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March 7, 1990

P-839.1

Honorable Elihu M. Harris, Chairman
Members, Joint Legislative
Audit Committee
State Capitol, Room 2148
Sacramento, California 95814

Dear Mr. Chairman and Members:

The Office of the Auditor General presents its report concerning the Department of General Services' management of state leases and real estate. The report specifically addresses ineffective response to emergencies in state-leased facilities, slow procurement of state leases and real estate, and inadequate enforcement of asbestos notification requirements.

Respectfully submitted,

KURT R. SJOBERG
Acting Auditor General

REPORT BY THE

OFFICE OF THE AUDITOR GENERAL

P-839.1

THE DEPARTMENT OF GENERAL SERVICES NEEDS TO IMPROVE ITS MANAGEMENT OF STATE LEASES AND REAL ESTATE

MARCH 1990

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SUMMARY

RESULTS IN BRIEF

The Department of General Services (department), through its Office of Real Estate and Design Services, is responsible for providing facilities, planning and real estate services, and a statewide real estate inventory to state and public agencies in an efficient and cost-effective manner. However, during our review, we noted the following deficiencies:

- The department has not effectively carried out some of its responsibilities as the State's lease manager in responding to emergencies in state-leased facilities;

- The department has not adequately enforced the terms of the leases it obtains for state agencies by ensuring that lessors properly repair reported problems in state-leased facilities;

- The department does not complete its procurement of all state-leased facilities within the time frames needed to procure leased facilities, which are set forth in the department's guide;

- The department did not notify some state agencies of the presence of asbestos within buildings they occupied when it became aware of the asbestos' presence, as required by law, nor did it consistently and correctly apply its procurement policies regarding leasing space in buildings that contain asbestos;

- Since 1974, the department has not periodically and independently reviewed state properties to determine whether landholding agencies have identified all excess lands, as required by the State Administrative Manual;

- The department failed to meet the January 1, 1989, legislative deadline for implementing a Statewide Property Inventory and has estimated that the project will not be completed until March 31, 1990. Because of this delay, the State may have lost an estimated $2.7 million in benefits based on the Statewide Property Inventory's first year of operation;

- The department, through the Office of Real Estate and Design Services and the Office of Fiscal Services, has not collected approximately $1.3 million in delinquent lease payments from state agencies, other governmental agencies, and private lessees; and

- Some state agencies have had to wait up to four years for the department to acquire property for their programs, and the department has not transferred properties to the Department of Parks and Recreation within the time limits established by law.

BACKGROUND

The department is to provide centralized business management services for the State to take advantage of specialized techniques and skills and to ensure continuing high levels of efficiency and economy. The department provides a full range of leasing and real estate services to state agencies through its Office of Real Estate and Design Services (OREDS). The OREDS is responsible for space planning, design, and layout; for negotiating and completing leases; and for lease management. According to the OREDS, it currently manages over 2,000 leases for which the State pays more than $14 million in monthly rent.

In addition, the OREDS is responsible for appraising properties that the State is acquiring or properties that it intends to sell. The OREDS also reviews and disposes of or transfers state properties no longer needed. The governor's budget for fiscal year 1990-91 states that, during fiscal year

1988-89, the OREDS processed 142 real estate acquisitions and sales for state agencies and used $9.8 million and 136.4 personnel years for its support.

PRINCIPAL FINDINGS

The Department Was Not Prepared To Respond to Emergencies in State-Leased Facilities

The California Government Code gives the department general powers of supervision over leases it executes, requiring it to conserve the State's rights and interests in carrying out this function. Further, the law authorizes the department's director to take action to resolve emergencies. However, the department did not effectively carry out some of its responsibilities in two emergencies that occurred in state-leased facilities. Specifically, the department's response was sometimes characterized by an inadequate assessment of conditions, a lack of overall coordination, ineffective site interaction, and inappropriate funding. The department responded ineffectively because it has not adopted and implemented a plan for responding to emergencies in state-leased facilities. As a result, the department could not fully protect the rights and interests of the State.

The Department Has Not Always Enforced Lease Terms at State-Leased Facilities

Although the State Administrative Manual places the total responsibility for lease management within the OREDS, we found during our review of state leases that the OREDS did not respond as required to problems in state-leased facilities. Specifically, the OREDS did not initiate, supervise, and follow up on repairs to leased facilities that were required by the terms of the lease agreements. As a result, some state agencies have experienced difficult and sometimes dangerous conditions in leased facilities. The OREDS has not responded

effectively to problems because its lease administration unit has misunderstood the department's lease management priorities, giving administrative tasks preference over resolving lease compliance issues. Also, the OREDS has not developed procedures to guide staff in resolving lease management problems, nor has it developed workload standards necessary for obtaining the proper staffing level for adequately responding to such problems.

The Department Takes Too Long To Procure Leased Facilities

Nearly all state agencies depend upon the department to obtain leased facilities. The department has a guide for client agencies that states time frames needed to procure leased facilities. However, the department does not complete all its lease projects within these time frames. For example, the percentage of newly negotiated leases the department did not complete within these time frames has increased from 41 percent in fiscal year 1986-87 to 63 percent in fiscal year 1988-89. These delays, which sometimes exceed the stated time frame by more than 12 months, cause some client agencies to operate in overcrowded or substandard facilities, which hinders the State's ability to serve the public.

Some of the factors contributing to delays in procuring leases were outside the department's control; however, some factors were not. These factors included the department's failure to accurately forecast staffing needs and to act to obtain staff when workload exceeded the capacity of the staff. Also, the department used inaccurate workload standards for determining its staffing needs.

The Department Has Not Consistently Complied With the Law or Its Own Policies Regarding Asbestos in State-Leased Facilities

The OREDS did not always comply with the provisions of the Health and Safety Code and the State Administrative Manual that require it to notify client agencies when it discovers asbestos in buildings the agencies occupy. The OREDS failed to notify seven state agencies because it apparently misunderstood the requirements of the statute and manual, and it did not notify two other agencies because of administrative oversights. Furthermore, the OREDS did not consistently and correctly apply its leasing policies regarding asbestos in state-leased facilities. Specifically, the OREDS did not comply with one or more policy requirements regarding asbestos in 8 of 27 transactions that we reviewed. As a result, the OREDS has not adequately protected the rights and interests of the State, nor has it ensured that employee exposure to potential asbestos hazards has been reduced to a minimum.

The Department Has Not Reviewed Excess State Lands as Required

Although the State Administrative Manual requires the OREDS to periodically and independently review state lands to determine whether state agencies have identified all excess lands, the OREDS has not conducted these reviews since 1974. Moreover, the department did not resume independent reviews of state lands after we brought this condition to the department's attention in 1983 when we identified 1,675.6 acres in excess of the needs of four state agencies that had not been reviewed by the department. Because the department has still not reviewed these lands to determine whether it should recommend to the Legislature that the lands be declared surplus, the State has lost the opportunity for almost six years to transfer, lease, or otherwise

dispose of at least 559.9 acres of excess property, worth over $65.9 million.

The Department Did Not Properly Implement the Statewide Property Inventory

The department did not implement the Statewide Property Inventory (SPI) by January 1, 1989, as required by state law. According to the department's director, the department had agreed to this deadline without knowing how much time would be required to implement such an inventory. As a result, the department may have lost an estimated $2.7 million in benefits based on the SPI's first year of operation. In addition, the department improperly funded the implementation of the SPI program through the Property Acquisition Law (PAL) account. The department used the PAL account to fund the SPI because the legislation that required the implementation of the system did not identify a funding source for its implementation. The funding for the SPI had reduced the PAL account by over $2.4 million as of June 1989. Finally, the department awarded the two consultant contracts for the SPI's feasibility study and implementation without competitive bids even though the contracts did not meet the criteria for exemption as required by law. The department awarded these contracts without seeking competitive bids because of its urgent need to implement the SPI by the legislative deadline of January 1, 1989. As a result, the State may not have obtained these contracts from the lowest responsible bidder.

The Department Has Not Collected All Delinquent Lease Payments

The department did not collect approximately $1.3 million in delinquent lease payments from state agencies, other governmental agencies, and private lessees. Also, neither the OREDS nor the Office of Fiscal Services (OFS) has accurate lists of delinquent lease payments owed. The department did not always collect delinquent lease payments because of internal

control weaknesses that hindered prompt follow-up of delinquent payments owed. According to the department's director, these internal control weaknesses primarily resulted from breakdowns in communications between the OREDS and the OFS and from the reduction of staff available to monitor delinquent lease payments.

The Department Could Acquire and Transfer Real Estate for State Agencies More Quickly

Although the OREDS is required to procure real estate for client agencies as promptly as possible according to state laws and regulations, it has experienced delays, some of which are within its control, in acquiring, processing, and transferring some properties. As a result, sometimes client agencies have had to wait up to four years to use the properties purchased for their programs. Further, client agencies waiting for the OREDS' review and approval of gift properties may wait one year or longer to use properties that were donated for state programs. Finally, the OREDS has not transferred some properties to the Department of Parks and Recreation within the time established by law. As a result, the Department of Parks and Recreation has not been able to put those lands to use as early as possible, as required by law.

RECOMMENDATIONS

To ensure that the department appropriately manages the State's lease and real estate functions, it should take the following actions:

- Adopt and implement such measures as are included in its draft Emergency and Catastrophic Disaster Support Services Guide;

- Ensure that lessors of facilities leased by the State provide all agreed-upon services and repairs;

- Reduce the time required to obtain a lease by requesting or redirecting to the OREDS sufficient staff to complete all current work received. Additionally, the OREDS should reduce the current backlog of work-on-hand by developing alternate plans for completing lease negotiations, such as delegations of leasing duties;

- Comply with the requirements of the Health and Safety Code, Section 25915 et seq., by notifying all state agencies in state-leased space within 15 days of the OREDS' discovering that the buildings contain asbestos. In addition, the OREDS should consistently enforce its leasing policies regarding asbestos;

- Periodically inspect state lands to identify potential surplus land, and declare to the Legislature properties the department finds during its independent reviews to be in excess of state agencies' foreseeable needs;

- Require competitive bids for all contracts involving the SPI, or ensure that all SPI contracts exempted from competitive bidding meet the criteria established in the Public Contract Code and the State Administrative Manual;

- Process all delinquent lease payments as required by the department's policies and procedures, and secure payment for the amounts outstanding; and

- Establish a reporting system for property appraisals and appraisal reviews that identifies projects exceeding the department's time allowances for completion.

AGENCY COMMENTS

The Department of General Services does not agree with all the findings and conclusions within this report; however, it determined that most of the recommendations have merit, and it will implement them in the near future.

INTRODUCTION

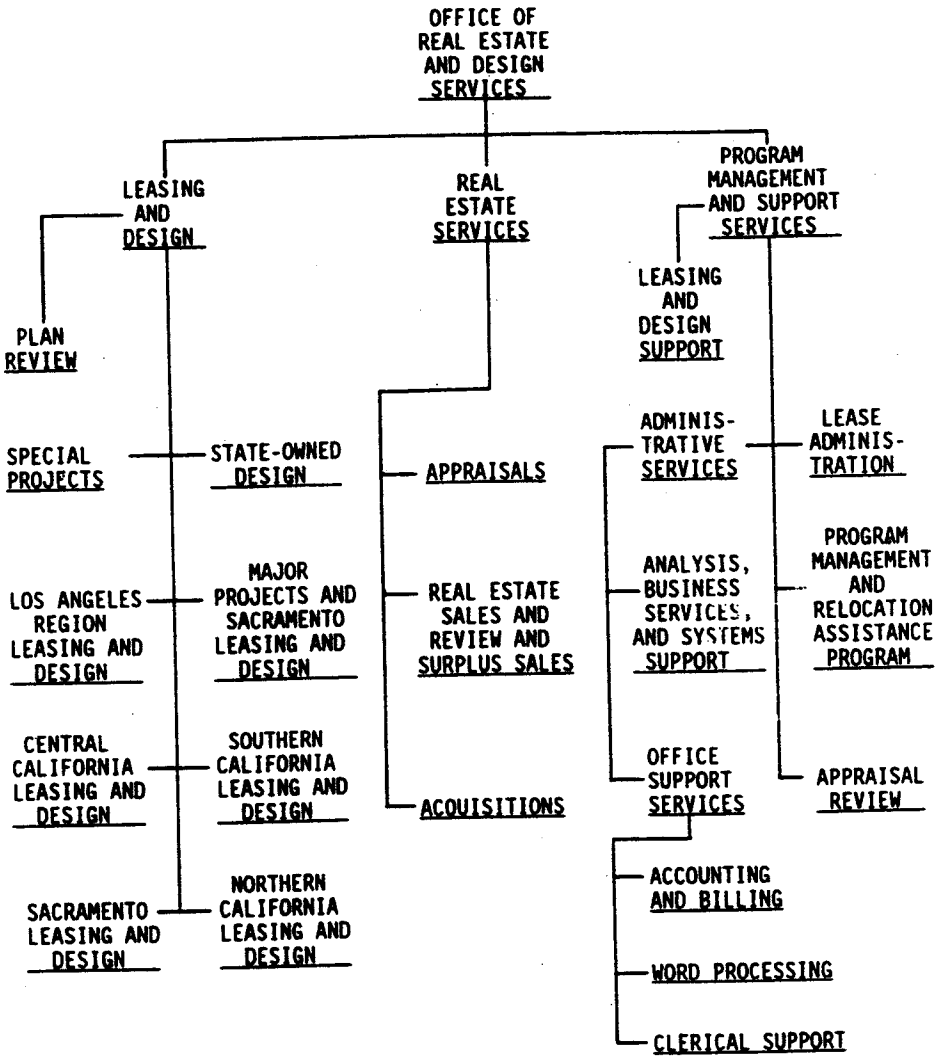
The Department of General Services (department) is responsible for centralizing the State's business management functions and services to take advantage of specialized techniques and skills and to ensure continuing high levels of efficiency and economy. The department is also required to develop and enforce policies and procedures to ensure that it operates effectively and to conserve the rights and interests of the State. Further, the department's director is required to properly segregate the department's functions so that it can accomplish its mandated tasks. To fulfill these requirements, the department is organized into six divisions that oversee the work of 21 offices. Among the tasks performed by these entities are real estate and leasing services.

Real Estate and Leasing Services

The department has designated its Office of Real Estate and Design Services (OREDS) to provide a full range of leasing and real estate services to state agencies. As shown in Chart 1, the OREDS is organized into three functional areas: leasing and design services, real estate services, and program management and support services.

CHART 1

ORGANIZATION OF THE DEPARTMENT OF GENERAL SERVICES' OFFICE OF REAL ESTATE AND DESIGN SERVICES



The responsibilities of the leasing and design section include determining the present and future space needs of state agencies and providing state agencies with economical office quarters that are uniform and conform with approved state standards. To provide state agencies with office quarters, this section is responsible for space

planning, design, layout, negotiation, as well as for consummation of leases and lease management. In addition, the section is responsible for developing alternative financial plans for proposed state buildings through long-term lease purchase agreements or through leases with options to purchase when specifically authorized by budget language.

The real estate services section is responsible for providing real estate expertise to state agencies to ensure the selection of the best sites available. It is also responsible for appraising properties that the State is acquiring or properties that it intends to sell. To manage the State's real properties, this section maintains the Statewide Property Inventory, a computer inventory of properties held by most state agencies. In addition, the section reviews and disposes of or transfers state properties no longer needed.

The program management and support services section provides administrative support for all three sections within the OREDS. In addition, this section manages state properties for other agencies, including leased property; it administers the relocation assistance program, which pays relocation expenses for persons displaced when the State buys their property; and it reviews appraisals of lands being acquired by the State to ensure that full compensation is being offered for those lands.

According to the OREDS, it currently manages over 2,000 leases for which the State pays more than $14 million in monthly rent. In addition, during fiscal year 1988-89, the OREDS completed over 1,000 leasing projects. Finally, the governor's budget for fiscal year 1990-91 states that, during fiscal year 1988-89, the OREDS processed 142 real estate acquisitions and sales for state agencies, and the OREDS used $9.8 million and 136.4 personnel years for its support.

SCOPE AND METHODOLOGY

The purpose of this audit was to review the department's leasing and real estate management incorporated within the department's OREDS. Our review of the OREDS encompassed its performance in lease management and procurement; real estate acquisition, management, and sales; and delinquent payment collection for state property leased to state agencies, other governmental agencies, and private lessees.

In each of these areas, we reviewed applicable statutes and regulations, interviewed department staff, and examined the department's and the OREDS' policies and procedures. Furthermore, we surveyed private companies with organizational needs comparable to the OREDS' needs to determine average time requirements, staffing levels, and workload standards for the component functions of lease management and procurement.

To review the OREDS' management and procurement of state-leased space in nonstate-owned buildings, we reviewed the information compiled by the OREDS' management information system for completed and uncompleted lease requests received during fiscal year 1986-87 through fiscal year 1988-89. We also reviewed a stratified random sample of leases that became effective July 1, 1987, through March 31, 1989, to determine why the OREDS experienced delays when procuring leases for state agencies and to determine the time that elapsed before the agencies occupied the leased space. In addition, we reviewed a random sample of lease projects that were not yet completed as of June 1989. We also reviewed leases that were brought to our attention during the audit. When applicable, we interviewed the personnel from client agencies and, in one instance, the owner of a commercial building housing state agencies. Finally, we reviewed the OREDS' compliance with state law and departmental policies regarding the leasing of space for state agencies within buildings that contain or may contain asbestos.

In our evaluation of the OREDS' management of state lands, we examined its compliance with requirements for identifying and disposing of surplus properties. As part of our work, we reviewed the findings and recommendations in a report published in 1983 by the Office of the Auditor General addressing surplus property, and we determined the current disposition of the state lands identified as surplus in that report. Further, we examined all properties declared surplus by state

agencies during fiscal years 1987-88 and 1988-89 and tracked the parcels through the property disposal process to determine the final disposition of each parcel.

In addition, we examined the process for implementing the Statewide Property Inventory, including its funding through the Property Acquisition Law account. We also examined the proposed implementation process for the OREDS' Proactive Asset Management program, described in Appendix B.

Further, we examined the department's collection of lease payments for leasing state property under the department's control. As part of this review, we compiled a list of the payments owed to the department for leases of state-owned property to local governments, nonprofit organizations, and private individuals, also known as by-state leases. We reconciled the list of lease payments owed that we compiled with the list of lease payments received by the department as maintained by the Office of Fiscal Services to determine the delinquent payments owed for by-state leases. For the remaining types of property leases made by the State and controlled by the department, we determined that delinquent payments existed from lists provided to us from the Office of Fiscal Services. However, we were not able to determine the actual number of delinquent payments owed to the department because the lists were not reliable. Therefore, we relied

on the Office of Fiscal Services for an estimate of the total amount of delinquent lease payments owed to the State for all categories of leases except by-state leases.

Finally, to evaluate the department's procurement process for real estate acquisitions, we examined a random sample of property acquisitions during fiscal year 1987-88 and a random sample of property acquisitions for the first nine months of fiscal year 1988-89. We also reviewed all gifts of properties made to the State during the same period. Finally, we reviewed all property acquisitions made on behalf of the Department of Parks and Recreation during fiscal years 1987-88 and 1988-89 to determine whether the OREDS complied with the statutory requirements for transferring those properties to the Department of Parks and Recreation.

PART A

LEASE MANAGEMENT

AUDIT RESULTS I

THE DEPARTMENT OF GENERAL SERVICES WAS NOT PREPARED TO RESPOND TO EMERGENCIES IN STATE-LEASED FACILITIES

The Department of General Services (department) has not effectively carried out some of its responsibilities as the State's lease manager in responding to emergencies in state-leased facilities, as provided by law. We found that, at the time of two emergencies in state-leased facilities, the department did not have an adequate plan for responding to the emergencies, and its response was sometimes characterized by an inadequate assessment of conditions, a lack of overall coordination, ineffective site interaction, and inappropriate funding. Because of such problems, the department could not fully protect the rights and interests of the State.

BACKGROUND

During a review of the department's management of leases, we identified two emergency situations that occurred in state-leased facilities.[1] In the first emergency, which occurred during September 1988, the state-leased facility housing the Contractors'

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[1]We identified these two emergencies during the course of our preliminary field work. According to a list prepared by the Office of Real Estate and Design Services, no other emergencies occurred in state-leased facilities during fiscal year 1988-89.

State License Board (board) in Sacramento incurred damage to the roof, prohibiting the use of the building until heating and cooling units were removed to avert further structural damage. According to the board's business services officer, the board was forced to suspend business and evacuate its 200 employees for a day as a result of the problem. The county building inspector who originally assessed the damage continued to have concerns about the safety of the building during the following year. Twelve months after the initial structural problem, the building was again evacuated because of additional problems with the roof. Following the second evacuation, the building inspector allowed the board to occupy the building as long as the board continued its efforts to relocate to another facility, which the board did in October 1989.

The second emergency situation began on March 2, 1989, when a fire damaged the CNA Building, a Los Angeles high-rise. In the weeks following the fire, industrial hygienists detected asbestos contamination in some state-occupied space within the CNA Building. As a result, seven state agencies were evacuated from nine floors of the building.

These agencies were the Office of Emergency Services' Southern California Earthquake Preparedness Project, the State Banking Department, the Governor's Office, the Department of Commerce's Office of Business Development, the Department of Insurance, the Department of Corporations, and the Department of Savings and Loan. In the months

following this evacuation, state-hired contractors began decontaminating and relocating the agencies' files, furniture, and office equipment. By late September 1989, the State continued to pay for asbestos cleanup costs, some of which could be attributed to delays in contract activities that still had not been completed more than nine months after the March 2nd fire.

The Department Is Required To Protect the State's Interests in Leased Facilities

Section 14600, together with Sections 14669 and 14615 of the California Government Code, provides that the department exercise general powers of supervision over the leases it executes and that it conserve the rights and interests of the State in carrying out this function. In addition, Sections 14970 through 14976 of the California Government Code assign the department's director the authority to act in emergencies. Finally, Section 14600 of the California Government Code requires that the department develop policies and procedures as it deems proper to ensure the effective operation of all functions performed by it.

The department has developed policies and procedures within the State Administrative Manual to ensure that it has total responsibility, through the Office of Real Estate and Design Services (OREDS), for managing all the leases it executes. However, neither the department nor the OREDS has adopted policies or procedures to ensure that they conserve the rights and interests of state agencies during an emergency in state-leased facilities.

During August 1989, following the two emergencies mentioned above, the department drafted an "Emergency and Catastrophic Disaster Support Services Guide" (emergency guide), which outlined a departmental response to emergencies. The department intended the emergency guide to explain how the department could assist state agencies in resuming normal operations as quickly as possible. However, as of February 15, 1990, the department had not adopted the draft emergency guide as departmental policy.

THE DEPARTMENT DID NOT ADEQUATELY ASSESS EMERGENCY CONDITIONS

Section 14970 of the California Government Code gives the department's director the authority to declare an emergency and to assess its extent. However, in the two emergencies we reviewed, the department did not fully assess emergency conditions, nor did it always use its expertise, as would have been appropriate, to assess the conditions. Under the department's draft emergency guide, knowledgeable members of the department's staff would be required to visit emergency sites and make basic assessments. These assessments could include evaluating the structural integrity of the building, determining whether to test for toxic contamination, establishing additional security measures, and acquiring alternative space. The draft emergency guide also defines the relevant areas of expertise that each office within the department can bring to resolving emergencies. According to the draft guide, the Office of the State Architect (OSA)

includes experts in assessing toxic contamination and major structural damage; in handling reconstruction design; and in bidding, contracting, and inspecting construction.

Department Experts Did Not Assess Severity of Problems in Sacramento Building

On September 23, 1988, the Division of Occupational Safety and Health issued an order prohibiting the use of portions of a state-leased facility in Sacramento occupied by the Contractors' State License Board. The order was issued because two rooftop heating and cooling units partially broke through the roof of the facility, creating an imminent hazard to employees. According to the business services officer of the board's parent agency, the Department of Consumer Affairs, he informed the OREDS' staff that the lessor, who had been notified of the problem, agreed to pay for necessary repair services but had asked the board to secure these services.

Even though this type of incident constitutes an emergency as defined by the State Administrative Manual, according to the OREDS leasing officer assigned to manage the lease for this facility, the OREDS did not send any staff member to assess the damage to the facility. Because the department did not initially assess the structural damage to the building, department resources, such as the structural expertise within the Office of the State Architect, were not used to resolve the emergency. In the absence of an assessment by

department experts, the board hired a private construction contractor to initially inspect the damages, and it secured repair services. However, the board continued over the next 12 months to experience serious problems with the roof. (See Part A, Chapter II for further details about the problems that occurred in the facility.)

Department Experts Were Not Initially Employed To Assess Need for Toxics Testing in CNA Building

The department also did not use its experts to assess emergency conditions involving the CNA Building in Los Angeles. On March 2, 1989, the day the fire broke out in the CNA Building, the department sent one of its leasing officers to Los Angeles to view the premises and contact affected client agencies. The leasing officer who initially visited the CNA Building was not given a written plan or procedures to guide her in assessing the emergency needs of client agencies in the building. Although the OREDS knew then that asbestos-containing construction materials were in the CNA Building, it did not immediately seek the guidance of department asbestos experts.

According to an OREDS space planner, she telephoned a representative of the Department of Savings and Loan on March 3 and suggested that state agencies in the CNA Building hire an industrial hygienist to test state-occupied space for asbestos contamination. According to an OSA official, asbestos experts from the OSA were not consulted and, therefore, did not have the opportunity to specify the

type and extent of testing to be employed. The environmental consultant hired by the agencies used a different method from that preferred by the OSA's asbestos experts in testing for asbestos contamination in office settings.

On March 15, the day after receiving initial test results, OREDS officials consulted OSA asbestos experts. Upon reviewing the results, which an OSA official characterized as being inconclusive, an OREDS official recommended the evacuation of state employees from three floors of the CNA Building, pending further action.[2] Experts within the OSA's asbestos program then requested another environmental consultant, already under retainer with the OSA, to conduct additional tests within state-occupied space in the CNA Building. The OSA directed the consultant to employ a more refined form of analysis which the OSA prefers over that which was used by the firm hired by the client agencies in the CNA Building. Results of the asbestos tests by OSA consultants indicated the potential for significant levels of airborne asbestos contamination on some floors. Thus, according to the assistant chief of the OREDS, to protect employees from a perceived

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[2]According to an environmental consultant hired to monitor decontamination of state property in the CNA Building, there are no national or state standards for exposure to airborne asbestos in nonindustrial office settings such as the CNA Building. Further, there are no such standards for surface contamination.

potential hazard and to maintain credibility with those employees, the State elected to evacuate remaining agencies from the CNA Building on March 31, 1989.

Security Needs Were Not Adequately Assessed in CNA Building

The California Government Code provides for the department to exercise general powers of supervision over the leases it executes and to conserve the rights and interests of the State. It also authorizes the department's director to act in emergencies. The State Administrative Manual, Section 1403.9, states that the department's Office of the California State Police (state police) is assigned the responsibility of providing police protection in state-owned and state-leased facilities. In addition, the state police provides consultant and coordinator services for developing employee protection programs, building security, crime prevention, and emergency planning.

When the department evacuated all remaining state personnel from the CNA Building and terminated its leases for state offices, the agencies left state and personal property in the building. Nevertheless, the department did not ask the state police to assess the security measures needed to protect the state property that would be left in the building pending the property's decontamination by state-hired consultants. Such property included computers and other electronic equipment. Also left behind when agencies left the CNA Building were confidential records and other business files.

In testimony on November 6, 1989, before the Assembly Committee on Governmental Efficiency and Consumer Protection, the chief of the OREDS stated that the CNA Building was considered to be very secure, adding that he was never allowed in the building without going through a security guard. However, on one of our visits to the CNA Building, we were able to walk past a building security guard and continue unescorted throughout the building, entering offices of the Department of Corporations through unlocked doors. In those offices, we observed a variety of public and private property left behind when agencies were told to vacate the premises.

In the months following the evacuation from the CNA Building, one agency formerly housed in the CNA Building reported that some of its equipment, as well as personal property belonging to some of its employees, could not be located. Such items included microwave ovens, refrigerators, two sets of microfilm index records, furniture, and diplomas located in office space occupied by the Department of Corporations.

We conclude that it would have been prudent for the department, before evacuating remaining employees, to use the expertise of the state police to assess the security of state property left behind when state agencies vacated the CNA Building. In fact, the department's draft emergency response guide lists the state police as one of the member offices of the department's proposed emergency response team. Under the draft guide, members of the team would stand ready to provide resources, support, and personnel.

THE DEPARTMENT'S RESPONSE TO THE CNA BUILDING EMERGENCY LACKED ADEQUATE COORDINATION

Section 14971 of the California Government Code allows the department's director to perform any work required to avert, alleviate, or repair damage to property of a general public and state interest. In addition, Section 14974 of the California Government Code allows the director to determine how the work will be accomplished. We determined that the department did not effectively coordinate its response to the emergency in the CNA Building, nor did it adequately manage activities initiated as part of that response. The department's draft emergency guide would address such issues. For example, it would provide that the department's deputy director for the Real Estate and Building Division should act as emergency coordinator. The draft emergency guide would also provide for an emergency team leader in charge of an emergency response team comprising employees from various offices of the department, selected for their knowledge and experience. According to the draft emergency guide, the team leader would remain on-site during the initial stages of the emergency. In addition, the draft guide specifies that the team leader, who should be a good communicator, would be responsible for the department's interaction with client agencies.

Emergency Coordinator Not Designated

Even though efforts to resolve the emergency in the CNA Building required a complex set of interactions among at least six of the department's offices, eleven state agencies, and seven private companies, the department did not clearly designate a single individual or office responsible for the overall coordination of communications and the other activities related to resolving the emergency.

At a meeting on March 14, which was convened by the deputy secretary of the Business, Transportation and Housing Agency and attended by some of the involved agencies, a deputy director of the department named an official from the OSA as the person who would coordinate the department's response to any asbestos problems detected in the CNA Building. However, in various communications during the following months, department personnel identified seven other individuals, all employees of the OREDS or the OSA, as "in charge of" or otherwise coordinating the department's response to this emergency. Further, when we asked the department to clarify who was acting as the project manager for the emergency and, therefore, responsible for coordinating the department's response during this period, the department's director named two additional individuals, an assistant chief of the OREDS and, later, a deputy director of the department. In the same document, the department's director also identified as project manager a private environmental consultant the department hired as the on-site contract monitor.

The lack of overall coordination sometimes contributed to communications problems between the department and other entities involved in the emergency. For instance, an agency official noted that, because he and his staff were told at various times that the department's efforts were being coordinated by different individuals, they were uncertain as to whom they should contact with their concerns, questions, and requests. In addition, essential information was not always relayed to all entities who needed it. For example, according to the regional manager of the Department of Commerce's Office of Business Development, which occupied space in the CNA Building, the department did not notify her or any of her staff of the evacuation of the CNA Building. She evacuated her staff on April 4 after one of her employees had heard about the evacuation from other state personnel. The regional manager added that she had no direct contact with anyone from the OREDS until more than a month and one-half after the March 2nd fire.

Private contractors, as well as state entities, experienced problems because of the uncertainty about which department official had the responsibility for making decisions. For example, we identified one instance in which personnel from the OSA and the OREDS were apparently giving conflicting directions to a contractor at the CNA Building. Specifically, the contract monitor indicated that an OREDS official had directed movers to enter a contaminated area without adequate protective gear. An earlier memorandum issued by an OSA project manager stated that movers were not to enter the area under

such circumstances. We also found a log entry in which the on-site contract monitor noted that, while an official from the OREDS had supported increasing the pace of decontamination and relocation activities, an OSA official had stated that the monitor should not try to speed up the contractors' work pace.

Ineffective Interaction With Involved Entities

During its response to the emergency in the CNA Building, the department did not have a representative at the CNA Building with authority to make decisions or to ensure consistent communication among all involved entities. We found that the department's failure to interact effectively with the entities involved and to respond promptly to agency requests delayed the resolution of the emergency. For example, officials from two agencies complained about the department's failure to respond effectively to their requests for the estimated costs of decontaminating office contents. They needed the information so they could decide whether to decontaminate, discard, or replace specific items of furniture, equipment, and files. Until furniture and equipment were either discarded and replaced or cleaned and returned, agencies had to rent such items. At least two months after requesting the information, the agencies still had not received the cost information from the OREDS.

Further, we concluded that, because the department did not assign an on-site state representative to the CNA Building, the department may not have adequately satisfied the requirements of contracts with private firms hired to decontaminate state property at the CNA Building. These contracts provided that a project manager be present during all cleanup activities. The department has stated that it met the on-site management requirements of the cleanup contracts by having the contract monitor present during cleanup activities. However, the environmental consulting firm that acted as the contract monitor could not function as project manager over the project at the CNA Building because the firm did not have independent decision-making authority to act on behalf of the State, especially in fiscal matters such as changing contract requirements. For example, two of the three contracts for the decontamination of state property in the CNA Building, both of which were administered through the OSA, provided that changes or deviations from plans and specifications within those agreements were not to be made without authority in writing from the OSA. The third contract, which the OREDS administered, specifically prohibited the contract monitor from revising any part or scope of the contract documents.

Thus, when circumstances required that contractors perform additional work or otherwise perform in a manner that would not comply with existing contract terms, delays sometimes resulted because a state representative was not available to approve the contract changes. According to the owner of the consulting firm monitoring the

contractors, the failure of the department to provide someone at the CNA Building with the authority to deal directly with the building owner, sign shipping manifests, and sign changes in contract terms resulted in numerous project delays.

ERRORS IN INITIAL PROCESS THAT WAS USED TO FINANCE CLEANUP OF CNA BUILDING

Although a process exists through which the department may secure initial funding to support its response to emergencies in state-leased facilities, we found that it did not follow that process in initially seeking funds to support contracts for asbestos decontamination in the CNA Building. Upon the director's declaration of an emergency, as provided for in Section 14970 of the California Government Code, the department's director is required to recommend to the Department of Finance that money be allocated to carry out work necessary to meet emergency needs. However, according to the Department of Finance, the department did not request emergency funds to support the cleanup contracts for the CNA Building. Instead, the department attempted to use an inappropriate fund for financing activities related to the emergency in the CNA Building.

In late April 1989, the department requested six state agencies that had evacuated their offices at the CNA Building because of asbestos contamination to transfer a total of more than $1.4 million into the Architectural Revolving Fund (ARF) to fund the decontamination of state property in the CNA Building. However, according to the

department's director, the department determined in early July that the ARF was not the proper vehicle for financing the project. The department lacked the legal authority to use the ARF to pay for the cleanup costs because use of the fund is restricted to work involving state-owned buildings.

During the two months that the department apparently remained unaware that the ARF was an inappropriate funding source, the agencies initiated the fund transfers. Some of the transfers were contingent upon the Department of Finance's approval of requests for deficiency funding and some were not. Transfers contingent upon deficiency funding requests did not take place. However, the transfers not contingent upon the Department of Finance's approval were completed before the end of fiscal year 1988-89. These transfers included over $44,000 from the State's General Fund, which had been transferred from the Office of Emergency Services and the Department of Commerce, as well as more than $245,000 in special fund money from the Department of Savings and Loan.

Although the department provided us with a copy of a memorandum, dated September 21, 1989, which initiated the return of the agency funds transferred at its request into the ARF, it could not provide valid documentation of any earlier efforts to return the money. The department's director told us that an earlier request initiating the return of the funds was lost.

The department has indicated that, upon completion of the decontamination project, it now intends to recover funds it has spent on cleaning up the CNA Building by billing each of the state agencies that were tenants in the building.

THE REASON FOR THE DEPARTMENT'S INADEQUATE RESPONSE TO EMERGENCIES IN STATE-LEASED FACILITIES

The department's director stated that the department followed its established policy when it responded to the emergency in the CNA Building. However, before the two emergencies we reviewed, the department did not have written guidelines for its personnel to follow when they responded to emergencies in state-leased facilities. Thus, its response to the two emergencies, which was based on informal procedures and past practice, failed to ensure that it adequately assessed the emergency conditions, adequately coordinated emergency response activities and communications, or provided for financing of its response activities.

The department's recently drafted emergency guide would address these deficiencies. This draft guide, which would establish both the department's and the client agencies' responsibilities in the event of an emergency in state-leased facilities, had not been adopted as of February 15, 1990.

CONCLUSION

The Department of General Services did not effectively respond to two emergency situations in state-leased facilities. Specifically, the department did not fully assess the situations to determine the action necessary to protect the State's employees and interests. Moreover, the department did not adequately coordinate the State's efforts to resolve either emergency. For example, the department did not interact effectively on-site with involved entities. In addition, it did not adequately supervise the contractors hired to decontaminate that building, as required by the contracts, and it initiated the funding of the building's cleanup from an improper fund. The department responded to the emergencies ineffectively because it has not adopted and implemented a written plan for responding to emergencies in state-leased facilities.

RECOMMENDATIONS

To respond effectively to emergencies arising in state-leased space, the Department of General Services should take the following actions:

- Adopt and implement such measures as are included in its draft Emergency and Catastrophic Disaster Support Services Guide; and

- Ensure that it provides adequate management of its contracts. Such oversight may include on-site supervision of contractors by a state representative authorized to independently approve contract change orders, communicate with all involved parties, and resolve issues involving contract-related activities.

II

THE DEPARTMENT OF GENERAL SERVICES HAS NOT ALWAYS ENFORCED LEASE TERMS AT STATE-LEASED FACILITIES

The Department of General Services (department) has not adequately enforced the terms of the leases it obtains for state agencies. During our review of the department's Office of Real Estate and Design Services (OREDS), we found that the OREDS did not always act promptly or completely on behalf of state agencies to ensure that lessors properly repaired reported problems in state-leased facilities. As a result, some client agencies have experienced difficult and sometimes dangerous conditions in leased facilities.

POOR ENFORCEMENT OF LEASE TERMS

Section 1445 of the State Administrative Manual states that the OREDS' lease management responsibilities include the post-occupancy activities necessary to ensure that both the lessors and state agencies comply with the terms of lease agreements. This section instructs the client agency first to notify the lessor or the lessor's representative of any problems encountered in leased space, such as poor maintenance, unsuitable temperatures, or poor janitorial services. If the lessor is not readily available or if the problem is not satisfactorily resolved after the agency's initial contact with the lessor, the agency is to immediately request the assistance of the OREDS. In the opinion of the

Legislative Counsel, the OREDS is required to assume the primary role in negotiating with the lessor, should the agency fail to obtain compliance with the lease. Section 1410.2 of the State Administrative Manual states that the OREDS will supervise maintenance and repair projects in state-leased facilities.

The OREDS' standard lease form requires the lessor to maintain the leased premises in good repair and appearance and in tenantable condition. The lease further provides that, if the lessor fails to comply promptly with these terms after written notice from the State requiring compliance, or if an emergency occurs constituting a hazard to the State's employees, the State may make necessary repairs and deduct the cost of the repairs from rent due. For leasing services, including management and routine lease procurement projects, the department charges each client agency 1.5 percent of the monthly rent owed by the agency on leases the department procures.

In our review of the files for 50 randomly selected leases, we identified five instances in which client agencies had notified the OREDS of problems in state-leased facilities. We also identified two

instances of problems client agencies experienced with state-leased facilities that were not in our sample.[3]

Although the OREDS maintains a lease administration unit responsible for managing the State's leases as described in Sections 1410.2 and 1445 of the State Administrative Manual, the unit did not respond as required in six of the seven instances in which we identified that client agencies had notified the OREDS of problems with their facilities. The remaining instance involves a vehicle that crashed into a facility in the Los Angeles area. The client agency did not contact the lease administration unit for assistance but instead requested assistance from the leasing officer within the leasing and design section who had handled the original procurement of the lease. The leasing officer subsequently referred the problem to the space planner within the leasing and design section who was originally responsible for the plans for the facility. The space planner assumed many of the responsibilities stated in the State Administrative Manual.

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[3]For five of these seven lease management problems, the lease files contained documentation that a problem had occurred. We identified the remaining two problems for which the files contained no documentation through interviews with staff members from the OREDS and client agencies. While our audit procedures involved the review of all documentation in the lease files in our sample and in other lease files that came to our attention, we did not apply procedures to systematically identify additional problems that were not documented in lease files. Therefore, we cannot state the percentage of leases in our sample for which client agencies experienced problems in state-leased facilities.

According to the space planner, he used his expertise to resolve the problem. After first surveying the damage caused by the truck, he contacted a contractor who visited the site, assessed the situation, and recommended remedial measures. The space planner next notified the lessor in writing of the problems and of the contractor's recommendations, informing the lessor that he needed to repair the building to bring it into compliance with the lease terms. When the lessor did not respond to the initial notification, the space planner sent a certified letter. Approximately two months later, the space planner returned to the site to follow up on the situation, and he determined that, although neither the lessor nor the client agency had notified him, the facility had been repaired.

By contrast, in the other six instances when client agencies experienced problems with the facilities they occupied, the OREDS' lease administration unit did not fulfill its responsibilities under Section 1410.2 of the State Administrative Manual. Specifically, the lease administration unit did not supervise or follow up on reported problems in state-leased facilities to ensure that conditions violating the terms of the lease had been corrected. In five of these six cases, client agencies made repeated contacts with the unit before the unit took action in its attempt to obtain lessor compliance. For example, the business services officer for the parent agency of the Contractors' State License Board (board) said he notified the lease administration unit on September 23 and 24, 1988, that the board's leased facility had incurred damage to the roof, prohibiting use of the building, and that

the lessor intended the board to secure the repairs necessary for its continued occupancy of the building. However, the lease administration staff did not supervise the initial repairs, which were temporary, nor did the staff assume the primary role in negotiating with the lessor to permanently repair the building, as required by the terms of the lease.

In the five months following the initial repair efforts, a county building inspector and a private structural engineer hired by the board warned of continuing concerns about the roof's safety. Also, the county inspector noted concerns about areas of the building that were not receiving adequate heat because of the removal of the heating and cooling units from the building. During these five months, the OREDS took no direct action in negotiating with the lessor to enforce the lease requirement that the lessor maintain the premises in good repair. The following pictures show the types of conditions that existed within the board's facility almost ten months after the initial damage to the roof.

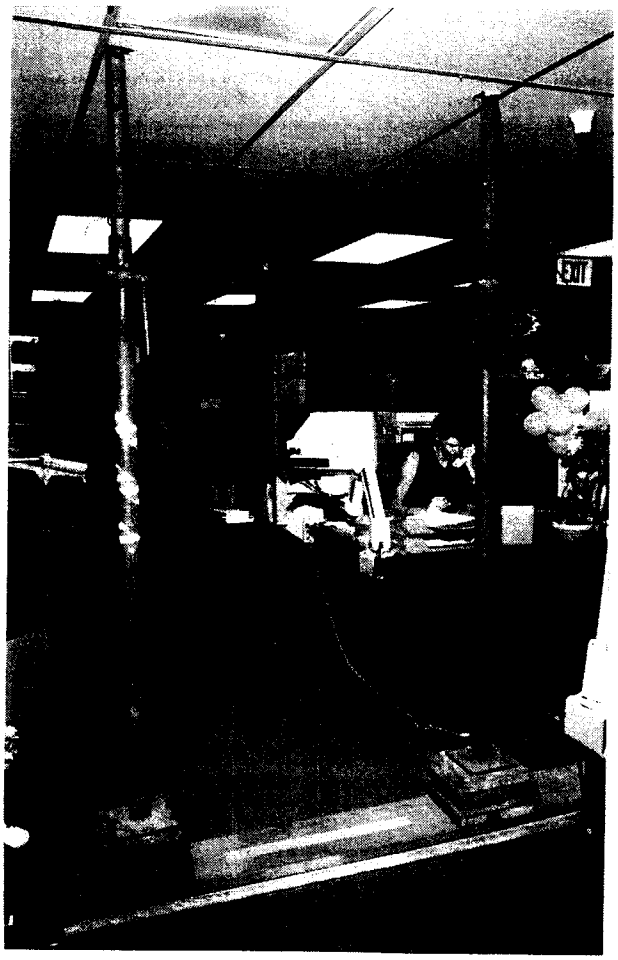

Photo 1: Structural supports in the boards's office space

Photo 2: Structural supports in the board's file room

Because of further deterioration of the building, on March 2, 1989, the county inspector warned that the building would be closed if further temporary repairs were not completed and permanent repairs were not begun by March 3. One day later, the OREDS did notify the lessor that the State would arrange for temporary repairs the following day and could deduct the costs from future rent. The notification also instructed the lessor to arrange for permanent

repairs within one day. Staff members of the board rather than of the OREDS subsequently managed efforts to secure the temporary repairs and supervised vendors who provided the repairs necessary to allow the board to remain in the building.

Once the additional temporary repairs were made, unanticipated problems continued to prevent the lessor from permanently repairing the roof. The OREDS' files do not show any further efforts by the OREDS' staff to work with the lessor to ensure that the facility was returned to good repair. Moreover, the board was not able on its own to obtain lessor compliance with the terms of the lease.

Finally, in September 1989, after 12 months of attempting unsuccessfully to enforce the lessor's compliance with the terms of the lease, the board had to evacuate the building following a crisis caused by rain water accumulating on the sagging structure. Following the evacuation, the building inspector allowed the board to reoccupy the building as long as the board continued in its efforts to relocate in another facility, which the board did in October 1989.

Lease Compliance Not Enforced for Other Client Agencies

The lease administration unit also did not respond effectively to other lease-compliance problems. For example, on December 4, 1986, after initially contacting the lessor, a client agency notified the OREDS of torn carpeting that constituted a safety hazard for staff and

the public in its leased facility. In a letter dated January 26, 1987, the OREDS notified the lessor that he needed to replace the torn carpeting; however, the lessor did not repair the carpeting. In a letter dated September 21, 1988--20 months later--the OREDS notified the lessor that the State would replace the carpet and deduct the costs from the future rent due, but as of March 14, 1989, the carpet still had not been replaced.

In another instance, a client agency had experienced heating and cooling problems in its leased facility since 1985. A representative of this agency noted that his telephone calls to the OREDS' lease administration unit frequently were not returned, and when calls were answered, promised action was delayed for extended periods. The representative said that, because the problems were not resolved promptly, the agency had to continually contact the OREDS, and the agency's relationship with the lessor had been strained. As of January 1990, the problems with the facility had still not been resolved.

REASONS THE DEPARTMENT HAS NOT ALWAYS ENFORCED LEASE TERMS

The OREDS has not enforced lessors' compliance with lease terms for several reasons. Specifically, the department has misinterpreted the requirements regarding the OREDS' lease management responsibilities; the department has contradicting policies concerning

the OREDS' responsibilities for enforcing lessor compliance; the OREDS has misunderstood departmental policy regarding lease management; the OREDS has not established procedures to guide its staff in the management of leased facilities; and the OREDS has not established workload standards for its lease management personnel.

Misinterpretation of Lease Management Requirements

In the department's interpretation of lease management requirements, the OREDS is not principally responsible for resolving problems in state-leased facilities. According to the department's director, the OREDS and client agencies share responsibility in resolving such problems. The director stated that, as a practical matter, client agencies have the personnel at the site to evaluate and react to hazardous conditions much faster than the OREDS' lease management personnel, who manage from 400 to 500 leases each.

According to the chief of the OREDS, the department's interpretation is supported in an analysis by the Legislative Analyst's Office (LAO) of an inspection program the department proposed in 1982 to ensure that certain state goals were met and to identify problems in state-leased facilities. The chief stated that the LAO would not support the inspection program because the lease management goals cited in the department's proposal could be achieved more effectively and efficiently through administrative control and tenant action than

through inspections by department personnel every two years and because building problems are more easily recognized by the people who occupy the building year-round.

We found, however, that the department has not correctly interpreted its lease management responsibilities, nor does the LAO's analysis of the proposed inspection plan support the position that the department is not principally responsible for resolving problems in leased facilities. First, in the opinion of the Legislative Counsel, once the client agency has initially contacted the lessor, the OREDS, which offers expertise in managing leases, has the duty to assume the primary responsibility for enforcing a lessor's compliance with a lease.

Furthermore, during our review of the LAO's analysis of the department's 1982 proposal, we found that the goals of the department's proposed inspections included enforcing tenant compliance with the state goals for handicapped access to state-leased facilities, for energy conservation, and for efficient use of space by client agencies. Additionally, the department proposed to inspect facilities for compliance with fire safety regulations and to identify building and mechanical problems. Addressing these specific program objectives, the LAO felt that other alternatives offered more promise and that executives of the agencies occupying the leased space should take responsibility for ensuring that the inspection objectives were met, without the help of department personnel. Instead of inspecting leased

facilities, the analysis stated, the department should concentrate its efforts on quick resolution of reported problems encountered in those facilities.

Departmental Contradictions in Policy

Contradictions exist at the departmental level about the department's policy for ensuring that state-leased facilities are repaired when lessors do not take responsibility for the repairs as required by the lease terms. The department's director stated that the law precludes the OREDS from taking any action to bring a building into compliance with a lease until the lessor actually refuses to carry out a provision of the lease. However, in a later statement, the director said that the OREDS could take action when a lessor neglects to make necessary repairs to a facility. In the opinion of the Legislative Counsel, the OREDS may take action to correct a problem in a state-leased facility when a lessor fails, refuses, or neglects to make necessary repairs following notification by the OREDS. We conclude, from the Legislative Counsel's opinion, therefore, that there are circumstances when the OREDS need not wait to take action until a lessor actually refuses to make repairs.

Misunderstood Priorities

The lease administration unit has not effectively ensured lessor compliance with the terms of their leases also because the OREDS has misunderstood the department's priorities regarding lease management. For example, the assistant chief in charge of the lease administration unit stated that his staff would like to have become more involved in resolving the issues of the Contractors' State License Board's building; however, the number of other administrative tasks necessary for managing state-leased facilities limited the staff time available. In contrast, the department's director has assigned higher priority to hazardous conditions that threaten the health and safety of state employees, emergencies requiring premises repairs, and other premises problems.

Lack of Procedures

The OREDS has not established procedures to guide its staff in dealing with problems occurring in leased premises, nor has it required that staff supervise the resolutions of these problems. The OREDS' manual for leasing officers, which contains a statement of lease management responsibilities, does not describe any of the procedures necessary for initiating, supervising, or following up on repairs that are required by the terms of the lease. In addition, the OREDS could not provide any other manual describing such procedures.

Lack of Workload Standards

According to the assistant chief in charge of the lease administration unit, the lease administration unit does not have sufficient staff to complete all its required tasks. However, the OREDS has not requested additional staff for the unit since department management submitted a budget change proposal for one additional position in 1984. This budget change proposal stated that, when the lease administration unit did not have enough staff to effectively manage leases, untrained staff of the client agencies had to interpret leases and negotiate with sophisticated property owners to obtain required corrections. The proposal noted that this situation resulted in the State not always receiving full value according to the lease terms. However, the department's budget and planning section stated that it would not support a budget change proposal for additional staff unless the lease administration unit established workload standards for its staff. According to the assistant chief in charge of the lease administration unit, the OREDS has not had time to develop these workload standards because of other higher priorities.

THE DEPARTMENT HAS NOT ADEQUATELY PROTECTED THE STATE'S INTERESTS

When the OREDS does not fulfill its responsibilities as the State's lease management expert by requiring that lessors maintain their properties according to the terms of their leases, client agencies may have to endure difficult and sometimes dangerous

conditions. For example, a client agency informed the OREDS that the elevators in its leased facility functioned so poorly that the fire department sometimes had to free occupants who were trapped there. In addition, according to a letter from the client agency, one employee had been injured after the elevator car dropped between floors. The elevator operated poorly for seven months before the OREDS took any action to resolve the problem.

Further, when the lease administration unit does not take the primary role in negotiating with lessors to obtain compliance with lease terms, other state staff who are not experts in lease management must perform these duties instead of their normal duties. For example, according to the business services officer for the Contractors' State License Board, she had neither the training nor the experience required to resolve the problems following the initial failure of the roof in the board's leased facility. Yet, she stated, from September 23, 1988, to October 21, 1989, she had to devote approximately 20 percent of her work time to resolving the problems with the roof so the board could remain in its leased facility. She also said that it was her understanding, according to the State Administrative Manual and the client reference guide that the OREDS provides to client agencies, that, in return for the fee the board pays the OREDS for lease management, the OREDS would perform the tasks that she had to perform in her attempt to resolve the situation in the board's building.

Finally, when the lease administration unit does not enforce lessor compliance with lease terms, staff members from other OREDS units sometimes must devote time to respond to problems identified in state-leased facilities. According to a staff member of the leasing and design section, he has had to resolve lease management problems on occasions when business services officers have contacted him after receiving no response from the lease administration unit. When staff members from the OREDS' leasing and design section devote time to resolving lessor compliance issues, the time they have available to complete lease procurement projects is reduced commensurately. The leasing and design section currently has a large backlog of projects. (See Part A, Chapter III, for our discussion of this backlog.)

CONCLUSION

The lease administration unit of the Office of Real Estate and Design Services did not respond as required in six situations by initiating, supervising, and following up on repairs to state-leased facilities that were required by the terms of the State's lease agreements. The lease administration unit did not respond adequately to these situations for several reasons. First, the Department of General Services has not properly interpreted the OREDS' lease management responsibilities. Also, the lease administration unit within the OREDS misunderstood the department's lease management priorities and, as a result, gave administrative tasks

precedence over resolving lease compliance issues. Furthermore, the OREDS has not developed procedures to guide staff in resolving problems in leased facilities. Finally, according to the assistant chief of the lease administration unit, the unit has not developed the workload standards. The OREDS needs to develop such workload standards to determine sufficient staffing levels necessary to complete all its required tasks.

RECOMMENDATIONS

To ensure that lessors comply with lease terms by providing all agreed-upon repairs, the Office of Real Estate and Design Services should take the following actions:

- Assume the primary role in negotiating with lessors to obtain their compliance with lease terms;

- Communicate the proper work priorities to the lease administration unit;

- Initiate procedures to guide staff in their efforts to obtain lease compliance and to assure adequate supervision; and

- Establish workload standards so that it can determine and request the proper level of staff to adequately carry out required lease management duties.

III

THE DEPARTMENT OF GENERAL SERVICES TAKES TOO LONG TO PROCURE LEASED FACILITIES

Nearly all state agencies depend upon the Department of General Services (department) to obtain leased facilities. The department has prepared a guide for client agencies that states time frames needed to lease facilities. However, the department does not complete all its lease projects within these time frames. Moreover, the percentage of newly negotiated leases the department did not complete within the time frame for this type of lease increased from 41 percent in fiscal year 1986-87 to 63 percent in fiscal year 1988-89. The delays, which sometimes exceed the stated time frame by more than 12 months, cause some client agencies to operate in overcrowded or substandard facilities, which hinders the State's ability to serve the public.

THE DEPARTMENT DOES NOT COMPLETE ITS LEASE PROJECTS WITHIN ESTABLISHED TIME FRAMES

Section 14669 of the California Government Code authorizes the department's director to enter into any lease for real or personal property that the director deems to be in the State's best interest. Also, Sections 1400 and 1400.1 of the State Administrative Manual state that the leasing and design section within the Office of Real Estate and Design Services (OREDS) is entirely responsible for the development

of state-leased facilities except facilities for the University of California, the State Compensation Insurance Fund, and the State Lottery Commission. Accordingly, other state agencies must depend upon the department to secure leases with private owners when the agencies' needs for space exceed the space available in state-owned buildings. In addition, client agencies must depend on the department to renew leases and to plan and secure alterations such as redesigned floor plans for facilities already leased.

For leasing services, including lease management and routine leasing projects, the department charges each client agency 1.5 percent of the monthly rent owed by the agency for leases the department secures. In addition, the department charges by the hour for space-planning services and for nonroutine leasing services. In fiscal year 1989-90, the department charged $56.25 per hour for space-planning services and $66.20 for nonroutine leasing services.

The department's Client Reference Guide (client guide) describes the procedures client agencies should follow when they request leasing assistance. The client guide also indicates the average time the department needs to obtain or renew leases and informs client agencies that they should incorporate these times into their plans for occupying new facilities or for requesting lease renewals. The client guide indicates that simple lease renewals require six months to complete, more complex renewals that include provisions for significant alterations require twelve months to complete, new leases

for less than 15,000 square feet require nine to twelve months to complete, and new leases for over 15,000 square feet require more than twelve months to complete. According to the department's director, these time frames provide reasonable amounts of time, on the average, for the OREDS staff to complete leasing projects.

We found that, in fiscal year 1988-89, the department completed slightly more than one-third of all newly negotiated leases for up to 15,000 square feet within the time frame set forth in the client guide. Data from the department's automated system for managing leasing projects show that, of 113 negotiations for new leases completed during that year, only 42 (37 percent) were completed within the nine-to-twelve month time frame specified in the client guide. Furthermore, of the 71 leases that the department did not complete within these time frames, 25 (22 percent) exceeded the time frame by six to twelve months, and 19 (17 percent) exceeded the time frame by more than twelve months. Moreover, as Table 1 shows, the percentage of leases not completed within the time frame specified in the client guide has increased from 41 percent in fiscal year 1986-87 to 63 percent in fiscal year 1988-89.

TABLE 1

LEASE PROJECTS EXCEEDING TIME FRAMES FISCAL YEARS 1986-87 THROUGH 1988-89

Fiscal Year	Total Number of Projects Completed	Percentage of Projects Exceeding Time Frame in the Client Guide	Percentage of Projects Exceeding Time Frame by 6 to 12 Months	Percentage of Projects Exceeding Time Frame by More Than 12 Months
1986-87	87	41	11	6
1987-88	99	49	15	7
1988-89	113	63	22	17

Note: This data is for newly negotiated leases of 15,000 square feet or less.

To compare the department's leasing time frames with those required by private companies that provide similar leasing services, we sent surveys to 24 major corporations in the United States addressing the practices used by their leasing units, all of which initially appeared to have leasing needs similar to those of the OREDS. In the survey, we outlined a request for a leased facility that met specific requirements, and we asked the private companies to furnish us with estimates of the time the leasing units took to obtain space that was ready for occupancy. The four comparable corporations that responded to our survey reported times ranging from 6 to 18 months to secure their most difficult-to-obtain leases. In contrast, the OREDS took more than 18 months to complete 5 (38 percent) of the 13 leases

completed in fiscal year 1988-89 for facilities that had similar requirements to those specified in our survey.

Factors That Affect the Time Required To Complete Leasing Projects

To determine factors affecting the time the OREDS requires to secure leased space for state agencies, we reviewed the files of 40 leasing projects. We randomly selected these from projects in which leases became effective from July 1, 1987, through March 30, 1989. Eight of those lease projects involved situations for which the department had not established time frames. Of the 32 remaining leases, the department exceeded the time frames for 20 (63 percent).

We categorized factors that contributed to lease delays as those beyond the control of the department; those arising from the department's imposing conditions that, in its estimation, protected the State's interests; and those within the control of the department. For some leases, more than one factor contributed to the delay.

Delays Caused by Factors Beyond the Department's Control

Of the 20 leases in our sample that exceeded the time frames established in the client guide, 7 (35 percent) involved factors outside the department's control. One factor that delays the procurement of leases is the resistance the OREDS sometimes meets from

lessors or local governments in its attempts to lease space for certain agencies. For example, one parole office in our sample did not receive office space for 36 months because the city in which the office space would be located did not want a parole office in the site chosen by the OREDS and the Department of Corrections.

Other factors that delayed the procurement of leases in our sample and that were beyond the control of the OREDS include a lack of acceptable lease sites; inquiries or objections raised by legislative groups; and negotiations that, according to OREDS supervisors, were unsuccessful, causing leasing officers and space planners to redo previously completed tasks.

Delays Caused by Conditions The Department Believed Protected the State's Interest

Of the 20 leases in our sample that exceeded the time frames established in the client guide, 3 (15 percent) were delayed because the OREDS imposed restrictions that were intended to protect the interests of the State. In some lease projects, the actions that slowed the leasing process stemmed from the OREDS' efforts to save the State money. For example, in one lease that we reviewed, the client agency submitted a request for leased space in December 1987. According to a leasing officer for the project, available sites that met the OREDS' structural and health and safety requirements could not initially be found in the area where the client agency needed a

facility. The leasing officer therefore investigated a type of lease option that involved constructing a facility meeting certain state specifications, but the leasing officer determined that this option would cost more than the market rental rate. Since the client agency did not indicate an urgency for the facility, the leasing officer continued to search for space. Finally, 21 months after the client agency requested space, a suitable site was located. The leasing officer estimates that he will be able to lease the facility at a rate that will cost the State $88,200 less over a seven-year term than the other option he investigated.

In its efforts to protect the State's interests in a competitive bidding situation, the OREDS took 34 months to complete a lease in our sample. When the OREDS seeks competitive bids for leases, it advertises for space that meets specified requirements. The OREDS then sends requests for bids to owners who offered acceptable sites in response to the advertisement. Upon receiving the bids, if the OREDS elects to accept any bid, it must accept the lowest bid. In this instance, the client agency wanted to eliminate many of the sites offered in response to the advertisement for space. For five months, the OREDS and the client agency could not reach an agreement about the acceptability of some of the sites in question. The OREDS subsequently withdrew one site from consideration upon learning that the structure would not be available soon enough to meet the client agency's needs, and the client agency agreed to consider some previously eliminated sites.

Delays Caused by Factors
Within the Department's Control
Include a Backlog of Work-on-Hand

Of the 20 leases in our sample that exceeded the time frames, 13 (65 percent) involved problems over which the OREDS had some control. According to the OREDS, 3 of the leases were delayed by three different employees, each characterized as unproductive, and 11 leases were delayed by the OREDS' backlog of work-on-hand.[4]

We reviewed the OREDS' backlog reports of work-on-hand for fiscal year 1986-87 through fiscal year 1988-89 and determined that the backlog of work-on-hand had increased from 36,770 hours of work-on-hand on June 30, 1987, to 76,120 hours of work-on-hand on June 30, 1989. Examples of leases delayed by the backlog of work-on-hand include one lease for which, according to an OREDS supervisor, the backlog apparently prevented staff from devoting substantial time to the project for two months after receiving the request from the client agency. Following the two-month delay, the client agency had to pay the lessor's contractor an additional $25,000 so the contractor could schedule the double work shifts necessary to have the facility ready in time for the agency's needs.

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[4]One of the leases in our sample was delayed by more than one factor that was within the OREDS' control.

For another lease, the client agency requested new leased facilities because of building code violations and fire and life safety violations in its existing facility. However, because of the large backlog of work-on-hand, the OREDS' staff did not make progress in its attempts to secure a new facility for at least ten months after receiving the request. While the client agency waited for its new facility, its old facility sustained severe structural problems that caused two temporary evacuations of employees.

Inaccurate Forecasting of Staffing Needs Contributed to Backlog

Forecasts made for fiscal year 1986-87 through fiscal year 1988-89 that underestimated the staffing hours the OREDS would need to complete all requests received in each of these fiscal years have contributed to the growing backlog of work-on-hand. According to the chief of the OREDS, the OREDS' forecasts of staffing needs are an element in the department's process for developing the annual proposed governor's budget. To meet the time frames of the department's budgeting cycle, the OREDS develops its forecasts of staffing at least 13 months before the start of the fiscal year for which the staff is budgeted.

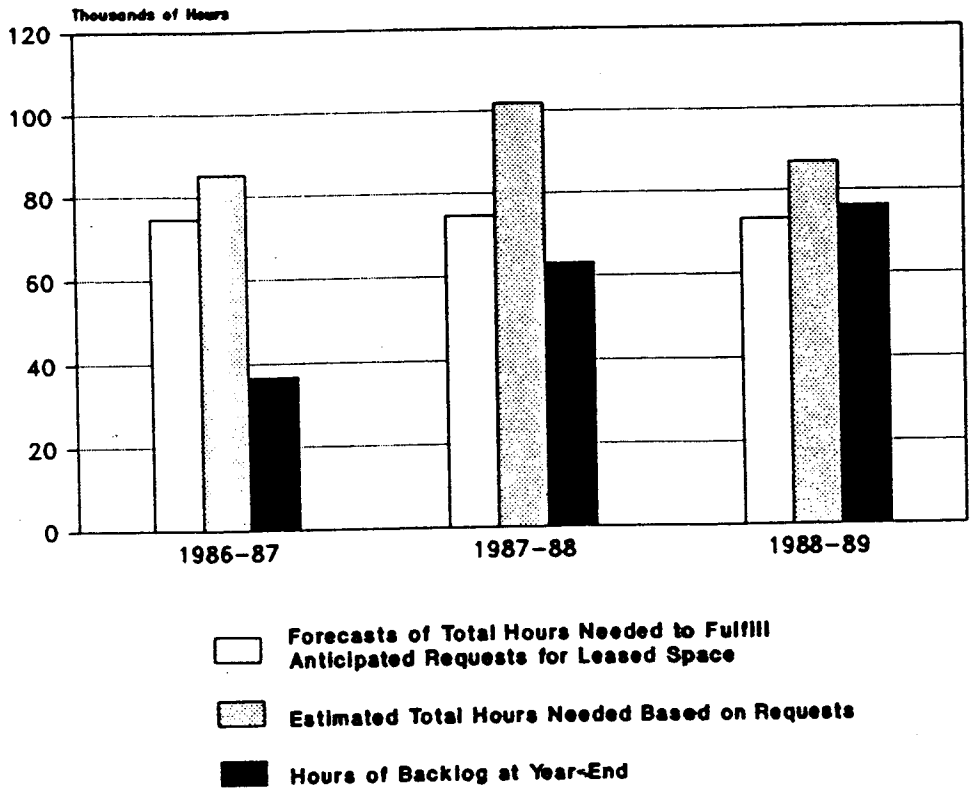
The model that the OREDS uses to make its staffing forecasts consists of a two-step process. First, the OREDS assesses the volume, type, and size of the projects it received during the 12 months immediately preceding the preparation of the forecast. It then applies

workload standards, which theoretically reflect the staffing hours required to complete projects, to those projects actually received in that 12-month period. Finally, the OREDS adjusts these hours to account for projects it anticipates receiving during the budget year that it believes will represent extraordinary workload.

As Chart 2 shows, for fiscal year 1986-87 through fiscal year 1988-89, the model's forecasts of total hours needed for anticipated requests have been lower than the OREDS' estimates based on work actually received during each of these fiscal years. As a result, the OREDS could not show in departmental budget hearings for fiscal year 1986-87 through fiscal year 1988-89 the need for the staff resources necessary to complete all current leasing projects. Without adequate staffing, the backlog of work-on-hand has continued to increase.

CHART 2

A COMPARISON OF OREDS' FORECASTS, ESTIMATES, AND BACKLOGS OF WORKLOAD FISCAL YEARS 1986-87 THROUGH 1988-89



Despite differences between the forecasts of total hours needed for anticipated requests and the estimates of total hours needed based on actual requests, for the past five budgeting cycles, the OREDS has not revised its model to improve the precision of its forecasts. Although the chief of the OREDS stated that OREDS staff has, on many occasions, performed analyses such as comparing forecasts of workload with actual data from the relevant time periods, the OREDS could not provide us with specific dates and details of every analysis. He added

that, in most cases, detailed documentation was not formally and systematically referenced, filed, and maintained. According to accepted forecasting methods, however, forecasts should be compared on an on-going basis with the actual values for each time period. The forecaster should then identify the sources of the differences between the forecast and actual values and revise the forecasting model to make it more accurately reflect the relationship between the past and the future. In this way, the model can improve with successive forecasts.

In addition to improving the forecasting model, comparisons between forecasts and actual workload performed at regular intervals throughout the year would allow the OREDS to promptly detect when the hours needed to complete actual requests exceed its forecasts. The OREDS can then make informed judgments about requesting additional staff to avoid increases in the backlog of work-on-hand. Because the OREDS does not express its annual forecasts in terms of intervals, such as months or quarters, it cannot make such comparisons.

Standards for Estimating the Staff Hours Needed for Leasing Requests Are Inaccurate

Inaccurate workload standards have also contributed to inaccurate forecasts. According to the chief of the OREDS, these standards are intended to represent the average number of hours of staff time required to lease space. Our sample of 40 leasing projects indicates that the workload standards the OREDS uses to estimate the

staff time required to lease space are too low to accurately reflect the time currently used. According to the OREDS' current workload standards, which it has not revised since July 1987, the 40 leasing projects in our sample should have taken 7,122 hours to complete. However, the staff actually worked 8,664 hours to complete these projects--22 percent more hours than it estimated using the current workload standards.

Workload standards that understate the actual average hours required to fulfill current leasing requests can result in understated forecasts of the staff resources used for developing requests for the Governor's Budget. In addition, because of the method the OREDS uses to calculate its backlog of work-on-hand, insufficient workload standards can also result in understated actual hours of backlog.

According to the OREDS' assistant chief in charge of leasing, the workload standards are outdated because recent legislative and policy changes have affected the hours needed to complete projects. Specifically, the assistant chief cited new legislative and policy requirements regarding asbestos, seismic safety, toxics, handicap compliance, safety, and communications with local municipal agencies and representative legislators.

Staff Not Always Requested for Identified Workload Increases

During our review of the department's requests for staff for the OREDS, we determined that the requests were not sufficient to address the workload represented by leasing projects received by the OREDS. Further, the department has not always requested additional staffing, even when it has become aware that the OREDS' current workload has exceeded the capacity of the staffing level that analyses for departmental budget hearings indicated were allocated to the OREDS' leasing and design section. According to the department's director, the OREDS received 12.6 new positions for its leasing and design section during fiscal years 1987-88 and 1988-89 in response to a November 1987 request.[5]

Since that time, the department has requested additional staff for the OREDS' leasing and design section only one other time. In this request, made through a budget change proposal prepared in December 1988, the department asked for a transfer of three positions to the OREDS from the Employment Development Department (EDD) to accommodate anticipated EDD projects that were expected to require substantial OREDS staff time. (See page 63 for further discussion.)

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[5]According to the director, the department provided the OREDS 5.8 positions by redirecting positions from other programs. The department obtained 6.8 additional positions through budget change proposals. These positions include managerial and clerical staff as well as leasing officers and space planners.

We found, however, that between February 1988 and June 1988, the OREDS had already received more requests for leasing projects than the department had anticipated for that period, and by the end of fiscal year 1987-88, the backlog of work-on-hand had reached 63,052 hours. Nonetheless, except for the budget change proposal relating to the EDD's future leasing requirements, the department did not submit any budget change proposals following the June 1988 departmental budget hearings for fiscal year 1989-90 to obtain additional staff for the leasing and design section, nor did the department submit any budget change proposals for staff following the June 1989 budget hearings for fiscal year 1990-91.[6] By June 30, 1989, the backlog of work-on-hand had reached 76,120 hours.

Measures Instituted To Reduce OREDS' Backlog

According to the department's director, backlogs of work-on-hand are difficult to eliminate because the staff level required to quickly reduce the backlog far exceeds the level needed to support the projected ongoing workload once the backlog is reduced. Therefore, since 1987, the OREDS has implemented three measures in an attempt to reduce its backlog of work-on-hand.

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[6]The department submitted a budget change proposal and, according to an analyst for the OREDS, obtained for fiscal year 1989-90 one-half of a position to perform tasks involving asbestos notifications for state-leased facilities. Although this additional staff position may perform tasks done by leasing and design section staff, the budget change proposal did not specifically identify that the one-half position would be allocated to that section.

The first measure involves increasing the number of projects that the OREDS delegates to client agencies. For example, we reviewed 15 leases for facilities partially delegated to the Department of Motor Vehicles (DMV) under a memorandum of understanding between the DMV and the OREDS dated March 6, 1987. This memorandum specified that the DMV would perform some leasing tasks that the OREDS normally performs. The OREDS retained control over the leasing process by reviewing and approving the agency's work and by negotiating the lease terms.

For the nine projects that have been completed under this memorandum of understanding, the average time from the DMV's involvement with locating acceptable sites to the completion of the project was ten months shorter than the average time from the OREDS' involvement with to completion of those leases obtained solely through the OREDS' efforts. In addition, the average amount of OREDS staff time used per lease was 45 hours less for delegated leases than for leases obtained solely by the OREDS. The OREDS, however, claims that these partial delegations have not been effective, and as of February 6, 1990, it has no projects delegated to the DMV under the memorandum of understanding.

The second measure involves collaboration with client agencies to transfer staff positions to the OREDS for work solely on the agency's projects. For example, according to a budget change proposal developed by the department, the Employment Development Department (EDD) entered into a major plan for reorganizing and planning offices

that would require an estimated 23,150 hours of OREDS staff time over two years. The OREDS acknowledged that such an influx of work would increase the backlog of work-on-hand from the EDD to a level that would prevent the OREDS from completing the work within the time the EDD desired. The EDD, therefore, offered to transfer funding for three staff positions to the OREDS to prevent this accumulation of backlog. The OREDS agreed to assign the staff hired for these positions to work exclusively on the EDD's projects. According to the chief of the business services division of the EDD, the OREDS' service has improved since this measure was implemented. The third measure involves reducing the OREDS' workload by contracting with private firms or negotiating with lessors to provide space planning. However, the department, in various budget analyses, has noted that contracting with private firms results in substantially higher costs to the State.

Even though the department implemented these measures, the measures have not had a significant effect on the backlog, partially because the OREDS uses these measures on an infrequent basis. For example, in June 1989, the OREDS estimated that in each of fiscal years 1989-90 and 1990-91, it would delegate to client agencies 1,000 hours of work and use private firms and lessor services for no more than 2,200 hours for planning work.

DELAYS IN OBTAINING SPACE HAVE HINDERED THE STATE'S ABILITY TO SERVE THE PUBLIC

When agencies request leased facilities, they must justify to the OREDS that their present facilities are or will be inadequate or unsuitable. Agencies may need new or additional space for a variety of reasons, including program expansion, substandard conditions in the present facility, or the need to consolidate several units to improve the organization's efficiency. Regardless of the reason, when an agency submits a request for space to the OREDS, the agency is formally declaring a present or future need for space, a need that sometimes becomes more acute with the passing of time. An example of this may be seen in a lease in our sample that was delayed for over 27 months because of factors within the OREDS' control. When the client agency first requested space for a new field office, the agency demonstrated that its existing facility could not adequately accommodate all the services the public needed. According to the former operations officer for the field office, lobby space was insufficient during the last six months that the field office waited for space, so patrons sometimes had to wait outdoors, and files were stored everywhere including in the hallways, employee lounge, and employee restroom.

For another leasing project, also delayed because of factors within the OREDS' control, the client agency requested in May 1985 that the OREDS renew the lease for the agency's San Francisco offices. After 14 months, for which the OREDS' files show no evidence of progress in obtaining the renewal, the client agency submitted a new

request for the renewal, which included requirements for an additional 7,578 square feet of space and extensive changes to the agency's existing floor plan. The project was not completed until 31 months after the OREDS received the second request. According to the client agency, during its wait for this space, it could not hire some employees needed for performing its regulatory duties.

CONCLUSION

State agencies that must depend upon the Department of General Services to lease their facilities sometimes face long waits to obtain space. The percentage of newly negotiated leases of 15,000 square feet or less that were not completed within the department's nine-to-twelve month time frame increased from 41 percent in fiscal year 1986-87 to 63 percent in fiscal year 1988-89. Also, in fiscal year 1988-89, 17 percent of those leases not completed within the department's time frame exceeded the time frame by more than twelve months. We reviewed a sample of leases indicating that three types of factors contributed to the delays: those beyond the control of the department; those stemming from the department's interpretation of its charge to protect the State's best interests; and those within the control of the department. Moreover, estimated backlogs of work-on-hand increased from 36,770 hours on June 30, 1987, to 76,120 hours on June 30, 1989. One reason the backlog has accumulated is that

the department did not obtain sufficient staff to complete all current work. Inaccurate forecasts of staffing needs contributed to the department not obtaining sufficient staff. In addition, the department used workload standards that understated the number of hours of staff time currently used to complete projects.

RECOMMENDATIONS

To reduce the time taken to lease facilities for client agencies, the Department of General Services should take the following actions:

- Improve its forecasting by comparing actual leasing requests received and the hours required to fulfill them with the original forecasted values;

- Develop new workload standards to more accurately reflect the staffing hours needed to complete projects;

- Respond more quickly to obtain staff when workload exceeds the capacity of budgeted staff. Specifically, the department should monitor staffing requirements against forecasts at regular intervals and request or

redirect staff when monitoring indicates that actual work received substantially exceeds budgeted forecast levels; and

- Determine the most advantageous methods for reducing the current backlog of work-on-hand, and develop a plan that includes sufficient delegation to client agencies and transfers of staff from client agencies where possible. Additionally, the department should use private firms and lessor planning services when the benefits outweigh the costs.

IV

THE DEPARTMENT OF GENERAL SERVICES HAS NOT CONSISTENTLY COMPLIED WITH THE LAW OR ITS OWN POLICIES REGARDING ASBESTOS IN STATE-LEASED FACILITIES

The Department of General Services (department), through its Office of Real Estate and Design Services (OREDS), did not notify some state agencies of the presence of asbestos within buildings they occupied when it became aware of the asbestos, as required by law. Furthermore, the OREDS has not consistently and correctly applied its procurement policies regarding leasing space in buildings that contain asbestos. As a result, the OREDS has not adequately protected the rights and interests of the State, nor has it ensured that employee exposure to potential asbestos hazards has been reduced to a minimum. The department has estimated that 70 percent of state-leased structures contain asbestos.

CLIENT AGENCIES ARE NOT ALWAYS NOTIFIED ABOUT ASBESTOS IN LEASED BUILDINGS

Effective January 1, 1989, Assembly Bill 3713 amended the Health and Safety Code to add Chapter 10.4, Section 25915 et seq., which states that the owner of any building constructed before 1979 who knows that the building contains asbestos-containing construction materials must notify all employees working in that building of the presence of such material. The notice must, among other things, identify specific locations where asbestos is present. It must also

identify general procedures and handling restrictions necessary to minimize disturbance and release of asbestos and exposure to asbestos. Further, the notice must identify the results of any air monitoring or other tests conducted by or for the owner and the potential health risks resulting from asbestos exposure. Chapter 10.4 further requires that the owner notify the employees by mail within 15 days after becoming aware of the presence of the asbestos. Owner is defined as including "an owner, lessee, sublessee, or agent of the owner of a building or part of a building, including, but not limited to, the State or another public entity." As lessee for the space it leases on behalf of state agencies, the Department of General Services (department) is a building owner within the meaning of the Health and Safety Code's notification provisions.

According to the State Administrative Manual, as well as to the department's own policy statement regarding its responsibilities under the Health and Safety Code, the OREDS, as the department's lease manager, must notify its client agencies when it becomes aware of asbestos in leased buildings. Client agencies must then notify their employees who work in those buildings.

In reviewing the OREDS' administrative and lease files, we identified 46 leased locations that the OREDS knew to contain asbestos and for which the OREDS issued asbestos notifications during our review period extending from January 1, 1989, through November 30, 1989. Although the OREDS issued at least one notification for each building

in our sample, it did not always notify all state agencies occupying leased space in those buildings. No more than one state agency occupied space in each of 37 of the buildings. However, a total of 32 agencies occupied space in the 9 remaining buildings. Of those 32 agencies, the OREDS failed to notify 9 (28 percent) after it was informed that asbestos was present. For example, the OREDS failed to notify 2 of 8 agencies occupying leased space in a San Francisco building after it was notified that the building contained asbestos.[7] We concluded that the OREDS failed to notify the 2 agencies because its notification procedures lack a mechanism to ensure that it identifies and notifies all state agencies in a building in which it discovers asbestos.

The OREDS' failure to issue asbestos notifications to 7 other state agencies apparently stemmed from its misunderstanding of notification requirements set forth in the Health and Safety Code. Six of the 7 state agencies occupied space in the CNA Building in Los Angeles, discussed in Part A, Chapter I, of this report.

During 1988, as part of a Department of Health Services' survey of some public buildings, a private consultant tested office space occupied by a seventh agency located in the CNA Building. Survey

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[7]The OREDS notified the 2 agencies on December 6, 1989, after we had asked officials to provide us with evidence that it had issued notifications to each agency at that location.

results indicating that the agency's office space contained asbestos were forwarded to the OREDS. On February 1, 1989, the OREDS issued written notification concerning the presence of asbestos in the CNA Building to the agency occupying the space where the asbestos was discovered, but it did not notify the other six state agencies in the building as required by the Health and Safety Code. An assistant chief of the OREDS stated that the OREDS' staff did not pursue notifying the other state agencies because of the lessor's insistence that the building contained no asbestos. However, as required in the State Administrative Manual and the Health and Safety Code, the OREDS must advise all client agencies in leased space when it has knowledge of the presence of asbestos in the building.

The OREDS' assistant chief also stated that, after the fire of March 2, 1989, the State relocated all the state tenants out of the CNA Building, eliminating further need for the asbestos notification. However, all state tenants were not immediately relocated out of the CNA Building after the fire. In fact, the Governor's Office remained in the CNA Building until August 25, 1989.[8]

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[8]The Governor's Office was relocated after an environmental consultant, hired by the department, detected asbestos contamination in its suite in the CNA Building which exceeded federal school-building standards. According to the environmental consultant, the school standards were applied because there are no national or state standards for exposure to airborne asbestos in nonindustrial office settings such as the CNA Building.

We identified one other case in which an agency was not notified about the presence of asbestos because of the OREDS' misunderstanding of the Health and Safety Code's notification requirements. An OREDS assistant chief stated that the agency was not notified because a report received in 1989 indicated that no asbestos was in the building. However, a previous report and other documents contained in the lease file indicate that asbestos was present in the building. The asbestos identified in those reports has apparently been encapsulated. The Health and Safety Code requires notification even though all known asbestos in the subject building has been encapsulated. However, the notice need not be as detailed as that which is otherwise required.

By failing to notify all state agencies occupying space in buildings known to contain asbestos, the department has not met the statutory requirements contained in the Health and Safety Code. Furthermore, the department has not ensured that employee exposure has been reduced to a minimum.

LEASE POLICY REGARDING ASBESTOS NOT ALWAYS FOLLOWED

In 1987, the chief of the OREDS acknowledged the health risks associated with asbestos in buildings, noting that the State was undertaking extensive studies to identify asbestos in state-owned buildings and developing a program of asbestos abatement, removal, and containment. He suggested that, although the State cannot dictate that

asbestos be removed from state-leased buildings, the OREDS could nonetheless establish policies ensuring that buildings considered for lease are free of asbestos and that owners of buildings considered for lease renewal agree to remove or contain the asbestos. On October 17, 1989, the department estimated that the State was leasing approximately 16 million square feet of space. It further estimated that 70 percent of state-leased structures contain asbestos.

Since December 1987, the OREDS has implemented two asbestos-related lease policies. According to the first asbestos policy, which became effective December 4, 1987, the OREDS was to seek leased space for state agencies in buildings that had been certified as asbestos-free. If the OREDS could not locate any such space, it would consider leasing space in buildings containing asbestos, as long as a hygienist or other qualified person certified that the asbestos was encapsulated or otherwise properly contained. The policy required similar certifications for lease renewals.

In February 1989, the OREDS issued a new policy regarding asbestos in leased facilities. The policy requires that standardized asbestos-related language be included in all new leases, renewals, and amendments to existing leases. The OREDS exempted from this policy short-term lease extensions and leases written on its short-form lease agreement.

According to this new policy, specified areas within leased facilities are to be free of asbestos. If a building was constructed before 1979, the lessor is to provide the State with certification that such areas are free of asbestos before the execution of the lease. The required lease language also establishes the responsibilities and liabilities of the lessor in the event asbestos is discovered at any time during the lease term, and, among other things, it permits the State to remove asbestos, relocate employees, and/or terminate the lease if the lessor fails to attempt diligently to remove the asbestos in accordance with the lease agreement. Costs for all such remedial measures are to be borne by the lessor. When the OREDS issued this revised policy, it acknowledged that the new lease language is restrictive, but it stated that the State should take the lead role in eliminating asbestos.

State Policies Not Always Consistently and Correctly Applied

To determine whether the OREDS has consistently and correctly applied its current policy, we reviewed a list of 50 new leases, extensions, and renewals completed between September 1, 1989, and November 21, 1989. Of those 50 transactions, we tested 27 to which the policy applied.[9] Our review of the lease files relating to those

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[9]In our compliance testing, we used the date on which the client agency authorized execution of the lease. A lease is executed when all acts necessary to complete it and give it validity as an instrument are carried out, including signing and delivery.

transactions revealed 8 transactions (30 percent) in which the department did not comply with one or more of its policy requirements regarding asbestos. For 3 of the 8 transactions, we found no evidence of the certification that the buildings are asbestos-free. We also identified, in 7 of the 8 transactions, lease agreements that did not contain asbestos-related language consistent with that established in the department's policy.

According to the OREDS' staff members who were involved in the transactions we reviewed, the required asbestos language was unintentionally excluded in the case of one of the eight transactions. For each of the remaining seven transactions, the OREDS' staff cited exceptions that are not allowed in the OREDS' policy statement. For example, the staff members told us that the required asbestos language was not included in four leases because negotiations for the respective leases had started before the current asbestos policy went into effect. However, in three of the four cases, the new leases were not even authorized for execution by the involved client agencies until at least four months after the policy became effective.

When the OREDS does not enforce its asbestos policy for leased space, it cannot ensure that employee exposure to asbestos is minimized. Further, the OREDS' failure to enforce its asbestos policies may expose the State to unnecessary financial risks. For example, when leases do not include language that establishes the State's rights and assigns responsibility for asbestos-related costs to

the lessor if state-occupied space becomes contaminated by asbestos, the State may have to pay unanticipated, unbudgeted costs for such things as decontamination of state property and agency relocation.

An event discussed in Part A, Chapter I, of this report illustrates the State's fiscal vulnerability under such circumstances. Seven state agencies were occupying leased space in a Los Angeles high-rise when state consultants determined that the building contained the potential for significant levels of airborne asbestos contamination. None of the applicable leases included any asbestos-related language such as that required under the OREDS' current policy because they were executed before the policy was in effect. As of September 1989, state agencies had presented us with evidence of expenses totaling more than $2.14 million in decontamination, relocation, and other expenses that the agencies attributed to the asbestos contamination discovered in that building.

CONCLUSION

The Office of Real Estate and Design Services did not always comply with the provisions of the Health and Safety Code that require it to notify client agencies upon discovering asbestos in buildings they occupy. The OREDS failed to notify seven state agencies because it apparently misunderstood the requirements of the statute. The OREDS' failure to notify two other agencies might have been avoided if it had established

adequate procedures for agency notification. The OREDS also did not consistently or correctly apply its leasing policies regarding asbestos in state-leased facilities. Specifically, the OREDS did not include required asbestos language and/or certification in 8 of 27 transactions that we reviewed.

RECOMMENDATIONS

To ensure that it complies with requirements of the Health and Safety Code, Section 25915 et seq., the Office of Real Estate and Design Services should establish the following procedures:

- Train staff to ensure that all OREDS personnel understand the requirements for asbestos notification; and

- Identify all agencies occupying leased space in buildings constructed before 1979 that the OREDS knows to contain asbestos, notifying all such agencies within 15 days of the OREDS' discovering that the buildings contain asbestos.

To minimize exposure of the State and its employees to known risks associated with asbestos, the OREDS should take the following actions:

- Clarify its policies regarding the leasing of space in buildings containing asbestos, ensuring that all exemptions from its policies are clearly stated and consistent with the policies' goals and objectives; and

- Enforce its leasing policies regarding asbestos.

PART B

REAL ESTATE MANAGEMENT

AUDIT RESULTS I

THE DEPARTMENT OF GENERAL SERVICES HAS NOT REVIEWED EXCESS STATE LANDS AS REQUIRED

Although the Department of General Services (department) has reported to the Legislature all lands declared excess by landholding agencies as required, it has not complied with state requirements for independently and periodically reviewing state properties to determine whether the agencies have identified all excess lands since 1974. We initially brought this condition to the department's attention in a report published in 1983. Moreover, in our current review, we determined that the department still had not independently reviewed state lands, including the 1,675.6 acres that we identified in the 1983 report as in excess of the foreseeable needs of the four state agencies with jurisdiction over the lands, and we found that 559.9 acres, worth over $65.9 million, remained in excess. Because the department has not reviewed these lands to determine whether it should recommend to the Legislature that the lands be declared surplus, the State has lost the opportunity for almost six years to transfer, lease, or otherwise dispose of some of the property that we identified as excess.

THE DEPARTMENT HAS NOT INDEPENDENTLY REVIEWED STATE LANDS

The department is responsible for managing and disposing of land that the Legislature has designated as surplus, land that is excess to the State's needs. The California Government Code provides

for the disposal of excess land by making it available for transfer to other state agencies, for sale to other governmental entities, or for sale to the general public. Section 11011 of the California Government Code also provides for the identification of excess lands by requiring each state agency to review all state lands over which it has jurisdiction and to report to the department land that is in excess of the agency's foreseeable needs. Further, to ensure that all state agencies comply with this requirement, Section 1381 of the State Administrative Manual requires the department to review periodically and independently all state lands to determine whether, in its opinion, state agencies have omitted declaring any lands in excess of their foreseeable needs.

To ensure that state agencies are aware of the requirement that they annually identify and report excess land, the department sends a memorandum to landholding agencies requesting them to review their properties and to report any excess land under their control. Based on the landholding agencies' reports of excess land, the department submits an annual report to the Legislature identifying land that should be designated and disposed of as surplus. The Legislature reviews the annual report of excess lands and authorizes the disposal of any lands that it determines to be surplus property. The remaining land identified in the annual report but not declared surplus by the Legislature remains in the custody of the agency that reported the property until the Legislature authorizes its disposal and the director requests the property from the agency for sale or disposal.

We examined the department's procedures for independently reviewing and subsequently identifying excess lands and for preparing the annual report of excess lands to the Legislature. Although the department reports to the Legislature all lands declared excess by the landholding agencies as required, it has not independently and periodically reviewed state lands, as required by the State Administrative Manual, since 1974. Similarly, in 1983, in an Office of the Auditor General's report entitled "California Could Earn Millions of Dollars From Better Management of Its Excess Lands," we reported that the department did not systematically identify excess state lands.

During our review of the findings and recommendations from the 1983 report, we reviewed the department's records listing the parcels that constituted the 1,675.6 acres that the Office of the Auditor General had initially identified as excess of the foreseeable needs of the four state agencies with jurisdiction over these lands. We determined that the department still had not independently reviewed the 1,675.6 acres, and we found that 559.9 acres (33 percent) remained in excess. Table 2 identifies the 559.9 acres, valued at over $65.9 million, that remained in excess of state agency needs as of June 30, 1989.

TABLE 2

EXCESS STATE LANDS AS OF JUNE 30, 1989, THAT WERE IDENTIFIED AS EXCESS IN 1983

Agency	1983 Acres	1983 Estimated Value	1989 Acres	Current Estimated Value[a]
California State University	139.4	$ 2,554,791	138.9	$14,725,850
Department of Corrections	2.0	1,000	2.0	1,000
Department of Developmental Services	1,054.2	159,875,827	419.0	51,242,800
Department of Veterans Affairs	480.0	1,227,841	0	0
Total	1,675.6[b]	$163,659,459	559.9	$65,969,650

[a]Estimated value determined by the Office of Real Estate and Design Services' appraisal unit.

[b]Appendix A of this report presents the disposition of all 1,675 acres originally identified, as of June 30, 1989.

Because the department has not reviewed these lands to determine whether it should recommend to the Legislature that the lands be declared surplus, the State has lost the opportunity to transfer, lease, or otherwise dispose of some of the property that we identified as excess for almost six years.

A Statewide Inventory of State Properties Is Needed

During fiscal year 1973-74, the department, on a pilot basis, designated one position for independently reviewing state agencies' lands. According to the department's director, the department's original independent reviews demonstrated a need for a comprehensive index of state-owned properties. Such reviews also revealed that agencies funded from the State's General Fund had little incentive to declare properties surplus since they received no direct benefits from the sale of surplus properties. Nevertheless, the director stated that the department set aside subsequent funding for the independent review position because of other department priorities and the questionable success of its pilot program for reviewing the State's properties.

In addition, according to the department's director, the Legislature has addressed the department's concerns by authorizing the implementation of a comprehensive statewide property inventory of all state landholdings, known as the Statewide Property Inventory (SPI). The Legislature has also established an account into which surplus sale proceeds can be deposited and used for the landholding agencies' program needs. Moreover, the Legislature authorized the Proactive Asset Management (PAM) program, which, the director stated, would be used to coordinate a property review function within the SPI. According to the Legislature, the review function will allow the department to actively manage the State's properties to ensure that

agencies maximize the use of their properties. The PAM program is further discussed in Appendix B.

During our review of the feasibility study for the SPI, however, we could not identify a program function or staff position responsible for the independent review of state lands. Furthermore, we did not find evidence that the Office of Real Estate and Design Services, the unit within the department responsible for implementing the SPI and the PAM program, had requested additional personnel for either the SPI or the PAM program. Thus, the OREDS has not ensured that sufficient personnel will be available to review state lands independently and periodically, as required by the State Administrative Manual. Finally, we did not find evidence that the Office of Real Estate and Design Services had requested additional personnel or funds for the required independent reviews in any of its annual budget change proposals.

CONCLUSION

Since 1974, the Department of General Services has not independently reviewed, as required by the State Administrative Manual, all state lands that state agencies do not report as excess to determine if these lands are surplus to state agencies' needs. The department discontinued its staffing for the reviews of state lands during 1974 because of other departmental priorities and because the department believed that the reviews were of questionable success.

RECOMMENDATIONS

To ensure that state lands in excess of state agencies' foreseeable needs are declared surplus and disposed of in accordance with the requirements of the law and the State Administrative Manual, the Department of General Services should take the following actions:

- Determine the staffing requirements necessary for identifying potential surplus lands, and redirect department staff or request additional staff, as appropriate, for these reviews;

- Periodically inspect state lands to identify potential surplus land; and

- Declare to the Legislature properties the department finds during its independent reviews to be in excess of state agencies' foreseeable needs.

II

THE DEPARTMENT OF GENERAL SERVICES DID NOT PROPERLY IMPLEMENT THE STATEWIDE PROPERTY INVENTORY

Section 11011.15 of the California Government Code required the Department of General Services (department) to implement a statewide inventory by January 1, 1989. However, the department failed to implement this inventory, known as the Statewide Property Inventory (SPI), by the required date. Moreover, the department's director stated that the SPI will not be completed until March 31, 1990. Because of this delay, the State may have lost an estimated $2.7 million in benefits based on the SPI's first year of operation. Additionally, the department improperly funded the implementation of the SPI using the Property Acquisition Law (PAL) account, and it is continuing to use the PAL account for this purpose. The funding for the SPI had reduced the PAL account by over $2.4 million as of June 1989. Finally, the department awarded the two consultant contracts for the SPI's feasibility study and implementation without competitive bids even though the contracts did not meet the criteria for exemption as required by law. As a result, the State may not have obtained these contracts from the lowest responsible bidder.

DELAY IN IMPLEMENTING THE STATEWIDE PROPERTY INVENTORY

Section 11011.15 of the California Government Code required the department to prepare, by January 1, 1989, a statewide inventory of

all real property held by the State. Implementation required that the department initially inventory all state real properties using information furnished by the agencies in possession of these properties. The code also requires that the department maintain a complete statewide inventory of the properties and update the inventory annually. Finally, the code requires a report, based on that inventory, of all properties declared surplus or with no current or projected use.

The department placed the responsibility for preparing a statewide property inventory with the Office of Real Estate and Design Services (OREDS). However, the OREDS did not implement the SPI by January 1, 1989, as required by state law. Instead, during March of 1988, the OREDS notified three legislative budget committees that it would be unable to meet the legislative deadline of January 1, 1989. It estimated that it could implement the SPI by January 1990. The OREDS proceeded with the SPI within the framework of the department's estimated completion date of January 1990.

In his letter to the legislative committees, the department's director told the Legislature that the department would not be able to implement the SPI by the mandated date because the department had agreed to the original deadline without knowing the constraints and time requirements of implementing such an inventory. Further, according to the department's director, when the department realized that it could not meet the original deadline for implementing the SPI,

it obtained implied approval from the Legislature for the one-year extension. However, in a Legislative Counsel opinion, the Legislative Counsel stated that the department's notification to the legislative budget committees was not legislative approval for a one-year extension of the original deadline.

As a private consultant estimated in a feasibility study prepared for the department, because of the delay in implementing the SPI, the State may have lost an estimated $2.7 million in benefits based on the SPI's first year of operation. According to a report to the department's director from the Department of Finance, the estimated $2.7 million is based on a cost savings of $1 million per year from the department's more effective management of properties plus the revenues of $1.7 million per year from the potential sale of surplus properties identified through the SPI.

On October 17, 1989, the department reported to the Department of Finance that it did not expect to meet the second deadline of January 1990 for the implementation of the SPI. The department's director indicated a concern that the data arriving late from some state agencies reporting their property inventories would not be error free, leaving insufficient time to correct the errors before January 1990. The director stated that he expects the department to complete the data corrections by March 31, 1990.

IMPROPER FUNDING OF THE INVENTORY

In one of the department's initial assessments of the requirements for implementing the SPI, the department recognized that the Legislature did not provide a funding source for the SPI. As a result, the department requested and received authorization from the Department of Finance to fund the SPI through the PAL account.

The PAL account was established by the California Government Code to fund specified real estate activities of the department. Section 15863 of the California Government Code requires that any proceeds from the department's sale or rental of property be deposited in the PAL account within the State's General Fund. The code further requires that all money deposited in the PAL account be available for the maintenance, improvement, and care of the State's real property.

During our review, we questioned the use of the PAL account for funding the SPI and requested a Legislative Counsel opinion on whether money from this account could properly be used for this purpose. The Legislative Counsel stated that money in the PAL account may not be used to fund the inventory unless legislation specifically makes this money available for that purpose. The Legislative Counsel further stated that nothing in the budget acts of 1986 through 1989 indicates that the department may use money from the PAL account for the SPI. Thus, the PAL account was not an appropriate funding source for the SPI in the absence of specific legislative approval authorizing the use of funds for this purpose from the account.

As of June 1989, the OREDS' expenditures to implement the inventory had reduced the PAL account by over $2.4 million. By June 30, 1991, the department estimates that the total SPI-related expenses paid for out of the PAL account will have reached $4 million.

Departmental Action

To fund the SPI and another program related to land management, the Proactive Asset Management program, the department has proposed a $3 million appropriation from the State's General Fund for fiscal year 1990-91. The $3 million would be transferred into the PAL account with specific legislative provisions to use the PAL account for a purpose other than those specified in Section 15863 of the California Government Code.

IMPROPER CONTRACT AWARDS FOR THE SPI

Section 10360 of the Public Contract Code requires that agencies submit each consultant contract to the department for review and approval before the contract is in effect. Sections 10356 and 10373 of the Public Contract Code require all state agencies to secure at least three competitive bids or proposals before awarding a consultant contract unless a contract meets specific conditions for exemption from this requirement. In addition, Section 12102(a) of the Public Contract Code requires competitive bidding for electronic data processing (EDP) services unless the department's director determines

that the services proposed are the only services that can meet the State's need or unless an emergency dictates that the services are needed immediately to protect the public health, welfare, or safety. Finally, Section 5202 of the State Administrative Manual states that no individual or organization that develops a feasibility study for an information technology application proposed by a state agency shall be awarded any state contract for work recommended in the feasibility study unless the contract is shown to be in the State's best interests and unless the development of the feasibility study gives the individual or organization no unfair competitive advantage in any associated contract bidding process.

During our review of the three major vendors the department used to implement the SPI, we found that the department approved the procurement of the hardware and software and of the consultant needed without requiring competitive bids. The department's Office of Procurement stated in its approval of the OREDS' request for exemption from competitive bidding for the hardware and software that the two vendors supplying these goods were the only ones capable of meeting the OREDS' needs. We concluded that the department had the authority to make this determination under Public Contract Code, Section 12102(a)(1).

The Office of Procurement also approved the OREDS' request for exemption from competitive bidding for the consultant contract for the SPI feasibility study. The OREDS then hired a consultant that had just

developed a similar automated inventory system for the department's Office of Local Assistance. In addition, the Office of Procurement exempted the OREDS from advertising the contract in the State Contracts Register. According to the purchasing manager of the Office of Procurement, the department stated as its justification for selecting the consultant that it recognized that the time required to bid competitively, select a consultant, and receive necessary project approvals would make it impossible to complete the inventory by the necessary date. Referring to an urgent need to meet the mandated implementation dates for the SPI, the department cited the Public Contract Code, Section 12102(a)(2), as the basis for exemption.

After the consultant's completion of the feasibility study and the Department of Finance's subsequent approval of the study, the OREDS requested approval from the department's director to continue contracting with the same consultant for the actual implementation of the SPI. In the memorandum requesting the director's approval, the OREDS stated that, although the State's policy is to not continue with the same consultant, the savings in time and costs were sufficient for recommending departmental approval. Upon reviewing the memorandum, the department's chief deputy director approved the request to continue contracting with the same consultant.

According to the purchasing manager at the department's Office of Procurement, the department approved the second consultant contract for the SPI under the Public Contract Code, Section 12102(a)(2), in a

further attempt to meet the SPI completion dates. We found, however, that, in the OREDS' request for exemption dated January 25, 1988, the chief of the OREDS conceded that the department would be unable to meet the legislative deadline regardless of whether the contracts were or were not exempted from competitive bidding. Moreover, in March 1988, before the department contracted the second time with the same consultant, the OREDS had already notified three legislative committees that it would not meet the original deadline, and it estimated that it would need an additional year to implement the SPI.

To clarify why the department exempted the second consultant contract for a completion date that it knew it could not meet, we discussed these issues with the deputy director of the department's Office of Procurement and his purchasing manager. The department's purchasing manager stated that, because of the department's oversight, it did not consider the consultant's previous participation in preparing the feasibility study. He further stated, however, that, if the conflict had been noted, it still would not have prevented the department from approving the consultant contract because approval could also have been granted under Section 5202 of the State Administrative Manual. Section 5202 allows the department to approve such contracts when the contract is shown to be in the State's best interests and when the development of the feasibility study gives the individual or organization no unfair competitive advantage in any associated contract bidding process. The purchasing manager concluded that the consultant contract was in the State's best interests because the department needed to meet the SPI completion dates.

We questioned the department's use of the Public Contract Code, Section 12101(a)(2), to exempt these two consultant contracts from competitive bidding and its subsequent citation of the State Administrative Manual, Section 5202, as an alternative for exempting the second consultant contract from competitive bidding. Consequently, we asked for a Legislative Counsel opinion on whether these citations were appropriate. In response, the Legislative Counsel stated that, although neither the Public Contract Code nor the State Administrative Manual defines the terms "emergency" or "protection of the public health, welfare, or safety," Section 12102 of the Public Contract Code indicates that an emergency exists when services are needed immediately. The Legislative Counsel further stated that, given the facts as presented, the two-year implementation deadline allowed by the California Government Code would not impose an immediate need for services nor constitute an emergency within the meaning of Section 12102. The Legislative Counsel concluded that Section 5202 of the State Administrative Manual clearly requires a demonstration that the consultant who developed the feasibility study received no unfair advantage in the bid for the second contract. Thus, the department's awarding a contract without considering the consultant's involvement in the feasibility study appears to violate the provision.

Because the department did not require competitive bids before awarding two consultant contracts for the implementation of the SPI, the State may not have obtained the contracts from the lowest responsible bidder. Further, other potential consultants were denied

an equal opportunity to compete for these contacts. For example, in 1985, one consultant requested information concerning the department's management of state facilities and indicated to the department that the consultant's firm could apply its computer system to the department's specific needs. In a memo dated about a year before the award of the feasibility study contract, an assistant to the chief of the OREDS advised the chief that the services this consultant was offering might be appropriate for the SPI. Nevertheless, the department never responded to the consultant's inquiry. To determine whether the consultant could have provided a statewide inventory and whether his firm would have competitively bid for this contract, we contacted the consultant. Upon review of the background and requirements we provided, the consultant stated that, had his firm been given the opportunity, it would have been able to provide a complete, integrated, and cost-effective system with all the necessary support to meet the requirements. The consultant further stated that his firm was disappointed at not having received a reply to the 1985 inquiry.

CONCLUSION

The Department of General Services did not implement the Statewide Property Inventory by January 1, 1989, as state law required. It failed to meet this mandated date because, according to the department's director, the department had agreed to the deadline without knowing how much time would be required to complete a project of this magnitude. The

department did not secure formal legislative approval for its revised date because department officials believed that notification of three legislative budget committees constituted implied approval of the revised date.

Further, the department improperly funded the implementation of the SPI from the Property Acquisition Law account for the last two years and is currently asking the Legislature to specifically appropriate a portion of the PAL account for the SPI. The department used the PAL account to fund the SPI because the legislation that required the implementation of the system did not identify a funding source for its implementation.

Finally, the department approved the award of two consultant contracts for the SPI without seeking competitive bids even though the justification for awarding those contracts did not meet the criteria of the Public Contract Code or the State Administrative Manual. The department awarded these contracts without seeking competitive bids because of its urgent need to implement the SPI by the legislative deadline of January 1, 1989.

RECOMMENDATIONS

To ensure that the Department of General Services has legislative approval to revise legislative deadlines, the department should request from the Legislature any extensions needed to revise mandated deadlines.

To ensure that the department complies with the Public Contract Code and the State Administrative Manual, the department should require competitive bids for all contracts involving the SPI or ensure that all SPI contracts exempted from competitive bidding meet the criteria established in the Public Contract Code and the State Administrative Manual.

III

THE DEPARTMENT OF GENERAL SERVICES HAS NOT COLLECTED ALL DELINQUENT LEASE PAYMENTS FOR STATE-OWNED PROPERTY

The Department of General Services (department) is responsible for leasing the State's real property under state jurisdiction to secure rent for subsequent deposit in the State's General Fund. However, neither the Office of Real Estate and Design Services (OREDS) nor the Office of Fiscal Services (OFS) has accurate lists of delinquent lease payments owed. Moreover, the department did not collect approximately $1.3 million in delinquent lease payments from state agencies, other governmental agencies, and private lessees during our review period.

LISTS OF DELINQUENT LEASE PAYMENTS OWED ARE NOT ACCURATE

Section 14670 of the California Government Code authorizes the department's director to lease any real property belonging to the State, the lease payments for which must then be deposited in the State's General Fund. In addition, the department's policies and procedures manual sets forth instructions for the collection of delinquent payments owed to the State. According to the policies and procedures manual, for leases of state-owned property to local governments, nonprofit organizations, or private individuals, the

department should collect lease payments directly from the lessees or through a remittance from the state agency responsible for collecting the lease payments.

According to the department's director, before April 1989, the OREDS was responsible for pursuing delinquent payments for the properties it maintained. After April 1989, the department's OFS assumed that responsibility.

During our review, we examined the methods the department uses to account for the leases of state lands it manages, by lease category. These categories include leases of state-owned property under a state agency's jurisdiction to local governments, nonprofit organizations, or private individuals, also known as by-state leases; property management leases for property acquired whose jurisdiction has not been transferred to a state agency and which is not presently needed by the agency; surplus property leases for properties the Legislature declared surplus; capital area leases for state-owned property leased by the Capital Area Development Authority; and leases for easements on state property.

To ensure that the department had accounted for all the delinquent lease payments owed, we attempted to compile a list of the payments owed, for each lease category, from information the OREDS and the OFS maintained for fiscal year 1986-87 through fiscal year 1988-89. However, according to the assistant chief of lease

administration, the OREDS did not maintain a definitive list of all delinquent lease payments owed to the department and, instead, had to rely on the OFS for such a list. Upon reviewing the OFS list, we discovered that we could not rely on the list because the department had not identified all state leases and reconciled lease payments owed with payments received. Lacking accurate lists of delinquent payments owed for all five lease categories, we compiled a list of delinquent payments owed for the largest category, by-state leases, and relied on the OFS for an estimation of the total delinquent lease payments owed to the State for the remaining four types of leases.

NOT ALL DELINQUENT PAYMENTS ARE COLLECTED

During our review, we found that the OREDS and the OFS did not collect approximately $1.3 million in delinquent payments from state agencies, other governmental agencies, and private lessees. Specifically, the OREDS and the OFS did not collect an estimated $1 million in payments for the by-state leases that we reviewed from fiscal year 1986-87 through fiscal year 1988-89. For example, for one such lease of farm land to a private lessee in the Santa Clara area, the department failed to collect from the state agency with jurisdiction over the land a remittance of over $37,000 for each of the three years that we reviewed. Furthermore, according to an estimate by the chief of the OFS, neither the OFS nor the OREDS has collected an

additional $281,000 in delinquent payments for property management leases, surplus property leases, capitol area leases, and charges for easements granted.

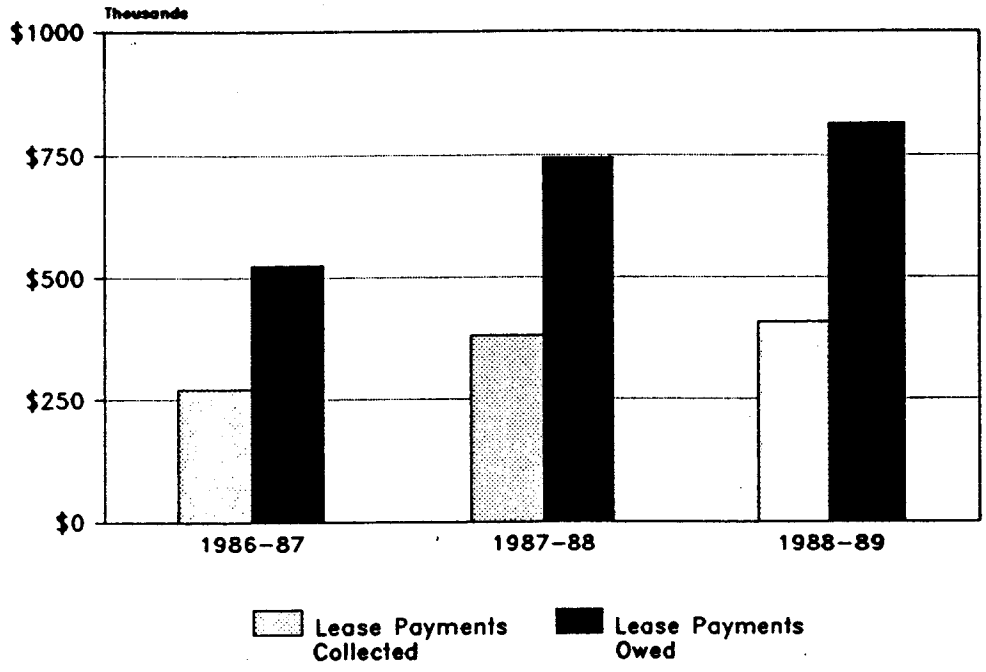
The department's director stated that, in early 1989, the department recognized that, even though the OREDS had collected the great majority of the rents on time, it could improve the collection process it uses for delinquent payments. Therefore, the director stated, the responsibility for collecting lease payments was transferred from the OREDS to the OFS to address internal control weaknesses that did not always ensure prompt follow-up of delinquent amounts. The director further stated that the internal control weaknesses were primarily the result of communication breakdowns between the OFS and the OREDS and of the OREDS' changing property management role and mission, which reduced staff resources available to monitor delinquent lease payments. The director concluded that, with the large amount of receivables collected by the department, of which lease payments are a very small part, occasional breakdowns in the department's procedures are not surprising.

We found in our review of the collection of by-state leases, however, that, of the $1 million in delinquent lease payments owed, the department has not collected approximately $190,000 from other governmental agencies and private lessees, nor has it collected approximately $810,000 in remittances from state agencies in the last three fiscal years even though they were one of the few types of

receivables for which the OREDS' lease administration section was responsible. As indicated in Chart 3, even though the amount of lease revenues collected by the department has increased during the last three fiscal years, the department has collected only approximately 50 percent of all lease payments owed to it in any of those years.

CHART 3

COLLECTION OF BY-STATE LEASE PAYMENTS
AND REMITTANCES OWED TO THE DEPARTMENT
FISCAL YEARS 1986-87 THROUGH 1988-89



CONCLUSION

The Department of General Services did not collect approximately $1.3 million in delinquent payments from state

agencies, other governmental agencies, and private lessees. The department did not always collect delinquent lease payments because of internal control weaknesses that hindered prompt follow-up of all delinquent amounts. According to the department's director, these internal control weaknesses primarily resulted from breakdowns in communications between the Office of Fiscal Services and the Office of Real Estate and Design Services and from the reduction of staff available to monitor delinquent lease payments.

RECOMMENDATIONS

To ensure that the Department of General Services collects all delinquent payments for properties maintained by the Office of Real Estate and Design Services, the department should take the following actions:

- Develop an accurate list of delinquent lease payments by identifying all state leases and reconciling all lease payments owed with payments received; and

- Process all delinquent lease payments as required by the department's policies and procedures, and secure payment for the amounts outstanding.

IV

THE DEPARTMENT OF GENERAL SERVICES COULD ACQUIRE AND TRANSFER REAL ESTATE FOR STATE AGENCIES MORE QUICKLY

Although the Department of General Services (department) is required to procure real estate for client agencies as promptly as possible according to state laws and regulations, it has experienced delays, some of which are within its control, in acquiring, processing, and transferring some properties. Specifically, the department exceeds its 11-month departmental standard for acquiring real property for client agencies, causing these agencies to wait sometimes up to four years to use the properties purchased for their programs. Further, the department's review of property donations and dedications to client agencies exceeds the 6-month standard for all the donations or dedications processed since June 1987. Consequently, state agencies may wait up to one year or longer to use properties that were donated for state programs. Finally, the department has not transferred properties to the Department of Parks and Recreation within the time prescribed by the California Government Code. As a result, the Department of Parks and Recreation has not been able to put those lands to use as early as possible, as required by law.

DELAYS IN ACQUIRING REAL ESTATE FOR STATE AGENCIES

Section 1358 of the State Administrative Manual requires state agencies responsible for acquiring property to make an offer to purchase property as promptly as reasonable after the fair market value is established through an appraisal. According to Section 1353 of the State Administrative Manual, the department's responsibility for ensuring that real estate transactions are processed and approved expeditiously resides with the Office of Real Estate and Design Services (OREDS). In the absence of a departmental standard to govern how long this process should take, we requested clarification from the department's director. The director stated that the process for a typical property acquisition should take about eleven months from the date that the client agency requests assistance to the date that the deed or final order for the property is recorded.

We reviewed a random sample of property acquisitions the OREDS processed from fiscal year 1987-88 through March 1989 and found that delays in acquiring property were caused both by factors the OREDS can control and factors it cannot control. We excluded from our sample properties that were delayed by factors the department cannot control, such as when a parcel is added to the acquisition project or when a property is subjected to condemnation proceedings.

We tested the remaining property acquisitions the OREDS processed during our review period and found that many property acquisitions took over eleven months to complete and some took four years or longer. Specifically, in our review of 26 of 78 acquisitions that occurred during fiscal year 1987-88, we found that 15 (58 percent) took longer than eleven months to complete. Moreover, in our review of 13 of 53 acquisitions that occurred between July 1988 and March 1989, we found that 5 acquisitions (38 percent) took over eleven months to complete.

To determine why so many property acquisitions had taken longer than eleven months to complete, we reviewed each step of the acquisition process for each property in our sample. We found that the OREDS could improve its control of specific activities associated with the acquisition process, such as appraisals and appraisal reviews, and that improvement of its control over these activities could shorten the time needed to acquire properties for the State.

An acquisition flow chart presented by the department's director shows that the department typically allows up to 17 weeks to complete an appraisal. We found, however, in our review of twenty-one property appraisals conducted by the OREDS' appraisal unit between July 1, 1987, and March 30, 1989, that eight of the appraisals (38 percent) took longer than 17 weeks to complete. Of these eight appraisals, two exceeded the standard by less than 2 weeks, two

exceeded the standard by 2 to 12 weeks, two exceeded the standard from between 12 and 52 weeks, and the remaining two exceeded the standard by more the 52 weeks.

The department's acquisition flow chart also shows that the department typically allows up to three weeks to review a completed appraisal. We found that, of 24 appraisal reviews between July 1, 1987, and March 30, 1989, 9 reviews (38 percent) exceeded the department's standard. Of these 9 appraisal reviews, 4 exceeded the standard by four weeks or less, 4 exceeded the standard by four weeks to eight weeks, and one exceeded the standard by more than eight weeks.

According to the director, appraisals and appraisal reviews take longer to complete than the time allotted by the department's standard because of a 90-day backlog. This backlog, the director said, can add four to twelve weeks to a property acquisition, depending on the project's priority and the typing and proofing of a finished appraisal report, which can add two to four weeks depending on the size of the report and the workload of the clerical staff.

Because of the time the department requires to complete appraisals and reviews of those appraisals, state agencies sometimes experience unnecessary delays in obtaining properties purchased for their respective programs.

PROPERTY DONATIONS AND DEDICATIONS ACQUIRED TOO SLOWLY

Section 1377 of the State Administrative Manual states that, when a state agency wishes to accept a gift of real property, the OREDS shall review the proposed gift's documents to ensure that the property title is correct before the State will accept the property. In the absence of a departmental standard to govern how long this process should take, we requested clarification from the department's director. The director stated that the process for accepting gift deeds should generally take about six months.

During our review of the gift deeds received from June 1987 through March 1989, we found that all of the deeds took longer than six months to complete or still had not been completed. For example, the OREDS took over thirteen months to review and transfer one gift of 410 acres to the Department of Parks and Recreation. Although the Department of Finance approved the property's acceptance two and one-half months after the request for the OREDS' review, the OREDS still required ten and one-half months to record the deed, acquire title insurance, and transfer the property to the Department of Parks and Recreation.

To determine why the department does not meet its standard for acquiring properties given to the State, we reviewed each step in the acquisition process for each gift deed. During this review, we found

that some delays occur for reasons that the OREDS cannot control. For example, the OREDS cannot always control the time required for its review of the property gift deed documents.

However, we found that the OREDS does have control over the gift deed process between the time that the OREDS receives a title insurance policy and recorded deed and the time that the property gift deed is transferred to the client agency. During this time, the property remains in the OREDS' jurisdiction while the property title is transferred to the land index unit so that the information from the document can be recorded in the land index. The land index unit then returns the property title to the program management section for transfer to the agency receiving the property. In our review of three property gift deeds received since June 1987 for which the OREDS had received both the title policy and the recorded deed, all three still had not been transferred to the client agencies.

According to the department's director, property gift deeds can be delayed each time the property gift deed project is transferred from one office to another because the transfers require additional processing time. He also stated that the time needed to order, receive, and evaluate the title report can further delay the time to process property gift deeds. He stated that it takes 60 days for the property gift deed to be processed at the OREDS' land index unit, which is not currently automated, and that, on a few occasions in the past

year, gift deed documents were misplaced after they left the OREDS, creating additional delays for those projects.

We found, however, that even after the title report has been received, the OREDS often takes up to three months to transfer the properties to client agencies. Moreover, the senior land agent for the OREDS' special projects unit stated that the OREDS can record property gift deeds in the land index with copies of the original documents and, thus, does not need to record the deeds in the land index before transferring the title to a state agency.

As a result of these delays in reviewing and approving documents and transferring gift deed properties to client agencies, state agencies may wait sometimes up to one year or longer to use properties that were donated for state programs.

PROPERTIES ARE NOT ALWAYS PROMPTLY TRANSFERRED TO THE DEPARTMENT OF PARKS AND RECREATION

Section 15862.5 of the California Government Code requires all lands purchased for state parks before April 1 of each fiscal year to be transferred to the Department of Parks and Recreation (DPR) by the effective date of the following fiscal year's budget act. This section also requires that the DPR make the property accessible and usable to the general public at the earliest opportunity. Further, upon review of this code section, the Legislative Counsel has concluded that the

department must transfer jurisdiction over real property acquired before April 1 for state park purposes to the DPR when the property is needed and, in any event, no later than the effective date of the next budget act enacted after April 1.

We found, however, that of the 119 parcels purchased for state park purposes before April 1, 1988, 9 (8 percent) were not transferred to the DPR by July 1, 1988. Also, of 62 parcels purchased for state park purposes before April 1, 1989, 23 (37 percent) were not transferred to the DPR by July 1, 1989. Moreover, the DPR transfers funds to the department for the acquisition of these properties. The balance from these funds is not returned until the department transfers the jurisdiction of the properties to the DPR, delaying the use of those funds for other acquisition projects.

We asked the department's director to explain why the OREDS had not transferred several properties to the DPR by the deadlines specified in the California Government Code. The director explained that the OREDS is unable to control the time required to record the deed at the county Recorder's Office and the time required to receive an accurate final policy of title insurance. He also stated that a lack of resources has contributed to the time taken to transfer property but that the OREDS is developing ways of maximizing the existing resources to get the job completed as quickly as possible.

We found, however, that all the properties we identified that had not been transferred to the DPR by the date required by law had been recorded before April 1 as part of the transfer process and were not affected by the time spent at the county Recorder's Office. Furthermore, the acquisition of title insurance affected only 3 (13 percent) of the 23 acquisitions that were not transferred during the first nine months of fiscal year 1988-89. According to the senior land agent for the OREDS' special projects unit, the department has assigned the task of transferring these properties to only one person as a part-time responsibility. The department is in the process of developing a system that will complete the transfer of these properties more quickly, but it had not completed the implementation of this system as of November 1989.

Because the OREDS does not transfer properties to the DPR within the time frames established by law, the remaining funds transferred to the department for the purchase of properties are held by the OREDS for longer than necessary. In a letter from the DPR to the OREDS, the chief of the DPR's Acquisition Division stated that these delays cause problems because some project accounts cannot be closed until the transfer of jurisdiction to the DPR is completed. Moreover, the DPR is unable to put these lands to use as quickly as possible, as required by law.

CONCLUSION

The Department of General Services' Office of Real Estate and Design Services has taken up to four years to acquire real estate and over one year to accept gifts of property for state agencies. These delays are caused, in part, by the OREDS not promptly appraising properties, reviewing its appraisals, and exchanging documents within the office. Finally, the OREDS has not transferred some properties to the Department of Parks and Recreation by the dates mandated in the California Government Code, in part, because the OREDS has allotted insufficient resources to accomplish this task.

RECOMMENDATIONS

To acquire real estate and transfer properties to client agencies more quickly, the Office of Real Estate and Design Services should take the following actions:

- Establish a reporting system for property appraisals and appraisal reviews that identifies projects exceeding the department's time allowances for completion;

- Review the property appraisal and appraisal review functions, and add additional staff as needed to ensure that these functions are completed within the allotted time;

- Monitor the acquisition process by establishing a reporting system for properties acquired by gift deed that identifies the position of the acquisition in the acquisition process and the time it has been in that position;

- Process duplicate copies of title documents at the OREDS' land index unit; and

- Review the process for transferring properties to the Department of Parks and Recreation and ensure that all future properties are transferred no later than the date required by law.

We conducted this review under the authority vested in the auditor general by Section 10500 et seq. of the California Government Code and according to generally accepted governmental auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,

KURT R. SJOBERG
Acting Auditor General

Date: March 5, 1990

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DISPOSITION OF EXCESS STATE LANDS IDENTIFIED IN THE OFFICE OF THE AUDITOR GENERAL'S REPORT, P-306

In 1983, the Office of the Auditor General identified 1,675.6 acres of land under the control of four state agencies, which the agencies were not using or planning to use for state programs. The four state agencies were the California State University, the Department of Corrections, the Department of Developmental Services, and the Department of Veterans Affairs. We followed up on our initial review of these lands to determine the current dispositions of the properties. The following table reflects the status of properties as of June 30, 1989:

TABLE A-1

STATUS OF STATE LANDS IDENTIFIED IN REPORT P-306 AS OF JUNE 30, 1989 (ACRES)

	Never Declared Excess	Currently in Use	Declared Excess	Total Acres
California State University	138.9	0	0.5	139.4
Department of Corrections	2.0	0	0	2.0
Department of Developmental Services	419.0	0	635.2	1,054.2
Department of Veterans Affairs	0	480	0	480.0
Total	559.9	480	635.7	1,675.6

We also reviewed the disposition of properties after the agencies had declared the properties as excess to the department. The following table reflects the status of all properties declared as excess by the agencies in possession of them, as of June 30, 1989:

TABLE A-2

STATUS OF STATE LANDS DECLARED EXCESS
AS OF JUNE 30, 1989
(ACRES)

	Not Declared Surplus by the Legislature	Declared Surplus by the Legislature/ Not Sold	Declared Surplus by the Legislature/ Sold	Total Acres
California State University	0.5	0	0	0.5
Department of Corrections	0	0	0	0
Department of Developmental Services	204.0	141.2	290	635.2
Department of Veterans Affairs	0	0	0	0
Total	204.5	141.2	290	635.7

THE STATE'S PROACTIVE ASSET MANAGEMENT PROGRAM

During March 1986, the Commission on California State Government Organization and Economy (commission) issued a report to the governor and the Legislature recommending the development of a strategic and systematic approach to managing the State's real property. The commission stated that a proactive asset management approach for managing state-owned real property could increase the State's revenues and reduce its costs.

According to the commission, a proactive asset management program within state government should strategically and systematically link performance to goals and measurable objectives by offering structured incentives to state property managers. The commission recommended that a pilot program be authorized that would establish the information base needed for proactive asset management.

The commission also recommended an organizational structure that would incorporate accountability, performance incentives related to measurable objectives, a central automated inventory for real property, and master contracts for special services. Further, the commission recommended that the State reduce staff duplication, process requests for space more efficiently, give state property managers additional training, and report in the governor's budget the value of income from the State's property.

In response to the commission's recommendations, the governor issued an executive order on June 22, 1989, which established the State's policy for actively managing its real property to achieve the maximum public benefit and the highest and best use from state-owned property. Additionally, the governor ordered all agencies, departments, boards, and commissions to manage their land and property to further the State's asset management policy, and he established a proactive asset management function within the Governor's Office of Planning and Research.

In addition, the Legislature authorized and the Office of Real Estate and Design Services (OREDS) in the Department of General Services instituted a pilot program in the San Diego area to establish the data base needed for implementing the actual program. The Legislature also approved a proactive asset management program within the OREDS for fiscal year 1989-90 by appropriating $696,000 for its implementation. According to the senior real estate officer in the proactive asset management unit, the OREDS implemented the actual program in January 1990.

Before the implementation of this program, the OREDS entered into an agreement that illustrates the benefits of a program such as the Proactive Asset Management program. The OREDS negotiated with the city and county of Los Angeles to merge adjacent lands, in which all three entities maintain an interest under a tri-party agreement, using a 66-year lease with a private developer for the construction and operation of a high-rise office building and commercial structure. According to the OREDS' projections, this project will generate approximately $540,000 in annual rental income to the State from fiscal year 1990-91 through fiscal year 1992-93. The OREDS further projected that income to the State will increase significantly once the proposed building is completed.

State of California

State and Consumer Services Agency

Memorandum

To: Kurt R. Sjoberg
Acting Auditor General
660 J Street, Suite 300
Sacramento, CA 95814

Date: February 28, 1990

From: Office of the Secretary
(916) 323-9493
ATSS 473-9493

Subject: Response to Auditor General Report No. P-839.1

Thank you for the opportunity to respond to your report P-839.1, The Department of General Services Needs to Improve Its Management of State Leases and Real Estate. The attached response from the Department of General Services addresses each of your recommendations.

If you need further information or assistance on this issue, you may wish to have your staff contact W.J. Anthony, Director, Department of General Services, at 445-3441.

Shirley Chilton

SHIRLEY R. CHILTON
Secretary to the Agency

Attachment

SRC:ejp

State of California State and Consumer Services Agency

MEMORANDUM

Date: File No: P-839.1

To: Shirley R. Chilton, Secretary
State and Consumer Services Agency
915 Capitol Mall, Room 200
Sacramento, CA 95814

From: **Department of General Services**

Subject: **REPORT P-839.1 -- THE DEPARTMENT OF GENERAL SERVICES NEEDS TO IMPROVE ITS MANAGEMENT OF STATE LEASES AND REAL ESTATE**

Thank you for the opportunity to respond to Office of the Auditor General Report P-839.1 which addresses recommendations to the Department of General Services (DGS). The following response addresses each of the recommendations.

INTRODUCTION

The DGS has reviewed the findings, conclusions, and recommendations presented in Report P-839.1. While not agreeing with each finding and conclusion, the DGS has determined that most of the recommendations have merit and will be implemented within the near future.

Overall, the DGS is pleased to note that after an approximately thirteen month audit of its leasing and real estate functions, the report discloses no deliberate attempts to avoid complying with State requirements and no indications of fraud or abuse. In addition, the reported findings are not surprising when consideration is given to the size and complexity of the leasing and real estate functions administered by the DGS.

The following response addresses the recommendations primarily. Our disagreements with some specific findings will not be repeated in this response since they have been extensively discussed in past meetings with Auditor General staff and in prior correspondence. It does not appear to be constructive to revisit those subjects in this response.

PART A - LEASE MANAGEMENT

Prior to discussing the individual recommendations in this section, the DGS believes it would be helpful to add the following additional information regarding the lease management functions located in the Office of Real Estate and Design Services (OREDS).

The Leasing and Design Section (L&DS) is the largest of its kind among state operations in the nation in terms of the rental monies involved and square footage leased. Because of the breadth and complexity of its lease projects, including the design and leasing of extraordinarily large build-to-suit office

sites, health and forensic laboratories, and high-technology computer facilities, representatives of other states' real estate operations often communicate with the L&DS for help and guidance in modernizing and streamlining their own real estate programs.

On behalf of its 120 State agency clients, the L&DS staff has planned, leased, and managed the State's current leased space inventory of nearly 15 million square feet including 11.4 million square feet of office space, with monthly rentals totaling approximately $14.5 million. In addition, OREDS' planning staff is responsible for 7.7 million square feet of State-owned space. It is notable that, despite the huge size of the leased inventory, virtually none of it is vacant or otherwise underutilized.

Through the staff's careful space planning and decisive negotiations, it is estimated that the rent for the average lease is 15 to 20% lower than the market asking rate. Thus, the L&DS Team, even at the lower end of this estimate, saves the taxpayers over 26 million dollars per year in rental costs.

I. THE DEPARTMENT OF GENERAL SERVICES WAS NOT PREPARED TO RESPOND TO EMERGENCIES IN STATE-LEASED FACILITIES

DGS COMMENTS: The report's conclusion was reached based on several findings in the investigation of emergency situations in two state leased facilities during the 1988/89 fiscal year.

In both instances OREDS acted in accordance with established policies and procedures in relation to its role as lease managers. Further, in each of the two emergency situations, experts were used in evaluating the critical aspects of any developing problems. In our opinion, actions taken by the department were proper and effective under the circumstances. (1) *

In addition, related to the security finding, the CNA building did have 24 hour security which was viewed as adequate for the prevention of loss or removal of items from the building by parties other than the state, the owner or his employees. Through continued efforts by the DGS and the Attorney General's Office, the important one of a kind documents referred to in the report were recovered and decontaminated in September 1989. Other items from this entity were sold at auction by the building owner.

Related to the procedures for funding the CNA emergency work, the DGS originally requested state agencies to prepare documentation to transfer funds to the Architecture Revolving Fund (ARF) to provide the funding necessary to complete emergency work at the CNA building. However, after receiving further details of the scope of the required emergency work, DGS determined that the use of the ARF was inappropriate. In June 1989, the Office of Fiscal Services initiated contract amendments to change the funding from the ARF to the DGS Service Revolving Fund (SRF). Under this funding procedure, the DGS would recover its costs via billings to state agencies for the emergency work performed at the CNA building rather than having state agencies transfer funds via a Form 22 into the ARF and then transferring those funds to the SRF through a plan of financial adjustment.

*The Office of the Auditor General's comments on specific points in this response begin after the Department of General Services' response.

In conclusion, the DGS concurs that the ARF was incorrectly used as a depository (or conduit) to fund or pay for the initially required emergency work and that the SRF should have been used. However, it should be noted that the various state agencies which actually received the benefits of the emergency work ultimately funded the costs from their own proper funding sources.

While we continue to believe that the specific emergencies cited in the report were handled properly, as with all major projects, valuable lessons were learned. These lessons are being incorporated into the emergency guide discussed under the following recommendation.

RECOMMENDATION: "Adopt and implement such measures as are included in its draft 'Emergency and Catastrophic Disaster Support Services Guide';"

DGS RESPONSE: As a result of events that interrupted the normal business operations of state agencies in 1989, the DGS drafted the "Emergency and Catastrophic Disaster Support Services Guide". This guide was drafted to assist state agencies in promptly resuming normal business operations after an unplanned event interrupts those operations.

Based on the concepts in the draft guide, the DGS has developed a guide book entitled "Business Recovery Planning Guide". The purpose of this book is to assist all state agencies in preparing business recovery plans that will govern the agency's resumption of normal operations. This guide will be distributed to all state agencies during March 1990.

The DGS is also coordinating the efforts of several of its offices to form an emergency response team to respond promptly to requests for assistance from state agencies in resuming business operations.

RECOMMENDATION: "Ensure that it provides adequate management of its contracts. Such oversight may include on-site supervision of contractors by a state representative authorized to independently approve contract change orders, communicate with all involved parties, and resolve issues involving contract-related activities."

DGS RESPONSE: DGS concurs and, as in the past, each emergency situation will be evaluated to determine the necessity for on-site supervision by a state representative.

II. THE DEPARTMENT OF GENERAL SERVICES HAS NOT ALWAYS ENFORCED LEASE TERMS AT STATE-LEASED FACILITIES

DGS COMMENTS: The key issue discussed in this chapter relates to the DGS taking the primary role in lease management. The DGS continues to believe that it has responded appropriately to the circumstances discussed in this chapter (2) The following information will address this issue.

OREDS has a staff of four lease managers to administer the provisions of approximately 2,000 leases statewide. One of the ways a lease manager successfully deals with 400 to 500 leases is by not assuming the primary role in

obtaining lease compliance. It is more effective and efficient for an on-site client agency's business services officer to resolve most premise problems. These officers can evaluate and react to hazardous conditions to gain compliance from the landlord much more quickly than lease management personnel. If the landlord fails to respond, OREDS would either intervene on behalf of the client with the landlord or, in a emergency, would authorize the client to contract to have the needed repair made and deduct the cost from the rent. OREDS does not have contracting authority or funding to perform any repairs on leased space. The following excerpt from a November 20, 1989, Legislative Counsel opinion provided by the auditors appears to support our policy regarding the issue of tenant agencies contracting for corrective work to be performed.

"Accordingly, we conclude that should a lessor fail to take corrective measures on behalf of a tenant agency, or in the event of an emergency, OREDS may terminate a lease or authorize the tenant agency to perform repairs and withhold rent to recover costs or, in some cases, pursue a civil remedy in a court of law."

RECOMMENDATION: "Assume the primary role in negotiating with lessors to obtain their compliance with lease terms;"

DGS RESPONSE: As previously discussed, the DGS believes that on-site agency staff should be responsible for the primary role. (2) However, in the future, OREDS' lease managers will take a more active role in obtaining the lessors' compliance with the lease terms in those instances where the lessor is not responsive to the agencies initial requests. OREDS will develop new procedures to ensure that premise problems are resolved in a timely manner with the least disruption to the client agency.

RECOMMENDATION: "Communicate the proper work priorities to the lease administration unit;"

DGS RESPONSE: Priorities are well known to the members of the Lease Management Unit, but circumstances evolving around individual incidents dictate the degree of effort that may be directed to accomplish a particular task. The DGS will reemphasize the department's priorities to lease management staff.

RECOMMENDATION: "Initiate procedures to guide staff in their efforts to obtain lease compliance and to assure adequate supervision;"

DGS RESPONSE: OREDS has scheduled staff to work on the development of a manual section for lease management activities. It is planned to be completed in approximately six months and updated and expanded as necessary. SAM Sections 1410.2 and 1445 will be revised to help clarify OREDS' lease management responsibilities.

RECOMMENDATION: "Establish workload standards so that it can determine and request the proper level of staff to adequately carry out required lease management duties."

DGS RESPONSE: OREDS is committed to developing appropriate workload standards to justify necessary staffing levels. These standards should be available by October 31, 1990.

III. THE DEPARTMENT OF GENERAL SERVICES TAKES TOO LONG TO PROCURE LEASED FACILITIES

DGS COMMENTS: When applying workload standards or averages and estimated completion times to specific projects, it is important to keep in mind that 50 percent of all projects will exceed the standard or average time and that 50 percent will be under. Thirteen leases out of 32 leases, over which OREDS had control, exceeded the standard completion period. (3) We will work toward decreasing the standard completion period through tighter scheduling processes.

RECOMMENDATIONS: "Improve its forecasting by comparing actual leasing requests received and the hours required to fulfill them with the original forecasted values; develop new workload standards to more accurately reflect the staffing hours needed to complete projects;"

DGS RESPONSE: The DGS is improving its forecasting by comparing actual and estimated leasing and planning requests, and comparing the assigned hours to the actual time used for completion.

The key element in this system is updating our workload standards on an annual basis. OREDS now has available a computer analysis of all completed projects from July 1, 1987, through June 30, 1989, and new work standards from that data base are to be adopted by March 1, 1990. The work standards will be updated annually by using the prior two years data. These standards will also be used in the budget process.

RECOMMENDATION: "Respond more quickly to obtain staff when workload exceeds the capacity of budgeted staff. Specifically, the department should monitor staffing requirements against forecasts at regular intervals and request or redirect staff when monitoring indicates that actual work received substantially exceeds budgeted forecast levels;"

DGS RESPONSE: The DGS will initiate action to address the staffing needs of OREDS in a more timely manner. With the development of new work standards, a schedule will be established to monitor these standards on a regular basis.

RECOMMENDATION: "Determine the most advantageous methods for reducing the current backlog of work-on-hand by developing a plan that includes sufficient delegation to client agencies and transfers of staff from client agencies where possible. Additionally, the department should use private firms and lessor planning services when the benefits outweigh the costs."

DGS RESPONSE: It is already the DGS policy to use the methods expressed in this recommendation when they can be efficiently utilized. In recognition of the concerns expressed in the report, a plan will be developed to address the backlog including consideration of the various methods available. OREDS is currently establishing a Delegations Unit whose function will be to administer,

train, and develop the staff of specific client agencies to conduct their own facilities leasing activities. This unit will coordinate the use of private consultants, lessor planning services and other creative alternatives that may become available for accomplishing planning activities. Under this program, OREDS will delegate full and/or partial leasing authority on approximately one third of its current workload. The program's administration will be provided by two to four additional staff which will allow other staff to focus on remaining workload and regain better control of the backlog.

IV. THE DEPARTMENT OF GENERAL SERVICES HAS NOT CONSISTENTLY COMPLIED WITH THE LAW OR ITS OWN POLICIES REGARDING ASBESTOS IN STATE-LEASED FACILITIES

DGS COMMENTS: OREDS acknowledges the misunderstanding of the asbestos notification policy. The minor oversight in notification was immediately corrected upon identification. Our internal procedural policies are being corrected to address this oversight.

RECOMMENDATIONS: "Train staff to ensure that all OREDS personnel understand the requirements for asbestos notification; and identify all agencies occupying leased space in buildings constructed before 1979 that the OREDS knows to contain asbestos, notifying all such agencies within 15 days of the OREDS' discovering that the buildings contain asbestos."

DGS RESPONSE: The recent hiring of a one-half time Asbestos Coordinator will result in improvement in this area. This employee will have responsibilities for ensuring that a uniform and consistent notification policy is implemented. This process will include the notification of client agencies within the required 15 days of discovering the presence of asbestos. This information will also be inserted into the OREDS' Statewide Property Inventory change control ledger as a tracking and tickler system for future reference.

RECOMMENDATION: "Clarify its policies regarding the leasing of space in buildings containing asbestos, ensuring that all exemptions from its policies are clearly stated and consistent with the policies' goals and objectives;"

DGS RESPONSE: A revised policy statement and lease paragraph are being prepared to state our goals and objectives more clearly and to clarify basic criteria important to the process. The revised policy will require that all leased facilities be "free from hazard from Asbestos Containing Construction Materials" (ACCM). It will define what ACCM's are and when they constitute a hazard to the health and welfare of state employees and the visiting public. It will also be very specific as to the lessor's responsibility in abating a hazard and to the operation and maintenance of the facility with ACCM's in place.

RECOMMENDATION: "Enforce its leasing policies regarding asbestos."

DGS RESPONSE: The OREDS will enforce this policy via the previously mentioned revised lease language and via specific language added to the lease agreement concerning operation and maintenance and related reporting dates for predetermined inspection and testing. The recently hired Asbestos Coordinator will be charged with developing an interim Personal Computer-based tracking/tickler system for this operation.

PART B - REAL ESTATE MANAGEMENT

Prior to discussing the individual recommendations in this section, the DGS believes it will be helpful to add the following information regarding the size and complexity of the real estate management function.

The core functions of the Real Estate Services Section (RES) are to appraise, buy, manage, and sell real property. These services are performed for approximately 25 agencies and represent one of the largest operations of its kind in the United States. Over the last 10 years, the RES has acquired properties worth nearly one-half billion dollars. Further, in the last two years alone, RES staff have appraised 2,268 parcels valued at over $244 million, and acquired in excess of 300 parcels with a total value of nearly $90 million.

I. THE DEPARTMENT OF GENERAL SERVICES HAS NOT REVIEWED EXCESS STATE LANDS AS REQUIRED

DGS COMMENTS: The report concludes that the department has not independently reviewed all State lands to determine which are surplus to State needs. The DGS had recognized that there had been little incentive for General Fund agencies to declare properties as surplus, as they would receive no direct benefits from the surplus sale proceeds. However, in the past few years, various agencies have obtained legislative authority for using sale proceeds. The DGS now believes an independent review process will be more effective. The Statewide Property Inventory and the recently implemented asset management program will result in a comprehensive review of the State's land holdings to determine which are excess to its needs.

We also would point out that the State has not lost the opportunity to transfer, lease or otherwise dispose of the surplus property identified in the 1983 report. This property is still available for these types of actions. In addition, some of the lands identified in the report as "lost opportunities" consist of portions of Agnews State Hospital. On four separate occasions, the department has proposed in the annual report to the Legislature on surplus proprietary lands that these lands be declared as surplus to State needs. On each occasion, the Agnews property was not approved for sale by the Legislature as surplus lands.

RECOMMENDATIONS: "Determine the staffing requirements necessary for identifying potential surplus lands and redirect department staff or request additional staff, as appropriate, for these reviews; periodically inspect state lands to identify potential surplus land; and declare to the Legislature properties the department finds during its independent reviews to be in excess of state agencies' foreseeable needs."

DGS RESPONSE: The issues presented in these recommendations are currently being addressed. Specifically, the DGS has recently created an Asset Management Unit (AMU) within OREDS which will be responsible for reviewing the land holdings of other state agencies to determine which properties are underused or unused. In addition, the AMU will report surplus lands to the Legislature. Although the

funding for the AMU was only authorized for a two-year period (through June 30, 1991), DGS will propose to make this a permanent program. This will allow the continuation of a systematic procedure to ensure the efficient management of State real estate assets.

II. THE DEPARTMENT OF GENERAL SERVICES DID NOT PROPERLY IMPLEMENT THE STATEWIDE PROPERTY INVENTORY

DGS COMMENTS: DGS agrees with the recommendations and would like to offer the following clarifications related to the findings discussed in this chapter.

In retrospect, it would have been preferable for DGS to sponsor legislation which would have extended the January 1, 1989 completion date, so that there would be no confusion regarding the date when the Statewide Property Inventory (SPI) was expected to be available.

As the report notes, the DGS did make numerous more informal legislative notifications of the expected delay by sending a letter to the three legislative budget committees in March 1988 and sending quarterly project status letters to the appropriate legislative oversight committee. Since the Legislature did not respond to these notifications, DGS assumed that the delay was approved and that a more formal approach was not necessary.

DGS was also overly optimistic as Section 11011.15 of the Government Code was being considered by the Legislature. If DGS had fully recognized the magnitude of preparing the SPI, including the development of a very complex computer system and the potential delay in receiving the necessary information from the various land holding agencies, it is very likely that DGS would have suggested a later completion date at that time.

The report also makes reference to a theoretical loss of $2.7 million in benefits due to the delay in implementation of the SPI. This figure comes from the SPI Feasibility Study Report (FSR) and breaks down to $1.7 million in sales and $1 million in more effective management. The assumption of the FSR for the SPI is that the Proactive Asset Management (PAM) function would be fully implemented to coincide with the completion of the SPI. Since PAM is just being implemented at this writing, no loss of benefits has resulted because of the delay in completing the SPI. The $1.7 million in sales revenue will be realized in the future when both the SPI and PAM are in place.

The report also concludes that the Property Acquisition Law (PAL) account was not an appropriate funding source for the SPI. The 1985-86 Governor's Budget proposed one position and $59,000 to fund a surplus real property development program. This program was to allow the department to become more aggressive in identifying potential state surplus property and increase State revenues through the sale of surplus property. The department proposed that this program be funded from the General Fund. The Legislative Analyst Office (LAO) agreed with the program but recommended that the program be self-financing so that its total costs would be recovered through rental receipts and revenues generated through the sale of surplus property. In other words, the LAO recommended that the program be funded from the PAL account and the Legislature agreed.

The 1987-88 Governor's Budget proposed an increase of 2.9 personnel years and $783,000 to develop and implement the SPI as required by Chapter 907, Statutes of 1986 (AB 3932). The department proposed that this increase be funded through the PAL account to continue with the direction provided by the LAO and the Legislature regarding the appropriateness of this account as a funding source for programs which assist the state in identifying state surplus property. The LAO recommended approval for both the budget increase and the proposed funding source for 1987-88 and the Legislature concurred with the LAO recommendation.

The 1988-89 Governor's Budget proposed an increase of 7.3 personnel years and $407,000 to complete development and implementation of the SPI system. Again, to continue with the direction provided in prior years by the LAO and the Legislature regarding the appropriateness of the PAL account as a funding source for the SPI, the department proposed that this increase also be funded by this account. The Legislature approved the 1988-89 request as submitted.

While we agree that no specific language was included in the Budget Act for fiscal years 1986 through 1989 relative to the funding of the SPI, it was clear to the DGS that the fiscal subcommittees were made aware that the department was proposing this system to be funded from the PAL and that the Legislature expressed their consent by approving DGS's budget change proposals. (5)

Finally, it is the opinion of DGS' Legal Office that the PAL account is a proper funding source for the SPI. Government Code 15863 appropriates the revenues to the department which are deposited into the General Fund pursuant to the PAL Section "...for the care, maintenance, and improvement of the real property acquired pursuant to this part that is under the jurisdiction of, or being administered by the Department of General Services...". The SPI is considered a necessary tool to assist the department in meeting its responsibilities outlined in the PAL Government Code Section. More specifically, the SPI will assist the department in being more aggressive in identifying potential surplus property and selling such property for the state in order to increase State revenues.

The report concludes that the sole source contracts awarded to implement the SPI were not appropriate. DGS considered the situation an emergency in accordance with PCC 12102(a)(2) and State policies and granted an exemption from competitive bidding for the two consultant contracts. DGS believed that the urgency and importance of completing the SPI as quickly as possible, even though not meeting the original completion date, was sufficient justification to award the contracts in this manner.

RECOMMENDATION: "To ensure that the Department of General Services has legislative approval to revise legislative deadlines, the department should request from the Legislature any extensions needed to revise mandated deadlines."

DGS RESPONSE: Appropriate actions will be taken in the future when extensions are needed from legislatively mandated deadlines.

RECOMMENDATION: "To ensure that the department complies with the Public Contract Code and the State Administrative Manual, the department should require competitive bids for all contracts involving the SPI or ensure that all SPI contracts exempted from competitive bidding meet the criteria established in the Public Contract Code and the State Administrative Manual."

DGS RESPONSE: The DGS will require competitive bidding for all contracts involving SPI or ensure that all SPI contracts exempted from competitive bidding meet the criteria established in PC 12102 and the State Administrative Manual.

III. THE DEPARTMENT OF GENERAL SERVICES HAS NOT COLLECTED ALL DELINQUENT LEASE PAYMENTS FOR STATE-OWNED PROPERTY

DGS COMMENTS: In January 1989, the DGS recognized that no reconciliations were being made of leases to amounts billed. As a result, the Office of Fiscal Services (OFS) embarked on a project to ensure that billings were being processed for all leases and that accounts receivable were being maintained. As a result of this project, the OFS has added 55 leases to those that were being billed before OFS assumed the billing and collection function from OREDS. OFS has initiated a formal lease reconciliation process with OREDS to make sure that accurate and timely billings and collections can be accomplished.

RECOMMENDATION: "Develop an accurate list of delinquent lease payments by identifying all state leases and reconciling all lease payments owed with payments received;"

DGS RESPONSE: A complete and accurate list of delinquent payments owed is nearly complete and collection actions have already begun. In April 1989, the department implemented new procedures to ensure the accuracy and timeliness of billings and collections. They include:

1. OREDS will batch and transmit monthly to the OFS lease billing instructions;

2. OREDS will sequentially number each billing instruction to ensure that all have been received by the OFS;

3. OFS and OREDS will perform an annual reconciliation in May relative to leases in force versus billing amounts; and

4. Any adjustments identified in number three above will be adjusted accordingly in the June billings.

RECOMMENDATION: "Process all delinquent lease payments as required by the department's policies and procedures and secure payment for the amounts outstanding."

DGS RESPONSE: As discussed previously, OFS has taken over the collection of lease payments and follows the department's policies and procedures in securing payment for the amounts outstanding.

IV. THE DEPARTMENT OF GENERAL SERVICES COULD ACQUIRE AND TRANSFER REAL ESTATE FOR STATE AGENCIES MORE QUICKLY

DGS COMMENTS: The report indicates that OREDS has taken four years and longer to acquire real estate and over one year to accept gifts of property for State agencies. It suggests that such significant delays are caused, in part, by not promptly appraising, reviewing, and exchanging documents within the OREDS. We agree that all of the above functions are integral to the acquisition process. However, in nearly all cases where the acquisition process has taken lengthy periods of time, it is because of the complexities of negotiations or title, or because of shifts in priorities by the requesting agency by reallocating acquisition funds or by making additions or deletions of parcels to a project. These types of factors contribute more to the delays in the acquisition process than delays in appraisals or appraisal reviews.

RECOMMENDATION: "Establish a reporting system for property appraisals and appraisal reviews that identifies projects exceeding the department's time allowances for completion;"

DGS RESPONSE: Within two weeks following receipt of a clients request for appraisals, OREDS shall advise the agency of the time required for it to complete the appraisal. If the allotted time is deemed excessive to the agency's needs, the DGS shall pursue alternatives such as contracting with outside appraisers and other State agencies to provide the appraisals. In addition, the DGS shall provide each agency a copy of the monthly Appraisal Status Report. The DGS is also presently in the process of negotiating a contract with Caltrans to prepare appraisals for OREDS during periods of peak workload.

RECOMMENDATION: "Review the property appraisal and appraisal review functions and add additional staff, as needed, to ensure that these functions are completed within the allotted time;"

DGS RESPONSE: The OREDS is working to develop methods for improving the property appraisal and review process as follows:

1. A status report of appraisal requests will be published monthly instead of less frequently and will include the client agency, assigned staff appraiser, and estimated completion date. It is anticipated that closer monitoring will result in more effective coordination and more timely completion of property appraisals.

2. To minimize the backlog of appraisals, OREDS will contract out for appraisals when appropriate.

3. The OREDS is negotiating with another State agency which has expertise and staff to enter into an agreement to provide appraisal services.

4. The OREDS is now hiring retired annuitants with appraisal expertise for appraisal review to help in reducing the backlog, particularly during peak periods.

5. If the appraisal backlog is expected to consistently exceed authorized staffing levels, additional staff may be proposed to provide adequate turn around time in both appraisals and reviews.

RECOMMENDATION: "Monitor the acquisition process by establishing a reporting system for properties acquired by gift deed that identifies the position of the acquisition in the acquisition process and the time it has been in that position;"

DGS RESPONSE: OREDS is reviewing the possibility of developing a status report to track all gift deeds being processed through the office to ensure that they are progressing in a timely fashion.

Upon recordation of the deed, the property is under the control of the agency. The property at that point can be placed into whatever program the agency has planned. The DGS never has jurisdiction over property involved in gift deeds. The gift is deeded to the agency named in the deed. Therefore, the time it takes OREDS to transfer the actual deed after recordation does not affect the agency's use of the property.

In an effort to clear up any confusion about the jurisdiction status of gift deeds, the OREDS has designed a form to notify the client agency of their ownership interest immediately upon recordation.

RECOMMENDATION: "Process duplicate copies of title documents at the OREDS' land index unit;"

DGS RESPONSE: OREDS is working to accellerate one of the phases of transferring acquired properties to client agencies by making duplicate copies of deeds as soon as they are recorded. After assigning a control number, the original documents will be sent to the land index, and duplicates will be retained by the Acquisition Unit. Then, notwithstanding any delays in processing through the land index, the property can be transferred promptly to the agency upon receipt of the policy of title insurance.

RECOMMENDATION: "Review the process for transferring properties to the Department of Parks and Recreation and ensure that all future properties are transferred no later than the date required by law."

DGS RESPONSE: OREDS has reviewed the process and has developed a status report for all parcels which have been approved for settlement by the Public Works Board. This report is updated monthly and makes readily apparent any problems related to transfers. In addition, we now advise our client agencies when the deeds are recorded so that they can take possession in advance of the formal transfer of jurisdiction.

CONCLUSION

As part of its continuing efforts to improve policies and procedures, the DGS has implemented or is taking action to implement the recommendations presented in this report. It should be noted that on-going actions of OREDS' management have demonstrated a strong commitment to improving operations in a timely manner.

In conclusion, the recommendations are of assistance in improving procedures and we will continue to work toward the overall success of the DGS leasing and real estate programs to enhance their benefit to the State of California.

If you need further information or assistance on this issue, please call me.

W. J. ANTHONY, Director
Department of General Services

THE OFFICE OF THE AUDITOR GENERAL'S COMMENTS ON THE RESPONSE FROM THE DEPARTMENT OF GENERAL SERVICES

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

(1) In the absence of initial assessments by the department, the client agencies hired private consultants; however, the department did not use its own experts to perform basic assessment as discussed on pages 13-16.

(2) Regarding the Office of Real Estate and Design Services' (OREDS) responsibilities for lease management, the Legislative Counsel stated that the OREDS has a duty to ensure compliance with lease terms and is required to assume the primary role in negotiation with lessors as we discussed on pages 29 and 30 and page 38 of the report.

(3) We reviewed these 32 leases to determine the factors that contributed to the department exceeding its time frames for procuring leases. As explained on page 51 of our report, the department exceeded the time frames for 20 (63 percent) of these 32 leases. In addition, as the table on page 50 shows, in fiscal year 1988-89, the department exceeded its time frames for 63 percent of all 113 newly negotiated leases for facilities of 15,000 square feet or less.

(4) We did not conclude that the State completely lost the opportunity to transfer, lease, or otherwise dispose of the surplus property identified in the 1983 report. As we stated on pages 83 and 84 of the report, the State has lost this opportunity for almost six years because the department has not independently reviewed these properties to recommend to the Legislature that they be declared surplus.

(5) As shown on page 92, the report has been changed to state that the Property Acquisition Law account was not an appropriate funding source for the Statewide Property Inventory in the absence of specific legislative approval authorizing the use of funds from the account for this purpose.

cc: Members of the Legislature
Office of the Lieutenant Governor
Attorney General
State Controller
Legislative Analyst
Assembly Office of Research
Senate Office of Research
Assembly Majority/Minority Consultants
Senate Majority/Minority Consultants
Capitol Press Corps