



**State of Oregon  
Office of Public Defense Services  
Audit Report  
August 8, 2022**

## TABLE OF CONTENTS

Executive Summary.....	2
Background, Scope, and Methodology .....	4
Results and Recommendations .....	5
Acknowledgements.....	20

## EXECUTIVE SUMMARY

The objective of this audit was to conduct a review of the financial management and overall performance of the Oregon Public Services Defense Commission, Office of Public Defense Services (OPDS). Our audit focused on the efficiency and effectiveness of policies and procedures surrounding accounts payable, case support services expenses, contracting, and procurement. Through substantive and detail testing, control testing, and interviews with staff, we identified multiple opportunities for improvement with a focus on the following areas:

- **Policies and Procedures** – Review and evaluate current policies and procedures in place throughout the agency and determine whether they are clear and appropriate or require enhancement.
- **Accounts Payable** – Review and test purchases made in the ordinary course of business to ensure purchase orders and payment remittances are timely, recorded correctly, and have appropriate authorization.
- **Case Support Services (CSS)** – Review and test CSS expenses to determine that proper review and authorization is in place, proper remittance accounting is being performed, and that costs are reasonable in accordance with contract terms.
- **Attorney Contracts** – Review and test attorney contracts to determine that contract creation, authorization, execution, and emendation follow effective and efficient processes.
- **Service Contracts** – Review and test service contracts to determine that contract creation, authorization, execution, and emendation follow effective and efficient processes.
- **Procurement** – Review and test expenditures made by the agency to determine appropriate approval and proper documentation of transactions are in place in accordance with current policies and procedures.

Results of the audit are classified into three categories. The categories are defined below, ranking from most consequential to least:

- **Finding** – Most serious in nature, a finding is an instance of a breakdown or partial breakdown, leading to a potential failure of OPDS objectives. A finding requires immediate corrective action.
- **Observation** – An instance of a minor deviation from an otherwise well-implemented process. An observation should be evaluated and corrected as resources and time allow.
- **Process Improvement Recommendation (PIR)** – An instance of a potential improvement opportunity. A recommendation does not require action, but is encouraged for improvement.

Audit Area	Page	Findings	Observations	PIRs
Policies and Procedures	5	3	-	-
Accounts Payable	8	-	2	2
Case Support Services	12	1	1	2
Attorney Contracts	15	2	1	2
Service Contracts	19	2	-	1
Procurement	22	3	-	-
<b>Total</b>		<b>11</b>	<b>4</b>	<b>7</b>

## **BACKGROUND, SCOPE, AND METHODOLOGY**

### ***Background***

The OPDS in the State of Oregon ensures that eligible individuals have timely access to legal services consistent with Oregon and national standards of justice.

The OPDS is governed by the Public Defense Services Commission (PDSC). The PDSC's primary charge is to establish "a public defense system that ensures the provision of public defense services consistent with the Oregon Constitution, the United States Constitution and Oregon and national standards of justice".

The PDSC appoints the Executive Director for the OPDS. The OPDS is comprised of nine interconnected entities which include the Executive Division, the Compliance, Audit and Performance Division, the Appellate Division (including the Juvenile Appellate Section) the Trial Criminal Division, Non-routine Expenses, Court Mandated Expenses, the Juvenile Division, the Administrative Services Division and Special Programs, Contracts and Distributions.

The vision of OPDS is to maintain a sustainable statewide public defense system that provides quality representation to eligible clients in trial and appellate court proceedings.

### ***Scope and Methodology***

To achieve the audit objectives, the audit team reviewed applicable policies and procedures at OPDS regarding operating expenses, CSS expenses, contracts, procurement, and supporting documentation for the fiscal years 2018, 2019, 2020, 2021, and the six-month period ending December 31, 2021. The audit team also interviewed individuals from all major areas of the OPDS, performed walkthroughs to better understand the practices in place at the time of the audit, and performed detailed testing on certain aspects of OPDS expenditures and contracting.

Our audit was conducted in accordance with the guidelines set forth in the Institute of Internal Auditors' *International Standards for the Professional Practice of Internal Auditing*. The standards set criteria for internal audit departments in the areas of independence, professional proficiency, scope and performance of audit work, and management of the internal auditing department.

## RESULTS AND RECOMMENDATIONS

### *Policies and Procedures*

Review and evaluate current policies and procedures in place throughout the agency and determine whether they are clear and appropriate or require enhancement.

Findings	3
Observations	-
PIRs	-

<b>1</b>	<b>FINDING</b>	OPDS policies are outdated, incomplete, unorganized, and require enhancement.
	<b>RECOMMENDATION</b>	Develop updated policies and review these at least annually to identify and address changes in statutes, best practices, or other issues identified during use.
	<b>MANAGEMENT RESPONSE</b>	Management concurs with the recommendation and is actively taking steps to mitigate risks. OPDS has hired a second policy writer and recently went through a prioritization process on which policies to write and modify and in which order.

According to ORS 151.216, the duties of the PDSC include the adoption of policies, procedures, standards, and guidelines regarding:

- (A) The determination of financial eligibility of persons entitled to be represented by appointed counsel at state expense;
- (B) The appointment of counsel;
- (C) The fair compensation of counsel appointed to represent a person financially eligible for appointed counsel at state expense;
- (D) Appointed counsel compensation disputes;
- (E) Any other costs associated with the representation of a person by appointed counsel in the state courts that are required to be paid by the state under specified ORS, or any other provision of law that expressly provides for payment of such compensation, costs, or expenses by the commission;
- (F) Professional qualifications for counsel appointed to represent public defense clients;
- (G) Performance for legal representation;
- (H) The contracting of public defense services;
- (I) Contracting with expert witnesses to allow contracting with out-of-state expert witnesses only if in-state expert witnesses are not available or are more expensive than out-of-state expert witnesses; and
- (J) Any other matters necessary to carry out the duties of the commission.

Many of the policy documents are dated as late as 2015 that are still being used as current OPDS policy. The agency has undergone significant changes and restructuring since that time

causing many of the policies that are still in place and being used to no longer be applicable, redundant, or ineffective. The development and implementation of policy should be a continuous process that requires constant update and review. Existing policies should be periodically reviewed to identify and address changes in statutes, best practices, changes to business practices, or other issues identified by stakeholders. We recommend the OPDS prioritize the review and updating process of all current policies and procedures. It is our understanding that OPDS management is aware of this need and is actively working to mitigate this issue.

<b>2</b>	<b>FINDING</b>	It is a duty of the PDSC to determine the financial eligibility of persons entitled to be represented by appointed counsel at state expense, but the Oregon Judicial Department (OJD) is currently determining these criteria.
	<b>RECOMMENDATION</b>	To best serve defendants, the PDSC should take a more proactive role in determining financial eligibility criteria.
	<b>MANAGEMENT RESPONSE</b>	Management concurs with the recommendation. Management will work during the 2023-25 biennium to take a more active role in partnership with OJD. This will include knowledge transfer of current methodologies and developing an agreement on how the agencies will cooperatively develop any necessary policy and statutory changes for future improvements. This discussion may also be part of the “Legislative Work Group” which has stated intentions of statutory changes occurring during the 2024 session.

Oregon Revised Statute (ORS) 151.485 states that the responsibility to determine the financial eligibility standards to determine when persons are entitled to be represented by appointed counsel at state expense belongs to the PDSC. Currently, the OJD is taking the active role in determining financial eligibility criteria and the PDSC has tacitly adopted OJD’s decision-making by not affirmatively developing policy in this sphere. The PDSC should take a more active and controlling role in annually determining the criteria for financial eligibility that the OJD would then be responsible for enforcing.

<b>3</b>	<b>FINDING</b>	Technology systems and data storage used by the OPDS are outdated, lacking in sophistication, and need immediate attention in order to meet strategic goals.
	<b>RECOMMENDATION</b>	Identify and obtain a new financial case management system that is appropriate for OPDS operations.
	<b>MANAGEMENT RESPONSE</b>	Management concurs with the recommendation. OPDS has worked to stabilize the current environment(s) with an eye toward modernization. The Agency has prepared a policy option package to be included in the 2023-25 biennial budget to develop and implement a comprehensive financial/case management system. The initial business case for the F/CMS anticipates implementation of the new system by June 2025.

The technology system and data storage currently being utilized by the OPDS are reliant on one person in the IT department to function, which creates a high level of risk to the ongoing operations for the agency and is unsustainable beyond its short-term needs. SQL and Microsoft Excel files are used to store highly sensitive information related to cases and clients. While SQL databases are a recent update from a more antiquated form of data storage, further progress to update and improve these systems is necessary until a new technology system can be obtained for the OPDS.



**Accounts Payable**

Review and test purchases made in the ordinary course of business to ensure purchase orders and payment remittances are timely, recorded correctly, and have appropriate authorization.

Findings	-
Observations	2
PIRs	2

<b>1</b>	<b>OBSERVATION</b>	Vendors cannot be removed from the current vendor listing due to technology constraints.
	<b>RECOMMENDATION</b>	Vendor listings should be updated so that vendors no longer authorized are categorized as inactive and are made unavailable to users.
	<b>MANAGEMENT RESPONSE</b>	Management concurs with the recommendation. OPDS has worked to stabilize the current environment(s) with an eye toward system replacement and modernization. The Agency has prepared a policy option package to be included in the 2023-25 biennial budget to develop and implement a comprehensive financial/case management system. As the agency develops system requirements, efficiency in data management, such as inactivating unused data elements, will be a strategy to mitigate future risks.

Two of the 95 Accounts Payable (AP) transactions tested were paid to vendors with “DO NOT USE” included in the Vendor Name. The OJD manages the vendor list used by the OPDS. If there are any changes to the vendor information such as a change of address or change in business name, the ODPS must send this information to the OJD to update, resulting in a new instance of that vendor instead of an edit the existing vendor. After review of additional supporting documentation, the audit team was able to determine these transactions were made to approved vendors at the time of transaction. The AP Department data was pulled as of the date of this audit, which included the updated Vendor Name for the two vendors that had been updated with the OJD.

Although these transactions appear to have been completed appropriately, there is a risk for the AP Department to use vendors that should have been removed from the vendor listing. We recommend all instances of “DO NOT USE” vendors be made inactive, and a control be added to the current technology system that will not allow the use of these vendors.

<b>2</b>	<b>OBSERVATION</b>	Manual entry and processing of data creates the opportunity for errors to exist in the data set.
	<b>RECOMMENDATION</b>	Design and implement edit checks for all data inputs.
	<b>MANAGEMENT RESPONSE</b>	Management concurs with the recommendation. OPDS has worked to stabilize the current environment(s) with an eye toward modernization. The Agency has prepared a policy option package to be included in the 2023-25 biennial budget to develop and implement a comprehensive financial/case management system. As the agency develops system requirements OPDS will look to mitigate risks by “catching” errors on front end data input rather than on the back end. This strategy is a tool in most modern systems that mitigates risks and uniformly enforces state policies

As part of our AP testing, the number of days between invoice date until remittance of payment was reviewed. For one of these selections, the stamp date was input into the accounts payable system incorrectly such that the year 2015 was hand-keyed in while the actual stamp stated the year to be 2018. Based on the data, it appeared three years were required to process the payment. After further inquiry it was determined the payment had been remitted timely, but the data entry error still remained in the system. In multiple instances, data was messy, misspelled, or lacking formal presentation. There appear to be no controls in place to prevent these manual entry errors from occurring. We have recommended a more sophisticated technology system be put in place. In the meantime, we recommend the OPDS design and implement edit checks for all its data inputs. We also recommend cleaning up existing errors in data before transferring historical data into the new software once it has been obtained.

<b>3</b>	<b>PIR</b>	At the time of testing, it was taking the OPDS between 45 and 50 days to remit payments due to a significant backlog of payment requests in the department responsible for this process.
	<b>RECOMMENDATION</b>	Until a new technology system is in place, the current processes should be reviewed and improved to tighten the timeline and decrease remittance closer to 30 days.
	<b>MANAGEMENT RESPONSE</b>	Management concurs with the process improvement recommendation. At the time of this response OPDS has reduced the backlog from 49 days in June 2022 to 38 processing days as of July 2022. OPDS anticipates these numbers to continue to improve and will soon approach the 30 day target. Ultimately, OPDS anticipates much improved processing times with the implementation of the previously mentioned Financial/Case Management System in the 2023-25 biennium. Modernized systems in state government when properly integrated with the SFMA (state accounting system of record) as well as modernized policies and procedures consistently improve processing times and mitigate risks in an automated fashion.

The audit team completed detail testing for 95 Accounts Payable (AP) transactions. These selections were made across all years under audit, from a variety of case types, vendors, and counties. Testing included, but was not limited to:

- Tying out payment amounts to AP aging, vendor information, review of approvals when applicable,
- Review of payment rates to determine if they are in line with agency payment standards or reasonable if a predetermined rate is unavailable for the expense, appropriate cutoff procedures were applied,
- Tying out AP transaction to supporting documentation, and
- Determining the number of days between invoice date to remittance of payment.

If the department was functioning correctly, with the current technology restrictions, the AP department would be able to get payments out within 30 days. This was used as our threshold while testing these transactions. The results of this test showed that in 2018, all payments tested were made in under 30 days. In 2019, 96.8% of payments tested were made in under 30 days. In 2020, 20% of payments tested were made in under 30 days and in 2021, 18.8% of payments tested were made in under 30 days.

Management believes that there are enough staff to handle the volume of work in the AP department, but they do not have the technology to process the payments efficiently. A more sophisticated technology system needs to be acquired for the agency; however, this could take some time to plan for, procure, and implement. In the meantime, we recommend the current procedures in the AP Department be reviewed and updated where possible to ensure timely remittance of payments.

<b>4</b>	<b>PIR</b>	Manual processes require a significant amount of printing and slow down the AP process.
	<b>RECOMMENDATION</b>	Automate manual processes to the extent possible and eliminate unnecessary steps.
	<b>MANAGEMENT RESPONSE</b>	Management agrees with this process improvement recommendation and has taken steps to eliminate unnecessary procedural steps that add little to no value. This is evidenced by the reduction in the existing backlog and fewer days necessary to process payments. Implementation of a new Financial/Case Management System in the 2023-25 biennium will bring a new opportunity to apply industry standards and best practices to payment processing. The Business Plan for the F/CMS anticipates modifying existing payment policies and practices to optimize the functionality of the modern system.

Many of the current AP processes include printing and manual filing of information received electronically. The time stamp in the previous issue was placed on a printed paper that was completed by hand. There are other examples of this type of processing throughout the AP department and the OPDS as a whole. We recommend automation wherever possible and elimination of any unnecessary steps, such as printing electronic files, hand stamping, and then scanning for electronic storage; many manual processes, such as hand stamps, can be performed electronically.

**Case Support Services**

Review and test CSS expenses to determine that proper review and authorization is in place, proper remittance accounting is being performed, and that costs are reasonable in accordance with contract terms.

Findings	1
Observations	1
PIRs	2

<b>1</b>	<b>FINDING</b>	CSS authorizations allow for unnecessarily long billing periods.
	<b>RECOMMENDATION</b>	Update CSS authorization policies to better suit the needs of the agency.
	<b>MANAGEMENT RESPONSE</b>	Management agrees with the recommendation. OPDS will work to modernize policies and transition to a reduced timeframe and take the opportunity to “re-age” the accumulated liability going forward. This will improve transaction processing times and provide an opportunity to improve the integrity of financial and expenditure forecasts. Management anticipates placing policy changes in this area near the top of the priority list and expects changes to begin by the June 30, 2023, the end of the current biennium. With that timing it will have a direct impact on the 2025-27 budget preparation and contribute to the successful configuration and implementation of the F/CMS.

Detail testing was performed on 150 CSS expense selections. These selections were made across all years under audit, from a variety of case types, vendors, and counties. Testing included, but was not limited to:

- Tying the amount approved to the amount requested and determining whether the amount approved was in line with the type of service being provided,
- Tying the amount approved to payment support, reviewing support for reasonableness based on case type,
- Reviewing providers for appropriate approval, determining whether payment was made within the OPDS’s required two-year timeframe, and
- Reviewing hourly rates based on contract agreements.

Current policy states CSS authorizations must start within two years of the authorization date of the CSS and must be billed against the authorization within two years of the last date of service. Only 18 of the 150 CSS expenses were released more than six months after the last date of service. None of the CSS expenses tested were released more than one year after the last date of service. Based on these results, the policy to hold CSS expenses open for two years after the last date of service is unnecessary. Having such a lengthy submission period makes it difficult for the OPDS to accurately accrue for these expenses each year and budget for them in future years, and causes funds to be encumbered for long periods of time based on uncertain and high estimates of potential costs. We recommend the OPDS update its policy to have CSS expenses submitted within six months of the last date of service.

<b>2</b>	<b>OBSERVATION</b>	Payments to attorneys for CSS expenses are not timely due to the policy requiring most case types to be closed prior to payment.
	<b>RECOMMENDATION</b>	Attorneys on any case should be allowed, and potentially required, to bill at least quarterly for more timely payment for their services and more accurate case progress data to the OPDS.
	<b>MANAGEMENT RESPONSE</b>	Management agrees with this observation. More frequent payments to vendors will enhance the ability for OPDS to project budgetary needs and outstanding liabilities. It will also better support the vendor cash flow which they need for sustainable operations. This change will require modifying current policy and is expected to be one of the higher priorities, as mentioned in the previous management response. This will in turn have a direct impact on the 2025-27 budget preparation.

Only capital murder cases are allowed to be billed prior to case closure under current policy. All other cases may be billed only after the date of case closure. This policy is outdated and originated at a time when understaffing in the agency was a significant issue. With cases running for multiple years and billings allowed to occur up to two years after the case is closed, payments are not timely, and accruals are often inaccurate based on the significant lack of data and assumptions that have to be made. We recommend the OPDS review this policy and the wording of the attorney contracts to ensure the best process is being used to pay CSS expenses timely for the benefit of both the attorneys and the OPDS.

<b>3</b>	<b>PIR</b>	CSS expense reports are inefficient and the process for review and authorization is cumbersome.
	<b>RECOMMENDATION</b>	Review the current process and make updates where needed.
	<b>MANAGEMENT RESPONSE</b>	Management agrees with this process improvement recommendation. Agency review of CSS expenses in this manner is currently a statutory requirement. OPDS will review and make recommendations for necessary policy and statutory changes to appropriately shift work validation and strengthen financial controls. OPDS anticipates opportunities during the 2023 and 2024 legislative sessions as changes to the delivery of public defense services are in elevated public discussions.

During interviews with management and staff, it was difficult to determine whether the pre-approval process for these types of expenditures is redundant or serves a purpose. The AP department uses some of the data for matching, but the manual processing, which includes monthly reports from attorneys being submitted manually and saved to Microsoft Access, is inefficient and would greatly benefit from enhancement. We recommend this process be reviewed and updated as needed for more efficient processing with an emphasis on removal of redundant and manual processes, potentially eliminating the pre-approval process altogether.

4	<b>PIR</b>	The policies surrounding travel and travel expenses have historically been lenient to nonexistent. The absence of firm, consistently enforced policies creates an opportunity for misuse of travel funds.
	<b>RECOMMENDATION</b>	Formally adopt Department of Administrative Services (DAS) policies and procedures related to travel and travel expenses, or revise them to suit the specific needs of the OPDS.
	<b>MANAGEMENT RESPONSE</b>	Management agrees with the process improvement recommendation and has already adopted DAS travel policies. OPDS recognizes the DAS travel policies as a best practice in government. OPDS will continue to look to revise policies to best meet any unique needs of the PDSC and OPDS and document the necessity of modifications.

During interviews with management and after further review of a recent internal audit report issued by the OPDS's internal auditor, current policies regarding travel expenses have not been updated for at least seven years and have not been consistently followed by the OPDS directors and senior management in the past. The internal audit report found instances of non-compliance with the current OPDS travel policies that included lack of evidence for approval of expenses, use of personal vehicles rather than state pool vehicles, and purchasing airfare at a higher cost than economy or coach. While no current misuse of the travel funds have been identified, there is potential for this if these policies are not updated and enforced.

**Attorney Contracts**

Review and test attorney contracts to determine that contract creation, authorization, execution, and emendation follow effective and efficient processes.

Findings	2
Observations	1
PIRs	2

<b>1</b>	<b>FINDING</b>	Contracted attorneys are not analyzed or regularly reviewed for the quality of their performance.
	<b>RECOMMENDATION</b>	Develop independent performance measures that establish expectations for each attorney, law office, or consortium that are documented in their contracts annually.
	<b>MANAGEMENT RESPONSE</b>	Management concurs with the recommendation. The current contracting model limits the agency’s ability to change and influence the quality of performance and collect relevant and important data points in a timely manner. The purpose to establishing and developing the “Compliance, Audit and Performance” model by the Legislative Assembly in the 2021 legislative session was to draw attention to this issue. ODPS is requesting enhancement to the agency in policy packages to further strengthen and develop performance measures which will better measure the effectiveness and efficiency of contracted services regardless of delivery strategy.

It is the PDSC’s primary charge to establish a public defense system that ensures the provision of public defense in the most cost-effective manner consistent with the Oregon Constitution, the United States Constitution, and Oregon and national standards of justice. Further included in the duties of the PDSC is the adoption of policies, procedures, standards, and guidelines regarding performance for legal representation. Our audit was unable to evaluate the OPDS’s compliance with this performance requirement as there are no current policies in place that necessitate an evaluation of representation, and the OPDS had no documentation to support whether any evaluations are taking place. We recommend the OPDS establish a metric system in order to evaluate the performance of its agency and its defense attorneys. In developing an evaluation system, attention should be paid to the American Bar Association’s Ten Principles of a Public Defense Delivery System, which constitute the fundamental criteria necessary to design a system that provides effective, efficient, high quality, ethical, conflict-free legal representation for criminal defendants who are unable to afford an attorney.



<b>2</b>	<b>FINDING</b>	Attorney caseloads are impossible to track and confirm with the information the ODPS has available.
	<b>RECOMMENDATION</b>	Develop a process for reviewing reported caseloads for each attorney based on case type, time the case will go to trial, and case closure.
	<b>MANAGEMENT RESPONSE</b>	Management agrees that establishing a definition of what case closure means and better measure number of opened and closed cases during the contract period. This will allow OPDS to better define and evaluate open caseload levels among providers.

The OPDS relies on voluntary and periodic reporting from attorneys for caseload management. This leaves the OPDS vulnerable to an uneven allocation of casework and resources based on improperly tracked FTEs. The OPDS should make efforts to define a case count beyond the number of cases assigned in a given period. Case size and duration may vary drastically and OPDS is often not notified when open cases are closed or put on hold.

Previously, the OPDS paid attorneys based on the number of cases assigned. In a Sixth Amendment Center report from 2019, this was determined to be unconstitutional as the emphasis was placed on quantity of service and not quality of service to the defendants. The OPDS rewrote their payment methods to be based on FTEs in an attempt to address this issue, only assigning a certain number of cases to each FTE each year. However, when cases are assigned it is not always commensurate when casework is performed, which can lead to overloading attorneys in later years and a likely reduced level of quality given to their defendants. In order to provide the constitutional right of a quality defense, the OPDS must have insight into when casework is being performed in order to adequately apply their resources and assign cases to the most appropriate attorney.

<b>3</b>	<b>OBSERVATION</b>	A case type was miscoded in the OPDS database indicating an attorney was assigned a case at a level the attorney was not qualified for.
	<b>RECOMMENDATION</b>	Design and implement edit checks for all data inputs.
	<b>MANAGEMENT RESPONSE</b>	Management agrees with the observation and recommendation. As noted in previous responses, implementation of modern technology systems normally have edit checks driven by policy. As OPDS continues with the F/CMS project, edit checks will be part of the system requirements. OPDS looks forward to configuring the system to catch errors on the front end (data input) rather than on the back end (manual audit).

Detail testing was performed on a sub selection of attorneys while performing attorney contract testing. This testing revolved around attorney qualifications and included but was not limited to:

- Confirming the attorney had appropriate active licensing in the state of Oregon for the duration of the contract, and

- Reviewing proper documentation of qualification for case levels assigned.

In one instance of this testing, an error was found in the input for a case type that indicated an attorney had handled a case that they were not qualified for. Based on further inquiry, the OPDS was able to confirm the attorney did not mishandle a case, but the data did not reflect this and at no point was the OPDS aware that an error had occurred in the database. There appear to be no controls in place to prevent these manual entry errors from occurring. We have already recommended a more sophisticated technology system be put in place. In the meantime, we recommend the OPDS design and implement edit checks for all its data inputs.

<b>4</b>	<b>PIR</b>	Every contract process is different, creating a myriad of contract terms to track with individual law firms.
	<b>RECOMMENDATION</b>	Create a more standardized approach to annual contracts made with attorneys. Develop contract templates that favor the OPDS as much as attorneys.
	<b>MANAGEMENT RESPONSE</b>	Management agrees with the recommendation. ODPS will begin the next contracting cycle earlier in the fiscal year and be managed with a project management discipline. Goals and objectives for new contracts will be set earlier in the process and involve adequate stakeholder communication. Having a Designated Procurement Officer will improve uniformity in contracts and uniformity in the ongoing procurement of services. The function of the DPO allows program staff, namely the Chief Trial and Chief Juvenile attorneys to focus on strengthening contract language to the benefit of the clients across the entire state of Oregon.

Detail testing was performed on 60 attorney contract selections. These selections were made across all years under audit, covered private law firms, county defender associations and consortiums, and included both hourly and monthly contracts. Testing included, but was not limited to:

- Confirming the contract was complete and appropriately signed,
- Reviewing for proper documentation of each year under contract and inclusion of any or all amendments in the ODPS support files,
- Ensuring contracted rates are consistent with internal policies, and
- Confirming amounts paid to the attorneys did not exceed the contracted maximum amounts or contracted rates.

This testing covered contracts amounting to approximately \$60 million in payments from the OPDS throughout the years under audit. During review of these contracts, it became clear that there was no consistent application of a standardized contract for attorneys. Through discussions

with employees at the OPDS, we understand that efforts are already being made to improve this issue.

<b>5</b>	<b>PIR</b>	Attorneys appear to be paid below market average. OPDS has noted that attorney turnover is high and development of the next generation of attorneys is proving challenging.
	<b>RECOMMENDATION</b>	Provide higher rates for defense work closer to market rates. Lower attorney turnover will payoff over time as fewer newer attorneys are needed to be recruited and trained annually.
	<b>MANAGEMENT RESPONSE</b>	Management agrees with this process improvement recommendation and is actively working with the Legislature to make changes to bring pay parity to the public defense system. Additional requests and recommendation will be included in the 2023-25 budget.

During interviews with management, it has become apparent that retention of attorneys and coverage of current caseloads has become a problem for the OPDS. Hiring and retaining quality employees has become an issue faced by many industries across the state of Oregon. We agree with management in their determination that the rates being paid out on current attorney contracts appears to be below the market average for attorneys performing similar work. We also agree that high turnover rates can have a drastic effect on future capacity to provide the necessary services to the public. We recommend the ODPS do what it can to close the gap between its current contract rates and market average rates.

**Service Contracts**

Review and test service contracts to determine that contract creation, authorization, execution, and emendation follow effective and efficient processes.

Findings	2
Observations	-
PIRs	1

<b>1</b>	<b>FINDING</b>	The sole source method of contract creation is used too frequently, particularly given the lack of guidance around when sole source contracts should be made compared to RFPs or competitive bidding.
	<b>RECOMMENDATION</b>	Adopt DAS policies and procedures related to contract procurement, or revise to suit the specific needs of the OPDS.
	<b>MANAGEMENT RESPONSE</b>	Management agrees with the recommendation and has included a policy option package requesting the establishment of a Designated Procurement Officer in OPDS. Position requirements and available training opportunities as well as inclusion of applicable DAS policies and procedures, as appropriately modified for specific OPDS needs, will improve the integrity of OPDS procurements. OPDS recognizes adoption of best practices improves integrity and ultimately conserves valuable resources that can be better used in program delivery.

Detail testing was performed on 8 of the 36 service contracts entered into during the years under audit. Documentation was made available by the OPDS staff. Testing included but was not limited to:

- Confirming the contract was complete and appropriately signed,
- Reviewing for proper documentation of each year under contract and any or all amendments and included in the ODPS support files,
- Ensuring payments to the contracted vendor were made after the start date of the contract,
- Confirming amounts paid to the vendors did not exceed the contracted maximum amounts or contracted rates, and
- Reviewing contract rates for reasonableness.

Further review was completed on each selected service contract for appropriate procurement of services. Sole source method of contract was utilized in all selected contracts, though documentation for this determination was limited or missing entirely. The OPDS is legally exempt from following DAS policies related to procurement. In order to maintain independence from the State related to public defense, the State cannot be the enforcing authority over the OPDS's ability to conduct business. However, the fact that the ODPS is legally exempt from the general procurement process does not mean the procurement process is not a best practice for conducting the agency's procurement needs. Competitive bidding and issuance of RFPs can often create cost

savings and improve final product quality. We recommend the OPDS review and adopt DAS procurement guidelines as a best practice, regardless of legal exemption (also see Policies and Procedures issue 1).

<b>2</b>	<b>FINDING</b>	The position of Executive Recruiter was filled by an individual with a preexisting connection to a board member, potentially circumventing traditional procurement practices that mitigate the risk of improper selection of vendors based on personal biases.
	<b>RECOMMENDATION</b>	Adopt DAS policies and procedures related to contract procurement, or revise to suit the specific needs of the OPDS.
	<b>MANAGEMENT RESPONSE</b>	Management agrees with the recommendation and has previously discussed the finding with the PDSC based on an internal audit. Management does not believe any future actions are necessary for this particular incident. The designation and recruitment of a Designated Procurement Officer and the implementation of procurement best practices directly mitigates risk of findings in the future.

Further review was completed on each selected service contract for appropriate procurement of services. Interviews with management and further review of a recent internal audit report issued by the OPDS’s internal auditor revealed an instance where the Commission selected a vendor in 2021 with whom a Commissioner disclosed a potentially “less-than arms-length relationship”. We recommend the OPDS review and adopt DAS procurement guidelines as a best practice, regardless of legal exemption (also see Policies and Procedures issue 1).

<b>3</b>	<b>PIR</b>	In one service contract tested, lack of available documentation made it unclear whether the correct rates were being paid to the vendor.
	<b>RECOMMENDATION</b>	Ensure proper documentation of any changes to contracted rates with a signed amendment to the contract.
	<b>MANAGEMENT RESPONSE</b>	Management agrees with the recommendation and is working to restructure the procurement, contracting and contract administration process in OPDS. This includes a policy option package requesting a Designated Procurement Officer position and training for contract administrators. This training is already statutorily required in the Executive Branch as an effort to address audit findings such as this, and other contract administration shortfalls, and fulfill the recommendation. OPDS recognizes implementing this best practice mitigates a great deal of future risks.

One service contract entered into with the OJD did not have proper documentation for amendments and the payments made to the OJD did not tie to the contracted rates. The OPDS Operating Payment Request Forms for the three payments made on this contract were reviewed. Included in each form is a detail of the monthly rates that make up the total quarterly payment.

July and August were paid at the agreed upon rate of \$41,293.60 per month. In September, a note was included in the Special Pay Instructions box on the request form stating, "Per HR on 8/23/21, The IT Contract will be reduced by \$6,876 per month for a new cost of \$34,417.00 per month starting September 1. Charged \$34,417.60 for September \$41,293.60 minus \$6,876 = \$34,417.60". In the latest signed version of the contract (Amendment #3), there was a clause allowing a change to the rate: "When OJD is notified in writing that OPDS has assumed the CIO duties, OJD shall adjust the monthly billing rate to reflect the reduction in duties from a CIO to an ITS 4 (Lead). As a result of the change in duties, there will be a corresponding reduction in the per monthly cost". After further discussion with management, it was discovered that this was the reason for the decrease in contracted rates, though there was no documentation of this change in the contract file. We recommend appropriate contract documentation be obtained before contract rates are changed.

**Procurement**

Review and test expenditures made by the agency to determine appropriate approval and proper documentation of transactions in place in accordance with current policies and procedures.

Findings	3
Observations	-
PIRs	-

<b>1</b>	<b>FINDING</b>	Lack of policies surrounding procurement of operational expenditures creates a risk of potential abuse or error.
	<b>RECOMMENDATION</b>	Adopt and implement DAS policies and procedures related to operational procurement with adjustments made as deemed necessary.
	<b>MANAGEMENT RESPONSE</b>	Management agrees with the recommendation as previously discussed.

The combination of lack of policy and exemption from Oregon statutes has led to an inconsistent process followed by the OPDS. Discussions with management indicate efforts have been made to apply DAS procedures surrounding operational procurement intermittently. Formal adoption of DAS procedures would provide structure and control to the procurement process, protecting both individual employees and the OPDS as a whole (also see Policies and Procedures issue 1).

<b>2</b>	<b>FINDING</b>	The small size of the procurement department reduces the effectiveness of internal controls.
	<b>RECOMMENDATION</b>	Formalize a process to review work and separate incompatible duties for the sake of enhanced internal controls.
	<b>MANAGEMENT RESPONSE</b>	Management agrees with the recommendation. OPDS will establish controls for appropriate separation of duties.

The procurement department currently consists of only one person, the Facilities Manager/Procurement Services position. At times, that person is responsible for both requesting and receiving items needed by the OPDS, which could include things such as laptops and other high-value items. In cases where the Facilities Manager/Procurement Services position requests an item, a second person, such as the Executive Director or Deputy Director, should approve the purchase. When receiving items that were requested by the Facilities Manager/Procurement Services position, a secondary person should review the purchase order, bill of lading, and the physical items received, if possible, to ensure all items requested have been received and accounted for.

<b>3</b>	<b>FINDING</b>	Small service contracts are not being tracked or updated on a regular basis.
	<b>RECOMMENDATION</b>	Review all current service agreements and update those that are outdated. Adopt and implement DAS policies and procedures related to operational procurement with adjustments made as deemed necessary.
	<b>MANAGEMENT RESPONSE</b>	Management agrees with the recommendation and has adopted DAS policies and procedures for operational type procurements. OPDS will appropriately modify policies to best suit the agency's unique needs.

Detail testing was performed on 25 operational expenditure selections. These selections were made across all years under audit and covered all types of operational expenditure accounts. Testing included, but was not limited to:

- Tying the transaction amount to payment support, reviewing support for reasonableness, and
- Reviewing for proper documentation approval according to OPDS policies.

One selection was for janitorial services. For this selection, there was no way to determine how the monthly rate was agreed upon. OPDS had a contract on file that was acquired in 2012 with a monthly set price of \$1,245. The monthly price at time of testing was \$1,705 according to the invoice reviewed. OPDS was unable to provide an updated contract with the service provider, even though they have been under contract with this vendor for 10 years. Based on conversation with management, if OPDS was following the DAS policies and procedures related to operational procurement, the agency should be going through the OregonForward program for janitorial services and contracting with one of their vendors (also see Policies and Procedures issue 1).



## **ACKNOWLEDGEMENTS**

Over the course of this audit, with the assistance of the OPDS, we conducted over a dozen interviews, worked frequently and closely with OPDS staff, and were provided with hundreds of documents. The individuals at OPDS were active, helpful, and eager to explore opportunities for improvement. We appreciate the courtesy and cooperation we received from the management and staff in the OPDS and thank them for the effort and time they extended to provide us with requested information throughout the course of the audit.

We would also like to thank the agency's Internal Auditor for their support surrounding review of the OPDS and facilitation of our audit. The combination of their prior experience with OPDS and assistance familiarizing the audit team with intricacies specific to the agency was instrumental to the timely completion of the audit.