation of this chapter shall be null and void.”

Regarding the services of a third-party monitor, the Department was appropriated<sup>19</sup> a total of \$1,350,000 (\$450,000 in each of the 2002-03, 2003-04, and 2004-05 fiscal years) from the State Personnel System Trust Fund, Special Categories, Human Resource Outsourcing Project. Additionally, on February 19, 2004, a budget amendment totaling \$155,200 was approved transferring budget authority to the State Personnel System Trust Fund, Category 040000, Expenses, for third-party monitoring.

Our review of Department records relating to the third-party monitor disclosed the following deficiencies:

- The Acclaris contract, entered into by the Department on September 17, 2002, states that “For the initial ten months of support, the service provider shall be paid \$45,000 per month. For each month thereafter through the period of performance covered by the contract, the Service Provider shall be paid \$37,500 per month. . . . Additionally, a one time invoice of \$200,000 will be submitted upon delivery of, and acceptance by, the State of the Project Monitoring web-based tool.” This results in the Department contracting to pay \$450,000 for the 2002-03, 2003-04, and 2004-05 fiscal years; \$225,000 for the 2005-06 fiscal year; and a one-time payment of \$200,000 for a Project Monitoring Web-based Tool, for a total of \$1,775,000. Relating to the Project Monitoring Web-based Tool, a review of Department records disclosed that an Equipment Installation Request to the State Technology Office listed the expected date of installation as October 21, 2002, resulting in this also being a projected 2002-03 fiscal year expenditure.

<sup>16</sup> Section 216.311, Florida Statutes.

<sup>17</sup> Article VII, Section 1(c), Florida Constitution.

<sup>18</sup> Section 216.011, Florida Statutes.

<sup>19</sup> Chapter 2002-394, Laws of Florida; Chapter 2003-397, Laws of Florida; and Chapter 2004-268, Laws of Florida.

As a result, the Department entered the 2002-03 fiscal year with an appropriation of only \$450,000, and with expectations to expend funds related to the third-party monitoring contract totaling \$650,000 for that same fiscal year.

- Department disbursement records for the Acclaris contract disclosed that, for the 2002-03 and 2003-04 fiscal years, disbursements totaled \$1,182,618 (including \$185,000 for the Project Monitoring Web-based Tool – See Finding No. 12) and \$926,400, respectively. The disbursements exceeded the specific legislative-appropriated amounts for those services (including the approved budget amendment of \$155,200 during the 2003-04 fiscal year) by \$732,618 and \$321,200, accordingly. (See Exhibit E)
- Since September 17, 2002 (contract's inception date), through June 30, 2004 (approximately 22 of 40 months or 55 percent of the contract term), the Department paid a total of \$2,109,018 relative to the third-party monitoring contract. This total surpasses all three specific legislative appropriations for those services (2002-03, 2003-04, and 2004-05 fiscal years) and the approved budget amendment by \$603,818. Our review of the Department's payment history for the Acclaris third-party monitor contract disclosed that, in addition to making payments from the State Personnel System Trust Fund, Special Category (104488), HR Outsourcing Project, as specified by law, payments were also made from other funds and categories that have been established within the Department's organization as summarized below:
  - Four invoices totaling \$392,918 were paid from funds other than the State Personnel System Trust Fund, Special Category (104488), HR Outsourcing Project.
    - One invoice in the amount of \$185,000 was paid from the Supervision Trust Fund, Category 040000, Expenses.
    - Three invoices totaling \$217,918 were paid from the State Employees Health Insurance Trust Fund, Category 030000, Other Personal Services.
  - Eight invoices totaling \$727,900 were paid (\$335,700 in the 2002-03 fiscal year and \$392,200 in the 2003-04 fiscal year) from Category 040000, Expenses, rather than Special Category (104488), HR Outsourcing Project.

Also, we noted one instance in which third-party monitoring services provided during the 2002-03 fiscal year (June 2003) and totaling \$130,000 was paid from 2003-04 fiscal year appropriations.

We understand that People First is an important initiative for State Government. Likewise, we realize that the Department secured the third-party monitoring contract to help ensure the success of this initiative. However, entering into contracts for amounts greater than the appropriations is contrary to State law.<sup>16</sup> Also, by paying moneys in excess of specific legislative-appropriated amounts, the Department has failed to adequately plan and budget for expenditures related to the third-party monitor. Additionally, the disbursement of moneys from various trust funds makes it more difficult to have a total accounting of all costs incurred for the third-party monitoring services, as the total accounting may also be useful to others, such as legislative and Executive Office of the Governor (Office of Planning and Budgeting) staff. Unless an actual request is made to the Department for a total accounting of the third-party monitoring contract, this information cannot be readily obtained by using the fund and category as outlined by law from the State's FLAIR records or LBRs. For example, pertaining to the appropriations that were specified by law, the 2004-05 Legislative Budget Request, Exhibit D-1, Detail of Expenses, that should provide policymakers accurate information for decision making, showed that the actual expenses for the 2002-03 fiscal year totaled only \$450,000 instead of the \$1,182,610 actually expended.



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**Recommendation:** The Department should comply with State law and discontinue the practice of entering into contracts and making payments in amounts that exceed related appropriated amounts. This matter should be reported to the Legislature and the Executive Office of the Governor to determine if any further actions should be taken. While carrying out its responsibilities and implementing ongoing initiatives, we recommend that the Department ensure that expenditures are classified and reported appropriately.

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*The Secretary, in his written response to Finding No. 11, does not concur with our recommendation. The Secretary states that “The Department did not enter into contracts that exceeded appropriations.” However, as noted in our finding, the Department entered into the 2002-03 fiscal year with an appropriation of only \$450,000 and with expectations to expend funds related to the third-party monitoring contract totaling \$650,000. The Secretary also states that “The Department used the transfer authority in Chapter 216.292, Florida Statutes, to make payments for third party monitoring services.” Section 216.292(3), Florida Statutes, provides for a transfer of appropriations (fund or category). However, as shown in the Department’s response, most of the transfers were not made to the specific appropriation category for the third-party monitor and the expenditures were made from funds or categories other than that for the third-party monitor. Therefore, the third-party monitor expenditures were materially understated on the 2004-05 fiscal year LBR Exhibit D-1, as described in our finding. The Department’s use of various Programs’ base budget Expense appropriations and State Group Insurance appropriations (as shown in the Department’s response) as a funding source for the third-party monitor appears inconsistent with the assessment-based funding provided for in Chapter 2002-394, Laws of Florida, the General Appropriations Act (Item 2816) for the Human Resource Outsourcing Initiative. We continue to recommend that the Department take the actions specified in our recommendation.*

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**Finding No. 12: Project Monitoring Web-Based Tool**

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Our review of the accounting transactions related to the third-party monitoring contract disclosed that the Department paid Acclaris \$185,000 for a Project Monitoring Web-based Tool (PMO Tool) that was never fully used as intended by Department personnel in supporting the HR outsourcing project.

The PMO Tool was installed by February 15, 2003, and Acclaris was paid \$185,000 on May 5, 2003, for this tool. However, in an e-mail dated March 25, 2003, Acclaris staff noted that they were having problems with the tool. Based on audit inquiry, the Director stated, “The PMO Tool was purchased by the Office of the Secretary to be an Enterprise Wide Project Management Tool. After thorough review and usage by the People First Project Team, [employees] determined that the existing design of the tool was not sufficient to meet project management needs. . . . the team moved to Microsoft Office Suite.” Additionally, the Director further stated, “At the time of payment, the PMO Tool was being used by the People First Project Management Team and Mevatec/KSolutions [vendors] had met all of contractual requirements.”

Based on the above, it appears that a lack of adequate planning and inquiry of the PMO Tool prior to its purchase may have been a contributing factor to its not being useful for the People First project.

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**Recommendation:** Department management should make additional inquiries regarding this purchase and seek reimbursement from the vendor if it is determined that the vendor was not in compliance with the contract. Additionally, in the future, when the Department is making a determination during the planning and evaluation phase of a project as to whether the purchase of a product or service is in the best interest of the State, extensive inquiry should be made that will help substantiate the product's or service's effectiveness and usefulness for the purposes intended.

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**Finding No. 13: Florida Minority Business Loan Mobilization Program**

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State law<sup>20</sup> created the Florida Minority Business Loan Mobilization Program (Program). This law states, "It is the intent of the Legislature to promote diversity in state contracting by eliminating barriers to minority business enterprises providing goods and services to this state." This law also states, "The goal of the Program is to assist minority business enterprises by facilitating working capital loans to minority business enterprises that are vendors on State agency contracts." Under this Program, a minority business enterprise (MBE) vendor, upon receipt of a contract or subcontract from a State agency, may apply to obtain working capital financing from any participating financial institution approved by the Department. The contracting State agency may disburse to the MBE vendor a portion of the base contract award, termed the designated loan mobilization (DLM) payment, for use as collateral to obtain working capital financing.

The Department's Office of Supplier Diversity (OSD) is responsible for the administration of this Program. The OSD established procedures titled *Florida Minority Business Loan Mobilization Program Loan Processing Steps* to be followed in order to participate in the Program. In addition to the written procedures, we were informed by Department staff that, if an MBE vendor submits any invoice for payment of services to the contracting State agency prior to submitting its letter to the contracting State agency requesting to participate in the Program, that vendor would not be eligible to participate in the Program under that specific contract. We were also informed that other extenuating circumstances could exist that would allow the MBE vendor to participate in the Program although the MBE vendor had submitted an invoice for the designated contract.

Our review disclosed that the Department approved Acclaris (a certified minority-owned business) to participate in the Program and attempted to acquire a loan under this Program for Acclaris as discussed below:

- On September 17, 2002, the Department entered into the contract with Acclaris to provide third-party consulting support for implementation and performance monitoring of the HR outsourcing contract.
- On January 7, 2003, the President of Acclaris presented a formal request to the former Interim Secretary to participate in the Program relating to the third-party monitor contract.
- Through February 2003, the Department had approved five invoices totaling \$225,000 submitted by Acclaris under the third-party monitor contract for monthly services performed for the period September 17, 2002 (effective date of the contract), through December 2002, and a risk assessment delivered in January 2003.
- On March 11, 2003, the Department requested the Department of Financial Services (DFS) to make a DLM payment to Acclaris in the amount of \$200,000 for participation in the Program.
- Through April 2003, the Department approved four additional invoices totaling \$626,600 submitted by Acclaris under the third-party monitor contract for monthly services performed for the period January 2003 through March 2003 and the delivery of the PMO Tool in February 2003.

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<sup>20</sup> Section 288.706, Florida Statutes.

- On May 7, 2003, the President of Acclaris e-mailed the Executive Director of the OSD to obtain the status of the loan request. On that same date, the Executive Director of the OSD requested the status of the loan request from the Chief of the Bureau of Financial Management Services. In reply to the Executive Director's inquiry, the Bureau Chief stated that DFS requested an answer as to, "Why are we doing a loan to Acclaris when we have already paid them \$851,600 on the contract. [DFS] belief is that the Loan Mobilization Program is for start-up costs or working capital to [begin] the job."
- On May 9, 2003, the Department requested DFS to delete this DLM payment request.

It is questionable why the Department would submit a request on March 11, 2003, to DFS for a DLM payment to Acclaris and follow-up on that request on May 7, 2003, knowing that, by that date, Acclaris had submitted to the Department nine invoices totaling \$851,600 for services performed under the third-party monitor contract for the period September 17, 2002, through March 2003. Additionally, no documentation of extenuating circumstances relating to Acclaris that would make the vendor eligible to participate in the Program was provided on audit inquiry.

Although no DLM payment was made to Acclaris, it appears that the decision not to make the payment was based upon questions raised by DFS and not upon controls established in Department operating procedures for the Program. In response to audit inquiry regarding Department approval of Acclaris' participation in this Program, the Assistant General Counsel indicated that the request for the DLM payment was a "clerical error" and "once identified through the existing inter-agency operational process by which such requests are handled, was quickly rectified by the withdrawing of the loan request." However, as indicated by the actions of the Department, a DLM payment totaling \$200,000 was being sought by the Department for Acclaris as late as May 7, 2003.

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**Recommendation: In future transactions relating to MBE vendor participation in the Program, Department management should ensure that its actions comply with established policies and procedures. We further recommend that Department written policies and procedures for the Program be enhanced to address the Program participation issue raised in this finding as well as other applicable issues, such as defining and requiring documentation for any "extenuating circumstances."**

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#### **Finding No. 14: Conflicts of Interest**

State law<sup>21</sup> provides that a person, or any firm in which such person has any interest, who receives a contract that has not been procured competitively "to perform a feasibility study of the potential implementation of a subsequent contract, who participates in the drafting of a solicitation or who develops a program for future implementation is not eligible to contract with the agency for any other contracts dealing with that specific subject matter." This law, largely unchanged since it was first enacted in 1982, narrowly describes a situation wherein an organizational conflict of interest is recognized and prohibited. Generally, organizational conflicts of interest are determined to exist when contractors or consultants have past, present, or planned personal or financial interests that either directly or indirectly diminish the ability to give impartial objective assistance or results in an unfair competitive advantage.

Our review of the contracts and accounting records pertaining to the People First project included reviewing the functions performed by Acclaris and a consulting company, Mevatec Corporation (Mevatec). Effective May 15, 2000, the Department executed a State term contract titled *Professional Consulting Services for Management Skills*,

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<sup>21</sup> Section 287.057(18), Florida Statutes.

contract number 973-001-00-1, to provide economies in the purchase of professional consulting services for management skills by all State agencies and institutions. On December 1, 2000, and August 14, 2002, Mevatec and Acclaris, respectively, were added as vendors under this State term contract. Per Department records, this State term contract listed 52 vendors as of April 19, 2004, the last date the contract was revised.

During the 2000-01 and 2001-02 fiscal years, the Department issued four purchase orders totaling \$681,289 to Mevatec. These purchase orders were issued under the *Professional Consulting Services for Management Skills* State term contract to perform a business case analysis and HR outsourcing consulting services for the ITN evaluation phase of People First. Mevatec invoices pertaining to the purchase orders show charges for acquisition support, establishing performance standards, and providing evaluator notebooks and an activity-based costing approach.

On September 5, 2002, subsequent to the award of the HR outsourcing contract to Convergys in August 2002, the Department issued an RFQ to vendors listed on the *Professional Consulting Services for Management Skills* State term contract seeking professional consulting services for the implementation and performance monitoring over the life of the HR outsourcing contract. Six vendors responded to this RFQ, including Mevatec and Acclaris. The Department awarded the contract to Acclaris, and, on September 17, 2002, the Department entered into a contract with Acclaris to provide “consulting support for implementation and performance monitoring for the HR Outsourcing Contract.” (See Finding Nos. 9 and 10.) Shortly after the Acclaris contract was executed, its President sent a letter to the Department stating that it was negotiating with Mevatec “to assist Acclaris in providing the services detailed in the Contract.” Documentation shows that the letter was approved by the Department’s General Counsel. The effective date of Acclaris’ contract with Mevatec was September 17, 2002, the same date as Acclaris’ contract with the Department.

On April 7, 2003, the Department issued an RFQ to vendors listed on the *Professional Consulting Services for Management Skills* State term contract seeking implementation consulting support for the People First project. Fifteen vendors responded to this RFQ, including Acclaris and BAE Systems (Mevatec/BAE), which had acquired Mevatec. The Department awarded the contract to Mevatec/BAE, and, on April 14, 2003, the Department entered into a contract with Mevatec/BAE to perform change management, human resource administration, and user acceptance testing for People First including developing testing methodology, testing work plans, testing scripts, and testing scenarios. Subsequent to the expiration of this contract on July 31, 2003, and at the direction of the Department, Mevatec/BAE entered into an agreement with the Service Provider (Convergys) to perform user acceptance testing and other implementation consulting services. Also, as a result of this RFQ, the Department amended the Acclaris contract (Amendment No. 3) on June 24, 2003, in the amount of \$46,618 that required the third-party monitor to provide additional support services and to perform additional services between the dates April 17, 2003, and June 6, 2003. (See Finding No. 10 relating to amendments to the Acclaris contract.) A summary of activities relating to Mevatec/BAE is presented in the table below and includes the Faulkenberry Consulting Group, as its President previously was a lead consultant with Mevatec/BAE:

Date	Fiscal Impact	Activity
May 15, 2000		Effective date for <i>Professional Consulting Services for Management Skills</i> State term contract 973-001-00-1.
December 1, 2000		Mevatec is added to the <i>Professional Consulting Services for Management Skills</i> State term contract.
January 10, 2001	\$106,003	The Department issues Purchase Order No. C57077 to Mevatec for acquisition assistance for HR payroll outsourcing acquisition and business case analysis for HR payroll outsourcing.
February 6, 2001		Mevatec and the former Secretary present HR outsourcing initiative to Cabinet. Mevatec states it has been working with the Department for about 2½ months.
February 21, 2001		The former Secretary forwards Mevatec's <i>DMS Outsourcing Project, Business Case</i> , to the Governor.
April 11, 2001	\$229,992	The Department issues Purchase Order No. C57241 to Mevatec for acquisition evaluation, business case analysis of alternatives, and establishing performance standards.
<b>FY 2000-01</b>	<b>\$170,696</b>	<b>Payments to Mevatec for the People First project during the 2000-01 fiscal year total \$170,696.</b>
July 24, 2001	\$202,472	The Department issues Purchase Order No. C57658 to Mevatec for acquisition assistance for HR payroll outsourcing acquisition, business case analysis of alternatives, and residual organization re-engineering.
September 24, 2001	\$128,231	The Department issues Purchase Order No. B57902 to Mevatec for acquisition and support for HR payroll outsourcing acquisition and payroll outsourcing acquisition roll-out assistance (consulting support and oversight of the transition) from September 25, 2001, through June 30, 2002.
September 25, 2001		Mevatec issues its <i>Business Plan – Human Resource Outsourcing Initiative</i> .
November 5, 2001		Governor approves Mevatec's <i>Business Plan</i> ; approval allows Department to contract with a service provider for HR services on behalf of all State agencies.
November 6, 2001		House of Representatives, Office of the Speaker, approves Mevatec's <i>Business Plan</i> ; indicates that the Department may contract with a service provider for HR services on behalf of all State agencies.
December 7, 2001		House of Representatives, Fiscal Responsibility Council, approves Mevatec's <i>Business Plan</i> .
June 11, 2002	\$10,993	The Department increases Purchase Order No. B57902 by \$10,993.
June 19, 2002	\$3,598	The Department increases Purchase Order No. B57902 by \$3,598.
<b>FY 2001-02</b>	<b>\$388,257</b>	<b>Payments to Mevatec for the People First project during the 2001-02 fiscal year total \$388,257.</b>
August 29, 2002		E-mail from President of Acclaris to an Assistant Deputy Secretary of the Department submitting draft contract for work on Program Management Office monitoring for the HR outsourcing project. E-mail states that Acclaris and Mevatec are "excited about this opportunity to work with you" and also refers to a meeting with the former Secretary on September 5, 2002.
September 5, 2002 4:00 PM		Request for Quote (RFQ) sent to vendors listed on the <i>Professional Consulting Services for Management Skills</i> State Term Contract 973-001-00-1 seeking professional consulting services for the implementation and performance monitoring over the life of the HR outsourcing contract.
September 10, 2002		Mevatec responds to RFQ issued by the Department on September 5, 2002. Acclaris was subsequently awarded the contract.
September 17, 2002		Department enters into contract with Acclaris for \$1,775,000 to perform consulting support for implementation and performance monitoring of the HR outsourcing contract.
September 17, 2002		The effective date of the contract between Acclaris and Mevatec (contract was signed on December 3, 2002). Mevatec agrees to provide consulting support to Acclaris for the HR outsourcing project.
October 1, 2002		Letter from President of Acclaris to an Assistant Deputy Secretary of the Department informing the Department that Acclaris is entering into negotiations with Mevatec to act as a subcontractor. (Subsequently approved by the Department's General Counsel's Office – no date provided.)
December 3, 2002		Mevatec signs a contract in the total amount of \$884,500 with the People First third-party monitor, Acclaris, to provide consulting support in conjunction with the project. The effective date of the contract was September 17, 2002, the same date of Acclaris' contract with the Department. The contract amount of \$884,500 to Mevatec represents almost half of the amount of Acclaris' contract with the Department of \$1,775,000.

Date	Fiscal Impact	Activity
March 21, 2003		BAE Systems North America (BAE) acquires Mevatec.
April 7, 2003		Department issues a Request for Quote from contractors on State Term Contract 973-001-00-1, <i>Professional Consulting Services for Management Skills</i> , for implementation consulting support for People First. Deadline for submission is April 9, 2003.
April 9, 2003		Responses to the RFQ dated April 7, 2003, are due. The Department received 15 responses, including responses from Mevatec/BAE and Acclaris.
April 10, 2003		Department delays posting the award for the RFQ issued on April 7, 2003.
April 14, 2003	\$232,710	The Department enters into "People First Additional Resources" contract with Mevatec/BAE for the period April 14, 2003, through June 30, 2003. Contract deliverables included providing monthly status reports on activities relating to: change management resources, human resource administration resources, and user acceptance testing resources. Although effective on April 14, 2003, the contract was not signed until June 25, 2003.
June 6, 2003		Contract between Mevatec/BAE and Acclaris is terminated.
June 25, 2003		Department signs Mevatec/BAE contract effective April 14, 2003.
June 25, 2003		A Settlement Agreement is executed between the Department and Mevatec/BAE for payment of services performed during April and May 2003, prior to the actual signing of the "People First Additional Resources" contract.
<b>FY 2002-03</b>	<b>\$232,710</b>	<b>Payments to Mevatec/BAE for the People First project during the 2002-03 fiscal year total \$232,710.</b>
July 8, 2003	\$175,432	The Department amends the Mevatec/BAE contract for an additional \$175,432 for the period June 2, 2003, through July 31, 2003. Contract deliverables include providing monthly status reports relating to services provided by the Mevatec/BAE engagement manager, payroll lead, benefits administration resources, human resources administration resources, and all user acceptance testing support resources relating to implementation of People First.
July 11, 2003		A Settlement Agreement is executed between the Department and Mevatec/BAE for payment of services performed between June 2, 2003, and July 8, 2003, prior to signing Amendment No. 1.
July 31, 2003	\$543,000	The Department amends the Convergys contract (Amendment No. 1); requires Convergys to use no more than 2,715 of the 8,300 hours allocated to the Virtual Center of Excellence (a value of \$543,000) to pay Mevatec/BAE for performing independent user acceptance testing and other implementation consulting services for the contract's human resource and payroll preparation deliverables under separate contract with the Department. Convergys is required to pay Mevatec/BAE for the services performed under its contract with the Department. (Convergys entered into a separate agreement with Mevatec/BAE for consulting services to be performed.)
December 18, 2003	(\$465,960)	The Department amends the Convergys contract (Amendment No. 2); credits back 2,330 hours (a value of \$465,960) to Convergys because the cost for Mevatec/BAE consulting services amounted to only \$77,040.
December 18, 2003	\$465,960	The Department amends the Convergys contract (Amendment No. 3); requires Convergys to use no more than 2,330 of the remaining 7,463 (a value of \$465,960) Virtual Center of Excellence consulting hours to compensate Mevatec/BAE for performing independent user acceptance testing and other implementation consulting services for the contract's human resource and payroll preparation deliverables under separate contract with the Department. Mevatec/BAE is to perform these services during the period October 6, 2003, through January 2, 2004.
January 31, 2004	\$875,000	The Department amends the Convergys contract (Amendment No. 4); requires Convergys to use no more than 4,375 (a value of \$875,000) of the remaining 5,133 Virtual Center of Excellence consulting hours to compensate Mevatec/BAE for performing independent user acceptance testing and other implementation consulting services for the contract's human resource and payroll preparation deliverables under separate contract with the Department.
<b>FY 2003-04</b>	<b>\$175,432</b>	<b>Payments to Mevatec/BAE for the People First project during the 2003-04 fiscal year total \$175,432.</b>
July 21, 2004	\$151,600	The Department amends the Convergys contract (Amendment No. 5); requires Convergys to use the remaining 758 (a value of \$151,600) Virtual Center of Excellence consulting hours to compensate a third-party vendor (Faulkenberry Consulting Group, a limited liability company established effective June 15, 2004) for performing the contract's human resource and payroll preparation deliverables under separate contract with the Department. (David Faulkenberry, President of Faulkenberry Consulting Group, provided consulting services with Mevatec/BAE and served as Functional Leader for the payroll and benefits portion of the People First project.)
<b>FY 2000-01 through FY 2003-04</b>	<b>\$967,095</b>	<b>Payments to Mevatec/BAE for People First project for the 2000-01 through 2003-04 fiscal years total \$967,095.</b>

To be effective, monitoring functions should be performed independently from implementation functions and, thus, in the 2002-03 fiscal year, Acclaris and its subcontractor, Mevatec/BAE, were under contract to perform incompatible duties. After the Department's contract with Mevatec/BAE was executed and shortly after his appointment, the current Secretary recognized that the contract created a conflict of interest and made it inappropriate for Mevatec/BAE to furnish monitoring services through its subcontract with Acclaris. The current Secretary directed Acclaris to perform only monitoring functions per its contract with the Department. Acclaris and Mevatec/BAE subsequently terminated their contract on June 6, 2003.

While the current Secretary separated the incompatible functions of monitoring and implementing performed by Acclaris, we believe that a second organizational conflict of interest appears to have existed. The consulting services provided by Mevatec/BAE in the planning, evaluation, and negotiation phases of the contract also appear in conflict with implementation functions performed for the Department and, later, Convergys. Functions such as consulting services, the rendering of advice, evaluation services, or similar activities that establish the ground rules for a future contract may create a situation in which a contractor is situated to influence key aspects of a procurement in its own favor to the disadvantage of competing vendors. Also, if a contractor is placed in a position of providing assessments over another entity with which it has a significant financial relationship or, as in this case, was involved in the evaluation of the entity's selection, the contractor's ability to render impartial advice could be undermined. We cannot determine, on audit, whether the organizational conflict of interest created by Mevatec/BAE being first heavily involved in the planning of the People First project and later with implementation of People First resulted in an unfair competitive advantage to the company or diminished the objectivity of the company in rendering the implementation services, or whether the organizational conflicts of interest were mitigated by other actions. Since Mevatec/BAE services were acquired via the State term contract, the services are considered competitively procured and, thus, do not specifically violate the conflict-of-interest law referenced above. However, it is unlikely that the law, enacted in 1982, envisioned the enterprise-wide outsourcing contracts utilized by today's State Government. Given the dollar magnitude of the People First project, the law, as written, may not adequately safeguard State resources.

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**Recommendation:** We commend the current Secretary for taking action to separate monitoring functions from implementing functions in the Department's consulting services for the People First project. To strengthen public confidence that contracts are awarded impartially and to ensure that objectivity in the contract evaluation process is achieved, the Department should establish policies and procedures that define organizational conflicts of interest including procedures for disclosure provisions in all solicitations and contracts and steps to be taken to avoid or mitigate actual organizational conflicts of interest. Additionally, to ensure fairness and transparency in the solicitation, evaluation, and award of contracts, we recommend that the Legislature review current procurement law to determine whether the avoidance and mitigation of organizational conflicts of interest should be more broadly addressed. For example, the Legislature should consider amending Section 287.057(18), Florida Statutes, to extend the scope beyond a feasibility study to include all facets of a business case. Consideration should be given to require that all solicitations include the names and specific services provided by any vendors that participated in preparing the business case, drafting the solicitation, or developing the program for future implementation. The solicitation should also describe why the services provided by the vendors would not present an organizational conflict of interest.

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**Finding No. 15: Contract Administrator**

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State law<sup>22</sup> requires the Department to designate at least one employee as a contract administrator responsible for maintaining a contract file and financial information on all contractual services contracts and to serve as a liaison with the contractor managers and the Department. During our review of the Acclaris contract, we noted that the Department was not in compliance with applicable law.

In response to audit inquiry, the Director stated that “the lack of a Contract Administrator is also discussed in Internal Audit Report No. 2004-01.”<sup>23</sup> However, an explanation addressing why a contract administrator had not been appointed was not provided.

As evidenced by the issues identified during this audit and in the Department’s Internal Audit Report No. 2004-01, there exists a need for a contract administrator and stronger contract administration controls within the Department.

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**Recommendation: The Department should comply with applicable law by designating an employee as a contract administrator responsible for maintaining contract files and financial information on all contractual services contracts and to serve as a liaison with the contract managers.**

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**OTHER ISSUES**

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**Finding No. 16: Postemployment Restrictions on Executive Lobbyists**

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Postemployment restrictions provided in the Code of Ethics for Public Officers and Employees<sup>24</sup> as provided in State law prohibit certain former agency employees<sup>25</sup> from personally representing another person or entity for compensation before the agency with which he or she was employed for a period of two years following vacation of position. Furthermore, the Code of Ethics<sup>26</sup> provides that agencies may impose upon its own officers and employees additional or more stringent standards of conduct and disclosure requirements than those specified in the Code. Also, State procurement laws<sup>27</sup> provide “The Legislature recognizes that fair and open competition is a basic tenet of public procurement; that such competition reduces the appearance and opportunity for favoritism and inspires public confidence that contracts are awarded equitably and economically; and that documentation of the acts taken and effective monitoring mechanisms are important means of curbing any improprieties and establishing public confidence in the process by which commodities and contractual services are procured. It is essential to the effective and ethical procurement of commodities and contractual services that there be a system of uniform procedures to be utilized by state agencies in managing and procuring commodities and contractual services; that detailed justification of agency decisions in the procurement of commodities and contractual services be maintained; and that adherence by the agency and vendor to specific ethical considerations be required.”

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<sup>22</sup> Section 287.057(16), Florida Statutes.

<sup>23</sup> Internal Audit Report No. 2004-01, Department Contract Management, dated April 19, 2004, is an audit by the Department’s Inspector General’s Office.

<sup>24</sup> Chapter 112, Part III, Florida Statutes.

<sup>25</sup> Section 112.313(9)(a)2., Florida Statutes.

<sup>26</sup> Section 112.326, Florida Statutes.

<sup>27</sup> Section 287.001, Florida Statutes.



Soon after taking office, Governor Bush issued Executive Order 99-20, that provided a new Code of Ethics applicable to the Executive Office of the Governor and Lieutenant Governor, and to all Secretaries and Deputy Secretaries of executive agencies under the purview of the Governor. Agency Secretaries were to review and evaluate the revised Code of Ethics in light of the current policies adopted by their agency, with a view toward using the Code as the base standard. The Department adopted the Governor's Code of Ethics as the agency's policy. The Governor's Code of Ethics provides that "Employees whose immediate relatives (spouse, siblings, parents, children) are lobbyists will, at least quarterly, disclose to the designated ethics officer the names of all clients of such lobbyists; these employees will not participate in any matter that would inure to their relatives special gain or loss, and will recuse themselves from discussions/meetings/etc. involving clients of their immediate relatives."

During the course of our audit of contracts related to People First and other Department outsourcing projects, as described in the table below, we reviewed records pertaining to individuals who, as registered executive lobbyists represented, or currently represent, companies before State agencies:

Company Name	Project	Audit Report Number
Accenture LLP	MyFloridaMarketPlace	Estimated Release Date Fall 2004
The North Highland Company	MyFloridaMarketPlace	Estimated Release Date Fall 2004
BearingPoint	Integrated Retirement Information System	2004-143
The Staubach Company	Real Estate Strategic Planning and Management Services	2005-015

We noted that some of the Department's former senior managers or the spouses of current and former top managers are, or have recently been, registered as executive lobbyists, for companies involved in these contracts. In some cases, these lobbyists specifically excluded the Department from their registrations. However, the lobbyists noted on Exhibit B did not exclude the Department even though their two-year period specified by law had not elapsed, as described below:

- A former Deputy Secretary registered as an executive lobbyist to represent Mevatec one month after leaving State employment on October 18, 2001. While our review of records made available by the Department did not disclose evidence of any direct contact between the lobbyist and the Department in 2001, the former Deputy Secretary was Mevatec's only registered lobbyist during 2001. A second former Deputy Secretary also registered as an executive lobbyist to represent Mevatec less than three months after leaving State employment on March 28, 2002. Again, the records available for our review did not disclose any direct contact between either of the two former Deputy Secretaries and the Department, although the former Deputy Secretaries were Mevatec's only registered lobbyists for 2002 and 2003, until Mevatec was acquired by BAE. One of the former Deputy Secretaries continued as a Mevatec/BAE lobbyist in 2004. During this period of time, Mevatec/BAE had performed various roles in the People First project as discussed in Finding Nos. 1 and 14.
- The former Secretary began lobbying for The North Highland Company, the third-party monitor for the MyFloridaMarketPlace (MFMP) project, on March 27, 2003, just 77 days after vacating office and 21 days after the Company signed its contract with the Department. Our review of records did not disclose evidence of any direct contact between the former Secretary and the Department during 2003 and the Company had multiple executive lobbyists who were not former employees. However, the research and issuance of the Invitation to Negotiate for the MFMP third-party monitor occurred prior to the former Secretary leaving office.

Audit inquiry of Department managers disclosed that the Department has general employment procedures that make reference to the postemployment restrictions law, although these procedures do not inform Department staff on how to avoid an improper lobbying relationship and how to report such, should it occur. Such procedures, and training on such procedures, would reasonably ensure that employees are fully cognizant of the postemployment restrictions on executive lobbyists. Additionally, although the Department adopted the Governor's Code of Ethics, the Department's ethics officer indicated that the Code's requirement for quarterly disclosures by employees with relatives who are lobbyists had not been implemented. These disclosures provide information necessary for the Department to reasonably ensure that related interests do not obstruct fair and open competition in the procurement process.

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**Recommendation:** The Department should establish, implement, and provide training on policies and procedures that address quarterly disclosure requirements, clearly define improper lobbying relationships, enumerate how to avoid improper lobbying relationships, and how to report improper lobbying contacts should they occur.

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### Finding No. 17: Contract Procedures

Contract monitoring provides a basis for identifying problems as early as possible so that corrective action may be taken. Additionally, contract monitoring helps provide qualitative observations and data on how well services are being provided and whether desired services outcomes are being achieved.

As previously noted, State law<sup>28</sup> provides that "It is essential to the effective and ethical procurement of commodities and contractual services that there be a system of uniform procedures to be utilized by state agencies in managing and procuring commodities and contractual services." In several Auditor General reports,<sup>29</sup> we have reported on the Department's lack of adequate policies and procedures relating to the monitoring and procurement processes. Similarly, such findings were further substantiated by an Executive Office of the Governor, Chief Inspector General Audit Report.<sup>30</sup>

As part of our review of the Convergys and Acclaris contractual agreements, we also inquired, reviewed, and observed the Department's contract administration process. Our review indicated that the Department does not have an effective contractual services monitoring program and has not established written policies and procedures to monitor a contractor's performance and administer contracts effectively.

Internal Audit Report No. 2004-01 issued by the Department's Inspector General's Office disclosed that contract managers did not maintain files and records to support the acceptability of the contractor's performance. In a memorandum dated May 3, 2004, we requested an explanation of the procedures used by the Department for evaluating the performance of contractors. In response to audit inquiry, the Director stated, "There are no 'evaluations' *per se*. Department deficiencies concerning monitoring contractors' performance were reported in Internal Audit Report No. 2004-01. Department Administration is developing policies and procedures addressing these deficiencies, which should be in place by July 1, 2004. The criteria and standards for evaluating contractor performance [are] contained in the contract terms, conditions, and deliverables. If no deficiencies were identified or reported, there would be no separate documentation or 'evaluation' to support same."

<sup>28</sup> Section 287.001, Florida Statutes.

<sup>29</sup> Audit Report Nos. 02-048, 02-049, and 2004-143.

<sup>30</sup> Audit Report No. 2003-3, Road Map to Excellence in Contracting, Executive Office of the Governor, Chief Inspector General, dated June 2003.

The Department's Internal Audit report noted that the Department's current policies and procedures were not sufficient to guide staff through the procurement process; policies and procedures were not disseminated or made available to staff in either hard copy or electronic format; and existing procedures were outdated and had been undergoing revision for over three years. Also, the Internal Audit report noted that, while many State agencies publish extensive contracting policies and procedures manuals, Department procedures fail to address key components of the contracting process, including:

- Acquisition Planning.
  - Needs analysis/certification of need for services.
  - Identification of appropriate type of contract required (fixed price, cost-reimbursement, etc.).
  - Identification of appropriate procurement method (Invitation to Bid, Request for Proposal, Invitation to Negotiate, Single Source selection).
  - Conduct of cost and price analyses.
- Detailed explanation of processes for contract approval and execution, contract amendment, and contract renewal or extension.
- Procedures for designating contract managers for each contractual services contract.
- Contract monitoring and management requirements and procedures, including
  - Delineation of contract manager responsibilities.
  - Maintenance of official contract records and files.
- Invoice review and approval requirements, including requirements for documenting satisfactory performance of contract terms and conditions prior to payment.
- Contract close-out procedures and vendor evaluation.

Similarly, during the course of our audit, we noted that, contrary to law,<sup>31</sup> the Department had not developed procedures regarding the use of Request for Quotes (RFQs). The Department's response to audit inquiry stated that "State Purchasing is currently in the process of formulating procedures and rules concerning RFQ's. This issue was also brought to the Department's attention by the Office of Inspector General during Internal Audit No. 2004-01, Department Contract Management."

We made inquiries of Department management regarding the measures that are being taken to address the above-noted internal audit report findings. In response, the Director of Administration indicated that plans called for a draft to be ready for distribution for edit and approval by July 15, 2004. Also, upon completion, Department staff will be trained and the document will be posted on the Department's intraagency Website. On July 19, 2004, a draft copy of the *Departmental Purchasing Policies and Procedures* was provided to us with a notation that the draft is being reviewed and edited by Department personnel. Also, it is our understanding that the development of the RFQ procedures is nearing completion.

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<sup>31</sup> Section 287.042(3)(g), Florida Statutes.

The Department is given the responsibility to establish a system of coordinated, uniform procurement policies, procedures, and practices to be used by State agencies in acquiring commodities and contractual services.<sup>32</sup> This responsibility also includes utilization within the realm of its own organization.

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**Recommendation:** The Department should develop a contract monitoring program that identifies the criteria and standards to be used to evaluate a contractor's performance. Additionally, documentation should be maintained to demonstrate that evaluations were conducted, deficiencies were communicated to the contractor, and that corrective actions were implemented. Also, these matters should be addressed by Department management in Department policies and procedures.

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<sup>32</sup> Section 287.042(3), Florida Statutes.

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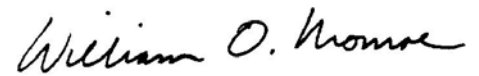
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**AUTHORITY**

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Pursuant to the provisions of Section 11.45, Florida Statutes, I have directed that this report be prepared to present the results of our operational audit.



William O. Monroe, CPA  
Auditor General

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**AUDITEE RESPONSE**

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In accordance with Section 11.45, Florida Statutes, our preliminary and tentative findings were submitted for response to the Secretary of the Department of Management Services. In a letter dated October 13, 2004, the Secretary provided responses to our preliminary and tentative findings. This letter is included in its entirety as Exhibit F to this report.

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**EXHIBIT LIST**

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- Exhibit A**      **HR Outsourcing Initiative - Estimated Potential Program Savings  
(Prepared for the Department by Mevatec)**
- Exhibit B**      **Former Employees and Executive Lobbyists**
- Exhibit C**      **People First Workforce Transition as of April 27, 2004**
- Exhibit D**      **People First – Chronology**
- Exhibit E**      **Acclaris Specific Appropriations and Expenditures**
- Exhibit F**      **Auditee Response**

EXHIBIT A

PREPARED FOR THE DEPARTMENT BY MEVATEC

HR Outsourcing Initiative  
 Estimated Potential Program Savings  
 (Dollars In Millions)

		FY2002	FY2003	FY2004	FY2005	FY2006	FY2007	FY2008	FY2009*	Total
<b>"As-Is" HR Program</b>										
Current "As-Is" Program Costs (1287.5 FTE)										
Current FTE Salaries & Benefits		\$ 55.6	\$ 57.0	\$ 58.4	\$ 59.9	\$ 61.4	\$ 62.9	\$ 64.5	\$ 21.5	\$ 441.1
Current Expenses		\$ 17.8	\$ 17.8	\$ 17.8	\$ 17.8	\$ 17.8	\$ 17.8	\$ 17.8	\$ 5.9	\$ 130.5
Total "As-Is" Program Costs		\$ 73.4	\$ 74.8	\$ 76.2	\$ 77.7	\$ 79.2	\$ 80.7	\$ 82.3	\$ 27.4	\$ 571.6
COPES Replacement / Upgrade		\$ 80.0								\$ 80.0
Total "As-Is" and COPES Costs	Annual	\$ 153.4	\$ 74.8	\$ 76.2	\$ 77.7	\$ 79.2	\$ 80.7	\$ 82.3	\$ 27.4	\$ 651.6
	Cumulative	\$ 153.4	\$ 228.2	\$ 304.4	\$ 382.1	\$ 461.3	\$ 542.0	\$ 624.2	\$ 651.6	
<b>HR Outsourcing Program Business Plan</b>										
HR Services Potential Provider Contract		\$ 14.0	\$ 41.8	\$ 41.8	\$ 41.8	\$ 41.8	\$ 41.8	\$ 41.8	\$ 13.8	\$ 278.6
Transition Workforce by Phase (922 FTE)		\$ 44.3	\$ 34.6							\$ 78.9
Vacancies (200 FTE)		\$ (9.3)								\$ (9.3)
Benefits (Group 1 - 112 FTE)		\$ (1.9)								\$ (1.9)
General HR (Group 2 - 440.5 FTE)			\$ (20.8)							\$ (20.8)
Recruitment & Selection (Group 3 - 169.5 FTE)			\$ (7.4)							\$ (7.4)
Subtotal Transition Workforce Costs		\$ 33.1	\$ 6.4							\$ 39.5
Residual FTE & Expenses (316 FTE)		\$ 20.7	\$ 21.2	\$ 21.7	\$ 22.2	\$ 22.7	\$ 23.2	\$ 23.7	\$ 7.9	\$ 163.3
Subtotal State Workforce (1238 FTE)		\$ 53.8	\$ 27.6	\$ 21.7	\$ 22.2	\$ 22.7	\$ 23.2	\$ 23.7	\$ 7.9	\$ 202.8
Credit for Abolished HR Positions (49.5 FTE)		\$ (2.1)	\$ (2.1)	\$ (2.1)	\$ (2.1)	\$ (2.1)	\$ (2.1)	\$ (2.1)	\$ (2.1)	\$ (16.8)
Functional Expenses: Recruitment/Selection + Expenses		\$ 1.9	\$ 1.0							\$ 2.9
Systems Expense: COPES and TimeDirect		\$ 5.5	\$ 5.5							\$ 11.0
Final Adjusted Transition Workforce + Other (1287.5 FTE)		\$ 59.1	\$ 32.0	\$ 19.6	\$ 20.1	\$ 20.6	\$ 21.1	\$ 21.6	\$ 5.9	\$ 200.0
<b>Total HR Services Provider and State Workforce</b>		\$ 73.1	\$ 73.8	\$ 61.4	\$ 61.9	\$ 62.4	\$ 62.9	\$ 63.4	\$ 19.7	\$ 478.6
Potential Cost Savings Relative to "As-Is" HR Program	Annual	\$ 0.3	\$ 1.0	\$ 14.8	\$ 15.8	\$ 16.8	\$ 17.8	\$ 18.9	\$ 7.7	\$ 93.1
	Cumulative	\$ 0.3	\$ 1.3	\$ 16.2	\$ 31.9	\$ 48.7	\$ 66.5	\$ 85.4	\$ 93.1	
Potential Cost Savings Relative to "As-Is" and COPES Replacement	Annual	\$ 80.3	\$ 1.0	\$ 14.8	\$ 15.8	\$ 16.8	\$ 17.8	\$ 18.9	\$ 7.7	\$ 173.1
	Cumulative	\$ 80.3	\$ 81.3	\$ 96.2	\$ 111.9	\$ 128.7	\$ 146.5	\$ 165.4	\$ 173.1	
									Potential Savings Program Years	\$ 173.1
									Average Annual Savings	\$ 24.7

Note 1: Current As-Is and Residual Estimates do not include HR Support Personnel - Payroll Accounting and Agency Specific Training (178 FTE).  
 Note 2: Estimated Residual/Savings for Attorney Fees are not included due to variable causal factors.  
 Note 3: FY2009 includes the pro-rated values for four months of operations to complete the contract period of performance (84 Months).  
 Note 4: All Salaries and Benefits costs include 2.5% annual escalation.



EXHIBIT B

FORMER EMPLOYEES AND EXECUTIVE LOBBYISTS

**People First**  
 Third-Party Monitor:  
 Acclaris LLC  
 09/17/02 - Present

**MyFloridaMarketPlace**  
 Third-Party Monitor:  
 The North Highland Company  
 03/06/03 - Present

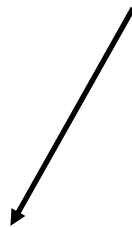
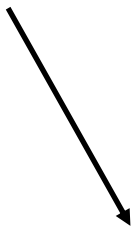


**Mevatec/BAE**

- DMS Purchase Order for Acquisition Assistance; Business Case Analysis (01/10/01)
- *DMS Outsourcing Project, Business Case* (02/21/01)
- DMS Purchase Order for Acquisition Evaluation; Business Case Analysis (04/11/01)
- DMS Purchase Order for Acquisition and Support (07/24/01)
- DMS Purchase Order for Acquisition and Support (09/24/01)
- *Business Plan – Human Resourcing Initiative* (09/25/01)
- Acclaris-Mevatec/BAE Contract Related to People First (09/17/02 – 06/06/03)
- DMS-Mevatec/BAE Contract (04/14/03 – 06/30/03)
- DMS-Mevatec/BAE Contract Amendment (06/02/03 – 07/31/03)
- DMS Amends Convergys Contract to pay Mevatec/BAE through Virtual Center of Excellence Hours provided in DMS – Convergys Contract (Beginning 07/31/03)

**Cynthia Henderson**  
 Secretary of DMS  
 09/05/00 – 01/07/03

Lobbyist for The North Highland Company  
 03/27/03 - 12/31/03



**Garrett Blanton**  
 DMS Deputy Secretary  
 9/11/00 – 3/28/02

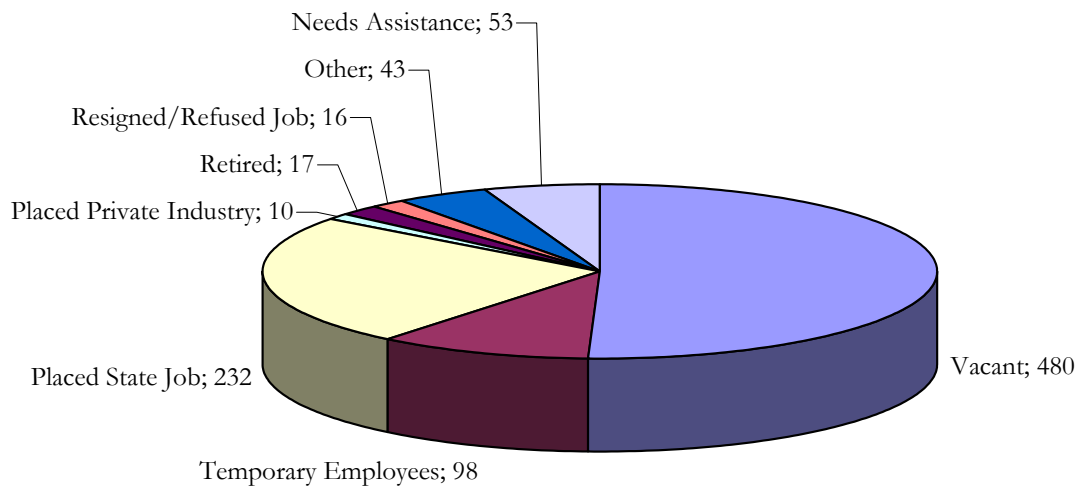
Lobbyist for Mevatec/BAE  
 06/12/02 – 12/31/02  
 01/14/03 – 03/31/03  
 01/22/04 – Present

**Barbara Auger**  
 DMS Deputy Secretary  
 9/11/00 – 10/18/01

Lobbyist for Mevatec/BAE  
 11/20/01 – 12/31/01  
 01/02/02 – 12/31/02  
 01/14/03 – 04/02/03

EXHIBIT C

PEOPLE FIRST WORKFORCE TRANSITION AS OF APRIL 27, 2004



This chart depicts (by number of positions) the transition of the employees affected by the HR outsourcing project, People First. The data shown is from the Department's Workforce Transition database which has tracked displaced State employees since June 1, 2001. In total, 949 positions have been affected, but over half (50.6 percent) were vacant when tracking began. It was not practicable for us to determine on audit if the database fairly represented the status of these employees.

## EXHIBIT D

## PEOPLE FIRST - CHRONOLOGY

Date	Activity
August 1999	KPMG begins study on changes to Florida Financial Management Information System (FFMIS), 5 options considered: <ul style="list-style-type: none"> <li>▪ As-Is.</li> <li>▪ Enhanced.</li> <li>▪ Custom.</li> <li>▪ Commercial-Off-the-Shelf.</li> <li>▪ Best-of-Breed.</li> </ul>
February 15, 2000	KPMG releases <i>Modernization of State Government Financial Management Business Practices Study (Business Case Study)</i> . Recommends “Best-of-Breed” option for FFMIS which would have a \$281.3 million implementation cost over 5 years and a net fiscal impact of \$358.5 million in technology-related savings over 15 years. Additionally, \$467.9 million in nontechnology related savings over the same period of time could be realized.
May 15, 2000	Effective date for <i>Professional Consulting Services for Management Skills</i> State term contract 973-001-00-1.
August 14, 2000	Thomas D. McGurk resigns as Secretary.
August 31, 2000	Executive Office of the Governor, Office of Policy and Budget, directs State agencies to “examine and provide the impact of reducing the workforce by 25 percent over a five-year period” and issues <i>Guidelines for Introducing Competition into Government Services</i> .
September 5, 2000	Cynthia Henderson is appointed as Secretary.
December 1, 2000	Mevatec is added to the <i>Professional Consulting Services for Management Skills</i> State term contract.
December 22, 2000	Department issues Request for Information due January 8, 2001.
January 10, 2001	Department issues \$106,003 purchase order to Mevatec Corporation (Mevatec) for acquisition assistance for Human Resource (HR) payroll outsourcing acquisition and business case analysis for HR payroll outsourcing.
January 22, 2001	Coordinating Council of the Financial Management Information Board unanimously approves a motion to permit the HR outsourcing initiative to proceed with the development of the business case analysis.
February 6, 2001	Mevatec and Secretary Henderson present HR outsourcing initiative to Cabinet. Mevatec states it has been working with the Department for about 2½ months.
February 21, 2001	Secretary Henderson forwards Mevatec’s <i>DMS Outsourcing Project, Business Case</i> to the Governor.
March 22, 2001	Department issues ITN No. 32-973-400-Z for HR outsourcing initiative.
April 11, 2001	Department issues \$229,992 purchase order to Mevatec for acquisition evaluation, business case analysis of alternatives, and establishing performance standards.
April 25, 2001	Statement of Qualifications in response to the ITN are due.
May 31, 2001	Executive Summary, Technical and Management/Cost Responses, and Financial Information responses to the ITN are due.

## EXHIBIT D (CONTINUED)

## PEOPLE FIRST - CHRONOLOGY

Date	Activity
July 1, 2001	Chapter 2001-254, Laws of Florida, becomes law. Section 49 of this law requires the Department to submit a plan for the outsourcing of the HR services to the Executive Office of the Governor, the President of the Senate, the Speaker of the House of Representatives, the Chairman of the Senate Appropriations Committee, and the Chairman of the House Fiscal Responsibility Council.
July 24, 2001	Department issues \$202,472 purchase order to Mevatec for acquisition assistance for HR payroll outsourcing acquisition, business case analysis of alternatives, and residual organization re-engineering.
August 24, 2001	Department issues a Request for Best and Final Offer on the HR outsourcing project.
August 29, 2001	Potential Service Providers submit Best and Final Offers for the HR outsourcing project.
August 31, 2001	Department memorandum indicates Convergys is the best value Service Provider and recommends final negotiations for a seven-year performance period to begin.
September 18, 2001	Department LBR requests \$450,000 for a third-party contract monitor.
September 24, 2001	Department issues \$128,231 purchase order to Mevatec for acquisition and support for HR payroll outsourcing acquisition and payroll outsourcing acquisition roll-out assistance (consulting support and oversight of the transition) from September 25, 2001, through June 30, 2002.
September 25, 2001	Mevatec issues its <i>Business Plan – Human Resource Outsourcing Initiative</i> .
October 18, 2001	Secretary Henderson sends letter to Senator Carlton, Chairman, Committee on Appropriations, stating, “We also anticipate third-party monitoring of any resultant contract will be the most successful method of monitoring the contract.”
November 5, 2001	Governor approves Mevatec’s <i>Business Plan</i> ; approval allows Department to contract with a service provider for HR services on behalf of all State agencies.
November 6, 2001	House of Representatives, Office of the Speaker, approves Mevatec’s <i>Business Plan</i> ; indicates that the Department may contract with a service provider for HR services on behalf of all State agencies.
December 7, 2001	House of Representatives, Fiscal Responsibility Council, approves Mevatec’s <i>Business Plan</i> .
January 29, 2002	Department makes a presentation to the Senate Committee on Governmental Oversight and Productivity identifying the need for a third-party contract monitor.
June 5, 2002	Chapter 2002-394, Laws of Florida, becomes law and provides for \$30,000,000 in funds for the Human Resources Services Statewide Contract.
June 11, 2002	Department issues Change Order No. 1 for September 24, 2001, purchase order to Mevatec; increase of \$10,993.
June 19, 2002	Department issues Change Order No. 2 for September 24, 2001, purchase order to Mevatec; increase of \$3,598.
August 14, 2002	Acclaris is added to the <i>Professional Consulting Services for Management Skills</i> State term contract by the Director of State Purchasing.

## EXHIBIT D (CONTINUED)

## PEOPLE FIRST - CHRONOLOGY

Date	Activity
August 21, 2002	Department signs \$278.6 million Human Resources, Benefits, and Payroll Administration Services contract with Convergys Customer Management Group, Inc. Contract includes 8,300 Virtual Center of Excellence consulting hours, a value of \$1,660,000. Frances Brooks is designated as the Project Manager.
August 29, 2002	E-mail from President of Acclaris to an Assistant Deputy Secretary of the Department submitting draft contract for work on Program Management Office monitoring for the HR outsourcing project. E-mail states that Acclaris and Mevatec are “excited about this opportunity to work with you” and also refers to a meeting with Secretary Henderson on September 5, 2002.
September 5, 2002 9:00 am – 11:30 am	Acclaris presents PMO Tool demonstration to Secretary Henderson and an Assistant Deputy Secretary to discuss software/hardware configuration and requirements document and determine readiness for implementation.
September 5, 2002 4:00 pm	Request for Quote (RFQ) sent to vendors listed on the <i>Professional Consulting Services for Management Skills</i> State Term Contract 973-001-00-1 seeking professional consulting services for the implementation and performance monitoring over the life of the HR outsourcing contract.
September 10, 2002	Responses to the September 5, 2002, RFQ are due. Six vendors submit responses including Acclaris and Mevatec.
September 17, 2002	Department enters into contract with Acclaris LLC for \$1,775,000 to perform consulting support for implementation and performance monitoring of the HR outsourcing contract.
September 17, 2002	Effective date of the contract between Acclaris and Mevatec (contract was signed on December 3, 2002). Mevatec agrees to provide consulting support to Acclaris for the HR outsourcing project.
October 1, 2002	Letter from President of Acclaris to an Assistant Deputy Secretary of the Department informing the Department that Acclaris is entering into negotiations with Mevatec to act as a subcontractor. (Subsequently approved by the Department’s General Counsel’s Office – no date provided.)
December 3, 2002	Acclaris signs contract with Mevatec for \$884,500 to provide consulting support in conjunction with the Department’s HR outsourcing contract; effective date of the contract is September 17, 2002 (same date of Acclaris’ contract with the Department). The contract amount of \$884,500 represents almost half of the amount of Acclaris’ contract with the Department of \$1,775,000.
December 10, 2002	Department signs contract with Brandt Information Service, Inc., for \$130,009 to supply professional services analyzing the current, interface, and reporting requirements of the users of the human resource systems that will be replaced by People First. The systems that are in the scope of this analysis are: COPES, COPES/Insurance, DSGI Systems, COPES View, TimeDIRECT, TrainingDIRECT, and JobsDIRECT.
December 10, 2002	Department amends Acclaris contract (Amendment No. 1); reduces the cost of monthly services (reduced cost by \$7,500) and requires Acclaris to perform a risk assessment (for a cost of \$45,000), net increase of \$37,500.
January 7, 2003	Secretary Henderson resigns; Simone Marstiller is appointed Interim Secretary.
January 7, 2003	President of Acclaris presents a formal request to Interim Secretary Marstiller to participate in the Florida Minority Business Loan Mobilization Program.
January 27, 2003	Acclaris presents <i>People First Managing Strategic Risks January 2003</i> to the People First Steering Committee.

## EXHIBIT D (CONTINUED)

## PEOPLE FIRST - CHRONOLOGY

Date	Activity
February 15, 2003	Project Monitoring Web-based Tool (PMO Tool) is installed.
March 11, 2003	Department requests Department of Financial Services (DFS) to make a designated loan mobilization (DLM) payment of \$200,000 to Acclaris for participation in the Florida Minority Business Loan Mobilization Program.
March 12, 2003	Department amends Acclaris contract (Amendment No. 2); reduces the cost of monthly services by \$37,500.
March 21, 2003	BAE Systems North America completes acquisition of Mevatec.
March 25, 2003	E-mail from Acclaris' staff indicating problems regarding the PMO Tool.
April 7, 2003	Department issues a Request for Quote from contractors on State Term Contract 973-001-00-1, <i>Professional Consulting Services for Management Skills</i> , for implementation consulting support for People First. Deadline for submission is April 9, 2003.
April 9, 2003	Responses to the RFQ dated April 7, 2003, are due. The Department receives 15 responses, including responses from Mevatec/BAE and Acclaris.
April 10, 2003	Department delays posting the award for the RFQ issued on April 7, 2003.
April 14, 2003	William S. Simon is appointed Secretary.
April 14, 2003	Current Secretary responds to an e-mail dated April 13, 2003, from a Deputy Secretary identifying concerns and recommending changes related to the third-party monitor.
April 14, 2003	Department enters into "People First Additional Resources" contract with Mevatec/BAE for \$232,710 for the period April 14, 2003, through June 30, 2003. Deliverables include providing monthly status reports on activities relating to change management resources, human resources administration resources, and user acceptance testing resources. Contract not signed until June 25, 2003.
April 24, 2003	Department amends contract with Brandt Information Service, Inc. (Amendment No. 1); extends the deadline from March 4 and 5, 2003, to June 15, 2003.
May 1, 2003	Convergys is given the approval for "Go-Live" with Staffing Administration function.
May 5, 2003	Department pays Acclaris \$185,000 for the PMO Tool.
May 7, 2003	President of Acclaris and the Executive Director of the Department's Office of Supplier Diversity request the status of the DLM payment. The Department's Chief of the Bureau of Financial Management Services responds that DFS is questioning why the Department is making a loan to Acclaris when Acclaris has already been paid \$851,600.
May 9, 2003	Department requests DFS to delete the DLM payment request.
May 21, 2003	Secretary Simon sends letter to Convergys indicating the State will initiate payment.
May 30, 2003	Frances Brooks ceases to be People First Project/Contract Manager.
June 6, 2003	Contract between Acclaris and Mevatec/BAE is terminated.
June 23, 2003	Chapter 2003-397, Laws of Florida, becomes law and provides for \$43,807,305 for the Human Resources Services Statewide Contract.

## EXHIBIT D (CONTINUED)

## PEOPLE FIRST - CHRONOLOGY

Date	Activity
June 24, 2003	Department amends Acclaris contract (Amendment No. 3); increases the cost of monthly services by \$46,618.
June 25, 2003	Department signs Mevatec/BAE contract effective April 14, 2003.
June 25, 2003	Department enters into a Settlement Agreement with Mevatec/BAE for payment of services performed during April and May 2003, prior to the signing of the "People First Additional Resources" contract.
June 26, 2003	Department processes voucher in the amount of \$3,333,333 for Convergys' May 2003 invoice. DFS questioned the Department on the services the payment covered and the voucher was not processed further. A certified forward payable was recorded for May and June 2003 totaling \$6,666,666.
July 7, 2003	Taylor Smith is designated People First Project/Contract Manager.
July 8, 2003	Department amends contract with Mevatec/BAE (Amendment No. 1) for \$175,432 for the period June 2, 2003, through July 31, 2003; deliverables include providing monthly status reports relating to services provided by the Mevatec/BAE engagement manager, payroll lead, benefits administration resources, human resources administration resources, and all user acceptance testing support resources relating to implementation of People First.
July 11, 2003	Department enters into a Settlement Agreement with Mevatec/BAE for payment of additional services performed between June 2, 2003, and July 8, 2003, prior to signing Amendment No. 1.
July 24, 2003	Current Secretary notifies Convergys that, if the September 1, 2003, deadline is not met, the State will assess fees and is prepared to seek actual delay damages and pursue default remedies.
July 31, 2003	Department amends Convergys Contract (Amendment No. 1); requires Convergys to use no more than 2,715 of the 8,300 hours (a value of \$543,000) allocated to the Virtual Center of Excellence to pay Mevatec/BAE for consulting hours for performing independent user acceptance testing and other implementation consulting services for the contract's human resource and payroll preparation deliverables under separate contract with the Department. Convergys is required to pay Mevatec/BAE for the services performed under its contract with the Department.
August 8, 2003	Department amends Acclaris contract (Amendment No. 4) by \$631,000; increases the cost of monthly services.
December 4, 2003	Department amends Acclaris contract (Amendment No. 5) by \$155,200; increases the cost of monthly services.
December 18, 2003	Department amends Convergys contract (Amendment No. 2); credits back 2,330 hours (a value of \$465,960) to Convergys because the cost for Mevatec/BAE consulting services only cost \$77,040 (\$543,000 - \$465,960).
December 18, 2003	Department amends Convergys contract (Amendment No. 3); requires Convergys to use no more than 2,330 (a value of \$465,960) of the remaining 7,463 Virtual Center of Excellence consulting hours to compensate Mevatec/BAE for performing independent user acceptance testing and other implementation consulting services for the contract's human resource and payroll preparation deliverables under separate contract with the Department. Mevatec/BAE is to perform these services during the period October 6, 2003, through January 2, 2004.

## EXHIBIT D (CONTINUED)

## PEOPLE FIRST - CHRONOLOGY

Date	Activity
January 31, 2004	Department amends Convergys contract (Amendment No. 4); requires Convergys to use no more than 4,375 (a value of \$875,000) of the remaining 5,133 Virtual Center of Excellence consulting hours to compensate Mevatec/BAE for performing independent user acceptance testing and other implementation consulting services for the contract's human resource and payroll preparation deliverables under separate contract with the Department.
February 19, 2004	Budget amendment totaling \$155,200 is approved transferring budget authority to the State Personnel System Trust Fund, Category 040000, Expenses, for third-party monitoring.
March 2, 2004	President of Convergys Employee Care states that the payroll phase is taking longer than the State or Convergys anticipated.
April 8, 2004	Department amends Acclaris contract (Amendment No. 6) by \$191,200; increases the cost of monthly services.
May 21, 2004 through July 16, 2004	Department conducts pilot rollout of payroll preparation for Department staff pay.
July 14, 2004	Department amends Convergys Contract (Amendment No. 6) which deletes and replaces Section 2.5 Failure to Meet Due Dates, eliminating stipulated damages; modifies Section 7.1 Term/Renewal, renewing the contract for two additional years; modifies Exhibit F – Payment Schedules (agreeing to pay Convergys \$33,486,979) and revises Exhibit H – Item Fee List (increasing the total cost by \$10 million).
July 21, 2004	Department amends Convergys Contract (Amendment No. 5); requires Convergys to use the remaining 758 (a value of \$151,600) Virtual Center of Excellence consulting hours to compensate the third-party vendor (Faulkenberry Consulting Group, a limited liability company established effective June 15, 2004) for performing the contract's human resource and payroll preparation deliverables under separate contract with the Department.
September 9, 2004	Department pays Convergys \$11,162,326.33.



EXHIBIT E

ACCLARIS SPECIFIC APPROPRIATIONS AND EXPENDITURES

<b>SPECIFIC APPROPRIATIONS FOR THE 2002-03 FISCAL YEAR</b>		
	Appropriations - Chapter 2002-394, Laws of Florida Special Categories - Human Resource Outsourcing Project State Personnel System Trust Fund	<b>\$450,000</b>
<b>EXPENDITURES FOR THE 2002-03 FISCAL YEAR:</b>		
	Fund Description: State Personnel System Trust Fund Category: Special Category - HR Outsourcing Project Category Number: 104488	444,000
	Fund Description: State Personnel System Trust Fund Category: Expenses Category Number: 040000	335,700
	Fund Description: Supervision Trust Fund Category: Expenses Category Number: 040000	185,000
	Fund Description: State Employees Health Insurance Trust Fund Category: Other Personal Services Category Number: 030000	217,918
	<b>TOTAL EXPENDITURES FOR 2002-03 FISCAL YEAR</b>	<b>\$1,182,618</b>
	<b>2002-03 FISCAL YEAR EXCESS (DEFICIENCY) OF SPECIFIC APPROPRIATIONS OVER EXPENDITURES</b>	<b>(\$732,618)</b>
<b>SPECIFIC APPROPRIATIONS FOR THE 2003-04 FISCAL YEAR</b>		
	Appropriations - Chapter 2003-397, Laws of Florida Special Categories - Human Resource Outsourcing Project State Personnel System Trust Fund	<b>\$450,000</b>
	Approved Budget Amendment	155,200
	<b>TOTAL SPECIFIC APPROPRIATIONS/BUDGET AMENDMENTS FOR THE 2003-04 FISCAL YEAR</b>	<b>605,200</b>
<b>EXPENDITURES FOR THE 2003-04 FISCAL YEAR:</b>		
	Fund Description: State Personnel System Trust Fund Category: Special Category - HR Outsourcing Project Category Number: 104488	534,200
	Fund Description: State Personnel System Trust Fund Category: Expenses Category Number: 040000	392,200
	<b>TOTAL EXPENDITURES FOR THE 2003-04 FISCAL YEAR</b>	<b>\$926,400</b>
	<b>2003-04 FISCAL YEAR EXCESS (DEFICIENCY) OF SPECIFIC APPROPRIATIONS OVER EXPENDITURES</b>	<b>(\$321,200)</b>

## EXHIBIT F

## AUDITEE RESPONSE



The Administrative and Operations Arm  
of Florida's Government



DEPARTMENT OF MANAGEMENT  
**SERVICES**

JEB BUSH, GOVERNOR

WILLIAM S. SIMON, SECRETARY

October 13, 2004

Mr. William O. Monroe, CPA  
Auditor General  
Office of the Auditor General  
Claude Denson Pepper Building  
111 West Madison Street  
Tallahassee, Florida 32399-1450

Dear Mr. Monroe:

Pursuant to Section 11.45(4)(d), Florida Statutes, this is our response to your report, Department of Management Services People First For the Period July 2002 Through February 2004, Prior Related Planning Actions Resulting in the Issuance of the Invitation to Negotiate (ITN No. 32-973-44-Z), and Other Selected Actions Taken Through August 31, 2004.

In large measure, your report reiterates issues and recommendations made by our Office of Inspector General in Internal Audit Report Number 2004-01, dated April 19, 2004. As a result of the internal audit, the Department's Division of Administration is developing a comprehensive set of contracting policies and procedures to include all aspects of acquisition and contracting processes—from needs assessment and cost benefit analysis to contract close-out. As recommended in the internal audit, specifically recommendations 1 through 5, our draft policies and procedures address requirements for contract administration and management including appropriate documentation of contracting decisions and actions, and contract monitoring. The policies and procedures will be completed and available in hard copy, as well as posted on the Department's web site for use by all Department personnel by February 2005.

Our responses to the draft report follow in the order of your findings and recommendations.

### Convergys

#### Finding No. 1: Planning

The need to replace the aging COPES is generally agreed upon by stakeholders. However, absent complete and objective cost-benefit and risk analyses during the planning phase of the project, the Department did not demonstrate that viable

## EXHIBIT F (CONTINUED)

## AUDITEE RESPONSE

Mr. William. Monroe  
October 13, 2004  
Page 2

alternatives, potential hazards, and costs of outsourcing had been fully considered prior to launching the procurement process. Cost-benefit and risk analyses provide assurances that State resources will be prudently used, stakeholder uncertainty will be minimized, user needs will be met, and contract terms will be equitable and comprehensive. Also, not establishing a mechanism for capturing and tracking all Statewide costs incurred in the implementation of People First prevents the measurements of any actual cost savings. Such information is both crucial and fundamental to Department managers and other stakeholders in making informed decisions regarding the People First project.

**Recommendations**

The Department should develop internal policies and procedures that require object cost-benefit and risk analyses during the planning phase of outsourcing proposals. Also, in analyzing the costs and benefits of an outsourcing solution, attention should be given to identifying costs associated with the loss of State institutional knowledge along with the capacity to take work back or move to another provider should the outsourcing initiative be discontinued. Also, to facilitate determining the extent of cost savings attributed to the People First project, the Department, as the State contracting agency, should, in consultation with the Center, establish a mechanism to capture and track all Statewide costs incurred with the People First project.

**Response**

CONCUR: As a result of the internal audit conducted by the Office of Inspector General, the Department is in the process of drafting comprehensive contracting policies and procedures (see OIG Report, Recommendation 3). As required in the draft procedures, we will follow Gate Process guidelines established in 2004 by the Governor's Center for Efficient Government in any future outsourcing initiatives.

To determine the extent of project cost savings, the Department will continue to work with the Office of Policy and Budget to obtain the data necessary to facilitate the tracking of such savings. The Department will also consult with the Governor's Center for Efficient Government to develop a method of tracking other statewide cost data that is not available in the legislative planning and budgeting system. We will determine the most cost-effective approach to capturing costs incurred and savings resulting from the People First project after full implementation.

**Finding No. 2: Evaluations and Negotiations**

Our review of the ITN evaluation and contract negotiation processes disclosed that several deficiencies existed, as discussed below.

## EXHIBIT F (CONTINUED)

## AUDITEE RESPONSE

Mr. William. Monroe

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- To ensure that ITN responses are effectively scrutinized and critically reviewed, an agency should ensure that the evaluation and negotiation teams have the collective experience and knowledge in the program area where the services are sought. Section 287.001, Florida Statutes, recognizes that documentation of the acts taken in a public procurement is an important means of curbing any improprieties and establishing public confidence in the process by which commodities and contractual services are procured.
- To ensure the integrity of the procurement process, it is imperative that individuals involved in the process be free from conflicts of interest. Although not required by State law for competitively procured contracts, a written attestation by individuals involved in the evaluation and negotiation of agency contracts that they are independent of, and have no conflict of interest in, the entities evaluated and selected serves to remind such individuals of the objectivity required for such activities.
- Not all evaluation forms were signed and dated by the evaluators. Additionally, upon completion of the oral presentations, evaluators adjusted the evaluation forms for any scoring changes, but three of the seven did not initial such changes. Greater reliance can be placed on the accuracy and completeness of evaluation forms that are to be signed and initialed by evaluators.
- Evaluation forms included blank columns for the reviewer to reference specific criteria to the ITN Statement of Objectives (Objectives) and to the applicable potential service provider response. None of the seven evaluators completed references to the Objectives and only four substantially completed references to the responses. Since the references were not preprinted on the evaluation forms by those overseeing the process. Such references would assist all evaluators in identifying the performance requirements that pertain to the evaluation criteria.
- Not all evaluation criteria were suitable for yes-or-no responses. Some questions are more appropriately answered with a rating-type scale, such as from 1 to 5, rather than yes or no.

**Recommendations**

The Department should establish written policies and procedures to ensure that evaluation and negotiation teams are competent and independent of, and have no conflict of interest in, the entities being considered for outsourcing and other ITN initiatives. Additionally, to evidence the teams' collective knowledge and experience, the qualifications and work history of each evaluator and negotiator should be concisely documented and incorporated into the contract files. The Department should also develop instructions for evaluators that clearly state that all evaluators should sign and

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date all evaluation forms, initialing any changes made during the process. Also, to reasonably ensure higher quality evaluations, the Department should provide cross references from evaluation criteria to performance requirements and evaluators should be instructed to reference evaluation criteria to the ITN response. Additionally, the Department should carefully weigh how questions posed of evaluators should be answered, selecting a suitable rating-type scale for questions that cannot appropriately be answered yes or no.

**Response**

CONCUR: We are pleased that the Auditor General's review disclosed no unqualified evaluators or conflicts of interest on the part of any evaluator. The concerns expressed by the Auditor General for the contract awarded in 2002, centers on administrative functions such as the initialing of forms and maintaining documentation in the contract files. These concerns are covered by the comprehensive policies and procedures currently being developed as a result of the internal audit performed by the Office of Inspector General (see OIG Report, Recommendation 3). Additionally, if the Auditor General believes it is necessary to create and maintain extensive documentation for all public procurements as stated in the recommendation, it should recommend that the Legislature revise Chapter 287 Florida Statutes.

**Finding No. 3: Contract Provisions**

Our review of the Convergys contract disclosed the following contract deficiencies:

- No definition of "material obligation."
- No provision identifying the State's legal requirements for records retention.
- No provision for the Department to have consent authority over new or changes in subcontractors utilized in the People First project.
- No provision for subcontractors to obtain background history checks.

**Recommendations**

The Department should determine the steps that can be taken to mitigate the contract deficiencies identified above and ensure proper consideration of such deficiencies is given in other existing and future contracts.

**Response**

NON-CONCUR: The Department believes that other contract provisions and/or statute adequately address the deficiencies noted. Further, we believe that existing contracts contain terms and conditions which are clear, unambiguous and legally enforceable. The Department strives to continually review its standard contract

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provisions to identify best contracting practices. Because contract law and state procurement statutes frequently change and evolve, this is an ongoing process.

**Finding No. 4: Default and Termination Provisions**

Since the People First project is an outsourcing initiative whereby the Service Provider performs the HR functions, at the expiration of the Convergys contract, the State will own only the HR data and not any system or property. However, there are contractual provisions that facilitate the acquisition and migration of certain hardware, software, and intellectual property to the State in the event of default by the Service Provider or upon termination for reasons other than Service Provider default, including expiration of the contract. Our review of these provisions disclosed that Department policies and procedures were not effective in ensuring that documentation clarifying agency decisions pertaining to the default and termination provision were maintained in contract files, as set forth in the original contract and as later amended.

**Recommendations**

Whereas detailed documentation can clarify the factors and assumptions behind cost estimates and other financial provisions within the contract, the Department should develop policies and procedures that require documentation explaining the development of key contract provisions be maintained in contract files.

**Response**

CONCUR: The Department is currently developing comprehensive contracting policies and procedures (see OIG Report, Recommendation 3). The procedures will address requirements for maintaining documentation in the contract files explaining development of key contract provisions.

**Finding No. 5: Delegation of Authority**

State law provides that a department head has the authority, without being relieved of responsibility, to execute any of the power, duties, and functions vested in the department or in any administrative unit thereof through administrative units and through assistants and deputies designated by the head of the department from time to time, unless the head of the department is explicitly required by law to perform the same without delegation. Florida case law supports that when the government enters into a contract that includes a provision that the contract may only be modified in a certain way, the government must strictly adhere to that provision. The contract could have been written to allow contractual modification to be executed by an authorized representative of the Secretary, but it was not. While the contract specifically allows for

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the Service Provider to use an authorized representative, the Secretary is not so authorized.

**Recommendations**

All future amendments to the Convergys contract should be signed by the Secretary.

**Response**

NON-CONCUR: Section 20.05(b), Florida Statutes, provides that an agency head may execute any of his/her powers, duties and responsibilities through designated assistants and deputies. Irrespective of the contractual requirements that the Secretary sign all contract amendments, all contract amendments have been signed by properly designated assistants and deputies in compliance with state law.

**Finding No. 6: Monitoring Contract Compliance**

To ensure compliance with contractual provisions, the Department's Contract Manager should ensure that procedures are in place to monitor key requirements. Although the Department hired a consultant to provide support for performance monitoring of the People First project, certain administrative provision of the Convergys contract did not appear to have been monitored by the Department.

**Recommendations**

The Department should develop and implement policies and procedures to ensure that contract managers are fully informed of their responsibilities to monitor contract performance. Additionally, the Department should take immediate steps to ensure that subcontractor insurance coverage is continually maintained.

**Response**

CONCUR: As discussed, the Department is developing comprehensive policies and procedures that detail the responsibilities of contract managers (see OIG Report, Recommendations 3, 4 and 5). The procedures will address requirements for monitoring the contractor's supervision of subcontractors to ensure that insurance coverage is maintained, as required.

**Finding No. 7: Deliverables**

The Convergys contract described three types of deliverables: plans, Go-Live dates, and performance metrics. Our review of these deliverables disclosed that contractual provisions relating to the receipt and acknowledgement of the deliverables were not always followed.

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**Recommendations**

The Department should continue to pursue obtaining all deliverables. To promote transparency and fairness in the contract process, the Department should establish policies and procedures requiring that the methodologies used and management decisions made in executing contract amendments are clearly documented in the contract files. Additionally, the Department should ensure that contract managers and administrators are fully aware of their contractual responsibilities and cognizant of the possible consequences to the People First project if acceptance or rejection of deliverables is not made in accordance with contractual provisions.

**Response**

CONCUR: We are pleased the Auditor General acknowledged that the vendor has not received payments for failure to provide contract deliverables. It should also be pointed out that it is a matter of public record that the Secretary has testified on this issue on numerous occasions. Since the Secretary's arrival, the Department has aggressively managed the contract and has held the contractor liable for failure to meet contract requirements. The Department will ensure that management decisions are clearly documented and that contract managers and administrators are aware of their contractual responsibilities through the development of comprehensive policies and procedures (see OIG Report, Recommendations 3 and 5).

**Acclaris****Finding No. 8: Planning**

Although requested, we were not provided with any documentation that demonstrated that a needs assessment or cost-benefit analysis had been performed during the planning phase of the HR outsourcing project to support the decision to utilize consultant services for the monitoring function.

**Recommendations**

To ensure State resources are used efficiently and effectively, the Department should perform and document a needs assessment or cost-benefit analysis before entering into any contracts with significant costs.

**Response**

CONCUR: The Department is currently developing comprehensive policies and procedures (see OIG Report, Recommendation 3). The procedures will require performance and documentation of a needs assessment or cost-benefit analysis prior to entering into contracts with significant costs.



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**Finding No. 9: Request for Quotes**

Our review of Department records pertaining to the Acclaris third-party monitoring contract disclosed that the Department could not adequately demonstrate that its procurement process used to select the vendor was administered in a fair and equitable manner. State law supports that documentation of Department acts taken and an effective monitoring mechanism are important means of curbing any improprieties and establishing the public's confidence in the procurement process. Prudent business practices dictate that the evaluation and selection of a vendor be adequately documented to support that the Department exercised good judgment and showed accountability in obtaining best prices, terms, or conditions when procuring the contract and expending State funds.

**Recommendations**

The Department should establish policies and procedures that ensure sufficient documentation supporting management's decision-making process pertaining to vendor selection is maintained. Additionally, the issuance of an RFQ results in the use of resources on the part of staff and responsive vendors. Therefore, once an RFQ is issued, the Department should utilize it appropriately to negotiate the best prices, terms, and conditions for Department contracts.

**Response**

CONCUR: The Department is currently developing comprehensive policies and procedures to ensure maintenance of sufficient documentation supporting management decisions (see OIG Report, Recommendation 3). The policies and procedures will address the one instance in which the Auditor General questions the use of an RFQ.

**Finding No. 10: Contract Amendments**

Our audit of the third-party monitor contract disclosed that the Department paid additional amounts to Acclaris although deficiencies regarding the third-party monitor's performance had been identified, services required to be performed either remained the same as provided for in the original contract or had been reduced, and the required deliverables had been reduced. The Acclaris contract has been amended six times since the contract was executed. The original contract was for a total cost of \$1,775,000. The six amendments increased the cost of the contract to \$2,799,018.

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**Recommendations**

The practice of providing additional payments to Acclaris because of failures relating to the People First project should be discontinued. The Department should take all necessary steps to ensure that State funds are only used for essential and valid purposes.

**Response**

NON-CONCUR: The Department does not make a practice of providing additional payments of State funds to any vendor unless for essential and valid purposes. The Auditor General's conclusions do not fully consider all facts surrounding the Department's efforts to develop and implement the HR Outsourcing initiative. As related to the AG staff, the email alleging contractor deficiencies was dated prior to the arrival of the current Secretary who chose not to act upon the email until he gathered further information in order to make an informed decision. As noted in the report, the contract with Acclaris was renegotiated in order to better align the vendor's responsibilities with the Department's need for increased project implementation services. A primary reason for continuing the Department's relationship with Acclaris was to ensure continuity during critical junctures in project development and implementation. Further, the Department deducted the additional contract costs from payments due to Convergys.

**Finding No. 11: Legislative Budget Requests and Use of Appropriated Funds**

Our review disclosed that, contrary to law, the Department entered into a contract with the third-party monitor in an amount that exceeded the specific legislative appropriation for those services. Our review further disclosed that disbursements to the third-party monitor exceeded the amounts approved by the Legislature. Additionally, we noted that the Department made payments to the third-party monitor from funds and categories other than the fund and category from which the appropriation for the third-party monitor was established. As a result, Department records do not provide a mechanism that readily identifies all expenditures incurred relating to the third-party monitor.

**Recommendations**

The Department should comply with State law and discontinue the practice of entering into contracts and making payments in amounts that exceed appropriated amounts. This matter should be reported to the Legislature and the Executive Office of the Governor to determine if any further actions should be taken. While carrying out its responsibilities and implementing ongoing initiatives, we recommend that the Department ensure that expenditures are classified and reported appropriately.

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Response

NON-CONCUR: The Department did not enter into contracts that exceeded appropriations. In the instance cited by the AG, although the AG report discusses only the Acclaris contract, the recommendation indicates that the Department makes a practice of entering contracts that exceed appropriations. This is incorrect. The Department used the transfer authority in Chapter 216.292, Florida Statutes, to make payments for third party monitoring services. The Department also used existing base budget appropriations in the Expense and OPS categories for contractual obligations. The contract was not executed until it was determined that adequate operating appropriations were available to cover contract costs as indicated in the following table.

Document/Date	Service	Amount	Amount by Funding Source	Funding Source
Original Contract (9-17-2002)	Monthly Services	\$1,575,000	1,350,000	450,000 x 3 years Special Category
			150,000	5% Transfer -Salaries & Benefits to Expenses-HRM
			75,000	Base Budget Expense Appropriations - HRM
	PMO Tool	200,000	200,000	Various Programs Base Expense Appropriations
<b>Total - Original Contract</b>		<b>\$1,775,000</b>	<b>\$1,775,000</b>	
<b>Amendments</b>				
Amendment No. 1 (12/10/2002)	Monthly Services	\$(7,500)	\$(7,500)	Offsets 45,000 below
			45,000	Offset by Credits above and below
Amendment No. 2 (03/12/2003)	Monthly Services	(37,500)	(37,500)	Offsets 45,000 above
Amendment No. 3 (06/24/2003)	Monthly Services	46,618	46,618	State Group Insurance - OPS
Amendment No. 4 (08/08/2003)	Monthly Services	631,000	217,918	State Group Insurance - OPS
			10,000	HRM - 5% Transfer-OPS to Expenses
			5,000	HRM - 5% Transfer-OCO to Expenses
			135,000	HRM - 5% Transfer - Salaries & Ben to Expenses
			263,082	HRM Base Budget Expense Appropriations
Amendment No. 5 (12/04/2003)	Monthly Services	155,200	155,200	Convergys Contract
Amendment No. 6 (04/08/2004)	Monthly Services	191,200	143,200	HRM Base Budget Expense Appropriations
			48,000	HRM-5% Transfer-Contractual Services to Special Category
<b>Total - Amendments</b>		<b>\$1,024,018</b>	<b>\$1,024,018</b>	
<b>Total Contract Amount</b>		<b>\$2,799,018</b>	<b>\$2,799,018</b>	

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**Finding No. 12: Project Monitoring Web-Based Tool**

Our review of the accounting transactions related to the third-party monitoring contract disclosed that the Department paid Acclaris \$185,000 for a Project Monitoring Web-based Tool (PMO Tool) that was never fully used as intended by Department personnel in supporting the HR outsourcing project.

**Recommendations**

Department management should make additional inquires regarding this purchase and seek reimbursement from the vendor if it is determined that the vendor was not in compliance with the contract. Additionally, in the future, when the Department is making a determination during the planning and evaluation phase of a project as to whether the purchase of a product or service is in the best interest of the State, extensive inquiry should be made that will help substantiate the product's or service's effectiveness and usefulness for the purposes intended.

**Response**

CONCUR: Because of on-going project delays and the vendor's failure to meet deliverables, the PMO Tool was not a practical means of monitoring this particular project. However, this does not mean the Tool should not have been purchased. Had the contract proceeded along a more predictable schedule, the Tool would have been useful. Moreover, in managing future projects, the Department may yet use the Tool.

The Department has recently implemented a policy requiring the Chief Information Officer to review all software solutions before procurement. In addition, a business case will be required that states the business needs for any potential software solution. The Department also intends to have a "proof of concept period," if feasible, to review prospective software solutions.

**Finding No. 13: Florida Minority Business Loan Mobilization Program**

Our review disclosed that the Department approved Acclaris (a certified minority-owned business) to participate in the Program and attempted to acquire a loan under this Program for Acclaris. Although no DLM payment was made to Acclaris, it appears that the decision not to make the payment was based upon questions raised by DFS and not upon controls established in Department operating procedures for the Program.

**Recommendations**

In future transactions relating to MBE vendor participation in the Program, Department management should ensure that its actions comply with established policies and procedures. We further recommend that Department written policies and procedures

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for the Program be enhanced to address the Program participation issue raised in this finding as well as other applicable issues, such as defining and requiring documentation for any "extenuating circumstances."

**Response**

CONCUR: The Department will enhance written policies and procedures to address the Program area issues raised in this finding to include the definition and documentation of any "extenuating circumstances."

**Finding No. 14: Conflicts of Interest**

While the current Secretary separated the incompatible functions of monitoring and implementing performed by Acclaris, we believe that a second organizational conflict of interest appears to have existed. We cannot determine, on audit, whether the organizational conflict of interest created by Mevatec/BAE being first heavily involved in the planning of the People First project and later with implementation of People First resulted in an unfair competitive advantage to the company or diminished the objectivity of the company in rendering the implementation services, or whether the organizational conflicts of interest were mitigated by other actions. Since Mevatec/BAE services were acquired via the State term contract, the services are considered competitively procured and, thus, do not specifically violate the conflict-of-interest law referenced above. However, it is unlikely that the law, enacted in 1982, envisioned the enterprise-wide outsourcing contracts utilized by today's State Government. Given the dollar magnitude of the People First project, the law, as written, may not adequately safeguard State resources.

**Recommendations**

To strengthen public confidence that contracts are awarded impartially and to ensure that objectivity in the contract evaluation process is achieved, the Department should establish policies and procedures that define organizational conflicts of interest including procedures for disclosure provisions in all solicitations and contracts and steps to be taken to avoid or mitigate actual organizational conflicts of interest. Additionally, to ensure fairness and transparency in the solicitation, evaluation, and award of contracts, we recommend that the Legislature review current procurement law to determine whether the avoidance and mitigation of organizational conflicts of interest should be more broadly addressed.

**Response**

CONCUR: As the Auditor General is probably aware, in 2004 the Department supported legislation to amend Chapter 287, Florida Statutes. This comprehensive revision would have fundamentally changed the way the State purchasing system

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functions. The Legislature chose not to implement the proposed changes. However, the Department stands ready to assist in any way possible should the Legislature decide to amend Section 287.057(18), Florida Statutes. As stated throughout the responses to this report, the Department is developing policies and procedures that will address the Auditor General's concern regarding disclosure provisions in contracts (see OIG Report, Recommendation 3).

**Finding No. 15: Contract Administrator**

State law requires the Department to designate at least one employee as a contract administrator responsible for maintaining a contract file and financial information on all contractual services contracts and to serve as a liaison with the contractor managers and the Department. During our review of the Acclaris contract, we noted that the Department was not in compliance with applicable law.

**Recommendations**

The Department should comply with applicable law by designating an employee as a contract administrator responsible for maintaining contract files and financial information on all contractual services contracts and to serve as a liaison with the contract managers.

**Response**

CONCUR: As recommended in the Department's Office of Inspector General Internal Audit Report Number 2004-01, the Department recently designated a contract administrator responsible for maintaining contract files and financial information on all contractual services contracts and to serve as a liaison with contract managers (see OIG Report, Recommendation 2).

**Other Issues****Finding No. 16: Postemployment Restrictions on Executive Lobbyists**

Audit inquiry of Department managers disclosed that the Department has general employment procedures that make reference to the postemployment restrictions law, although these procedures do not inform Department staff on how to avoid an improper lobbying relationship and how to report such, should it occur. Such procedures, and training on such procedures, would reasonably ensure that employees are fully cognizant of the postemployment restrictions on executive lobbyist. Additionally, although the Department adopted the Governor's Code of Ethics, the Department's ethics officer indicated that the Code's requirement for quarterly disclosures by employees with relatives who are lobbyist had not been implemented. These disclosures provide information necessary for the Department to reasonably

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ensure that related interests do not obstruct fair and open competition in the procurement process.

**Recommendations**

The Department should establish, implement, and provide training on policies and procedures that address quarterly disclosure requirements, clearly define improper lobbying relationships, enumerate how to avoid improper lobbying relationships, and how to report improper lobbying contacts should they occur.

**Response**

CONCUR: The Department is aware of statutes and the Governor's direction regarding lobbying. We are pleased to note that the Auditor General found no instances of improper lobbying. Regardless, the Department will enhance its current ethics training to increase awareness of quarterly disclosure requirements and the need to report improper lobbyist contacts.

**Finding No. 17: Contract Procedures**

As part of our review of the Convergys and Acclaris contractual agreements, we also inquired, reviewed, and observed the Department's contract administration process. Our review indicated that the Department does not have an effective contractual services monitoring program and has not established written policies and procedures to monitor a contractor's performance and administer contracts effectively.

The Department is given the responsibility to establish a system or coordinated, uniform procurement policies, procedures, and practices to be used by State agencies in acquiring commodities and contractual services. This responsibility also includes utilization within the realm of its own organization.

**Recommendations**

The Department should develop a contract monitoring program that identifies the criteria and standards to be used to evaluate a contractor's performance. Additionally, documentation should be maintained to demonstrate that evaluations were conducted, deficiencies were communicated to the contractor, and that corrective actions were implemented. Also, these matters should be addressed by Department management in Department policies and procedures.

**Response**

CONCUR: The Department is in the process of developing policies and procedures concerning contract monitoring due to conditions previously reported by the Department's Office of Inspector General (see OIG Report, Recommendation 3).

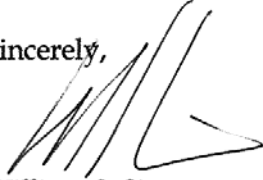
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If further information is needed concerning any of our responses, please contact Steve Rumph, Inspector General at 488-5285.

Sincerely,



William S. Simon  
Secretary

WS/crm

cc: Taylor Smith, Deputy Secretary  
Department of Management Services

Lisa Hurley, Deputy Secretary  
Department of Management Services

Cindi Marsiglio, Deputy Secretary  
Department of Management Services

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