CMS RESPONSES, AUDITOR GENERAL COMMENTS AND AUDITORS' COMMENTS ON THE COMPLIANCE EXAMINATION OF THE DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

For the Two Years Ended June 30, 2004

Performed as Special Assistant Auditors for
The Auditor General, State of Illinois

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WILLIAM G. HOLLAND

AUDITOR GENERAL'S COMMENTS ON THE COMPLIANCE EXAMINATION OF THE DEPARTMENT OF CENTRAL MANAGEMENT SERVICES FOR THE TWO YEARS ENDED JUNE 30, 2004

The Auditor General's audits are a very deliberative process with safeguards built in to ensure that the facts contained in each report are supported, the conclusions reached are reasonable, and the audited agency has had ample opportunity to respond to the findings.

The Compliance Examination of the Department of Central Management Services for the two years ended June 30, 2004, followed that process. This audit formally commenced with an entrance conference held on June 14, 2004. Throughout the next ten months, the various auditors assigned to this engagement - some of whom are from a public accounting firm on contract with my Office and some of whom are OAG employees - met with CMS officials on literally dozens of occasions. Our working papers supporting this audit are composed of an estimated 25,000 pieces of paper - each and every one of which was reviewed by the Department. The level and intensity of our interactions with CMS on this audit are unparalleled in my twelve and a half years as the State's Auditor General.

Unfortunately, despite the openness and transparency of the auditors in sharing and discussing their audit results with the Department, CMS continues to misunderstand and, in many instances, mischaracterize our findings. The Department's responses to the audit findings are often misleading and occasionally inaccurate. This document presents the Department's responses and, where necessary, countering Auditors' Comments.

The entire compliance examination report consists of three volumes: (1) the Compliance Examination, including the auditors' findings; (2) this document, containing CMS' responses and Auditors' comments; and (3) CMS' attachments to CMS' responses. Although lengthy, a thorough reading of the entire compliance examination report is essential to a complete understanding of the Department's and the auditors' positions on the findings. While CMS disagrees with the auditors in many cases, ***I cannot emphasize enough that I stand behind the integrity of our audit process and unequivocally support each and every one of the auditors' findings and recommendations***.

WILLIAM G. HOLLAND, Auditor General

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CMS RESPONSES, AUDITOR GENERAL COMMENTS
AND AUDITOR COMMENTS ON THE COMPLIANCE EXAMINATION
OF THE DEPARTMENT OF CENTRAL MANAGEMENT SERVICES
For the Two Years Ended June 30, 2004

This volume contains the Department of Central Management Services' responses to the Compliance Examination of the Department, for the two years ended June 30, 2004. As depicted below, the Department's responses are on the left side of the document (page "a"), while the auditors' comments are on the facing page (page "b"). Attachments referred to by the Department of Central Management Services in its written response have been included in the third volume of our compliance examination.

Page __a	**Page __b**
Dept. of Central Management Services' Response	**Auditor General's and Auditors' Comments**

CMS
ILLINOIS Rod R. Blagojevich, Governor
DEPARTMENT OF CENTRAL MANAGEMENT SERVICES
Michael M. Rumman, Director

April 14, 2005

HAND-DELIVERED

William Holland
Auditor General
Iles Park Plaza
740 East Ash
Springfield, Illinois 62703-3154

Mr. Gary D. Neubauer
Partner
Sikich Gardner and Co., LLP
1000 Churchill Road
Springfield, Illinois 62702

Dear Auditor General Holland and Mr. Neubauer:

Attached is the Response of the Department of Central Management Services ("CMS") to the Draft Compliance Examination of CMS for the two-year period ending June 30, 2004 ("Draft Report"). In addition to its specific responses to each of the proposed Audit Findings, CMS provides this general response. It is our understanding that the Final Report will contain this response and our specific responses in their entirety. (We have also enclosed our responses to the Immaterial Letter.)

Summary

CMS takes issue with the Draft Report, *not* because it contains *unfavorable* findings, but because it contains *inaccurate and misleading* findings. CMS expected—and we think the citizens of Illinois also expect—an Audit Report that was factual, logical and objective: a report that contains standards that are consistently applied, that presents all relevant facts accurately after an open process that should have allowed CMS and the auditors to review and fully discuss the proposed findings.

Instead, we received a Draft Report that contained findings inconsistent with well-established standards and practices, omitted and ignored relevant facts, and contained deliberately inflammatory suggestions of impropriety devoid of factual or logical basis.[1] Compounding this problem, and inconsistent with: (1) the practice of *prior* audits (2) the practice of the external auditors in *this* audit, and (3) most importantly, the Auditor General's *own* Audit Guide,[2] the Auditor General's staff refused to share proposed findings with us prior to release of the Draft Report, and then, at the Pre-Exit and Exit

[1] One such example was inclusion of a gratuitous quotation from a *criminal* liability section of the Procurement Code, which was removed from the Draft Report only after the auditors were forced to admit that not only had they failed to allege a violation of the provision, but that there were absolutely no facts that would support such an allegation.

[2] See OAG Audit Guide at 24-6 (Attachment 1).

Comment 1: **Every** fact in our findings can be traced back to a supporting document.

Comment 2: CMS claims that this current audit is "inconsistent with...the practice of *prior* audits." Yet, on page 2 of its response, CMS acknowledges that "[d]uring the past two years CMS has fundamentally transformed the business of State government..." Generally accepted government auditing standards require auditors to be aware of, and respond to, changes in an agency's operating environment. Those standards also require auditors to assess the risk of fraud and to be alert to operating practices that constitute abuse or waste of resources. The Auditor General's Office has released over 2,100 audits since 1992, and this audit followed the same rigorous applicable standards and practices as each of the audits before it.

#1

Comment 3: Draft reports are not "released." To the contrary, while an audit is on-going, draft reports are confidential. The draft report represents the auditors' preliminary conclusions and is provided **only** to the audited agency for its review and comment.

#2

#3

Comment 4: The draft report was provided to CMS on March 17, 2005, and a formal exit conference was scheduled for April 6. In the interim, the auditors offered to meet with CMS officials in an informal "pre-exit" conference to help facilitate the Department's review of the draft report. CMS officials accepted our **second** offer of a pre-exit conference, which was subsequently held on March 31. Following the pre-exit conference, on April 4, CMS provided the auditors with additional information on this particular finding (Finding 3). Frankly, CMS' additional information raised additional questions for the auditors that, unfortunately, CMS was unable to answer at the exit conference two days later. Specifically, CMS officials were unable to state whether a particular individual was working for the State when CMS shared information with him about an upcoming procurement. Given that CMS was unable to answer basic questions concerning this issue, a decision was made to defer this matter for additional follow-up. (Please see Auditors' Comment 54.)

#4

Conferences refused to provide its basis for findings that CMS challenged, either telling us to "save our argument for our response" or, in the case of legal issues, "get an opinion from the Attorney General," knowing full well that there was inadequate time to do so.

General Response

During the past two years CMS has fundamentally transformed the business of State government, despite the forces that resist change. CMS has reduced State government costs by more than $600 million since Fiscal Year 2003, freeing up valuable resources to provide Illinois citizens with quality healthcare, education and other important public services. We have increased the efficiency of State government by eliminating waste and consolidating services. Perhaps most importantly, we have rejected the approach of "business as usual" in State government, and brought new, innovative best practices into the State's key operations. Indeed, in 2004, CMS received the Cronin Gold Award, the highest award for innovation in state procurement from the National Association of State Procurement Officers. CMS was also recently notified that it has won a national award from the E-Gov Institute, also for its innovative practices in government.

Unlike the CMS of the past, our goal has not been to keep doing the same things the same way they've always been done, to avoid change and the risk of criticism and the attention of the press. Our goal has been to embrace change and innovation--despite that criticism--so that we could deliver extraordinary results for the People of Illinois. *Indeed, for every dollar we have invested making these changes, we have delivered more than $8 in savings and cost reductions.*

So perhaps we shouldn't have been surprised in the entrance conference for this audit, when one of the auditors said that he had read all about CMS in the media, and perhaps was slightly embarrassed when I reminded him that we hoped that the unsubstantiated media allegations wouldn't be the starting point or source materials for the audit.

CMS believed, perhaps naively, that the audit would, in fact, be different. Perhaps we believed that the audit would be consistent with applicable audit standards, including

#5

Comment 5: Generally, the auditors and audited agencies are able to agree on matters of statutory interpretation. In those instances, however, where agreement cannot be reached, it is the auditors' standard practice to suggest the agency refer the matter to the Attorney General who, by law, is charged with rendering opinions to State officials on matters of statutory interpretation. 15 ILCS 205/4. In areas of disagreement over statutory interpretation, the Auditor General's Office defers to a formal written opinion from the Attorney General on the matter. CMS' objection to this suggestion simply reveals its ignorance of standard audit practices.

#6

Comment 6: Please see Auditors' Comment 2. Our audits are not, and under generally accepted government auditing standards should not be, conducted in a vacuum.

#7

Comment 7: In Finding 16, the auditors cite CMS for not filing reports with the General Assembly regarding the status of its reorganizations, as required by the Executive Reorganization Implementation Act. CMS' argument against Finding 16 is that such reports need not be filed until its reorganizations are in "full force" and that, to date, none of its reorganizations are in "full force" or "executed." Nevertheless, CMS has managed to file a report with the National Association of State Procurement Officials (NASPO) to obtain an award in 2004 for its procurement initiative.

#8

Comment 8: We're puzzled as to how Director Rumman could have had a discussion with the auditors at the entrance conference about unsubstantiated media allegations when, in fact, **Director Rumman did not attend the entrance conference. Furthermore, no auditor in attendance could have been "slightly embarrassed" by a point that was not made by a person who was not there.** At any rate, as pointed out previously, the auditors are responsible under generally accepted government auditing standards to assess the risk involved in an agency's operating environment at the outset – as well as periodically throughout – an audit engagement. However, media reports are never used as "source materials" or support for audit findings.

the Auditor General's own Audit Guide, and Generally Accepted Government Audit Standards (GAGAS). For example, those standards require auditors to:

- present findings that are clearly and logically linked to the applicable facts,
- be accurate, which requires that the evidence presented be true and that findings be correctly portrayed and well documented, and
- present findings fairly, completely and objectively.

In short, we expect—and we believe the general public does as well—that an audit will:

- contain only those facts that are clearly substantiated,
- draw only those conclusions which can reasonably follow from those facts,
- correctly interpret applicable legal and regulatory requirements, and
- present findings fairly.

Based on the comments during the entrance conference, CMS was concerned that the information in the draft report might not comply with these standards, perhaps not because there was a deliberate effort to do so, but because it would either be expedient to do so, or that the issues involved, e.g. the billings and accounting of the Efficiency Initiatives Revolving Fund, were understandably complex and would require extensive discussion between the auditors and the auditee to ensure accurate and balanced presentation of these issues in the report. This required not only presentation and discussion of relevant facts, which has occurred over the past eleven months, but also clear discussion of potential findings, including the factual and other assumptions on which those findings were based. Indeed, in every past audit, consistent with the Audit Guide, the auditors have provided us with Proposed Audit Findings ("PAFs"), which enabled that discussion.

For that reason, we actively sought to meet with both the Auditor General's Staff and the staff of the Special Auditor, Sikich Gardner ("Sikich") after the information gathering phase of the audit to discuss proposed audit findings. Sikich not only provided proposed audit findings to us, but also had extensive discussions regarding those proposed findings with us. As a result, we believe that in many aspects, the findings for which they were responsible were more consistent with audit standards, and provided appropriate recommendations with which, as our specific responses note, CMS agrees.

Unfortunately, the Auditor General's Staff refused such meetings claiming that it had not yet formulated proposed findings, even in the last few days before it issued the Draft Report. Perhaps the Auditor General's Staff is the paragon of productivity, but we think—and we think the general public will think so, too—it stretches credulity that the Auditor General formulated and drafted the extensive findings in the Draft Report in

#9

Comment 9: We agree the issues surrounding the Efficiency Initiatives Revolving Fund are complex. However, the auditors have developed a high level of expertise in this matter by virtue of the fact that we have had similar findings in 20 other agency audits to date. **Sixteen of those 20 other agencies agreed with the auditors that CMS had not provided adequate documentation with the efficiency billings.**

#10

Comment 10: It is not uncommon for OAG employees to supplement the efforts of the accounting firms acting as Special Assistant Auditors on behalf of the Auditor General. All such collaborative efforts meet the standards set forth in generally accepted government auditing standards for relying on work performed by others (AU Section 543). For those issues primarily handled by OAG employees, we had over **140 contacts** with CMS officials during the audit engagement, including at least **17 face-to-face meetings**. These meetings were generally with high-level CMS management, including Deputy Directors, the Chief Financial Officer, the Chief Operating Officer, the Budget Manager, and other appropriate CMS staff. OAG employees noted matters of concern to responsible CMS officials throughout the numerous and extensive meetings held during this engagement.

#11

less than 72 hours. Moreover, the auditors' work papers demonstrate that a least one of these findings appeared to have been finalized as long ago as mid-November, and that indeed most findings had been prepared weeks earlier—contradicting statements that findings had been drafted only hours before the Draft Report was provided to CMS.

But even if we are wrong, we believe the result has been a disservice to the General Assembly and to the general public because, as we demonstrate more fully in our specific responses, many of those findings:

- rely on inaccurate or incomplete facts,
- omit relevant facts,
- fail to identify critical assumptions or the identified assumptions are devoid of factual basis,
- contain illogical conclusions, which fail to provide any—let alone a clear—link between cause and effect, condition or criteria,
- rely on clear misstatements of the law and applicable regulation, and
- contain no—absolutely not one—positive aspect to any of the programs the auditors reviewed.

Again, many of these issues would clearly have been addressed in discussions between the Auditor General's staff and CMS, but the Auditor General declined to do so until after it provided the draft report to CMS. In that meeting, which lasted approximately five hours, CMS provided information to the Auditor General's staff outlining key factual, logical and legal errors in the document. Despite that, and somewhat remarkably, at the Exit Conference on Wednesday, April 6, 2005, the Auditor General's staff declined to make virtually all of the requested changes in the document, as demonstrated in Attachment 2, and declined to provide any basis for their refusal.

Unfortunately, CMS was left with no choice but to provide extensive detail in its responses. CMS believes that this detail will enable the general public to appropriately assess the findings, and make their own determinations regarding the significant accomplishments CMS has achieved, as well as the appropriateness of corrective actions it has already undertaken to address and resolve the valid issues the report raises. In that regard, CMS is making available to the public all the documentation to support each of its responses, consistent with our continuing goal of making government transparent.

#11

Comment 11: CMS' receipt of the draft report and their timeframe for reviewing and responding to its contents was in strict compliance with the Auditor General's Audit Regulations at 74 Ill. Adm. Code 420.720. Further, the Auditor General's Office went above and beyond those regulations by granting CMS' request for a one-week extension for holding the exit conference and providing agency responses. The auditors also provided CMS with an extensive, five-hour pre-exit conference prior to the formal exit conference which is afforded every audited agency. **Further, CMS officials reviewed each and every one of the approximately 25,000 documents supporting this report prior to the exit conference – an extraordinary step that has never been taken by any other audited agency during the past twelve and one-half years.**

#12

Comment 12: CMS provides specific responses to each of the individual findings contained in this report. **In many instances, CMS' responses are misleading, inaccurate or unsupported –** and we have provided Auditors' Comments when necessary. As auditors, we continue to maintain confidence that each finding is valid and each recommendation would, if implemented by CMS, represent an improvement in governmental accountability.

#13

Comment 13: As pointed out in auditors' comment 11, CMS was given all the due process it was owed – and more – throughout this audit. Where CMS provided appropriate support, the auditors made their suggested changes to the draft report.

#14

Comment 14: Actually, CMS' responses are being made available to the public by the Auditor General, consistent with our audit regulations which provide for agency responses to our audit findings to be made part of the audit report.

CMS is hopeful that readers will assess the findings, CMS' responses and the supporting documentation--using the required standard of balance--in the light of the significant and award-winning efficiencies, cost reductions, innovations and reforms CMS has created for the citizens and taxpayers of Illinois in the last eighteen months.

Sincerely,

Michael M. Rumman
Director

cc: Ms. Kim Labonte, Audit Manager
Office of the Auditor General

Mr. Mike Maziarz, Audit Manager
Office of the Auditor General

No Auditor Comments have been included for this page.

Finding 04-1

SUMMARY OF DEPARTMENT RESPONSE

Auditor Contention/Implication	Department Response
Governor's Office has no role in determining cost savings.	**Clear Misstatement of Law** • Legislation clearly provides that Governor's Office must approve all savings amounts after CMS designates anticipated savings.
CMS improperly made payments from non-GRF funds.	**Omission of Relevant Facts** **Clear Misstatement of Law** **Misleading and Illogical Conclusion** • Legislation does not limit payments to General Revenue Fund (GRF). • Indeed, it requires quite the opposite: payments must be made from funds where savings are anticipated to occur. • Here, savings occurred from non-GRF funds and thus were *required* to be paid from those funds. (See 04-1 Attachment A)
CMS improperly made payments during lapse period.	**Omission of Relevant Facts** **Clear Misstatement of Law** **Misleading and Illogical Conclusion** • Legislation does not prohibit or limit payments during lapse period. • Anticipated savings were correctly determined and approved. • The timing of these savings was consistent with their determination and approval.
Efficiency cannot occur from funded vacant headcount reductions.	**Clear Misstatement of Law** **Misleading and Illogical Conclusion** • Nothing in legislation suggests that efficiencies cannot occur from headcount reductions. • Indeed, headcount reductions are one of the key ways of realizing efficiencies clearly recognized by the legislature.
There are more than the three examples of improper payments; implies all $24 million in payments were improper.	**No Factual Basis** **Misleading Conclusion** • Auditor General Staff confirmed at Pre-Exit Conference that these are the only 3 allegations of improper payments, despite the use of "for example" in the finding and the inclusion—twice—of the total payments of $24 million. • There is no factual basis in the finding as to anything other than the three "examples."

#15

Comment 15: This finding does **not** question the role of the Governor in approving amounts designated as savings from the efficiency initiatives. To the contrary, the second paragraph of the finding acknowledges the Governor's role. What the finding does question is CMS' role in developing those savings estimates and, specifically, the fact that CMS abdicated its responsibilities under the law in this regard.

#16

Comment 16: This finding does **not** discuss payments *to* the General Revenue Fund, as CMS' response seems to indicate. This finding does discuss payments *from* the General Revenue Fund. On the latter topic, nowhere in the finding do the auditors contend that the legislation limits payments from the General Revenue Fund. The audit simply reports that GOMB directed the Department to make payments for the Vehicle Fleet Management initiative from the General Revenue Fund but the Department instead used the Communications Revolving Fund and the State Surplus Property Revolving Fund to make part of the payments.

#17

Comment 17: The finding neither states nor implies that efficiency initiative payments cannot be made during the lapse period. The finding does note that, when efficiency initiative payments were made after the end of the fiscal year and with only two weeks remaining in the lapse period, the auditors could not determine whether these payments represented "savings" or, rather, were simply monies that otherwise would have lapsed due to unfilled vacancies. Monies that lapse cannot be spent without further appropriation. Monies that are not allowed to lapse but, instead, are transferred to the Efficiency Initiatives Revolving Fund can be used for such purposes as paying CMS' contractors' fees and expenses, administrative expenses related to its efficiency initiatives, or further transferred to the General Revenue Fund and expended for other purposes for which GRF has been appropriated.

#18

Comment 18: As noted in Auditors' Comment 9, 20 other State agencies have a similar finding in their respective audit reports and **16 of those 20 other agencies agreed with the auditors' conclusion** that transfers to the Efficiency Initiatives Revolving Fund were not made from line item appropriations where savings were anticipated to occur, as required by law.

$5 million was improperly transferred from the Communications Revolving Fund.	**Misstatement of Fact** • Despite clear implication that the improper amount was $5 million, the finding itself notes that only $2 million may have been improper. • $3 million has been validated and remains unquestioned by the auditors. • Remaining $2 million was an estimate of where savings were anticipated, was not spent and thus is an appropriate savings transfer.
$5,000 each was improperly transferred from the Bureau of Personnel and the Bureau of Support Services.	**No Factual Basis** **Immaterial** • Statute requires savings payments to be made from the funds where savings are anticipated to occur. • Savings can occur from activities subject to "lump sum" appropriations—the statute does not exempt such appropriations from recognizing savings. • The two appropriations here, Veterans Assistance and Procurement Policy Board, were a part of the Department's overall appropriation and it was eminently reasonable to anticipate these entities were to realize savings from agency-wide procurement and IT efficiencies.

DEPARTMENT RESPONSE:

The Department disagrees with most of the finding and recommendation. The intended implication, by including both the charts on page 12 and 14, as well as referring to the three bullets on page 13, as "examples" is that all of the $24.8 million in transfers were improper. This implication is wholly without basis.

First, the Auditor General's staff clearly acknowledged at the Pre-Exit Conference that the three "examples" were the only allegations of improper transfers, and the finding cites or provides no facts to contend that any amounts—other than the three referenced on page 13—were anything other than entirely proper. Given that, the charts on page 12 and 14 are irrelevant and misleading.

Second, as to the $5,000,000 payment from the Communications Revolving Fund, $3,000,000 of that amount was validated as telecommunications savings, as the auditors acknowledge. The remaining $2,000,000 was a reasonable estimate of anticipated savings, was not spent, and thus it was reasonable and appropriate to account for this amount as anticipated savings.

Third, the two amounts of $5,000 each for Veterans' Job Assistance and Procurement Policy Board were appropriate anticipated savings.

Fourth, the finding is inaccurate and misleading because it relies on a patent misinterpretation of the underlying requirements regarding these transfers. First, it

#19

Comment 19: The Department's response is inaccurate and misleading. The finding does **not** note that $3 million has been validated and remains unquestioned by the auditors. In fact, we cite the Department in Finding 11 for failing to maintain adequate documentation to support the validation of savings. Savings for projects related to telecommunications would have been applicable to the State as a whole and not the Department individually.

#20

Comment 20: While it may have been "eminently reasonable" to anticipate savings would be realized in these line items, no documentation of that anticipation was prepared to support the billings that were made. As stated in the finding, a CMS official explained that at the time of payment, **the Department did not know exactly where the savings would come from**.

#21

Comment 21: Please see Auditors' Comments 19 and 20.

contains an incomplete (and therefore misleading) selective reference to the applicable statute, from which it concludes that CMS improperly allowed the Governor's office involvement in the determination of the transfer amounts. However, that sleight-of-hand is easily revealed for what it is by quotation of the statutory provision:

> *Anticipated savings amount will be designated by the Director of Central Management Services and approved by the Governor as savings from the efficiency initiatives authorized by Section 405-292 of the Department of Central Managements Services Law of the Civil Administrative Code of Illinois shall be paid into the Efficiency Initiatives Revolving Fund.*

30 ILCS 105/6p-5 (04-1 Attachment B).

Thus, as the complete provision makes clear, the portion of the finding that contends that the Department improperly "transferred responsibility for determining cost savings . . . to another agency [the Governor's Office]" has absolutely no basis and should be stricken from the finding. The Department complied with the statute: it designated the savings for approval by the Governor's Office. The Department worked collaboratively with the Governor's Office to determine the anticipated savings for several initiatives, just as it was required to do since their approval was statutorily required. If the auditors questioned the Governor's Office role in the savings approval process, it should have communicated with that office to obtain required audit documentation, as required by audit standards. The Department is unaware of any communication between the auditors and the Governor's Office related to this issue.

Fifth, the finding incorrectly applies the statute that it does manage to correctly cite in the finding: anticipated savings amounts should occur "from the line item appropriations where the cost savings are anticipated to occur." And that is exactly what the Department did. Yet, the finding implies that there are additional limitations—without citation to a statute because there is no statutory basis for these limitations: that all cost savings must be from GRF and that cost savings cannot be paid during a lapse period. Attached is a complete copy of the statute (see 04-1 Attachment B), electronically searchable at www.ilga.gov, which clearly does not provide either alleged limitation.

Sixth, the finding references the State Finance Act, presumably implying that CMS has also violated this law, even though there are no facts to support such an alleged violation, and—even more importantly—at the Pre-Exit Conference, the staff of the Office of the Auditor General admitted that it was not alleging such a violation. Again, the inclusion of this reference is at best irrelevant, and at most, deliberately misleading and inappropriate.

Finally, the finding is highly misleading as to the "lapse period" discussion on page 13. The clear implication of this discussion is that payments during the lapse period are improper, which as discussed above, is clearly wrong. But, even worse, the last sentence of that paragraph ambiguously states that "[d]ue to the processing of the payments during the lapse period, it was unclear whether the amounts taken were truly savings or were due to a lack of filling funded vacancies." The finding contains absolutely no support for the conclusions and implications in this statement. There is absolutely no support in the finding (nor was any provided at the Pre-Exit Conference) for the proposition that the

#22

Comment 22: Please see Auditors' Comment 15. The auditors did **not** conclude that the Governor's Office has no role in the efficiency initiatives billing process; rather, the auditors concluded that CMS abdicated its responsibility to determine anticipated savings amounts to be billed to the various State agencies. **During our audits of the agencies receiving billings from CMS for efficiency initiatives, we were *repeatedly* told by the agencies that CMS did not have any detail or documentation supporting the transfer amounts.**

#23

Comment 23: Contrary to CMS' assertion that the efficiency billings were done "collaboratively with the Governor's Office," CMS officials told our auditors, with regard to the September 2003 billings, that CMS received the amounts to be billed to the various State agencies from the Governor's Office of Management and Budget (GOMB) and that CMS' role was to put the billings on CMS invoices and return the billings to GOMB for mailing out to the affected agencies. Since, by statute, CMS is charged with the responsibility for designating anticipated savings amounts, **the auditors concluded that CMS had not fulfilled its responsibilities by acting as a mere transcriptionist**.

#24

Comment 24: The Department's response is inaccurate. The audit finding **never** suggests that the General Revenue Fund cannot be used to make efficiency initiative payments. The finding also does not imply that efficiency initiative payments cannot be made during the lapse period.

#25

Comment 25: Public Act 93-25 amended the State Finance Act to provide that State agencies were required to make efficiency initiative payments "from the line item appropriations where the cost savings are anticipated to occur." 30 ILCS 105/6p-5. The auditors found that CMS did not have documentation to demonstrate that its efficiency initiative payments were made from the proper line items in compliance with that Act. The State Finance Act is cited in the finding because it provides applicable legal criterion for the first portion of this finding and its inclusion is not only **not** misleading or inappropriate, it is necessary.

#26

processing of the payments in any way affected the auditors' ability to determine whether the amounts were truly savings or not. These amounts were properly taken as savings and are real savings. Moreover, these payments were made in mid-August 2004. Thus, the auditors had this information available to them for at least several months before issuing this report. There is no reason that the auditors could not and should not have made this determination rather than masking their failure to do so with a factually unsupported and baseless implication.

#26 **Comment 26:** Please see Auditors' Comment 17 concerning transfers made during the lapse period.

Finding 04-2

SUMMARY OF DEPARTMENT RESPONSE

Auditor Contention/Implication	Department Response

The Procurement Code requires contract files to contain individual scoring sheets.	**Misstatement of Law**
	Inconsistent with Auditor's Procurement Practices
	Inconsistent with Prior Audits
	Misleading Conclusion
	• Neither the Procurement Code nor the Administrative Rules require that contract files contain the scoring sheets of each individual evaluator.
	• Such a requirement is inconsistent with:
	  • Longstanding practice of all agencies under the Procurement Code, and the Administrative Rules.
	  • The Auditor General's own practices.
	  • Has not been a CMS audit finding since 1997, or—to CMS' knowledge—in the audit of any other agency since that time.
	• Individual evaluator's scores are the responsibility of the evaluator to maintain and this information was not required in the files.
	• CMS strengthened the documentation requirements long before this audit report by instituting a new practice in Fiscal Year 05 to maintain this information in the solicitation files. The auditors improperly used this new practice, which CMS put in place after the audit period, as the criteria for this finding.
	• The implication that failure to include individual scoring sheets means that scores were not accurate and the scoring process was corrupt is misleading and there are no facts to support such a contention.

The Procurement Code requires contract files to contain decision memoranda.	**Misstatement of Law** **Inconsistent with Auditor's Procurement Practices** **Inconsistent with Prior Audits** **Misleading Conclusion** • Neither the Procurement Code nor the Administrative Rules require that contract or solicitation files contain written decision memoranda; rather, the only requirement is that there be a "written determination." • CMS contract and/or solicitation files always contain such a written determination. This information was provided to the auditors.

#27

Comment 27: We agree. We did not cite the Procurement Code or the Administrative Rules as criteria for this finding. We cited good business practices as represented by CMS' own current policies.

#28

Comment 28: CMS requested and reviewed several of the Auditor General's procurement files. While CMS indicated that scoring sheets were prepared by individuals evaluating vendor proposals on CMS procurements, those individual scoring sheets were not always maintained in CMS' procurement files. By contrast, the Auditor General's practice is for 3-member teams to jointly prepare and individually sign evaluation score sheets. This scoresheet is maintained in every new procurement file. It is a public document and was reviewed by CMS.

#29

Comment 29: To CMS' credit, the auditors believe that the procedures CMS now claims it follows represent good business practices. Notwithstanding the fact that CMS did not adopt specific policies in this regard until October 2004, **good business practices <u>were</u> applicable – but not always utilized – during the current audit**.

#30

Comment 30: Unfortunately, in some instances, there is no documentation to support CMS' contention that the scoring process was conducted properly; consequently, the auditors did not determine whether CMS' scoring process was – in its words – "corrupt." The auditors continue to believe this is a valid finding.

#31

Comment 31: Under CMS' procurement rules, to constitute a "written determination" the writing must set forth "sufficient facts, circumstances, and reasoning as will substantiate the specific determination that is made." 44 Ill.Adm.Code 1.7025 (b). When asked for their written determinations, CMS provided only the Procurement Bulletin notice of award for 8 out of 9 contracts tested. **The notice of award in the Procurement Bulletin is dearth of any reasoning or substantiation for the specific determination that was made.**

	• Requiring written decision memoranda as the only document that can constitute a "written determination," is inconsistent with:
	  • Longstanding practice of all agencies under the Procurement Code, and the Administrative Rules.
	  • The Auditor General's own procurement practices.
	  • It has not been a CMS audit finding since 1997, nor—to CMS' knowledge—in the audit of any other agency since that time.
	• Contrary to the implication in this finding, CMS' written determinations for each contract do provide more than adequate information about the basis for each award and fully meet Code and Administrative Rules requirements. (See 04-2 Attachment A).
	• Notably, only one of the nine contracts cited by the auditor was protested, and that protest was denied and not appealed. If CMS had not provided adequate basis for its decisions in these contracts, there would have been protests or the one protest would have been successful.

The majority of the Department's contract files do not contain proper documentation.	**Omission of Relevant Facts** **Misleading Conclusion** • External auditors did in fact, as work papers demonstrate, create and test a sample of 25 separate contracts, and found only minor deficiencies; however, this information was deliberately excluded from the report. • As the auditors confirmed at the Pre-Exit Conference, the 9 contracts tested in this and other related findings, are <u>not</u> a statistically valid or representative sample. As external auditors noted, a sample size of less than 25 should not be used. Thus, the implied conclusion in the finding, i.e. that most or virtually all of CMS procurement decisions are undocumented, is inappropriate and misleading.
CMS imposed contract file requirements on other agencies that it didn't follow itself.	**Factual Misstatement** **Misleading Conclusion** • CMS followed the same requirements that existed at the same time as other agencies. • The finding is illogical since the cited requirement did not exist at the time the auditor contends CMS imposed it. • Notably, when CMS informed the auditors of this fact, the auditors refused to put the date of the requirement in the finding.

#32 **Comment 32:** On the contrary, this information is presented in Finding 9. However, it should be pointed out that the testing of this sample of 25 contracts was more limited than the testing done on the 9 large efficiency initiative contracts.

#33 **Comment 33:** **Not once** in this report did the auditors project the findings from their selection of 9 large efficiency initiative contracts to the universe of CMS contracts.

#34 **Comment 34:** Please see Auditors' Comment 29.

Department of Central Management Services' Response
Finding 4-2

DEPARTMENT RESPONSE:

The Department respectfully disagrees with this finding because it ignores relevant facts, misstates and/or misrepresents the facts contained in the finding, misinterprets the applicable requirements, and is deliberately misleading.

First, the essence of the auditors' claim regarding lack of contract documentation is that the "judgmentally" selected sample of contracts it reviewed did not contain either evaluator's individual scoring sheets or a decision memorandum. The required assumption for this claim is that there be a legal or regulatory requirement mandating that those two documents be in the files. There is none.

Notably, the auditor did not cite—nor is there—any authority in law or regulation that requires either type of document be created, let alone maintained, in a file. Rather, the rules require that the evaluation scoring information be retained—as the Department has done - and that there be a written determination of an award decision—again, as the Department has done. Thus, the Department has fully complied with the applicable legal and regulatory requirements.

Even if there was a legitimate question as to whether the applicable statutes and rules require either type of document be created, as advocated by the auditors, the auditors are required to give deference to CMS' interpretations under well-established case law, particularly when those interpretations are long-standing and have not been previously challenged.

To accept the auditor's conclusion that these documents are required, one would have to dismiss each of the following facts or conclusions:

1. Neither of the documents is mentioned in any procurement rule or law.
2. Well-established practice under the Procurement Code and Administrative Rules does not require these documents.
3. Not once during any audit in the last 6 years, has the auditor cited this as a finding for CMS, or to CMS' knowledge--*any* agency--despite the fact that most contract and solicitation files do not contain these documents.
4. The Auditor General's own procurement files do not contain these documents.

Thus, it is perhaps understandable why, rather than addressing these facts or conclusions, the auditor argues "best practice" and, even more desperately, cites a "Bid File Checklist—Other Agencies" document as establishing this requirement, and as to that document, criticizes CMS for imposing a requirement on other agencies to maintain individual score sheets although it did not impose such a requirement on itself.

The auditors fail to note the date of the "Bid File Checklist—Other Agencies" document. That document was not created until after the audit period (October 2004) and wasn't imposed as a requirement <u>on anyone</u> <u>by anyone</u> until that date—long after the contracts cited in the finding were awarded. Rather than condemn CMS, the report should have credited the Department for establishing this as a best practice and going beyond the requirements of the Code and Administrative Rules.

#35

Comment 35: The auditors reiterate that the Department has complied with neither administrative rules nor prudent business practices.

#36

Comment 36: The Auditor General's Office, as a matter of practice, does defer to an agency's **reasonable** interpretations of applicable statutes, rules and regulations.

#37

Comment 37: In 6 of 9 instances individual scoring sheets for these large procurements were not maintained in the files. The Auditor General's practice is for a team evaluation to be prepared by 3 auditors assigned to review each technical proposal. Those team evaluations are signed by each individual evaluator and maintained in our procurement files. Those evaluations were reviewed by, and copied for, CMS officials during the course of this audit.

#38

Comment 38: Please see Auditors' Comment 29.

The Department brought the date of the document to the auditor's attention at the Pre-Exit Conference, the auditors confirmed they were aware of the date, so the Department requested the auditor to include the date of the document (cited in this finding and a few others) in its report. But, the auditor refused to do so, and also declined at the exit conference to provide *any* basis for its refusal.

In essence what the auditor has done is find a violation of a best practice before the best practice existed. Such an allegation would be summarily dismissed in any other forum because it is not only illogical, but violates well-established audit principles and due process, and is a classic example of prohibited ex post facto lawmaking, a basic tenet of American law, well established in the constitutions of both the United States and the State of Illinois. U.S. Constitution, Article 1, Section 9; Illinois State Constitution, Article 1, Section 16.

Second, the clear and intended implication regarding the lack of individual score sheets in the files is that either the scores were not correctly recorded or that the members of the evaluation committee for each procurement did not provide individual scoring of each proposal. Both of those implications are clearly false. CMS gave the auditors the names of each evaluator for each of these procurements, and there are sheets in each file, which provide the scores for each proposal. Moreover, to remove any doubt about the validity of individual scoring, CMS has asked each of the evaluators to confirm the scoring sheet for each procurement indicating that the scores correctly reflect their individual scoring.[1]

Third, the auditor's finding regarding the lack of decision memoranda is logically and factually flawed. In essence the logic is:

1. 8 of 9 of the files did not contain a decision memorandum.
2. The code requires a written determination of award.
3. A decision memorandum is only permissible written determination of award.
4. Therefore, there was no written determination of award.

As discussed above, the auditor's conclusion is inaccurate and illogical because the Procurement Code and Administrative Rules requires a written determination, which may or may not be a decision memorandum.

This finding is factually flawed because it implies that the contract approval sheet is the only document in the file that could be considered as the written determination. It further implies that since the contract approval sheet is not executed until after the award, it cannot be the written determination. The Department believes the contract approval sheet cannot be that written determination, but there are other documents in the file, which are—and have consistently, been used as such written determination. In cases where the vendor with the highest number of points is selected, the summary scoring sheet meets the statutory requirement for a written determination. This was the case in 6 of the 9 contracts reviewed by the auditor. In the remaining 2 cases cited by the auditors as deficient, sufficient documentation exists in the files to ascertain the reasoning behind

[1] As an aside, if maintaining individual scoring sheets represents a required "best practice," the Department is perplexed as to why the Auditor General does not follow the practice, and why it hasn't cited other agencies for failing to follow this alleged requirement.

#39

Comment 39: CMS claims it had individual scoring sheets, but for 6 of 9 procurements the auditors did not find evidence of those scoring sheets in the files. Further, the summary scoring sheets that were provided to the auditors, in the instances noted in the finding, did not identify the individuals responsible for scoring the proposal or provide information about how the proposal scored in relation to the individual criteria stated in the Request for Proposal. **Without this information, no confirmation of the scoring process and award decision could be made**. *Existing* law requires an agency's determinations about expenditures of public funds to be in writing, sufficiently documented and maintained. Further, procedures developed by CMS for use by other State agencies acknowledges these procedures as illustrative of good business practice. Therefore, there is nothing "ex post facto" about the standards to which the auditors would hold CMS.

#40

Comment 40: Again, the auditors must question – if CMS required individual scoring sheets – why those sheets were not maintained in **all** the files we reviewed since these scoring sheets were contained in **some** of the files.

#41

Comment 41: CMS is getting hung up on nomenclature. The auditors would have been happy to receive **any** document – whatever it was called – providing support and rationale for the Department's procurement decisions.

#43

#42

Comment 42: Please see Auditors' Comment 28.

the decision (See 04-2 Attachment A). Thus, as the auditors' work papers confirm, such documentation is appropriate contract documentation (See 04-2 Attachment B). The work papers reflect in the procurement summary review that the auditors noted the contract approval sheet as the agency award recommendation document.

Finally, this part of the finding is at odds with the auditor's own procurement practice. In each of the procurements of the Auditor General that CMS reviewed, none contained a decision memorandum. Thus, the auditors' finding that a decision memo is a required "best practice" is disingenuous and hypocritical.

The use of statistical references in the finding is misleading, inconsistent with the audit practice the auditors established in this audit, and excludes audit work actually performed. The only implication from the use of percentages in the finding is to have the reader draw the conclusion that the percentage applies to all CMS contracts, thus leading to the inference that most CMS contracts do not contain required documentation. Such an implication and inference is simply not supported by the finding for the following reasons:

- As the auditor was forced to admit during the Pre-Exit Conference, there was nothing statistically significant about the 9 contracts that serve as the basis for this finding. Indeed, as the auditors' own Sampling Plan for the audit confirms, a minimum sample size of more than 60 would have been required for any statistical sample, and a non-statistical sample would have required a minimum of 25, in contrast to the sample of 9 here. Thus, it is inappropriate and misleading to include any statistical analysis, such as a percentage, in this finding. Indeed, the Sampling Plan confirms this, by saying that an appropriate "sampling plan and methodology are designed to ensure sufficient competent evidential matter . . ."

- In fact, the external auditors, as the work papers clearly show and as admitted at the Pre-Exit Conference, did provide a sample of 25 contracts, and provided the results of the analysis of those contracts, which showed minimal issues. Despite the facts that the work papers also show that the results from this sample were to be included in the findings (See 04-2 Attachment C); these results were omitted and not incorporated into the analysis.

- The auditors stated that their selection of these 9 contracts was "judgmental" and included the contracts related to the efficiency initiatives of CMS. Indeed, there is some support for this contention in the work papers, albeit from a slightly different perspective:

  > CONTRACTS SELECTED FOR TESTING:
  > Keeping in line with the project's purpose of examining the contracting process for initiatives developed by the Governor and CMS, we will select contracts that generally have some degree of reported savings to the award.

  But even assuming that this was an appropriate "purpose" and need not follow the Sampling Plan for the Audit, the auditors didn't follow this judgmental selection.

#43

Comment 43: During the audit process, CMS maintained that the contract approval sheet constituted the agency's required written determination. However, in its written response, CMS now acknowledges that the contract approval sheets are not valid written determinations. CMS now states, **for the first time**, that its summary scoring sheets constitute the written award determination required under Illinois law. However, **these summary scoring sheets were not signed by any CMS official authorized to make final procurement decisions** and, as CMS admits in its response, those scoring sheets do not always reflect the winning vendor.

#44

Comment 44: Every one of the Auditor General's procurement files, where applicable, contains a written determination of award. Each file contains: (1) a scoring sheet prepared by a team of auditors, each of whom is identified by name and signs the scoresheet; (2) a Director's scoring sheet incorporating price points into the technical proposal score; (3) a final selection committee's written recommendation to the Auditor General, which is either approved or rejected by him in writing; and (4) a notice of award to the winning proposer signed by the Auditor General himself. Again, unless CMS is specifically looking for a document entitled "Decision Memorandum" (which is not required by law and never specified as necessary by the auditors), then its comment that the Auditor General's procurement files lack this information is inexplicable. Our files are public documents and, unlike executive agencies, include both winning and losing proposals.

#45

Comment 45: The Department was informed at the June 14, 2004, entrance conference that the auditors would be reviewing selected large contracts related to CMS' efficiency initiatives. In no instance is a percentage used without including raw numbers; therefore, our use of percentages is not misleading.

#46

Comment 46: The sample of 25 contracts was tested for different attributes than were tested in the 9 contracts that are the subject of this finding. However, contrary to CMS' contention, the results of that testing are reflected in the audit report (see Finding 9).

Department of Central Management Services' Response
Finding 4-2

Rather than selecting all the contracts relating to savings, they selected only some—without rationale or basis (See 04-2 Attachment D). Although noting, in Finding 4-1, that there were initiatives related to the legal consolidation, those contracts were mysteriously excluded from the sample, as well as the temporary services master contract, which showed up as a 10th contract in one draft of the plan, and was tested, but then vanished from the selection of contracts without explanation. Nonetheless, despite clear documentation to the contrary in their own work papers, the auditors continued to deny that this contract was audited even when confronted with this fact at the Pre-Exit Conference. The auditors stated that this contract was removed because it is a master contract. This reasoning perplexes the Department since master contracts are required to follow the same procurement process as other contracts.

#47

Comment 47: There is nothing "mysterious" about the exclusion of the legal services contracts from our testing. Many legal services contracts are excluded from the Procurement Code provisions (30 ILCS 500/1-10 (b) (7)) and, therefore, would not be subject to the same criteria. The temporary services contracts are master contracts that do not, in and of themselves, incur any expenditure obligation and, for that reason, in-depth testing was not done. However, since CMS brings it up, one of the temporary services master contracts has been the subject of much discussion and concern. (See, for instance, the minutes of the Procurement Policy Board meeting of March 4, 2005, pages 2 - 4.)

Finding 04-3

SUMMARY OF DEPARTMENT RESPONSE

Auditor Contention/Implication	Department Response
• The Department used vendors to develop specifications for RFPs. • Vendors who "developed specifications" were routinely awarded contracts.	**Factually Incorrect** **Misleading Conclusion** • CMS used companies to collect data and identify opportunities for improvements within the organization. This information was made available to all bidders. Several of the companies used were never awarded a contract. • It is proper to allow vendors to collect data and identify opportunities for improvement and is not inconsistent with procurement "best practices." • The Auditor General routinely awards contracts to firms who provide similar information, which is inconsistent with its contentions in this finding. Indeed, in several instances, the Auditor General has awarded contracts to such vendors even though they were not the lowest priced. (See 04-3 Attachment A).
• Vendors who "developed specifications" had an advantage over other vendors.	**Factually Incorrect** **Misleading Conclusion** **Omission of Relevant Facts** • CMS did not use vendors who bid on these contracts to develop specifications for RFPs. (See affidavit from CMS Assistant Director, 04-3 Attachment B). • The Department did use the expertise of an outside consultant with no vendor affiliation to assist in the development of one RFP. • The Department did use companies to collect data and identify opportunities for improvements within the organization, but that information was made available to all bidders, and was explicitly and publicly disclosed. • The finding omits both instances in which there were multiple vendors who provided information, but only one (or a different vendor) received an award, as well as instances in which vendors provided such information and didn't get an award at all. • It is proper to allow vendors to collect data and identify opportunities for improvements within the

#48

Comment 48: The auditors do **not** state that use of outside vendors to develop information for inclusion in a Request for Proposals is prohibited. Instead, the auditors state that the Department should develop standards and procedures to: (1) determine when vendor-provided information should be used; (2) guard against bias and conflicts of interest; and (3) ensure that required notices are published in the Procurement Bulletin.

#49

Comment 49: The Auditor General does not routinely award contracts to firms that provided information for an RFP. We do, however, make copies of public documents available to all firms interested in proposing on our audit engagements. These documents include prior audit reports related to the audit engagement; however, under our rotation policy, the firms who prepared the prior audit reports are generally prohibited from proposing on the new engagement. The Auditor General does award contracts in some instances to vendors who were not the lowest priced but only when the evaluation criteria stated in the RFP establishes that price is a less important factor than technical skill, background, and experience. In those instances, the Auditor General publishes a contemporaneous notice in the Procurement Bulletin reflecting that the audit contract was awarded to a firm that was not the lowest priced. This procedure is in compliance with all applicable laws and rules. In those instances where CMS awarded a contract to a vendor that was not the lowest priced, it did not follow these safeguards and disclosures (see Finding 6).

#50

Comment 50: The Department acknowledges it used potential vendors to "collect data and identify opportunities for improvements within the organization..." The primary purpose of the efficiency contracts was to obtain the services of a vendor in identifying and obtaining efficiencies in various areas, such as procurement, fleet management, and information technology – the very same purpose for which CMS acknowledges it used potential vendors to develop information for the RFP. In such circumstances, the auditors continue to believe that the information provided by potential vendors constitutes development of specifications. The definition of "specifications" in the Procurement Code includes "any description, provision, or requirement pertaining to the physical or functional characteristics or of the nature of a supply, services, or other item to be procured under a contract." 30 ILCS 500/1-15.95. While use of a potential vendor to develop RFP specifications is not prohibited, the auditors believe CMS should develop specific guidelines for using potential vendors to develop RFP specifications so as to ensure the competitive process is fair.

	organization and is not inconsistent with procurement "best practices." • The Auditor General routinely awards contracts to firms who provide similar information; which is inconsistent with its contentions in this finding. Indeed, in several instances, the Auditor General has awarded contracts to such vendors even though they were not the lowest priced. (See, 04-3 Attachment A)
• The Department acted inconsistently with National Association of State Procurement Officials Guidelines.	**Factually Incorrect** **Misleading Conclusion** • The Department went above and beyond the applicable National Procurement Guidelines because it used a waiver and disclosure process which neither those guidelines, nor the Procurement Code, required. • It is proper to allow vendors to collect data and identify opportunities for improvements within the organization and is not inconsistent with procurement "best practices". • The Auditor General routinely awards contracts to firms who provide similar information; which is inconsistent with its contentions in this finding. (Indeed, in several instances, the Auditor General has awarded contracts to such vendors even though they were not the lowest priced. (See 04-3 Attachment A).
• The Department had a non-State employee review the RFP prior to the release of the RFP. A memo was in the file from this individual suggesting benchmarking as a goal in the RFP. This individual was subsequently named as partnering with the winning vendor.	• CMS provided clear documentation confirming that any involvement with this individual was prior to the contract award. The recommendation made by this individual would not have provided any benefit to the winning vendor or any vendors bidding on the procurement.

DEPARTMENT RESPONSE:

The Department disagrees with the auditor's findings because they are factually flawed and misleading.

The entire premise for this finding, as is clear from the title, is that the Department used vendor personnel to develop specifications for bids, and that it routinely awarded contracts to those vendors. That premise is wholly without basis.

#51 **Comment 51:** This is not a true statement. Please see Auditors' Comment 49.

#52 **Comment 52:** The auditors do **not** state in their finding that it is improper to use potential vendors to develop RFP specifications. Rather, the auditors state that the Department should develop specific standards for such use of potential vendors to help ensure the procurement process is fair and equitable to all vendors – both those who helped develop the RFP specifications and those who did not.

#53 **Comment 53:** This is not a true statement. Please see Auditors' Comment 49.

#54 **Comment 54:** This is the situation referenced in CMS' Footnote 1 in its letter dated April 14, 2005. The auditors noted that a non-State employee had submitted comments on an RFP that had not yet been issued by the Department. CMS was unable to tell the auditors in what capacity this person was working when he provided comments on the draft RFP to one of CMS' Deputy Directors. The person's comments were received on May 4, 2003; the RFP was issued on May 14, 2003; and the winning vendor's proposal was submitted on June 12, 2003. Sometime after submitting comments to CMS on the draft RFP (May 4) and before the winning proposal was submitted (June 12), this non-State employee established a business relationship with the vendor who was eventually awarded the contract. Further, in his comments on the RFP to CMS dated May 4, the non-State employee stated that he "understand[s] one of the objectives in this RFP is to not exclude McKinney & Company [sic] from participating in this procurement simply because they participated in gathering background statistics." The winning vendor, with whom this individual soon after partnered, was McKinsey and Company. Please see also Auditors' Comment 4.

First, CMS did not use *any* of the firms listed in the finding to develop specifications. This is clear in the work papers (Meeting minutes, CMS and OAG: 12/20/04, 1/13/05, 1/20/05, 1/24/05) and it is clear in the RFPs and contracts themselves. Furthermore, although permitted to do so, the Department does not use contractors to develop specifications and then bid on the RFP for which they developed the specification. Rather, as CMS has repeatedly stated and demonstrated, it used these firms to gather factual information that was included as background information in these RFPs—*and which was shared with all other bidders and publicly disclosed.* See the face sheets from each RFP. [2] This undisputable fact alone removes the stated basis for the finding and requires its removal. CMS is providing with this response an affidavit signed by the CMS Assistant Director that attests to the veracity of the Department's claims.

Second, although the use of these firms to collect data and identify opportunities for improvements within the organization is entirely permissible—and the auditors do not contend otherwise—the Department nonetheless went above and beyond any requirements to ensure that the procurement process for these contracts was transparent. It required these firms to fully disclose the information they provided the State to their competitors, negating any de facto advantage in the procurement process. This transparency went beyond not only the requirements of the Procurement Code and Administrative Rules, but it exceeded National Association of State Procurement Officials Guidelines.

Moreover, the auditor's assertion that CMS has not followed procurement "best practices" is disingenuous and hypocritical. As part of the Legislative Audit Commission ("LAC") "Audit Review Program," the Office of the Auditor General participates with certain accounting firms relating to their audit programs. Interestingly, the firms who participate in this Program receive an overwhelming number and amount of auditing contracts from the Auditor General.

According to the LAC's website, these firms include:

BKD, L.L.P.	McGladrey & Pullen
KPMG	PT&W
Clifton Gunderson	Prado & Renteria
McGreal, Johnson, McGrane	Kemper Group
Doehring, Winders Co.	Washington, Pittman & McKeever

[2] The Department did use the expertise of an outside consultant with no vendor affiliation to assist in RFP development.

#55

Comment 55: The finding acknowledges that using potential vendors to develop RFP specifications is permissible under CMS' procurement rules if the agency head determines in writing that it would be in the State's best interest to accept a proposal from such a vendor, and if a notice to that effect is published in the Procurement Bulletin. 44 Ill. Adm. Code 1.2050 (i). The auditors were not provided with any such written determination by the Director of CMS, and no notice to that effect was published in the Procurement Bulletin. The auditors believe that the type of information provided by potential vendors constitutes "specifications" as that term is defined in the Procurement Code, and that is the basis of our finding. Please see Auditors' Comment 50.

#56

Below are the amounts and number of contracts the Auditor General awarded these firms.

	FY 04	FY 03
KPMG	$1,800,814 (9)	$1,748,588 (11)
Clifton Gunderson	$1,413,057 (28)	$1,356,540 (16)
Doehring, Winders Co.	$203,076 (5)	$180,324 (6)
McGladrey & Pullen	$1,316,510 (19)	$1,037,701 (20)
Prado & Renteria	$60,486 (2)	$31,142 (4)
Kemper Group	$188,433 (12)	$193,234 (3)
Washington, Pittman & McKeever	$237,686 (7)	$299,943 (6)

In the following cases, these firms received contracts even though they were not the lowest cost bidder:

Audit	Selected Vendor	Cost
Department of Agriculture, Illinois State Fair, DuQuoin State Fair and the Illinois Grain Insurance Corporation	McGladrey & Pullen LLP	$428,000
Northern Illinois University and the University Related Organizations	Clifton Gunderson LLP	$266,543
Illinois Finance Authority	McGladrey & Pullen LLP	$273,200[3] Increased via an "Emergency Procurement" to $366,151

While CMS has no reason to believe that these decisions were anything other than entirely proper -- as were CMS' procurements -- these actions are inconsistent with the auditors' statements in this finding.

Third, the finding omits the following, relevant facts:

- The finding is based on the statistically and otherwise invalid sample of 9 contracts as referenced in response to Finding 04-2. Thus, the finding excludes contracts, like the legal services efficiency contract awarded to Hildebrandt, in which one of the other bidders provided pro bono background information, but was not selected. It also omits the other efficiency contracts—not to mention both: (1) the 25 contracts the external auditors tested, but omitted from their report, and (2) the thousands of other contracts CMS awarded during the audit period—in which no contractor provided information. Thus, it is highly misleading for the finding to use this improperly selective group of contracts to tout percentage statistics that would only lead a

[3] The Procurement Files also note that the OAG accepted this firm's Per Diem of $42.50, even though State Travel Regulations provide for a $28 per diem. In another instance, the OAG paid a $70 per diem.

#56

Comment 56: CMS' response here reflects a fundamental lack of understanding about the Legislative Audit Commission process. The accounting firms listed in CMS' response attended LAC hearings and provided testimony pertaining to audits those firms had conducted as Special Assistant Auditors to the Auditor General. Such testimony is completely unrelated to our procurement process since the testifying firms are already under contract with our Office at the time their testimony is given. For additional information, please see Auditors' Comment 49.

#57

reasonable reader to conclude that most of the Department's contracts are awarded to vendors who have provided background information. It simply is not true.

- None (0%) of the selected contracts reviewed by the auditors involved a contractor winning a bid it wrote the specifications for, and
- None (0%) of all Department contracts involved such a contractor winning such a bid.

There were multiple potential vendors who provided background information, and not all of them were selected for an award. This fact was conveniently omitted from the finding, including the table on page 20. (i.e. **Procurement Assessment**- BearingPoint, Accenture; **Strategic Marketing**- IEG, Promotion Group Central, Civic Entertainment Group, Sustain Communications, SponsorAid, The New England Consulting Group; **Software Review**- McKinsey, IBM; **Server Consolidation**- McKinsey, IBM.)

#57

Comment 57: The use of judgmental selection is consistent with generally accepted government auditing standards. In this audit, the auditors judgmentally selected large contracts related to CMS' efficiency initiatives. It was a deliberate process set forth in an audit program at the outset of the engagement. That audit program was discussed with CMS personnel at the audit entrance conference held on June 14, 2004, and a copy of the audit program was provided to CMS at its request. At the time these 9 specific contracts were selected for testing by the auditors, we had no idea what we would find. Somehow CMS seems to be saying that we purposefully selected contracts for which our findings would cast CMS in a bad light. **While we certainly agree the results of our testing are not favorable to CMS, the Department does not explain – short of our being psychic – how the auditors might have known which CMS contracts to select to achieve such a result.**

Finding 04-4

DEPARTMENT RESPONSE:

The Department disagrees with this finding for the reasons cited below.

Auditor Contention/Implication	**Department Response**
• The Department used evaluation criteria not stated in the RFP.	**Factually Incorrect** **Omission of Relevant Fact** **Misleading Conclusion** • Each of the evaluations sheets shows that CMS did use the same evaluation criteria in the RFP. • This is demonstrated in Attachment 04-4 A, which compares the criteria in the RFP with the criteria used in the evaluation score sheets. • The use of sub criteria is cited as a "best practice" of the National Association of State Procurement Officers (NASPO). (NASPO Principles, Chapter 9, p. 67 See 04-4 Attachment B) Given that the auditors used the NASPO principles as part of their audit criteria, they should have applied these principles here, but did not. • The auditors' criticism of the Department is disingenuous and hypocritical. The OAG routinely uses sub criteria in its procurement evaluations even though the sub criteria are not delineated in the RFP. • Each of the awards was clearly documented and was made to the vendor, which offered the best value to the State.
• The Department changed the scoring methodology without communicating the changes to bidders.	**Factually Incorrect** **Misleading Conclusion** • The Department did not change scoring methodology without communicating changes to the bidders. • In one instance, the Department did—during a permitted Best and Final Offer ("BAFO") process, clarify pricing. As a result of that process, it became clear that one vendor's proposal was superior, and this was documented in the procurement and contract files.
• The Department awarded a contract to a vendor that didn't receive the highest total points.	**Misstatement of Requirement** **Misleading Conclusion** • The Department is not required to award a contract to a vendor that receives the highest point total if that vendor's proposal is not in the State's best

#58

Comment 58: It is a fundamental principle of competitive procurement, recognized by NASPO guidelines and required by Illinois law, that contract awards must be made based on the evaluation criteria set forth in the solicitation document. Sub-criteria, by their definition, should be derived of, not depart from, the evaluation criteria set forth in the RFP. In Finding 4, the auditors noted instances in which CMS departed from its stated criteria and/or failed to maintain documentation necessary to demonstrate its compliance with those criteria.

#59

Comment 59: Simply stated, CMS' statement is not correct. The criteria used to evaluate proposals received through the RFP process are set forth in the RFP document. These criteria can be linked to the evaluation team scoring forms. Firms participating in the OAG procurement process have never expressed any concern about the OAG using sub-criteria not delineated in the RFP.

#60

Comment 60: CMS' response is inaccurate. As noted in the finding, **CMS changed its scoring methodology without communicating those changes to the vendors**.

	interest. • Indeed, standard language in the RFP, used consistently for decades, is that points are used only as a guide. The decision will be based on the best interest of the State. • In the cited instance, the total point scores between the first and second place vendors were very close, and the second place vendor offered a significantly lower price (11-38% lower than the other vendor). • This decision was fully explained and publicly documented in the notice of award and contract approval sheet, providing complete transparency into this decision. (See 04-4, Attachment C). • Not only is this allowable under the Code it is a NASPO best practice. (See 04-4 Attachment B) The OAG used the NASPO principles as part of their audit criteria, which shows that CMS is not only complying with the Code and Administrative Rules but is also following best practices.
• The Department should have gone back to the individual vendors for clarification of pricing so that a valid evaluation and comparison could have been made.	• The Department did go back to the vendor for clarification of pricing during the bid process. The vendor refused to commit a single figure for travel and expenses as well as a blended hourly rate for subsequent work. The vendor provided a letter to the Department supporting their position. This letter was provided to the OAG during the Pre-Exit Conference. • The Department's methodology with regard to assumptions made for expenses and the blended hourly rate were fair and reasonable. • The Procurement Code permits the Department to exercise this kind of judgment under these circumstances and there was no violation of the Code.

#61 **Comment 61:** The finding details the auditors' concerns with this procurement. In addition, similar concerns were expressed in an e-mail written by CMS' Chief Procurement Officer/State Purchasing Officer in Charge listed on the award notice for this procurement.

#62 **Comment 62:** Please see Auditors' Comment 60 and the auditors' position as stated in the finding.

Finding 04-5

SUMMARY OF DEPARTMENT RESPONSE

Auditor Contention/Implication	Department Response
The Department allowed a vendor to "extensively" revise its proposal during a best and final offer ("BAFO") process.	**Factually Incorrect** • Only 3 items changed from the original proposal to the best and final offer (BAFO).
After the vendor deleted them in the BAFO, CMS added several items back into the agreement, costing the State $5.75 million.	**Factually Incorrect** None of these 3 items were "added back" to the Agreement. • The Department eliminated lease transaction services in order to avoid more than $30 million in potential cost. • IPAM's original proposal obligated it to conduct a facility condition assessment on all 50 million square feet of State-owned property. As part of decreasing its overall contract price by approximately $11 million in its BAFO, IPAM proposed to conduct a facility condition assessment for 10 million square feet of State-owned property and train and assist out-sourced facility managers who would conduct the facility condition assessment on the remaining 40 million square feet and manage the facilities. • Although IPAM's original proposal obligated it to conduct a facility condition assessment on the entire State portfolio and later modified its proposal during its BAFO, the State still obtained approximately $9 million in savings during the best and final process.
The Department improperly provided a BAFO to only one vendor, IPAM.	**Inconsistent Position** **Misleading Conclusion** • As the RFP and Administrative Rules clearly allow, the procuring agency determines the scope and extent of a Best and Final Offer ("BAFO") process. • Even though this is not a Professional and Artistic ("P&A") contract, [see responses to Findings 4-6 and 4-7] the auditor's position is at odds with its conclusion in those findings that this is a P&A contract • If this were a P&A contract, the State could have negotiated a contract with IPAM without going back to them in a BAFO, since IPAM received the

#63

Comment 63: The auditors continue to maintain that **changing the fundamental composition of the proposing vendor** (particularly when the winning vendor did not exist as a legal entity until after the contract award), **deleting performance guarantees** and **reducing the scope of work** with regard to facility condition assessments by 80% (from 50 million square feet to 10 million square feet) **do constitute extensive revisions** to the vendor's original proposal.

#64

Comment 64: CMS has since amended the IPAM contract to add $5.75 million – $2.25 million for facility condition assessments and $3.5 million for lease transaction services.

#65

Comment 65: The audit does **not** question the offering of a best and final to a single vendor. It does take issue with allowing extensive changes to a technical proposal that has already been scored and a lack of documentation to show that such revisions did not significantly change the technical score of the proposal.

	highest technical points. Thus, the auditor's position in this finding is directly at odds with its position in other findings in the report.
The Department improperly allowed the composition of the joint venture to change.	**Factually Incorrect** • The joint venture changed because the New Frontier Company pulled out due to a conflict of interest that was disclosed during CMS' review of the original proposal. • CMS' evaluation did not change based on the ownership structure of the vendor. The original proposal specifically named Mesirow Stein as CMS' point of contact for the provision of services due to its supreme expertise in the fields of consulting, project management and development services. Therefore, the competency to perform the services under the proposal never changed.
The Department improperly allowed revision of the performance guarantee.	**Misleading Conclusion** • As part of the BAFO process, IPAM was requested to enhance their original proposal and, as part of that request, the performance guarantee was modified. • A thorough review of the items contained in both the performance guarantee contained in the original proposal and in the BAFO proves that the modifications allowed were clearly advantageous to the State.
The Department deleted 40 million square feet of facility condition assessment after the BAFO, but later awarded this work to IPAM in a sole-source contract.	**Factually Incorrect** • IPAM's original proposal obligated it to conduct a facility condition assessment on all 50 million square feet of State-owned property. • As part of decreasing its overall contract price by approximately $11 million in its BAFO, IPAM proposed to conduct a facility condition assessment for 10 million square feet of State-owned property and train and assist out-sourced facility managers who would conduct the facility condition assessment on the remaining 40 million square feet and manage the facilities. • The State obtained approximately $9 million in savings during the best and final process. Moreover, the State achieved additional savings by awarding a $2.25 million sole source contract to IPAM because the State is receiving this service at less than market rates.
The Department allowed the contract to be increased by $3.5 million of lease transaction support services,	**Misleading Conclusion** • The allegation is inaccurate and illogical: lease transaction and lease administration services are not the same service. Thus, the implication that CMS

#66 **Comment 66:** Please see Auditors' Comment 65.

#67

even though the contract provided IPAM to provide Lease Administration Services.	allowed IPAM to charge twice for the same thing is simply wrong.

DEPARTMENT RESPONSE:

The Department disagrees with the finding and recommendation. The auditors assert that the Department improperly allowed a vendor to "extensively" revise its proposal during the Best and Final Offer (BAFO) process. CMS does not agree that the charges made in the BAFO were extensive. In fact, only three items changed – Facilities Condition Assessment, Lease Administration and Performance Guarantee. Taken in the context of the entire scope of work, these changes did not individually or collectively "extensively" alter the proposal.

The auditor further implies that the revisions to the BAFO cost the state $5.75 million. This implication is not based in fact:

- The Department eliminated Lease Administration in order to avoid adding more than $30 million in cost. It is standard in the industry for lease administrators to pass on their fees to landlords. This in turn, would create an opportunity for the landlord to turn around and pass the increased cost on to the state. In order to avoid this potential cost CMS decided to perform the lease administration function itself.

- In its BAFO, IPAM proposed to conduct Facility Condition Assessments on 10 million square feet of property as opposed to the 50 million square feet that was in the original proposal. The remaining 40 million square feet would be assessed by outsourced facility. Subsequent to the award, but before contract execution, CMS decided not to outsource this function. Since in-house facility managers lacked the skills and experience to do facility assessment, the decision was made to sole source the remainder of the Facility Condition Assessment to IPAM, which had experienced teams in place already. The resulting sole source contract of $2.25 million pales in comparison to the $9 million savings the state obtained in the BAFO process.

- Transaction Administration was not substantially changed between the original proposal and the BAFO.

The auditor's assertion that it was improper for the IPAM joint venture to change is also without merit. While it is true that the New Frontier Company pulled out due to a conflict of interest, this had no impact on the Department's evaluation of the proposal.

Finally, the Department disagrees with the implication in the finding that removal of the Performance Guarantee was not in the State's best interest. During the BAFO process, the performance guarantee was modified to the State's advantage. Specifically, the BAFO retained a provision that at risk 10% of the Asset Management Fee and other items i.e. if not achieved, IPAM would only receive 90% of the fee; removed a potential

#67 **Comment 67:** The auditors do **not** contend that IPAM is being allowed to charge twice for the same service; **rather, the auditors contend that services that were deleted from IPAM's original proposal during the best and final process have subsequently been amended back into the contract as sole source, non-competitive procurements**.

#68 **Comment 68:** Please see Auditors' Comment 63.

#69 **Comment 69:** The auditors do **not** assert that it was improper for the joint venture composition to change; rather, we were concerned that there was no documentation in the procurement file to show that, after significant changes were made in IPAM's original technical proposal, that IPAM's proposal remained superior to other proposers who were not given the opportunity to participate in the best and final process.

#70

fee of $500,000 if IPAM completed some transactions and removal of incremental bonuses to be paid to IPAM if the savings goals were met. In total, these changes strengthened the performance guarantee to the state's advantage.

#70 **Comment 70: IPAM did not meet its stated savings goal of $14 million in FY04.** (Please see Finding 11 on this topic.) IPAM's fee has not been reduced because of its failure to meet the savings goal.

Findings 04-6

DEPARTMENT RESPONSE:

The Department disagrees with this finding for the reasons set forth below.

Auditor Contention/Implication	**Department Response**
• The Department failed to publish that 4 contracts were not awarded to the lowest bidder. • CMS failed to include subcontractor information in these same contracts.	**Misstatement of Facts and Rules** **Deliberate Omission of Relevant Facts** **Misleading Conclusion** • As the auditors note, the cited requirements (publishing the fact of non-award to the lowest bidder, and subcontractor information) *only apply if the contracts are Professional & Artistic (P & A) contracts within the meaning of the Procurement Code*. (See 04-06 Attachment A).These contracts are not. They: o Were clearly designated as non-P&A RFPs. o Did not specify a particular level of education, experience and technical ability as required if they had been P&A contracts o Used non-P&A evaluation criteria o Did not require the vendor to have a professional license. (e.g., the OAG's procurement files for P&A contracts contain a copy of such professional licenses). o Bulletin notices were posted as non-P&A. It is excruciatingly clear that these were not considered P&A contracts, and could not have been under the Code. Notably, the auditors failed to consider or even recognize the existence of any of these facts. o The auditors' principal basis for the conclusion that these are P&A contracts is that the Comptroller's internal processing rules (SAMS) take the position that they are. However, that position is inconsistent with the Procurement Code and Administrative Rules, which take precedence over the Comptroller's internal processing rules. o The auditors' work papers – in stark contrast to their findings – note that it is the Procurement Code and Administrative Rules, which determine this, not the SAMS rules cited in the finding. [22E Contractual Services-P&A Contract Controls; Section C. Partial Listing of

#71

Comment 71: The principal basis for the auditors' conclusion that these contracts are subject to disclosures applicable to professional and artistic contracts was the Department itself. CMS paid two of the four contracts listed in the finding from the appropriation detailed object code for Professional and Artistic contracts. For three of the four contracts, CMS filed professional and artistic service affidavits with the Comptroller and Auditor General explaining why the contracts were not reduced to writing before services were commenced (see Finding 8 on this topic).

	Statutes and Regulations See 04-6 Attachment B]. o The Auditor General's legal counsel was aware of this position since 2002, and at a meeting to discuss this did not disagree with CMS' conclusion that, despite the Comptroller's SAMS rules, these types of agreements were not P&A contracts. o That understanding is reinforced by the fact that this is the first time the Auditor General has taken this position, and it has not made this a finding in any other Department audit in the last 6 years, despite being directly aware of it at least as long ago as 2002. o To be a P&A contract, the services must be those provided by licensed professionals. These contracts did not require professional licenses.

#71

Comment 72: CMS hosted a workshop on August 7, 2002, entitled "Professional Services Workshop." The workshop was attended by staff from a number of State agencies. Neither before, during or after the workshop did the Auditor General's legal counsel have any "discussion" with CMS concerning its interpretations, and her presence at the meeting was merely as an attendee, along with dozens of other individuals. At any rate, the determination of whether a particular service constitutes a professional and artistic service must be made on a case-by-case basis and the contracts at issue did not exist – and, therefore, could not have been the subject of any discussion – three years ago.

#72

#73

Comment 73: Again, **contracts that did not exist three years ago could not have been the subject of discussion three years ago**. Please see Auditors' Comment 72. At any rate, it is not uncommon for the auditors to question an agency's classification of contracts when: (1) the agency's classification does not appear to be reasonable; and (2) by not classifying the contract as professional and artistic, the agency is able to avoid safeguarding procedures – such as disclosure of subcontractors – applicable only to that type of procurement. See, for instance, Finding 4 in the Capital Development Board audit released on April 6, 2005.

#74

Comment 74: **Nowhere** in the Procurement Code does it state that, to qualify as professional and artistic services, the services must be provided by a licensed professional.

Findings 04-7

DEPARTMENT RESPONSE:

The Department disagrees with this finding for the reasons set forth below.

Auditor Contention/Implication	**Department Response**
• The Department failed to publish that 4 contracts were not awarded to the lowest bidder. • CMS failed to include subcontractor information in these same contracts.	**Misstatement of Facts and Rules** **Deliberate Omission of Relevant Facts** **Misleading Conclusion** • As the auditors note, the cited requirements (publishing the fact of non-award to the lowest bidder, and subcontractor information) *only apply if the contracts are Professional & Artistic (P & A) contracts within the meaning of the Procurement Code* (See 04-06 Attachment A). These contracts are not. They: o Were clearly designated as non-P&A RFPs. o Did not specify a particular level of education, experience and technical ability as required if they had been P&A contracts o Used non-P&A evaluation criteria o Did not require the vendor to have a professional license. (e.g., the OAG's procurement files for P&A contracts contain a copy of such professional licenses). o Bulletin notices were posted as non-P&A. It is excruciatingly clear that these were not considered P&A contracts, and could not have been under the Code. Notably, the auditors failed to consider or even recognize the existence of any of these facts. o The auditors' principal basis for the conclusion that these are P&A contracts is that the Comptroller's internal processing rules (SAMS) take the position that they are. However, that position is inconsistent with the Procurement Code and Administrative Rules, which take precedence over the Comptroller's internal processing rules. o The auditors' work papers – in stark contrast to their findings – note that it is the Procurement Code and Administrative Rules, which determine this, not the SAMS rules cited in the finding. [22E Contractual Services-P&A Contract Controls; Section C. Partial Listing of

#75

Comment 75: The principal basis for the auditors' conclusion that these contracts are subject to disclosures applicable to professional and artistic contracts was the Department itself. CMS paid two of the four contracts listed in the finding paid from the appropriation detailed object code for Professional and Artistic contracts. For three of the four contracts, CMS filed professional and artistic service affidavits with the Comptroller and Auditor General explaining why the contracts were not reduced to writing before services were commenced (see Finding 8 on this topic).

	Statutes and Regulations See 04-6 Attachment B]. o The Auditor General's legal counsel was aware of this position since 2002, and at a meeting to discuss this did not disagree with CMS' conclusion that, despite the Comptroller's SAMS rules, these types of agreements were not P&A contracts. o That understanding is reinforced by the fact that this is the first time the Auditor General has taken this position, and it has not made this a finding in any other Department audit in the last 6 years, despite being directly aware of it at least as long ago as 2002. o To be a P&A contract, the services must be those provided by licensed professionals. These contracts did not require professional licenses.

#75

Comment 76: CMS hosted a workshop on August 7, 2002, entitled "Professional Services Workshop." The workshop was attended by staff from a number of State agencies. Neither before, during or after the workshop did the Auditor General's legal counsel have any "discussion" with CMS concerning its interpretations and her presence at the meeting was merely as an attendee, along with dozens of other individuals. At any rate, the determination of whether a particular service constitutes a professional and artistic service must be made on a case-by-case basis and the contracts at issue did not exist – and, therefore, could not have been the subject of any discussion – three years ago.

#76

#77

Comment 77: Again, **contracts that did not exist three years ago could not have been the subject of discussion three years ago**. At any rate, it is not uncommon for the auditors to question an agency's classification of contracts when: (1) the agency's classification does not appear to be reasonable; and (2) by not classifying the contract as professional and artistic, the agency was able to avoid safeguarding procedures – such as disclosure of subcontractors – applicable only to that type of procurement. See, for instance, Finding 4 in the Capital Development Board audit released April 6, 2005.

#78

Comment 78: **Nowhere** in the Procurement Code does it state that, to qualify as professional and artistic services, the services must be provided by a licensed professional.

Finding 04-8

SUMMARY OF DEPARTMENT RESPONSE

Auditor Contention/Implication	Department Response

• The Department was not timely in executing most/all contracts.	**Factually Incorrect**
	Deliberate Omission of Relevant Facts
	Misleading Conclusion
	• More than 90% of Department contracts are executed in a timely manner.
	• Selection of sample of 9 of CMS' most complex contracts provides a completely misleading picture and is; by the auditors' own admission, not a representative—but a "judgmental" sample.
	• Thus, its use of a percentage statistic in its report is invalid and misleading. The correct statistics are than less than 10% of all CMS contracts in the most recent reporting period are late filed.
	• This percentage is less than the percentage of many other entities, including the General Assembly and the Treasurer's Office.
	• But, even as to these 9 agreements, the auditors ignored the fact that there were timely interim agreements that were executed with the vendors that covered their services until the final contracts were completed. The auditors specifically identified and tested these agreements (as the work papers demonstrate), but they omitted them, without basis, from the report (See 04-8 Attachment A).
	• At the Exit conference, the auditors contended that these interim agreements were not really agreements, but that position is directly contradicted by:
	  • Their own work papers that tested these as contracts.
	  • Their own test for determining whether something is a binding contract (see discussion below).
	  • Even a cursory review of the contracts demonstrates that they are binding contracts.
	  • These interim agreements met standard contract law requirements. See 04-08 Attachment B.

• The Department allowed most/all vendors to begin work without a contract: • Compromising accountability to	**Factually Incorrect** **Legally Incorrect** **Deliberate Omission of Relevant Facts** • In the overwhelming majority of situations, CMS does not permit a vendor to work prior to formal

#79 **Comment 79:** The use of judgmental selection is consistent with generally accepted government auditing standards. Please see Auditors' Comment 57.

#80 **Comment 80:** In no instance is a percentage used without including raw numbers; therefore, our use of percentages is not misleading. Unlike the audit findings, CMS uses percentages in its responses without providing any raw numbers to put those percentages into context. Further, unlike the audit findings, CMS' percentages are **not** supported with any documentation.

#81 **Comment 81:** This audit is of the Department of Central Management Services. However, the auditors would point out that, in considering significance, the nature and amount of a contract would generally be considered. Failure to reduce a $24.9 million contract to writing before services commenced is qualitatively different from any such failure that might be related to small or routine contracts. However, since CMS does not provide any further information on its claims, the auditors are not in a position to address its points with regard to the operations of other State agencies that are not the subject of this audit.

#82 **Comment 82:** In 9 out of 9 contracts tested, CMS allowed vendors to commence work before a written contract was executed. For 2 of the 9 awards, the Department entered into "interim agreements." However, the Procurement Code does not use the term "interim agreement." Further, when tested by the auditors, it was noted that these "**interim agreements" lacked required terms and conditions necessary to constitute "contracts."** For instance, the "interim agreement" with EKI did not contain a detailed scope of work section or financial conflict of interest disclosure forms. (As stated by CMS in a cover sheet to the interim agreement, "The final definitive agreement will require significant negotiations regarding the statement of work and our expectations.") We stand by our recommendation that CMS should take the necessary steps to increase timeliness in reducing contracts to writing.

public.
• Increase likelihood that state's interests are not protected.
• Increases likelihood that state's resources wasted/ misused.
	execution of a contract.
	• In the limited situations in which the Department permits a vendor to begin work without a contract, it is in the best interest of the State to do so.
	• Even as to those limited situations, CMS and the State are fully protected from any liability as clearly provided in the RFP and well-established law.
	• Notably, the findings omit, without basis, the language from the RFP and other related documents that the Department provided to support this conclusion.
	• There is no compromise of public accountability since the award and contract are publicly filed, and no payments can be made to the vendor until and unless a contract is executed: all work is done at the vendor's own risk.
	• The State's interests are fully protected because vendors have no authority to bind the state, and because the state's only obligation under the contract is to pay the amounts owed and no payments can be made until a contract is executed and filed at the Comptroller's office.
	• There is no waste or misuse of State resources. In fact, quite the contrary:
	  • The State cannot and does not make any payments under the agreements until the contract is executed and filed, and
	  • In all cases, the vendors are performing work that would otherwise have to be performed by the State, thus conserving the State's resources, not wasting them.

• Vendors can represent the State and thus expose the state to liability.	**Clear Misstatement of Law and Fact** • Vendors have no legal capacity to bind the state to anything before or even after a contract is signed, and the auditors have cited no authority to the contrary. • The auditors' position is based on mere speculation of potential liability. • Notably, the auditors failed to cite any instance in which the State has suffered such liability, because there is none.
• State loses negotiating leverage when contract not signed before work begins.	**Factually Incorrect** **Misleading Conclusion** • Auditors' position is based on speculation, without any facts to support this speculative conclusion. • Cites CMS FAQ document (post-dating the audit period) that suggests the State has more negotiating leverage.

#83

Comment 83: We do **not** agree that CMS' failure to reduce 9 out of 9 contracts tested – with a total value of $69 million – to writing before services commenced constitutes a "limited" situation.

#84

Comment 84: Since **the law requires reducing these agreements to writing before the services are performed** (30 ILCS 500/20-80 (d)), any discussion about whether or not this represents good public policy is rather esoteric. However, as auditors, we continue to believe that having a fully-executed and timely contractual agreement represents prudent business practice and helps to avoid potentially costly disputes and litigation. Further, **public accountability is compromised** when the public does not know the actual scope of work and the cost of such work until the final contract is filed.

#85

Comment 85: The auditors reiterate that CMS' own FAQ document states that "The State has more leverage and the vendor has more incentive to negotiate prior to knowing they've been selected."

	• However, the FAQ document is misapplied in this situation. Because the State has no obligation to pay unless or until there is an executed contract, the negotiating leverage is in favor of the State and against the vendor, which must have a contract to be paid.
• The Department held agencies to a different standard.	**Factually Incorrect** **Deliberately Misleading Conclusion** • False. Relies on post-audit dated document (See Response to Finding 04-2). • Auditors changed the tense of one word when this time issue was brought to their attention, but it doesn't change the clear implication of the statement.

DEPARTMENT RESPONSE:

The Department disagrees with this finding because it is based on incorrect facts, and deliberate and misleading omissions of relevant facts.

Once again, the auditors have misrepresented the significance of their finding, relying on a "sample" that is neither statistically valid, nor consistent with their own Sampling Plan. And, once again, the auditors do not include the data on this issue from a sample done by their external auditors, which, as stated in their work papers, should have been included. (See, Response to Finding 4-2).

Moreover, the information in the finding is inaccurate and omits a relevant fact. For two of the nine initiatives cited in the finding, CMS *did have* a valid contract in place covering the work. In those situations, CMS – as a further means of protecting the State and locking the vendors into key terms – negotiated, executed and filed with the Comptroller, interim agreements. It is clear that the auditors had these contracts, tested against them, and in fact considered them to be contracts. But, for whatever reason, there is absolutely no discussion of these contracts in their findings.

When asked about this omission, the auditors contended that these really weren't contracts, but that is patently false:

- First, the auditors own work papers classified these agreements as contracts and performed certain tests against them. If they didn't think they were contracts, they wouldn't have so characterized them or tested against them. See 04-8 Attachment A.

- Second, the auditors own work papers contain the elements that define a contract, and each of the interim agreements, have each of those elements. See 04-8 Attachment B.

- Third, if these were not contracts, the Comptroller's Office would not have accepted them and would not have let State funds be paid against them.

#85

#86

Comment 86: Contract testing performed by our Special Assistant Auditors was consistent with our sampling plan and, contrary to CMS' assertion, the results of that testing were included in Finding 9. CMS appears to take issue with the fact that the Auditor General's Office conducted additional testing on 9 large contracts related to the Department's efficiency initiatives. Our judgmental selection of these 9 contracts was consistent with generally accepted government auditing standards and based on an audit program detailed at the outset of this engagement. Please also see Auditors' Comment 57.

#87

Comment 87: In 9 out of 9 contracts tested, CMS allowed vendors to commence work before a written contract was executed. For 2 of the 9 awards, the Department entered into "interim agreements." However, the Procurement Code does not use the term "interim agreement." Further, when tested by the auditors, it was noted that these "**interim agreements" lacked required terms and conditions necessary to constitute "contracts."** For instance, the "interim agreement" with EKI did not contain a detailed scope of work section or financial conflict of interest disclosure forms. (As stated by CMS in a cover sheet to the interim agreement, "The final definitive agreement will require significant negotiations regarding the statement of work and our expectations.") We stand by our recommendation that CMS should take the necessary steps to increase timeliness in reducing contracts to writing.

- Finally, despite being asked, the auditors could not provide a single basis for their conclusory statement that these were not contracts.

Here, because late filed contracts are filed by the Office of the Comptroller, with a copy to the Office of the Auditor General, the Department does have (and the Auditor General should have had) information about the number of the Department late filed contracts and the total number of contracts. That data reveals that for Fiscal Year 2003 and 2004:

	Fiscal Year 2003	Fiscal Year 2004
# of Late Filed Contracts	176	104
Total # of Contracts	1185	1064
% of Late Filed Contracts	14.8%	9.7%

Source: Auditor General website, www.state.il.us/auditor. Link Late Filing Affidavits Comptroller's data warehouse database contracts filed by agencies Fiscal Year 03 and 04 reports.

To put these numbers in perspective, several entities had a much greater percentage of late filed contracts:

	% of Late Filed Contracts Fiscal Year 2003	% of Late Filed Contracts Fiscal Year 2004
CMS	14.8%	9.7%
General Assembly	30.4%	18.1%
Treasurer	30%	32.5%

Source: Auditor General website, www.state.il.us/auditor. Link Late Filing Affidavits Comptroller's data warehouse database contracts filed by agencies Fiscal Year 03 and 04 reports.

Moreover, from a total dollar perspective only 2% of the total dollar amount of all CMS Procurement involved late-filed contracts. In any event, there is nothing improper about late-filed contracts. Indeed, the applicable rules contemplate that this will occur. Indeed, late-filed contracts are usually more likely to occur for complex agreements that take longer to negotiate, draft and execute. Indeed, that is exactly the case with the 9 contracts cited in the finding.

Why would CMS or other agencies or offices allow a vendor to begin work prior to the execution of the contract? The answer is simple:

- First, all of the contracts cited in the finding relate to efficiency initiatives designed to help remedy the State's fiscal crisis. Each day the work was delayed, savings to the State and its taxpayers, were also delayed. In short, beginning the work as soon as possible benefited the State and its taxpayers, and thus, without doubt, was in the best interest of the State.

#87

#88

Comment 88: There are two separate affidavit requirements in the Procurement Code. One pertains only to professional and artistic contracts and requires an affidavit to be filed when the contract is not reduced to writing prior to the commencement of services under the contract (e.g., Professional and Artistic Services Affidavit). The other affidavit requirement applies to all contracts and requires an affidavit to be prepared when the contract was not filed with the Comptroller within 30 days of its execution (e.g., Late Filing Affidavit). The figures cited by CMS in its response relate only to the late filing affidavits and do not address the professional and artistic services affidavits; therefore, **the Department's figures are incorrect and understated**.

#89

Comment 89: Since CMS' percentages were incorrect in the above chart (see Auditors' Comment 88), we can only presume they are incorrect here as well. While CMS has criticized the auditors for using percentages, in each such instance the auditors included raw numbers so that the percentages could be placed into perspective. CMS has not done the same here in its response. (Please see Auditors' Comments 45 and 80.) The raw numbers of affidavits filed by the other entities mentioned by CMS is small compared to CMS. Further, as stated in our Auditors' Comment 81, significance and/or materiality is a consideration in determining whether a finding exists. Comparison of one agency to another cannot be made without a consideration of the specifics on each contract in question, such as the nature of the service being provided, the total amount of the contract and how delayed was the execution and filing of the contract relative to the start date of services being provided. As shown in the finding, an average of 125 days passed between CMS' contractors starting work and CMS' filing of the contracts for these 9 procurements totaling $69 million. CMS does not consider these factors when comparing itself to other State agencies that were not the subject of this audit.

#90

- Second, there was no harm to the State by allowing the work to begin. As the RFPs clearly provide, any work begun prior to the execution of the contract was solely at the contractor's own risk. Notably, the finding omits this crucial fact, including:

    - The irrefutable fact that, until the contract is executed and filed with the Comptroller's Office, *there is no financial risk of the State to the contractor since the State cannot pay a single penny to a vendor until and unless such a contract has been executed and filed*.

    - There is no risk to third parties since the contractor cannot bind the state and is not an "agent" of the State.

    - There is no risk to waste of state resources, since the contractors performed work that the State would have had to perform anyway. Indeed, rather than their being risk to the State in this regard, there is benefit since, as stated in the first bullet point, until and unless there is a contract, the State has absolutely no legal obligation to pay for any work performed by the contractor.

#90

Comment 90: Since **the law requires reducing these agreements to writing before the services are performed** (30 ILCS 500/20-80 (d)), any discussion about whether or not this represents good public policy is rather esoteric. However, as auditors, we continue to believe that having a fully-executed and timely contractual agreement represents prudent business practice and helps to avoid potentially costly disputes and litigation.

Notably, the auditors and their counsel, despite being asked, have cited no case law to support their speculative belief of this risk[4], nor have the auditors provided any analysis of the scope or significance of this risk. Indeed, as to these nine contracts, there is *nothing* in the audit finding that suggests (or would support a conclusion) that there was any harm whatsoever to the whatsoever—because there was no such harm. Rather, as discussed above, there was benefit to the State.

[4] CMS provided on-point case law to the auditors legal counsel (a copy of which is attached See 04-8 Attachment C) that further supports this rather obvious proposition. The response was that there was no certainty that this result would apply here. While that may perhaps be true, certainty is not the standard for the audit, nor is it a reasonable standard. Any one could speculate that some court, somewhere, some day might ignore well-established precedent. But just because of that remote possibility, it is unreasonable to conclude that a state agency cannot rely on that precedent today, particularly when there is no case law to the contrary, and the Auditor General's counsel has not cited any.

#90

#91

Comment 91: The facts and circumstances in the case relied upon by CMS counsel are distinguishable from the facts and circumstances cited in the finding. The plaintiff in the case cited by CMS was suing to enforce an oral contract for $317,521 that was purportedly authorized by a government employee who did not have any procurement authority. In the 9 contracts discussed in this finding, the procurement decision was made in writing either by CMS' Director (1 contract) or by its Chief Procurement Officer/State Purchasing Officer (8 contracts). For that and other reasons, we believe it is questionable whether the case cited by CMS represents applicable precedent. More importantly, the contracts at issue involve the expenditure of $69 million for the overall stated purpose of saving hundreds of millions of dollars in public funds. **We simply do not believe that the possibility that the State might prevail in court, in the event the terms and conditions under which the services were provided are disputed, provides adequate protection of State resources or time or furthers the savings goals that are so crucial to the State.**

Finding 04-9

DEPARTMENT RESPONSE:

The Department has carefully reviewed this finding, which alleges that the Department did not properly monitor vendor expenses before paying them. With one minor exception, discussed below, CMS concurs with this finding, and is particularly outraged with regard to the inappropriate submission and approval of expenses related to the Asset Management contract. That a vendor would have the audacity to submit such obviously inappropriate expenses for reimbursement and that Department personnel would fail to have examined those expenses thoroughly before paying them is truly incredible. The Department greatly appreciates the Auditor General bringing this matter to our attention, and to ensure that taxpayers are made whole for this unfortunate situation, and that it will not occur again, the Department has taken the following actions:

- The Department has demanded that the vendor pay back *every penny* of questionable expenses.

- The Department is reviewing each and every expense submitted for reimbursement to CMS by the vendor, and will not pay any expenses until such review is completed and the amounts are determined to be properly payable.

- The Department is reviewing the terms of the contract with the vendor to determine whether further action against the vendor is warranted.

- The Department is conducting an internal investigation into how these amounts were paid and, after such an investigation, will take disciplinary action, against those employees who violated Department rules and practices regarding payment of these expenses.

Again, the Department is outraged and embarrassed by these improper payments, but the taxpayers of Illinois can rest assured that each and every penny that has been improperly paid will be recovered and that CMS will ensure that only properly payable amounts are reimbursed in the future.

In addition, the Department is implementing more stringent procedures and approval requirements, including approval of expense reimbursement by the Chief of each CMS bureau before they are submitted for payment. This will ensure that expenses are properly paid and that accountability for such payment is clearly established at the senior management level at CMS. Again, CMS appreciates the Auditor General's work in discovering these improper payments.

The findings also questioned expense reimbursement for four other contracts executed by our Bureau of Communications and Computer Services. CMS agrees with the auditors that those expense reimbursement should also be examined in detail to determine whether they were appropriately incurred. While standard industry practice (including the Bureau's historical practice) was to monitor expenses in the aggregate, the Department agrees that this practice was not and is not enough. The Department does take minor

#92

Comment 92: The auditors are similarly "outraged" by the reimbursement by CMS of these contractor expenses. For that reason, we do not feel that an "internal investigation" – as promised by CMS – is a sufficient remedial step. Consequently, we have turned over the information contained in this finding to the Executive Office of Inspector General.

#93

Comment 93: CMS indicates, in response to this finding, that it is implementing "more stringent procedures" as a result of this finding. However, the only "more stringent procedure" it specifically enumerates in its response is that future reimbursement requests from vendors must be approved by a CMS Bureau Chief before they are submitted for payment. In this finding, **CMS' Bureau Chief participated in evaluating the proposals that resulted in the IPAM award, had dinner with IPAM two weeks prior to the award, and also was the subject of many of IPAM's reimbursement requests for meals and other expenses**. Consequently, the auditors do **not** believe having a Bureau Chief review reimbursement requests before payment is sufficient to address the deficiencies noted in this finding.

#94

Comment 94: In this case, "standard industry practice" was **clearly not** an appropriate measure of accountability.

exception to the implication from the chart on page 36 that all the expenses for these contracts are questionable. However, the Department does agree that detailed documentation has not been obtained. Indeed, CMS has already begun the process of obtaining and reviewing all of the detailed documentation. To the extent that the documentation does not support the payment of expenses, the Department will conduct the same detailed review it is undertaking with respect to the asset management contract.

#95

Comment 95: The entire amount of $546,650 shown in the chart on page 39 (formerly page 36) is questionable either because: (1) based on documentation provided by the vendor, CMS reimbursed expenses that were inappropriate; or (2) no documentation to support the expenses was submitted by the vendor at all.

Finding 04-10

DEPARTMENT RESPONSE:

The Department disagrees with the finding for the reasons set forth below.

Auditor Contention/Implication	**Department Response**
• The Department failed to adequately determine the amount of savings it expected agencies to realize when billing for State agencies. • Not all agencies were billed for initiatives.	**Omission of Relevant Facts** **Factually Incorrect** **Misleading Conclusion** • The State Finance Act clearly states that the scope of CMS' charge was to identify "…. where cost savings are **anticipated** to occur." The Department took efforts to anticipate as precisely as possible where cost savings would occur. Thus, CMS did adequately determine the amount of savings. • The auditors seek to hold the Department to a different standard than the statutory one: that the Department must identify were cost savings occurred, and then using this unilaterally re-written standard, find that the Department failed to meet the correct statutory requirement. Such a conclusion is not only contrary to the statute, but also illogical. • Given the cost savings are anticipated, not actual, a measure of deviation is reasonable.
• Governor's Office has no role in determining cost savings.	**Clear Misstatement of Law** • Legislation clearly provides that the Governor's Office must approve all savings amounts.
• Efficiency cannot occur from funded vacant headcount reductions.	**Clear Misstatement of Law** **Misleading and Illogical Conclusion** • Nothing in legislation suggests that efficiency cannot occur from funded vacant headcount reductions. • Indeed, headcount reductions are one of the key ways of realizing efficiencies clearly recognized by the legislature. • If agencies backfilled against headcount that was counted as savings, then any finding should be lodged against such an agency, not CMS. CMS fully complied with its statutory obligations.

#96

Comment 96: The Department's citing of the State Finance Act is not relevant to this finding. In this finding, the Civil Administrative Code is used as criteria. 20 ILCS 405/405-292.

#97

Comment 97: Given the large discrepancy between procurement savings billed and savings realized by most State agencies, the auditors concluded that the "measure of deviation" experienced was **not** reasonable.

#98

Comment 98: This finding does **not** question the role of the Governor in approving amounts designated as savings from the efficiency initiatives.

#99

Comment 99: **Nowhere** in the finding do the auditors state or conclude that "efficiency cannot occur from funded vacant headcount reductions." What the finding does conclude is that CMS' methodology was flawed – basing its billings on an outdated facility management survey, which resulted in agencies being billed for "vacant" positions, some of which had been filled subsequent to the survey.

Finding 04-11

SUMMARY OF DEPARTMENT RESPONSE

Auditor Contention/Implication	Department Response
Statewide savings goals for efficiency initiatives are achieved solely by vendor actions.	**Omission of Relevant Facts** **Misleading and Illogical Conclusion** • The savings goals, as outlined by the Governor's Fiscal Year 2005 Proposed Budget, are defined using Fiscal Year 03 Appropriation Levels as the base and appropriately include reductions that are driven independently from direct vendor actions (see 04-11 Attachment A). • Department officials confirmed the definition of savings to auditors during interviews and provided the budget letter sent by the Governor's Office that made savings permanent in agency budgets for Fiscal Year 2005 (See 04-11 Attachment B).
Validated savings should not change when additional data is verified with agencies through the course of the year and following the close out of lapse period and federal funding participation claims.	**Omission of Relevant Facts** **Misleading and Illogical Conclusion** • Department officials confirmed to auditors that the intent of the validation form is to verify the savings methodology, and that as new information is made available the spreadsheet is updated.
McKinsey personnel must be specifically listed as a "Team Member" to document involvement for each savings category.	**Omission of Relevant Facts** **Misleading and Illogical Conclusion** • Department officials confirmed to auditors that they did not require McKinsey personnel to be listed because they were involved in all validations as a matter of course, per their contracted responsibility. • During a meeting between the OAG and the Department and as documented in the OAG's work papers ((Meeting Minutes, CMS and OAG: 12/20/04), the Department stated that documentation is available to support McKinsey's involvement in the savings categories. • The OAG only requested to review an example.
McKinsey staff was not involved in copier renegotiation.	**Omission of Relevant Facts** **Misleading and Illogical Conclusion** • McKinsey's work on the RFP as documented in September and October of 2003, **was prior** to the vendor approaching the State to renegotiate rates, directly resulting from the RFP work and the desire to avoid losing the contract. (See 04-11, Attachments D & E).
DHS staff initiated the	**Omission of Relevant Facts**

#100

Comment 100: As noted in the finding, these savings goals were included in certain RFPs, vendor proposals or contracts.

#101

Comment 101: The auditors are simply pointing out the inconsistencies in the preparation of the savings tracking forms.

#102

Comment 102: Contrary to CMS' assertion, the audit report does acknowledge that McKinsey staff were involved in the copier RFP.

improved capture of third party and federal payments prior to McKinsey involvement.	• Work paper review conducted by the agency documented that DHS stated they did preliminary analyses and review, but did not produce actual results. • DHS survey documents also validate that the savings methodology took into account historical collection rates thereby measuring only incremental savings as produced by McKinsey's direct involvement.
DHS savings must be collected in Fiscal Year 04 to be validated.	**Omission of Relevant Facts** **Clear Misstatement of Law** • Auditors omitted the fact that savings were collected in Fiscal Year 2005. • Under accrual accounting principles and the specific provisions of the State Finance Act, the date of recognition of the right to recovery occurs upon the determination of the liability. • Section 25 of the State Finance Act exempts the Medicaid program from the general State fiscal year requirements. (See 04-11 Attachment F).
Documentation to support the Fleet Management Initiative savings goal was not provided.	**Omission of Relevant Facts** • Department officials stated that the goals of $1 Million in Fiscal Year 04 and $2.6 Million in Fiscal Year 05 are stated as contract requirements in the Maximus contract as $3.6 Million in Fiscal Year 05 due to the date of contract implementation. • Fiscal Year 05 was not covered under this audit.

DEPARTMENT RESPONSE:

The Department disagrees with the finding and recommendation. The finding implies, by including the chart on page 47, that vendors were directly responsible for achieving the entire amount of statewide savings goals. This implication ignores the definition of savings as documented by the Governor's Fiscal Year 2005 Proposed Budget and described to the auditors during multiple agency interviews.

> The definition of savings for the various efficiency initiatives, as documented in the Fiscal Year 2005 State of Illinois Proposed Budget, is estimated using the Fiscal Year 03 appropriations as base.
>
> Savings are therefore defined as reduced appropriated spending. In addition to vendor initiated actions, savings include cuts made permanent in agency budgets through GOMB processes, frozen funded vacancies, field office closures, and across-the-board GRF cuts, to name a few.

The finding implies that the vendors' performance and resulting payments are tied to independently achieving the entire amount of the statewide savings goal. The table on

#103

Comment 103: The Department mischaracterizes DHS officials' responses to the auditors' follow-up and fails to recognize efforts DHS took to collect on these claims prior to McKinsey's involvement. For the $26.281 million in savings for correction in claims processing errors, DHS officials stated that "The DRS [Division of Rehabilitation Services within DHS] has always made the effort to correct and resubmit Medicaid rejects however, more intense efforts began in February of 2004 with the help of the McKinsey consultants." For the $3.157 million in savings for correction in Medicaid claims processing errors, DHS officials stated "The Department has been aware of, and devoting staff time to, correcting rejected claims as well as pursuing additional claiming opportunities for many years..."

#104

Comment 104: To corroborate FY04 cost savings reported by CMS on the savings tracking forms, **auditors followed up – at the suggestion of CMS' Assistant Director – with DHS, and we simply repeated the FY04 savings DHS reported collecting**.

#105

Comment 105: Please see Auditors' Comment 100.

page 47 does not clearly represent the fact that McKinsey was the only vendor where the performance and payment was tied directly to the statewide savings goal.

A copy of a GOMB letter with instructions to agencies that makes savings from procurement, IT, vehicles and functional consolidations permanent reductions to the budget in Fiscal Year 05 and beyond was provided to the auditors to further document the definition of savings.

No Auditor Comments have been included for this page.

Department of Central Management Services' Response
Finding 4-12

Finding 04-12

DEPARTMENT RESPONSE:

The Department agrees with the recommendation that the previous nine recommendations of the OAG's management audit of the State's Space Utilization Program should be fully implemented. In fact, the Department has taken steps since the September 2004 follow-up to the February 2004 Space Utilization Management Audit towards completion of implementation of these recommendations and offers the following:

Strategic Planning (Recommendation #4)—

The Department disagrees with the auditor's assertion that this recommendation has not been implemented. The auditors seem to base their conclusion on their inability to locate one document titled "Strategic Plan". The Department contends, however, that its entire approach to completely reorganize property and facilities management and space utilization and asset management is in fact a strategic plan.

Agency Reporting of Real Property to CMS (Recommendation #1)—

In October 2004, the Revised Form A was completed and is attached (see 04-12 Attachment A). Although the auditors admit that Form A was developed as a draft as of September 21, 2004; the Form is currently being utilized. Further the Annual Real Property Utilization Report was filed with the General Assembly on February 1, 2005.

Accuracy of Master Record (Recommendation #2)—

CMS has revised Form A to develop an accurate accounting of land and buildings owned by the State. The Department is considering whether to establish a new reporting procedure for wetlands and flood mitigation.

#106 **Comment 106:** If the Department has committed its "approach" to writing, it should have provided that document to the auditors during fieldwork.

#107 **Comment 107:** The revised Form A was in draft form only at the time of our fieldwork.

Department of Central Management Services' Response
Finding 4-13

Finding 04-13

DEPARTMENT RESPONSE:

The Department agrees with the finding and recommendation. CMS is pursuing the services of an actuarial consultant to calculate post employment benefits and incurred but not recorded healthcare claims on a consistent basis. This consultant has significant experience working with the CMS Group Insurance program. CMS is confident that the collaborative relationship with this industry expert will ensure the development and implementation of a consistent methodology for the development, determination of, and reporting these liabilities.

No Auditor Comments have been included for this page.

Department of Central Management Services' Response
Finding 4-14

Finding 04-14

SUMMARY OF DEPARTMENT RESPONSE

Auditor Contention/Implication	Department Response
Audits conducted during Fiscal Year 04 were not sufficient to fully comply with the Fiscal Control and Internal Auditing Act (30ILCS 10/2003).	**Misleading Conclusion** • During the nine months of the audit period the IOIA was in existence 26 agency legacy audit plans were evaluated for overall FCIAA coverage. • An interim audit plan was developed and resources allocated to complete audits necessary for statewide compliance. • Failure to complete the plan does not equate to non-compliance when the results prove full coverage for the 26 agencies when considered in whole, as was intended by Executive Order 2003-10.
An effective process to identify new major computer systems or major modifications of existing computer systems was not in place.	**Misleading Conclusion** • The auditors were provided with the process for identifying these projects. • The auditors failed to provide any instances of major system implementations or major modifications that were not reviewed.

DEPARTMENT RESPONSE:

The Department and the Illinois Office of Internal Audit (IOIA) disagree with the auditor's conclusion of noncompliance with the Fiscal Control and Internal Auditing Act.

The Governor's Executive Order 2003-10 established the IOIA. The IOIA was charged with creating a consolidated internal audit function for 36 agencies. From October 1, 2003 to June 30, 2004 an interim audit plan for Fiscal Year 04 was developed to provide adequate coverage for the 26 consolidated agencies with a legacy internal audit function. The planned methodology for complying with the Act was discussed with the Auditor General and his senior staff on October 21, 2003 (See 04-14 Attachment A). This planned methodology was also presented to the Legislative Audit Commission on November 18, 2003 (See 04-14 Attachment B).

Although all of the audits in the interim plan were not completed, a sufficient number of audits were completed at the 26 agencies to achieve compliance with the Act. For example, although the planned grant audits at the Capital Development Board and the Department of Corrections were not completed, during the two year period Fiscal Year 03 - 04 grant audits were completed at the Department of Agriculture, Banks and Real Estate, Children and Family Services, Commerce and Economic Opportunity, Emergency Management, Employment Security, Historic Preservation, Human Services, Natural Resources, Public Aid, State Police, Transportation, and Veterans Affairs.

#108

Comment 108: Pending implementation of a risk-based model beginning in Fiscal Year 2005, the IOIA developed an interim audit plan for Fiscal Year 2004 that identified the major systems required to be audited pursuant to the Fiscal Control and Internal Auditing Act (FCIAA). As noted in the finding, the IOIA did not perform all of the major system internal audits included in its plan. We fail to see how grant audits at one agency suffice to overcome IOIA's failure to audit grants at an entirely different agency. **IOIA, in internal memoranda, concluded that FCIAA had not been complied with** in regard to the areas noted in the finding. **The auditors' review and testing supported the conclusion reached by IOIA.**

#109

Comment 109: The compliance reports of the Department of Transportation, the Department of State Police and the Department of Commerce and Economic Opportunity for the period ended June 30, 2004, each contain a finding that the agency implemented a major new computer system or a major modification to a computer system without first obtaining an independent review by the Illinois Office of Internal Audits – as required by the Fiscal Control and Internal Auditing Act (30 ILCS 10/2003 (a) (3)).

#110

Comment 110: At the October 2003 meeting, the IOIA generally discussed the risk-based approach it was developing. The risk-based approach was not implemented in FY04 and is not the basis for this finding. In any event, in our meetings with IOIA, we have made it very clear that the criteria against which the auditors will continue to test the internal audit function is that contained in the Fiscal Control and Internal Auditing Act.

#111

Comment 111: Please see Auditors' Comment 108.

Department of Central Management Services' Response
Finding 4-14

Additionally, since the consolidation, the IOIA has conducted or has planned to conduct timely audits of all on-going major system implementations or major modifications. The external auditors have been provided with the process for identifying these projects. Further, the external auditors failed to provide any instances of major system implementations or major modifications that were not reviewed. Furthermore, as acknowledged in the audit report, the IOIA corrected the stated inefficiencies during the audit period. Lastly, the IOIA did reach out to the agencies for which we have audit responsibility in correspondence dated December 4, 2003 (See 04-14 Attachment C).

The IOIA believes that its statewide risk-based approach will ensure that appropriate coverage is given to all agencies for which it has audit responsibility. By having the internal audit function removed from the agencies, the IOIA is better able to maintain independence and conduct audits that under the previous structure would have been difficult to conduct. With the consolidation of the internal audit function, many agencies are receiving coverage, which previously received no internal audit coverage. Conducting internal audit work on a risk-based approach provides a more efficient and effective use of the State's audit resources.

#112

Comment 112: During the audit period, IOIA did **not** conduct audits of all major system implementations or modifications. **What it "has planned to conduct" is not relevant.**

#113

Comment 113: The process used by IOIA to identify major system implementations or major modifications to computer systems by State agencies was **not** adequate. As noted in Auditors' Comment 109, the IOIA did not review computer systems/modifications that were identified by the agencies or auditors as major during the audit period. The compliance reports of the Department of Transportation, the Department of State Police and the Department of Commerce and Economic Opportunity for the period ended June 30, 2004, each contain a finding that the agency implemented a major new computer system or a major modification to a computer system without first obtaining an independent review by internal auditors – as is required by the Fiscal Control and Internal Auditing Act (30 ILCS 10/2003 (a) (3)). Each of the State agencies involved in these three findings agreed with the auditors' conclusion that the system implementation/modification occurred without the appropriate review.

Department of Central Management Services' Response
Finding 4-15

Finding 04-15

SUMMARY OF DEPARTMENT RESPONSE

Auditor Contention/Implication	**Department Response**
The Illinois Administrative Code requires the Surplus Warehouse to maintain a statewide inventory control system for all State agencies.	**Misstatement of Law** • There is no requirement that the Department develop a statewide inventory control system. • Indeed, the rules recognize that state agencies may have separate control systems, because it requires those agencies to give the Department access to those systems**.** The auditors acknowledged this fact, but failed to modify language in the finding. (See 04-15 Attachment A) i.e. Title 44, Section 5010.520
The Illinois Administrative Code required the Surplus Warehouse to offer equipment for the use of any State agency.	**Misstatement of Law** • Offering the equipment for the use of a State agency is only one of the permissible methods of disposal.
The Department did not receive adequate compensation for some surplus property.	**Misstatement of Law** **Misleading Conclusions** • Requirement is that CMS sell the property to the highest bidder—it is compelled to sell the property at the highest bid price. • Property is sold on site at public auction to the highest bidder. • No reference in the Illinois Administrative Code provision for "adequate compensation" and criteria for it as sale is to the highest bidder as indicated above. • Auditors acknowledged this, including that there were no instances of non-compliance with the statute, but refused to modify the finding. (See 04-15 Attachment B) • Finding notes that iBid helped increase compensation while complying with bidding requirement, but fails to state that CMS implemented iBid. • The comparison in audit report failed to note that the computers that sold ($60-$100) on iBid were given a thorough review and included testing, review of system components, as well as other information that was presented to the on-line bidders.

#114

Comment 114: The finding recommends that CMS implement an effective inventory control system for the State's Surplus Warehouse. In fact, the State Property Control Act requires the Director of CMS to "maintain lists of transferable property..." 30 ILCS 605/7.3. The auditors found that comprehensive and accurate lists of transferable property were **not**, in fact, maintained by the Department – thereby putting inventory at risk for theft, loss and misuse.

#115

Comment 115: The separate inventory control systems maintained by individual State agencies are unrelated to the substance of this finding, which is about the State Surplus Warehouse operated by CMS.

#116

Comment 116: The finding does **not** misstate the law and, in fact, CMS' response is nearly identical to the language in the audit finding which states: "One method of disposal under the Illinois Administrative Code ... is to offer the equipment for the use of any State agency."

#117

Comment 117: CMS seems to be stating that administrative rules require it to sell State surplus property to the highest bidder even if the compensation received is inadequate. CMS promulgated these administrative rules and, in light of the audit finding, might wish to consider whether it would be appropriate to amend the rules to ensure that the State is adequately compensated for the sale of its surplus property.

#118

Comment 118: This is exactly the auditors' point. CMS is selling State surplus computers for as little as $5 - $10 without conducting any review or test to determine an appropriate value.

The Department did not comply with the Data Security on State Computers Act.	**Misstatement of Law** **Misleading Conclusions** • The Department implemented a policy in compliance with Data Security on State Computers Act, but it is the responsibility of the owning agency surplusing the equipment to comply with the Statute and with the Department memorandum. • It is misleading to say that violations of the Act can result in several potential consequences for the State, such as public embarrassment, security breaches, and possible lawsuits if sensitive personal data is disclosed.

DEPARTMENT RESPONSE:

The Department disagrees with both the finding and recommendation.

With respect to the Department having a poor inventory system, CMS disagrees. First, there is no requirement that the Department develop a statewide inventory control system. The state currently has 12 different inventory systems, independent of each other. Consolidation of these various inventory systems at this time is not cost effective. Over the years, various agencies have developed their own inventory systems, and migrated from the Department's centralized system known as the Central Inventory System (CIS). CIS is a mainframe-based operation maintained by the Department. However, only 25 smaller agencies participate and actively utilize CIS. Furthermore, Section 5010.520 requires agencies maintaining automated systems to make access available to the Department's Property Control Unit. To date, no agency has been successful in developing an on-line inquiry system for the Department's review. This lack of integration coupled with the diversity of systems in state government makes it impossible to electronically monitor the state's entire inventory; thus, Property Control is forced to rely on a paper system.

The Department disagrees with the auditor's assertion that the Illinois Administrative Code required the Surplus Warehouse to offer equipment for the use of any State agency. While the Department notifies agencies of available property throughout the year, Section 5010.610 of the Illinois Administrative Code does not require the Department to maintain a comprehensive listing of all property available for transfer. State Surplus receives 750,000 to 1,000,000 pieces of property each year. The Department markets to each and every agency property control liaison a schedule of when property is available for transfer. Staff of several hundred agencies, boards and commissions, routinely shop the warehouse every month and transfer back property.

The Department also disagrees with the auditor's claim regarding the sale of computer equipment. The Department has met and/or exceeded the Illinois Administrative Code, Section 5010.750. Property is generally sold "on-site" at public auction, to the highest bidder. The Department cannot regulate a public auction bid process and therefore cannot set pricing or the value of the items sold at public auction. The Department has

#119 **Comment 119:** In response to the passage of the Data Security on State Computers Act, in September 2003 CMS' Acting Manager of the Division of Property Control issued a memorandum to State agencies requiring electronic data processing equipment delivered to the Department's State Surplus Warehouse to be affixed with a label indicating the date and manner by which information on the computer had been overwritten. Contrary to its own policy, CMS did accept computer equipment without the required label. In fact, **the auditors found computer equipment at the State Surplus Warehouse that contained readable information**.

#120 **Comment 120:** The auditors strongly disagree. The General Assembly passed this Act because it was concerned about reports from other States that government computers being sold as surplus contained readable information. **The inadvertent disclosure of personal, sensitive or confidential information by the failure to overwrite such information on a surplused computer could result in any of the negative consequences enumerated by the auditors.** CMS could help avoid such consequences by enforcing its own policy.

#121 **Comment 121:** This finding did **not** recommend that CMS develop a statewide inventory control system. This finding is about the State Surplus Warehouse operated by CMS and the recommendation is that CMS implement an effective inventory control system at the Warehouse to help protect the stored goods from theft, loss and misuse, as well as to facilitate the transfer of such goods to State agencies that could use them.

#122 **Comment 122:** The State Property Control Act requires the Director of CMS to "maintain lists of transferable property..." 30 ILCS 605/7.3.

#123

been innovative and has offered additional for the sale to the public, but law does not require these new methods for sale. The Department exceeded the barrier of public auction sales in August 2003, by introducing its initiative designed to increase revenues. "iBid" (ibid.Illinois.gov), the state's first on-line auction service, was created and designed to increase sales of surplus property. To date, State Surplus has sold more than 2,000 items generating more than $300,000 in sales supplement to the on-site public auctions. iBid has had approximately 7,000 registered bidders since its introduction.

The computers identified and compared in this finding were computers sold at both public auctions: "on-site" versus computers sold "on-line". However, the comparison failed to note that those computers that sold ($60-$100) on iBid were given a thorough review and included testing, review of system components, as well as other information that was presented to the on-line bidders. Conversely, the review failed to note those computer systems that sold ($10) from the warehouse floor "on-site" did not receive the evaluation or testing to determine condition. On-site sales are sold "as is, where is;" and thus, bring far less than those sold on-line. Furthermore, in January of this year, the Department approved a schedule for state surplus auctions that includes development of more on-line property auctions. "LIVE Audio & Video" Web casts across the Internet are scheduled to begin mid-summer. The Department anticipates the Internet will increase participation from the average 175 on-site visitors, to the broader Internet market--much as "iBid" has. iBid now has approximately 7,000 registered bidders after 18 months of operation. Conducting Surplus Auction, LIVE Web cast of auctions on the Internet is the next step in the on-line evolution for surplus property sales.

Finally, the Department disagrees with the auditors' legal interpretation of the Data Security on State Computers Act and the Department's overall accountability with that Act. The Department has taken several proactive steps to assist agencies in addressing this requirement. The Department developed policies and guidelines based on the law, working with agencies to ensure compliance with the Act. The Department works continuously to educate state agencies with respect to the applicable laws. The Department receives on average 10,000 computers at surplus each year. The law requires every hard drive of any processor, server, or network device be cleared of all data and software before being sold, donated, or transferred. Public Act 93-0306 requires each state agency, board, commission—not the Department as the State Surplus Agency--to overwrite the previously stored data on a drive or disk at least ten (10) times and certify in writing the process is complete. On September 18, 2003, the Department issued a memorandum to all agencies, boards, commissions and universities, outlining the laws requirements and compliance with P.A. 93-0306. The Department instructed agencies how to meet their statutory burden. The Department requires a label be affixed to the face plate of every processor so staff can easily identify that the hard drive has been wiped, who wiped it, what software was used to over-write it, and the date completed.

By statute it is clear that the owning state agency surplusing the equipment has the responsibility, not the Department, to ensure the process is complete. The Department staff has been fully trained to look for the labels affixed to the front of PCs. Despite the Department's efforts, agencies have been negligent in packaging systems for identification upon arrival at the warehouse. Any computer identified not containing the label is refused at the warehouse and returned to the agency for action.

#123

Comment 123: CMS promulgated these administrative rules and, in light of the audit finding, might wish to consider whether it would be appropriate to amend the rules to ensure that the State is adequately compensated for the sale of its surplus property. Exploring options to generate additional revenues is consistent with the goals of the Department's efficiency initiatives.

#124

Comment 124: CMS states that the auditors "failed to note those computer systems that sold ($10) from the warehouse floor 'on-site' did not receive the evaluation or testing to determine condition." **CMS does not, however, explain why it did not bother to conduct testing necessary to establish a fair market value on the equipment it is selling.** Further, the finding does express concern about the low rate of compensation received on these computers and the recommendation suggests that CMS "evaluate options to increase the compensation received for the sale of the State's surplus property." The success of iBid demonstrates the potential to obtain additional compensation from the sale of State surplus equipment, and other options may be available as well that CMS should consider.

#125

Comment 125: The finding and recommendation note that it is – first and foremost – the responsibility of individual State agencies to comply with the Data Security on State Computers Act. However, the ultimate disposition of surplus equipment is done by CMS, such as by on-site and on-line sales, and CMS thus bears some responsibility to ensure that the Act's requirement that computer hardware "be cleared of all data and software before being prepared for sale, donation or transfer." 20 ILCS 450/20. Further, CMS has adopted a policy that all computer equipment sent by State agencies to its Warehouse must be affixed with a label demonstrating compliance with the Act. Contrary to CMS' assertion that non-compliant computers are being returned to the State agencies, the auditors found 15 out of 50 computers with no labels or with incomplete information on the labels. **We also found 15 computers that contained readable data.**

Even if there was a legitimate question as to whether the applicable statutes and rules require CMS to develop a statewide inventory control system for all state agencies, require Surplus Warehouse to offer equipment for the use of any State agency, require the Department to receive adequate compensation for some property, and that CMS did not comply with the Data Security on State Computers Act, as advocated by the auditors, the auditors are required to give deference to CMS' interpretations under well-established case law. It has frequently been held that the interpretation of a less than totally clear statute by the administrative body charged with its application is persuasive. *Cronin v. Lindberg*, 66 Ill.2d 47 (1976); *Radio Relay Corp. v. Illinois Commerce Com.*, 69 Ill.2d 95 (1977); *Rend Lake College Federation of Teachers, Local 3708 v. Board of Community College, District No. 521*, 84 Ill.App.3d 308 (5th Dist. 1980); Davis *v. City of Evanston*, 257 Ill.App.3d 549 (1st Dist. 1993).

#126

Comment 126: The Auditor General's Office, as a matter of practice, does defer to an agency's interpretations of applicable statutes, rules and regulations when such interpretations appear reasonable. Further, we believe the statutes cited in this finding are clear and unambiguous.

Department of Central Management Services' Response
Finding 4-16

Finding 04-16

DEPARTMENT RESPONSE:

The Department disagrees with this finding. It was not required to file these reports with the General Assembly until the reorganizations were effective. As the Department explained to the auditors, the reorganizations under Executive Orders 2003-10 and 2004-2 have not been completed. CMS will file the reports with the General Assembly when those reorganizations are complete.

This disagreement focuses on the language of the statute, which provides that:

> Every agency created or assigned new functions pursuant to a reorganization shall report to the General Assembly not later than 6 months after the reorganization **takes effect** and annually thereafter for 3 years.

15 ILCS 15/11 (emphasis added).

The auditor's position is that "takes effect" means that date the reorganization was "authorized." The plain meaning of "takes effect" cannot mean the date the reorganization was authorized.

First, the dictionary definition of "takes effect" is "the condition of being in full force or execution." American Heritage College Dictionary, 4th edition, p. 446. Because these reorganizations had not been in full force or execution in Fiscal Year 2004, they had not yet "taken effect."

Second, the purpose of the reporting requirement is to report on the after-effects of the reorganization, including the economies effected by the reorganization and the effects on State government. This purpose supports an interpretation that "takes effect" has the plain dictionary definition meaning, i.e. that the reorganization is in full force or has been executed. Until such reorganization has occurred, i.e. taken effect, its effect could not be determined and thus could not be reported to the legislature.

Third, the definition of reorganization in the statute also supports this interpretation. The requirement relates to the "reorganization" taking effect. What is a reorganization under the statute? It is a "transfer" a "consolidation" an "abolition" or an "establishment" of something. Thus, reorganization could not take effect until one of those actions has taken effect, i.e. occurred.

Finally, the term "takes effect" must be interpreted in light of the other provisions of the statute. For example, Section 6 of the Act provides that lawsuits and other court actions commenced by or against an agency or official do not abate by reason of the "taking effect" of any reorganization under the Act. "Taking effect" in this section can only mean having been executed or being in full force and effect, since until such time, there would logically be no affect on such a lawsuit or court action. Put another way, the mere authorization of a reorganization, as opposed to its being effectuated, would have no effect on a lawsuit or action against or by an agency or officer, thus this provision would not apply.

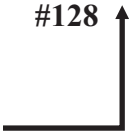
#127 **Comment 127:** This is **not** our position. The statute, and thus the finding, does not use the term "authorized."

#128 **Comment 128:** The Executive Reorganization Implementation Act states that "[e]very agency created or assigned new functions pursuant to a reorganization shall report to the General Assembly not later than 6 months after the reorganization takes effect and annually thereafter for 3 years." 15 ILCS 15/11. The purpose of the reporting requirement appears to be to enable legislators, at periodic intervals, to evaluate the progress of and results achieved by the Governor's reorganizations. We believe the plain meaning of the words "takes effect" is clear. The Executive Orders "take effect" as stated in the body of each order (e.g., "on the 61st day after its delivery to the General Assembly" (Executive Order 10 (2003)); "60 days after delivery to the General Assembly" (Executive Order 7 (2003)); "upon its filing with the Secretary of State" (Executive Order 2 (2004)). When CMS argued that this interpretation would require all reorganizations to be completed within six months, we pointed out that the statutory provision is simply a reporting requirement. Further, the statute contemplates periodic reporting (e.g., annually thereafter for 3 years) – a clear recognition that the reorganization being reported on may very well be a work in progress. Finally, **the initial reporting required under the Act could be postponed ad infinitum under CMS' interpretation** since it would not come due unless and until the Department declares the reorganization as "in full force" or "executed" – or, alternatively, until an arbitrary date unilaterally selected by the Department, such as the end of Fiscal Year 2005. **The auditors do not believe that CMS' interpretation is consistent with, or conducive to, the needs of the General Assembly.**

Department of Central Management Services' Response
Finding 4-16

Nonetheless, to end the debate on this matter, CMS will file reports on the current status of the reorganizations by the end of the fiscal year.

#128



Department of Central Management Services' Response
Finding 4-17

Finding 04-17

DEPARTMENT RESPONSE:

The Departments agrees with the finding and recommendation. The Department acknowledges its responsibility to the Illinois Office of the Comptroller for preparation of financial statements under the guidelines established in the Statewide Accounting Management System (SAMS) Manual. However, it is important to note that in Fiscal Year 2004, the Office of the State Comptroller, for the first time, took ownership of the process and prepared the initial draft of the financial statements for the Department to review. Had the Department had total control over the preparation of its financial statements as it had in years prior to Fiscal Year 2004, it is confident that the reports would have been completed on time. Delays occurred, many of which were outside the Department's control. The Department believes throughout the Fiscal Year 2004 GAAP Package and financial statement process that its staff worked proactively and collaboratively with the Illinois Office of the Comptroller and the external auditors and will continue to do so in the future in order to establish effective communication of financial information as timely as possible.

No Auditor Comments have been included for this page.

Department of Central Management Services' Response
Finding 4-18

Finding 04-18

DEPARTMENT RESPONSE:

The Department agrees with the recommendation contained in the audit report. Although, all of the equipment and vehicles, cited as missing or having inaccurate property records have been located and accurately recorded, CMS will continue to review and refine its controls and procedures to ensure property and equipment is properly safeguarded and property records are complete and accurate.

No Auditor Comments have been included for this page.

Department of Central Management Services' Response
Finding 4-19

Finding 04-19

DEPARTMENT RESPONSE:

The Department agrees in part with the finding and recommendation. The Department agrees to continue to make all CMS employees aware of the State of Illinois Vehicle Guide and all rules and regulations related to the use of a state or personal vehicle for business purposes.

However, the Department disagrees with the facts of the finding. The finding indicates that 19 of 41 accident reports or 46% were not filed on a timely basis. The Department informed the auditors and provided documentation that three of the reports were filed on time but contained a computer input error. The auditors ignored this information.

The Department also disagrees with the auditors' conclusion that the untimely reporting of accident reports in Fiscal Year 2004 put the State at an increased financial risk. While it is true that the State paid $15,108 to settle all 41 accident claims, only one of the 41 claims was filed late. That claim, which was only five days late, was a mere $3,699. Not only did the auditors omit this fact from the report, they infer that the untimely filing of accident reports caused the $15,108 paid by the State. The auditors not only misstated the facts – only $3,699 was paid on this single late claim; but provided no support to conclude that timeliness played a role in the settlement amount. Finally, it is unclear to the Department why, what is at the very most a $3,699 issue (and more likely a non-issue), was elevated to a material finding.

#129

Comment 129: CMS **did not provide** the auditors with evidence of the alleged computer input error. Therefore, the auditors could neither confirm nor deny that an input error occurred and no changes to the audit finding were made based on CMS' unsupported contention.

#130

Comment 130: Of the 41 accident reports, a total of 9 claims were paid out. Although, as noted in the finding, 19 of the 41 accident reports were filed late, only 1 of the 19 resulted in a payout. The other 8 paid claims were filed timely. The auditors are still concerned at: (a) 19 of 41 – or 46% – of accident reports being filed late; and (b) 1 of 9 paid claims – or 11% – being filed late.

Department of Central Management Services' Response
Finding 4-20

Finding 04-20

DEPARTMENT RESPONSE:

The Department agrees with the recommendation and for Fiscal Year 2005, the Board has been meeting quarterly.

It should be noted, however, that although the Director of CMS is the Chairman of the Board, he is only one member of the Board and is therefore a minority for quorum purposes. The Board is a separate legal entity created by the State Finance Act (30 ILCS 105/12-1), which is independent of CMS enabling legislation. Therefore, any findings pertaining to the Board should ultimately be directed to the Board and not the Department. To that end, the filing of reports is ultimately the responsibility of the Board and not the Department or the Director of CMS in his capacity as Director.

No Auditor Comments have been included for this page.

Department of Central Management Services' Response
Finding 4-21

Finding 04-21

DEPARTMENT RESPONSE:

The Department agrees with the finding, but not with the recommendation. In addition, the Department questions the materiality of the finding. The Department has procedures in place requiring approval of vendor invoices within 30 days of receipt. The Department reinforces compliance with this Prompt Payment provision on a monthly basis. Certain CMS Internal Service/Revolving Funds are subject to tight cash management to monitor the inflows and outflows from these funds. Most notably, the State Garage Revolving Fund, where 88% of the exceptions occurred, has been a historically cash flow challenged fund. Fiscal Year 2004 was no exception. In order to manage cash appropriately, a payment cycle has been established to monitor revenues and expenses. In the Department's Accounting system, an approval of a voucher acts as release to the Illinois Office of the Comptroller for payment. To comply with the provision of this specific Administrative Code section, in all instances regardless of cash fund balance in the cash challenged internal service funds, would be fiscally irresponsible as payments would be processed without regard to cash in the internal service funds which could jeopardize payment of vital expenses, including but not limited to payrolls. This could cause potential liabilities that would exceed prompt payment interest accrued.

#131

Comment 131: The timeframe for approval and denial of vendor invoices is set forth in administrative rules which were jointly promulgated by the Department and the State Comptroller. If CMS feels that those rules are inadequate or otherwise require amendment, it should initiate that process. In the meantime, the Department should comply with State law.

Department of Central Management Services' Response
Finding 4-22

Finding 04-22

DEPARTMENT RESPONSE:

The Department agrees with the finding and recommendation. The Department's Payroll unit will work with the Department's Internal Personnel unit to develop effective procedures to ensure employees on a leave of absence are removed from payroll in a timely manner.

The State has recovered the overpayment exceptions identified in the audit report.

No Auditor Comments have been included for this page.

Department of Central Management Services' Response
Finding 4-23

Finding 04-23

SUMMARY OF DEPARTMENT RESPONSE

Auditor Contention/Implication	Department Response
• The Department does not maintain time sheets in compliance with the Ethics Act. • The Department's payroll system not in compliance with the Ethics Act.	**Factually Incorrect** **Misleading Conclusion** • The Department's payroll system meets the timekeeping requirement of the Ethics Act. • Employee work hours are tracked on a daily basis. • Official Leave Forms document time off.
• The Ethics Act does not mandate Governor's Office to adopt and implement personnel policies.	**Ignoring State Law** **Misleading Conclusion** • "The Governor shall adopt and implement those policies for all State employees of the executive branch not under the jurisdiction and control of any other executive branch constitutional officer." 5 ILCS 430/5-5(a).
• Executive Ethics Commission can be ignored for guidance on compliance with the Ethics Act.	**Ignoring State Law** **Misleading Conclusion** • Executive Ethics Commission is now functional. • Personnel policies mandate in the Ethics Act, 5 ILCS 430/5-5(c) and the authority granted to the Executive Ethics Commission 5 ILCS 430/20-15 empowers the Executive Ethics Commission with issuing guidance and interpreting the Act for compliance purposes.

DEPARTMENT RESPONSE:

The Department disagrees with the finding that time sheets are not maintained in compliance with the State Officials and Employees Ethics Act.

The Department is following a memo from the Governor's Office, dated January 13, 2004, on implementation of the time sheet requirements that stated that the CMS payroll system meets the time sheets requirement in the Ethics Act.

The Department maintains timekeeping database system that tracks employee work hours on a daily basis. When an employee takes a day or few hours off, the employee is required to document the time on an official leave form, which is entered into the database.

"The Governor shall adopt and implement those policies for all State employees of the executive branch not under the jurisdiction and control of any other executive branch constitutional officer." 5 ILCS 430/5-5(a). The opinion of the Auditor General's Chief Legal Counsel is erroneous since the Governor's Office memo is policy that states the

#132

Comment 132: The State Officials and Employees Ethics Act requires "State employees to periodically submit time sheets documenting the time spent each day on official State business to the nearest quarter hour …" 5 ILCS 430/5-5 (c). **The auditors believe a positive, rather than a negative, timekeeping system is required by the Act.**

#133

Comment 133: We do not disagree with CMS' contention that the Act requires the Governor's Office to adopt and implement timekeeping policies for the agencies under his jurisdiction. Rather, we believe a memorandum from the Governor's Office dated January 13, 2004, appears to constitute such a policy with regard to timekeeping. That memorandum, from the Governor's then Senior Counsel, states that it "is not a formal legal opinion, but it will hopefully help you make some implementation decisions for your agency (emphasis added)." In short, the Governor's policy places the responsibility for developing and implementing a timekeeping system in compliance with the Act's requirements squarely on the shoulders of each individual agency and CMS failed to fulfill the responsibility given it by the Governor's Office under this policy.

#134

Comment 134: As stated by CMS itself, the Governor is required to adopt and implement policies for employees under his jurisdiction. **The informal opinion by the Executive Ethics Commission has not been shared with the auditors and may or may not suffice to meet this statutory requirement.**

#135

Comment 135: The Auditor General's legal counsel agrees with CMS that the Governor's Office memorandum delegated the responsibility for complying with the State Officials and Employees Ethics Act's timekeeping provisions to each individual executive agency. However, as pointed out in the finding, CMS subsequently did not utilize a timekeeping system in accordance with that Act's requirements.

memo "is not a formal legal opinion, but it will hopefully help you make some implementation decisions for your agency". The Governor's office left implementation decisions to the agencies.

Pursuant to the personnel policies mandate in the Ethics Act, 5 ILCS 430/5-5(c) and the authority granted to the Executive Ethics Commission 5 ILCS 430/20-15, the Commission is empowered with issuing guidance and interpreting the Act for compliance purposes.

The Governor's Office wrote a memo on December 16, 2004, requesting guidance on the adequacy of the timekeeping policy. The letter referenced that the Governor's Office, after Ethics Acts became law, determined that due to the short timeframe within which to implement a timekeeping system and the impact on union employees, that the timekeeping administered by CMS and DHS tracked employees' daily time. An employee must submit an official leave request for any type of leave taken and in the increment allowed for the specific type of leave.

Further, the Executive Ethics Commission issued an informal opinion stating that the CMS payroll system, for purposes of timekeeping, is in compliance with the Ethics Act.

#135

#136

Comment 136: Neither a memorandum from the Governor's Office nor an **informal opinion** by the Executive Ethics Commission can serve to override or derogate from the plain meaning and intent of the timekeeping requirements in the State Officials and Employees Ethics Act at 5 ILCS 430/5-5 (c).

Department of Central Management Services' Response
Finding 4-24

Finding 04-24

DEPARTMENT RESPONSE:

The Department agrees with the recommendation to file all Travel Headquarters Reports with the Legislative Audit Commission.

No Auditor Comments have been included for this page.