Commonwealth of Massachusetts
Office of the State Auditor
Suzanne M. Bump

Making government work better

Official Audit Report – April 3, 2013

Department of Developmental Services Administration of Limited Unit Rate Service Agreements

For the period July 1, 2008 through June 30, 2011

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INTRODUCTION AND SUMMARY OF FINDINGS AND RECOMMENDATIONS

The Office of the State Auditor (OSA) conducted an audit of the Department of Developmental Services' (DDS's) administration of its Limited Unit Rate Service Agreements (LUSAs). LUSAs are a form of a master contract agreement that can be used by DDS to purchase human services from a preapproved contractor on an intermittent, limited-time basis for clients who are not already covered through an existing contract. Although LUSA contracts are supposed to be used to purchase unanticipated intermittent services to clients throughout the year, our analysis of LUSA payment information contained within the Commonwealth's Massachusetts Management Accounting and Reporting System (MMARS) determined that between fiscal years 2009 and 2011, approximately 63% of all LUSA payments were processed within or after the last month of each fiscal year. Based on this peculiar service utilization pattern and the fact that prior OSA audits have identified instances of the misuse of LUSA funding[1], OSA initiated an audit of DDS's administration of LUSA funding. This audit assessed DDS's controls over its LUSA contracting activities and its compliance with applicable laws and regulations and its own internal policies and procedures for fiscal years 2009 through 2011. As part of our audit, we also conducted on-site audit testing at 15 DDS contractors that together accounted for over $16.6 million (26.7%) of the $62.2 million in LUSA payments for the three-year period covered by our audit. In addition to this report, we issued separate reports to each of the 15 contractors. This audit was conducted as part of OSA's ongoing efforts to audit human-service contracting activity by state agencies and to promote accountability, transparency, and cost effectiveness in state contracting.

Highlight of Audit Findings

- Although LUSA funding is supposed to be used for intermittent, unanticipated services to clients as needed, DDS is not properly administering these contracts. Instead, DDS Regional and Area Office staff have used LUSA contracts to provide millions in additional year-end funding to some DDS human-service contractors for various purposes, many of which are not consistent with the intended use of these funds. Further, some of the LUSA funding being provided by DDS may be unnecessary, given that several of the 15 contractors we selected for audit testing told us that they requested this funding only after being invited by DDS to do so because unused funds were available at year-end and given that the financial statements available for 14 out of the 15 contractors showed that they were already generating substantial surpluses even without year-end LUSA funding. We also found other significant administrative problems, including the retroactive authorization for millions in

[1] OSA Audit Report Nos. 2003-1490-3C, 2005-4488-3C, 2010-4539-3C, 2011-4547-3C, 2011-4550-3C, and 2011-4335-3C.

LUSA funding contrary to DDS policies, and irregularities on how DDS was pricing, encumbering, and accounting for LUSA funding. Finally, we found some instances in which information submitted by contractors and approved by DDS to obtain LUSA funding was inaccurate and misleading.

- We found documentation problems for LUSA payments totaling $7,517,602 at 14 of the 15 contractors we selected for audit testing. These problems included service authorization form deficiencies and missing or inadequate documentation of client service delivery. As a result, there was insufficient evidence to show that these LUSA payments had been properly authorized and accounted for, that they were necessary and not excessive, and that the contractor had actually provided the LUSA services billed.

- LUSA agreements are supposed to be used to provide direct services to clients. However, we determined that during our audit period, seven of the 15 contractors we selected for audit testing had been reimbursed a total of $688,811 in LUSA funds for what had been identified to, and approved by, DDS managers in three regions as being non-LUSA-related items such as the purchases of vehicles, appliances, furniture, and equipment; repairs; driveway paving; bathroom renovations; and overtime for staff. Such purchases are an inappropriate use of LUSA funding and, according to applicable state policies, should have been funded only through other state contracting mechanisms.

- DDS also used the LUSA funding mechanism to improperly purchase certain Transitional Services noncompetitively and, apparently as a matter of administrative convenience, to make year-end payments to contractors for Personal Support Services, Transportation Services, and ice-storm-related emergency costs that should have been paid for through other, non-LUSA, payment mechanisms. Documentation maintained by contractors for many of these transactions was also deficient.

Recommendations of the State Auditor

- DDS, in collaboration with the Executive Office of Health and Human Services, should take the measures necessary to ensure that all LUSA funding is properly administered in accordance with state contracting and accounting requirements. At a minimum, DDS should establish each contractor's appropriate funding needs at the beginning of each contract period and not use LUSAs as a supplement to pay for needed services that could have been included in regular program contracts. When LUSAs are used, DDS should establish detailed accounting, pricing, and monitoring procedures, including using the annual financial statement data filed by contractors with the Commonwealth's Operational Services Division (OSD), to enhance accountability for LUSA funding and activity.

- DDS should take measures to ensure that its contractors do not use any LUSA funding to pay for non-LUSA-related items. If DDS would like to provide funding to its contractors for these purposes, it should do so using established and appropriate contracting mechanisms and not use LUSA funds for these purchases. In the case of capital assets, DDS should also initiate corrective measures such as execution of legal agreements to protect the Commonwealth's ownership interest in capital assets that were paid for through LUSA funding.

- DDS should take measures to ensure that all of its contractors implement appropriate control measures to ensure that all LUSA services are performed, documented, billed, and accounted for in compliance with applicable requirements.

- DDS should take the measures necessary to ensure that all LUSA funding is expended in accordance with all applicable laws and regulations and is properly accounted for in the MMARS system. Responsible oversight agencies such as OSD and the Office of the State Comptroller should review the issues detailed in this report and take whatever actions they deem appropriate to address these issues, including strengthening their oversight over these DDS transactions.

Agency Progress

At the conclusion of our audit, DDS provided written comments to OSA in which it stated that after the end of our audit period, the department issued supplemental LUSA policy guidance, and that

> *DDS has implemented numerous requirements and protections to manage LUSA spending more effectively and to ensure that LUSAs are used only for their intended purpose . . . . These steps include:*
>
> - *Issuing guidance materials to all field staff involved in the purchasing of services that provide extensive detail regarding the allowable and non-allowable uses of LUSAs, proper authorization requirements, duration of LUSA use, and enhanced monitoring and compliance review procedures...*
> - *Clarifying rules regarding prohibition of capital and non-service purchases via LUSAs, protracted use of LUSAs, and the proper billing of additional services above and beyond contracted service levels...*
> - *Implementing stringent new requirements relating to the need for timely authorization of LUSAs...*
> - *Requiring the prior review of all proposed LUSAs by responsible Central Office DDS staff, to ensure that they are fully justified and reflect allowable uses and putting in place a centrally monitored LUSA tracking system...*
> - *Issuing LUSA guidance to all DDS providers, to ensure that they understand how to more effectively manage and monitor this purchasing mechanism...*
> - *Conducting statewide training of all DDS field staff and DDS provider organizations involved in contracting activities, to highlight areas of concern and to clarify new rules and approval practices...*
> - *Expanding procurements to reduce the need for future LUSA use....*

OVERVIEW OF AUDITED AGENCY

Historically, the Department of Developmental Services (DDS) and other agencies within the Executive Office of Health and Human Services have purchased human services through individual contracts with each contractor. However, in order to accommodate the need to provide intermittent or otherwise unpredictable services through the use of more flexible contracting arrangements, the Commonwealth's Operational Services Division and the Office of the State Comptroller have established a system of Master Agreements (also commonly referred to as "Master Service Agreements" or "MSAs") to address unpredictable circumstances that may arise by allowing departments to establish contracts in the state accounting system under which multiple preapproved contractors, each with a defined price or price range, may be paid for as-needed services. DDS has established MSAs primarily for four separate service categories (Residential, Day, Work, and Support services) and refers to those MSAs as Limited Unit Rate Service Agreements (LUSAs). LUSA funding utilization fluctuates from year to year but has exceeded $15 million per year for the past three fiscal years, with a three-year total of over $62 million, as summarized in the following table.

Limited Unit Rate Service Agreement Contractor Payments
Budget Fiscal Years 2009 through 2011*

	2009	2010	2011	Total
Residential Services	$ 4,672,202	$ 3,532,387	$ 1,976,713	$10,181,302
Day Services	1,241,040	1,688,771	407,144	3,336,955
Work Services	269,005	246,398	237,398	752,801
Support Services	15,626,697	19,842,303	12,495,125	47,964,125
Total	$ 21,808,944	$25,309,859	$15,116,380	$62,235,183

* Source: data provided by DDS

Each year, DDS expends approximately $900 million (70%) of its annual budget on community-based human services. For fiscal years 2009 through 2011, DDS expended between $15.1 million and $25.3 million per year on purchasing human services through LUSAs. Approximately 75% of DDS program service contractors receive LUSA payments, and over the three-year period covered by our audit, over 80% of the contractors in the DDS program service system received at least some LUSA funding.

AUDIT SCOPE, OBJECTIVES, AND METHODOLOGY

In accordance with Chapter 11, Section 12, of the Massachusetts General Laws, the Office of the State Auditor (OSA) conducted an audit of the Department of Developmental Services' (DDS's) administration of Limited Unit Rate Service Agreement (LUSA) contracts for the period July 1, 2008 through June 30, 2011. The scope of our audit included an assessment of the process and related internal controls DDS has established over its administration of LUSA contracts and the use of LUSA funding at 15 selected DDS contractors. These 15 contractors together accounted for approximately $16.6 million (26.7%) of the $62.2 million in LUSA payments for the three-year period covered by our audit.

We conducted this performance audit in accordance with applicable generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives, which were to:

- Assess the system of internal controls DDS has established over its administration of LUSA contract funding.
- Determine whether LUSA funding is being utilized as intended and in compliance with applicable laws, regulations, policies, and procedures by conducting audit testing of a judgmental sample of DDS human-service contractors who received significant LUSA funding.

To accomplish our objectives, we analyzed DDS policies applicable to LUSAs, DDS's LUSA-related documentation in the Commonwealth Procurement and Solicitation System, and state accounting records in the Commonwealth Information Warehouse to identify LUSA transactions, types of LUSA activity, participating contractors, and expenditure characteristics such as the accounting periods in which payments were processed. The electronic data sources used for this analysis constitute the official procurement and accounting records of the Commonwealth, are widely accepted as accurate, and form the basis for the Commonwealth's audited annual financial statements. Accordingly, our audit did not involve a comprehensive assessment of the reliability of source Commonwealth data. However, we did perform analytical procedures such as comparisons and reconciliations to available expenditure summary totals and audited financial statements for contractors to confirm that the Commonwealth database information we utilized was consistent

with other available information. Based on that analysis, we concluded that the data used was of sufficient reliability for the background information, sampling methodology, and other purposes of our audit. However, as documented in our audit findings, audit testing at DDS and selected contractors produced evidence that certain data involving the classification of DDS LUSA expenditures did not reliably represent the actual underlying agreement between DDS and contractors regarding the true purpose and use of the state funding. Since our planned audit methodology included reconciliation of Commonwealth data to contractor hardcopy supporting source documentation for each transaction, it was not necessary to assess the reliability of the computer-processed data of individual contractors.

Based on our analysis of the aforementioned data, we determined that 12% of all LUSA payments during our audit period had been processed during the last month of the fiscal year and that an additional 51% of all LUSA payments had been processed during the Commonwealth's accounts payable period[2]. This expenditure pattern for LUSA services was in marked contrast to the pattern for DDS's non-LUSA contractor payments, for which fewer than 4% were processed during the accounts payable period and fewer than 5% during the last month of the fiscal year. Based on that analysis and the results of prior audits that identified issues with LUSA transactions, we concluded that LUSA payments processed late in the year, particularly during the accounts payable period, are disproportionately likely to have been made in nonconformance with LUSA standards.

Because of the large number of contractors receiving LUSA payments (approximately 372 contractors over the audit period, with approximately 280 of those receiving payments during the accounts payable period), we determined that it would not be practical to conduct audit sampling on a random, statistical basis, since it would require on-site audit work with an excessive number of contractors across the state. Instead, all contractors were ranked by LUSA accounts-payable-period total payment amounts as of mid-August 2011. The 15 highest-ranking contractors were found to account for approximately 33.9% of all accounts-payable-period LUSA payments and approximately 26.7% of total LUSA payments during our audit period. They also accounted for approximately 17.6% of all June (period 12) LUSA payments. In OSA's opinion, transactions for those 15 contractors provided reasonable coverage of the known universe of transactions processed through

[2] The Commonwealth's accounts payable period, where money can be used to pay for expenses for the fiscal year just ended, is typically from July 1 through August 31 after the end of each fiscal year but can be extended through September 15.

the DDS Central and Regional Offices, and those contractors were therefore selected for audit testing. In our judgment, the selected sampling and audit methodology could be expected to identify the most prevalent control and compliance issues and provide a reasonable basis for forming conclusions regarding the overall performance of DDS's LUSA contracting arrangements and DDS's oversight and control of the system. However, since transaction sampling was not conducted randomly across all LUSA contractors and accounting periods, it is not reasonable to use the audit findings to project incidence rates or improper expenditure amounts for unaudited LUSA system contractors or for invoice processing periods other than the state's accounts payable period.

During our audit, we separately engaged each of the 15 selected contractors for audit testing, conducted interviews with contractor management and staff, reviewed prior audit reports where available, and reviewed applicable laws and regulations. We also obtained and reviewed each contractor's policies and procedures, accounting records, and supporting source documents relative to LUSA revenues and expenses during our audit period and performed tests on these records and transactions. At the conclusion of audit testing for these individual contractors, we met with the managers of each contractor to discuss our audit test results. In addition to this report, we issued separate reports to each of the 15 contractors. At the conclusion of our audit, we provided a copy of this report to DDS for its review and comments. However, any comments provided by the 15 contractors in our sample were included in the individual reports issued to these contractors. Finally, we performed audit work at DDS's Central Office and two DDS Regional Offices; this work included interviewing responsible DDS officials, reviewing DDS policy and procedural documentation pertaining to LUSAs, and obtaining and reviewing LUSA contract information. Our assessment of internal controls over DDS's LUSA activity was based on those interviews and review of documents at DDS as well as at the 15 contractors.

Although our audit procedures were designed to obtain reasonable assurance that our audit objectives pertaining to LUSA utilization, compliance, management control, and transaction identification and documentation would be met, the extensive control environment, documentation, and data reliability deficiencies identified in this report's Audit Findings section limited our ability to obtain reasonable assurance that DDS and its contractors had otherwise maintained adequate management control; used LUSA funding as intended; and complied with applicable laws, rules, and regulations for the areas tested. Although we believe that the evidence obtained by our audit testing and analysis provides a reasonable basis for our overall findings and conclusions, evidence was not

always sufficient to formulate conclusions on other matters pertaining to our audit objectives, such as fully identifying the extent to which LUSAs may have been used for improper purposes or determining the extent to which client services had actually been delivered in instances where documentation was missing.

AUDIT FINDINGS

1. DDS IS NOT PROPERLY ADMINISTERING MILLIONS IN LUSA FUNDING

Although Limited Unit Rate Service Agreements (LUSAs) are supposed to be used for intermittent, unanticipated services to clients as needed, the Department of Developmental Services (DDS) is not properly administering these contracts. DDS Regional Office and Area Office staff have used LUSA contracts to provide additional year-end funding to some DDS human-service contractors for various purposes, many of which are not consistent with the intended use of these funds. This additional funding is not distributed through any type of competitive process but rather is given to contractors in a discretionary manner not necessarily based on their documented needs. Further, several of the 15 contractors we visited told us that they did not request any of this funding but rather were contacted by DDS staff asking whether they wanted additional funds at the end of each fiscal year. Based on this fact and the fact that analysis of financial statements available for 14 out of the 15 contractors showed that they were already generating substantial surpluses even without year-end LUSA funding, the supplemental LUSA funding does not appear to have been necessary to avert contractor operational losses. We also found other significant administrative problems, including the retroactive authorization for millions of dollars in LUSA funding contrary to DDS policies, and irregularities in the methods DDS used to price, encumber, and account for LUSA funding.

Like all state agencies, DDS must adhere to requirements established by various statutes and rules and regulations promulgated by the Executive Office for Administration and Finance (EOAF) and related oversight entities, including the Office of the State Comptroller (OSC) and the Operational Services Division (OSD). Collectively, these requirements are known as "state finance law." OSC, OSD, and the EOAF Budget Bureau have issued extensive guidance to state agencies regarding these requirements, and those oversight agencies regularly remind all state agencies that state fiscal activity is based on a series of reliance and control systems. That guidance[3] includes the following statement:

> *The Comptroller relies on Department Heads to ensure that all payments and other documents sent to the Comptroller for certification through MMARS have been approved by the Department Head as being legal, appropriate and properly submitted in accordance with applicable law, policies and procedures.*

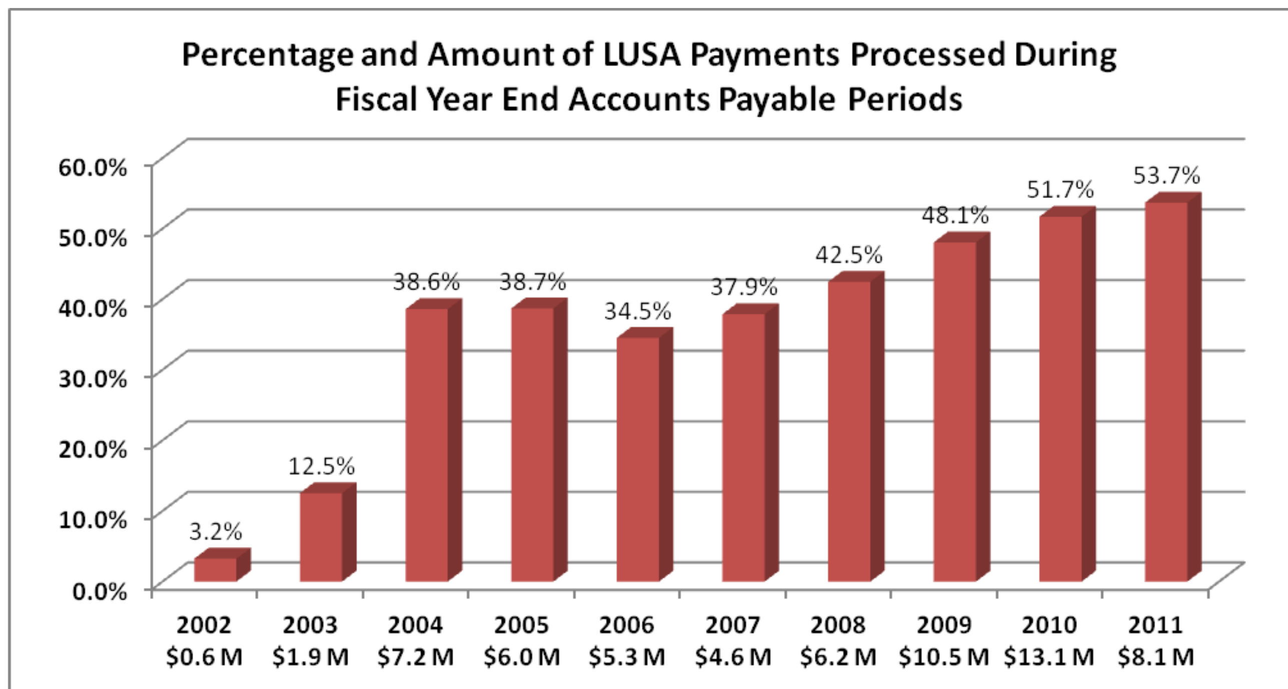
[3] OSC and OSD Joint Policy Statement on State Finance Law and General Contracting Requirements, issued July 1, 2004 and last revised May 20, 2011.

The same guidance reminds state department heads and other state managers of the applicability of Chapter 29, Section 66, of the Massachusetts General Laws ("Violation of State Finance Laws; Penalties"), which establishes criminal penalties for knowing violation of state finance law, including rules and regulations established pursuant to statutory authority. In addition, a second statute (Chapter 266, Section 67A, of the General Laws) also makes it unlawful for either public employees or contractors to engage in various improper contracting-related representation and documentation practices.

In order to ensure compliance with state finance law, DDS has established a process to administer LUSA funding. Specifically, according to DDS's Purchase of Service Manual, the purpose of a LUSA is to provide a contract that can be used at any time during its term to pay for unexpected services for clients authorized by DDS. In order to obtain funding to pay for LUSA services, DDS and contracted human-service contractors have to execute an Authorization for Services Form (ASF) that establishes the specific types of service, dates of service, and amount of LUSA funding that will be provided. According to this form, "LUSA/MA billing is for additional services on an intermittent, as-needed limited time service that clients need due to specific circumstances that are not included in [an] existing state-funded program contract." This form must be authorized by DDS before any services are rendered by one of its human-service contractors. Although this is the process that has been established by DDS for the administration of LUSA funds, our audit determined that DDS does not always follow this process.

If DDS was following its established LUSA contracting process, one could reasonably expect LUSA funding, like DDS's other contract funding, to be provided in a relatively consistent manner throughout the fiscal year. In order to assess LUSA funding patterns, we extracted and analyzed LUSA payment data from the Commonwealth's Massachusetts Management Accounting and Reporting System (MMARS) for fiscal years 2002 through 2011 and calculated the percentage of each fiscal year's total LUSA payments that had been made during the state's accounts payable period. Our analysis determined that during fiscal years 2002 and 2003, no more than 12.5% of LUSA payments occurred during the state's accounts payable period. This percentage was within the range of what might be reasonably expected. However, the percentage jumped to 38.6% for fiscal year 2004 and then tended to increase each year through the end of our audit period, reaching a high of 53.7% during fiscal year 2011, as displayed in the chart below. The total amount of LUSA

payments processed during each year's accounts payable period is also displayed at the bottom of each percentage column.



Note that the above table covers accounts-payable-period LUSA activity for all DDS contractors, not just the 15 included in our audit sample. The 15 contractors we selected for audit testing received a total of $10,761,550 in DDS payments for fiscal years 2009 through 2011 that were processed during the Commonwealth's accounts payable period. Those payments represented approximately 65% of the $16.6 million in total DDS LUSA payments these 15 contractors received during our audit period (see Appendix). During our site visits, we asked the 15 contractors why this was occurring. In response, several contractors told us that at the end of each year, DDS managers contacted them regarding the availability of state funding that would otherwise remain unused and would revert to the Commonwealth's General Fund at year-end if it was not spent. These contractors added that DDS Area and Regional Office managers asked contractors to submit funding requests for consideration. For example, one such e-mail from a DDS area director stated:

> *There is possibility for additional end of the year money. If you have staffing expenses for May and June above what you have already requested, please get your request in ASAP! This is first come first serve. So please if you have any additional staffing costs get your request into me now.*

When requests were approved, contractors were instructed to submit invoices and service delivery reports for the approved amounts.

In many instances, these approvals and payments were processed in mid-August, more than six weeks after the end of the fiscal year. This distribution to contractors of available excess funds at the end of the fiscal year may have been unnecessary, since the contractors in question were able to provide all the contractually-agreed-upon services under their existing contracts without any additional year-end LUSA funding. The fact that this additional funding in most cases may have been unnecessary is further substantiated by our analysis of the annual financial statements, called Uniform Financial Statements and Independent Auditor's Reports (UFRs), filed with OSD by 14 of the 15 contractors during our audit period. One of the 15 sampled contractors, Montachusett Regional Transportation Authority (MART), was exempt from OSD UFR financial reporting requirements. The Office of the State Auditor's (OSA's) efforts to trace LUSA payments to specific contractor programs for the 14 UFR filers was only partially successful because contractors did not list all LUSA contract reference identification numbers for each program as required by OSD's UFR-preparation instructions. Only one contractor had completely identified all LUSA contracts by program as required. Ten provided only partial LUSA contract listings, and three did not list any of their LUSA contracts.

Although it therefore was not possible to analyze operating results for each program funded with LUSA payments, it was possible to identify certain specific cases of excessive funding. For example, one contractor received $143,250 in LUSA payments during the fiscal year 2009 accounts payable period for an employment services and transportation program that had already been paid $1,255,656 through a regular state-funded contract. This program operated at 99.99% of planned capacity and had been budgeted to break even, with $1,455,832 in total revenue. Instead it underspent its budget by $86,609 and received $216,499 in excess revenue, resulting in a $303,108 (22.1%) surplus. Even if DDS had not provided any year-end LUSA funding, the program still would have generated a $159,858 (11.7%) surplus. As shown in the following table, our analysis of overall UFR data for the 14 contractors, including operating results for all programs with reported DDS funding, revealed that few of them had negative operating results for either their DDS-funded programs or their overall entity-wide operations.

Contractor Surplus/(Deficit) Operating Results

	Fiscal Year 2009	Fiscal Year 2010	Fiscal Year 2011	Three-Year Consolidated Results
Accounts-Payable-Period LUSA Total	$3,648,012	$4,337,449	$2,417,965	$ 10,403,426
DDS-Funded Program Surplus/Deficit Results	$7,487,485	$9,826,318	$7,099,155	$ 24,412,958
Entity-Wide Surplus/Deficit Results	$10,067,883	$17,406,960	$16,907,469	$ 44,382,312
Contractors Reporting Overall Deficits on DDS-Funded Programs	3	3	2	
Contractors Reporting Overall Deficits for the Entire Entity	3	1	0	

As can be seen from the preceding table, the 14 contractors in our sample reported total net surpluses of $24.4 million for their DDS-funded programs and $44.4 million for their entity-wide operations, representing excess-revenue-over-expense percentages of 3.7% for DDS-funded program operations and 2.6% for entity-wide operations during our audit period. Under these circumstances, supplemental LUSA funding does not appear to have been necessary to avert operational losses.

a. Retroactive Authorization of LUSA Services Contrary to DDS Policies

DDS and other state agencies are required to adhere to a variety of requirements established by state finance law and associated rules and regulations that are designed to ensure that public funds are not wasted or misused and that state business is conducted in a transparent manner. Included are general budgetary-control and accountability requirements that agencies not obligate the Commonwealth to pay contractors for services without first establishing formal written documentation of the service arrangements, payment terms, state appropriation account funding sources, and completion of all approval requirements. Documentation of these obligations (known as encumbrances) and transaction details is also required to be entered into MMARS in a timely manner so that obligations and activity can be controlled and tracked by department managers and by oversight entities such as OSC, the EOAF Budget Bureau, and the Legislature.

Ordinarily that requirement is enforced through a system of contract signature delegation arrangements and controls over encumbrances established in the state accounting system.

However, for open-ended multi-year contracts such as LUSAs, supplemental policy and procedural controls need to be established by the state agencies making use of such contractual agreements to ensure that the Commonwealth is not obligated to pay for services without first fully documenting the details of the obligation. DDS has established internal policies for this purpose, requiring that, in order to arrange for approving specific LUSA services to be delivered to individual DDS clients, DDS managers must prepare and sign ASFs. Each ASF must specify each client's services and service dates, along with the approved rate to be charged, the total potential payment obligation amount, and the appropriation account to which payments will be expensed. The form must be signed, dated, and sent to the selected contractor within three working days after the initiation of service.

However, our audit found that DDS and its contractors routinely circumvented this control system. In many instances, LUSA payments made for services claimed to have been provided long before the June 30 fiscal year-end date were not approved and invoiced until August, shortly before the closing of the state's accounts payable period. E-mail correspondence, service authorizations, and invoice submissions sometimes occurred as late as the last week of August. For transactions processed near the accounts-payable-period processing deadline in late August, documentation sometimes indicated that if the contractor could not assemble a billing package before the deadline, DDS managers would instead give the funds to a different contractor in order to avoid a reversion of these funds to the Commonwealth's General Fund. Such communications appear to indicate that the LUSA payments being made in some cases may not have actually been for the stated purpose of purchasing individual client services, but may instead have been a means of distributing available unused departmental funds at the end of the year.

For the 15 sampled contractors, the $5,423,765 in accounts-payable-period payments associated with retroactively completed ASFs are summarized below.

Payments for Retroactively Authorized Services*

	Payment Amount	Contractor Count
Fiscal Year 2009	$ 1,668,303	12
Fiscal Year 2010	2,249,820	13
Fiscal Year 2011	1,505,642	13
Total	$ 5,423,765	

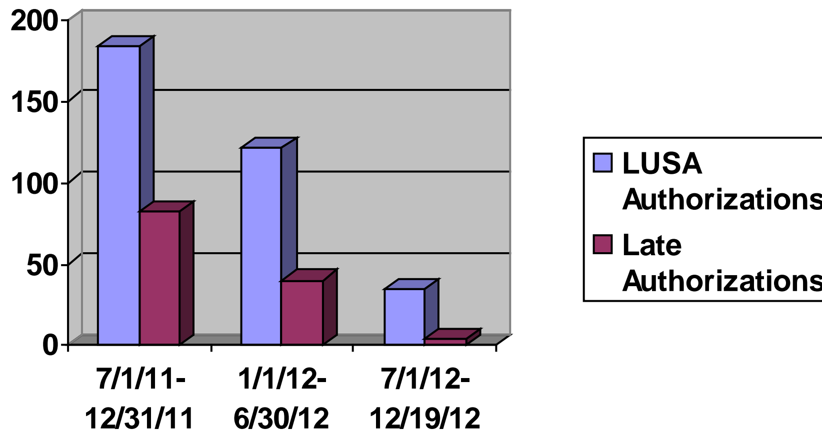
* Excludes certain transitional-service payments discussed separately in Audit Finding No. 4.

The table covers only transactions for which ASF documentation was maintained by contractors and included signature dates necessary to determine whether approval was processed retroactively beyond the three-working-day limit authorized by DDS policy. The total excludes numerous transactions for which it was not possible to determine when service authorization was approved because of problems such as missing ASF forms or ASF forms that were missing signature dates or were otherwise incomplete, as described in Audit Finding No. 2.

Auditee's Response

DDS has implemented a series of controls designed to eliminate post-fiscal-year authorizations and is enforcing a timely authorization policy. These actions have resulted in a sharp decrease in overall LUSA authorizations and in late authorization requests during FY12 and FY13. See chart below:

LUSA Authorizations / Late Authorizations 7/1/11-12/30/12



It is our view that the Central Office Review Process, taken together with the requirement that LUSA authorizations requested after the 3-day requirement must be processed to the Deputy Commissioner/Commissioner, has resulted in improved

> *compliance with the Timely Authorization standard.... The Department does not support situations in which the internal DDS authorization practices were not consistently followed on a timely basis, and we believe that the steps we have taken effectively control this area of purchasing activity.*

Auditor's Reply

Our report describes the importance of accounting controls to ensure that the Commonwealth's payment obligations are appropriately recorded and monitored. As our report states, for open-ended multi-year contracts such as LUSAs, supplemental policy and procedural controls need to be established by the state agencies making use of such contractual agreements to ensure that the Commonwealth is not obligated to pay for services without first fully documenting the details of the obligation. Although DDS established internal policies for that purpose during our audit period, our audit found that DDS and its contractors routinely circumvented that control system. However, according to its response, DDS has implemented enhanced controls in this area.

b. Circumvention of Encumbrance Internal Controls

EOAF and OSC have established various control mechanisms intended to prevent year-end expenditure abuses by state agencies. In order to assess how those controls had failed to prevent the year-end LUSA issues identified by our audit, we analyzed state accounting system data related to one of the principal control mechanisms. Specifically, each fiscal year, EOAF and OSC establish a mid-May deadline for establishing contractual payment obligations for goods and services purchased through the end of the fiscal year. Those obligations, known as encumbrances, must be recorded in the state accounting system by the established deadline date. After the deadline, agencies must generally obtain prior approval from EOAF for new obligation encumbrances or increases to existing contractual obligations beyond the already-established expenditure limits. This control helps ensure that state purchasing agencies accurately project their spending requirements for the remaining portion of the fiscal year and also serve to constrain last-minute "spend it or lose it" expenditure abuses. As part of this control process, during April and early May, DDS and other state agencies contracting for human services review contract arrangements, expenditures, program utilization statistics, and planned client placement changes to ensure that any needed contract amendments or encumbrance changes are completed before the processing deadline. Instructions issued by the EOAF Budget Director each year to department heads and their budget directors expressly state:

> *Departments must not respond to the deadline by over-encumbering prior to [annual deadline date]. Encumbrances must correspond to departments' best projection of the amount of funds actually needed to meet valid obligations, including some small but reasonable margin for error.*

During our audit, we asked DDS managers to explain how LUSA expenditures were budgeted each year. These officials responded that LUSA amounts were not budgeted at the start of each year; that funds were left unencumbered until needed, with only small amounts kept in LUSA encumbrances for unforeseen expenditures; and that adjustments were made as needed each year before the mid-May encumbrance processing deadline. DDS regional managers with whom we spoke said that funds were properly encumbered in regular non-LUSA contracts through the mid-May processing deadline, but acknowledged that at the deadline, any funds not required to fund regular contract activities through the end of the fiscal year were "amended out" of the non-LUSA contracts and transferred to LUSA contract encumbrances. One regional manager explained that this was done in order to avoid having the unused funds revert to the Commonwealth's General Fund at year-end. However, our analysis of DDS encumbrance transaction data in the MMARS system indicated that, although it was true that LUSA encumbrances were generally not established at the start of each year, DDS routinely over-encumbered LUSA funds. In fact, over the three-year period of our audit, more than $53 million in LUSA encumbrances had been established before mid-April, despite the fact that the three-year total of LUSA expenditures processed through the end of April for this same period was only $18.2 million. Since LUSA spending rates for the first 10 months of each year were far lower, totaling only $18.2 million over the three-year period, it seems unreasonable for DDS to encumber almost 300% of what it actually expensed during those months. Rather, it appears that, despite their assertions to the contrary, DDS managers were routinely over-encumbering LUSA amounts in the state accounting system, resulting in the creation of a pool of funds kept available for year-end discretionary use after the encumbrance processing deadline.

Auditee's Response

> *DDS takes steps to maintain available funds to cover unforeseen circumstances occurring after the annual encumbrance deadline. This is a reasonable response to deadlines that occur approximately forty-five days prior to the official end of the fiscal year. During these final weeks of the fiscal year, there is a legitimate expectation that many late-year client needs and emergencies will occur. It is important to encumber funds to ensure that these needs may be addressed when they do arise.*

> *Once the annual encumbrance deadline has passed, it is extremely challenging to process normal contract adjustments. The increase in LUSA funding noted by the Auditor not only reflects DDS's need to cover LUSA-type expenses, but also the need to support program changes and amendments that could not be done routinely due to restrictions on normal amendment processes. It is not DDS's goal or policy to use LUSAs for the purpose of* ***avoiding*** *reversions. In fact, DDS does typically revert purchase-of-service funding at year's end.*

Auditor's Reply

We acknowledge that it is appropriate for DDS to encumber sufficient LUSA funding to cover all reasonably projected year-end expenses. However, the amount of funds we found being encumbered by DDS during this period (almost 300% of what it actually expensed during the prior 10-month period), coupled with the numerous issues detailed in this report regarding improper administration, distribution, and use of these LUSA funds, raises serious questions about the need for DDS to encumber this level of LUSA funding, and we believe it is a clear indication of over-encumbering. Further, our audit of DDS also included an examination of year-end processing arrangements at other state agencies with similar human-service contracts, and this examination showed that DDS's encumbrance practices were atypical. For example, while eight other Executive Office of Health and Human Services (EOHHS) agencies also make use of LUSA-type multi-vendor Master Service Agreements in contracting for human services, on average for all eight, only 9.7% of those MSA expenditures are processed during the state's accounts payable period. For example, even though the state's Department of Mental Health spends more than $400 million each year on contracted human services, many of them similar to the services purchased by DDS, extensive use of year-end open-ended LUSA-type contracting arrangements has not been necessary. Finally, in its response, DDS asserts that it is not its goal or policy to use LUSAs for the purpose of avoiding reversions. However, as described in our report, our review of contractor documentation and our interviews with DDS regional managers and contractor staff appear to indicate that DDS did, to some extent, seek to distribute the LUSA funds in question for this purpose.

c. Questionable LUSA Pricing and Compensation Issues

We identified various problems with the way DDS was pricing and compensating LUSA contracts. For example, our review of various ASF documents and LUSA documents at each of the 15 contractors we selected for audit testing revealed that contractors did not submit proposed budgets for contracted services, and LUSA reimbursement rates for services were

often approved by DDS managers on the basis of unverified contractor assertions regarding the costs of providing the services. Communications between DDS managers and officials at the contractors we selected for audit testing showed that, in some cases, contractors made assertions to DDS regarding both direct service personnel costs and indirect costs that were incorrect, as evidenced by their own UFR filings with OSD. Even though UFR filings were readily available for review by DDS managers, there was no evidence that DDS had reviewed available cost information in those filings or had obtained alternative verification from sources such as on-site contract monitoring activities. As a result, contractors sometimes received LUSA funding that significantly exceeded their actual costs. For example, DDS and one of the contractors we selected for audit testing established a program serving a single client for the entire 2011 fiscal year with funding provided solely through a LUSA. The LUSA funding for the program totaled $160,790, including $3,111 paid during the accounts payable period. That organization's UFR disclosed that even after factoring in all indirect costs, the LUSA-funded program had generated a $40,522 (29%) surplus excess of revenue over expenses. Had DDS managers appropriately reviewed the contractor's actual costs, sufficient but lower payment arrangements could have been established, which would have prevented this unnecessary expenditure of Commonwealth resources.

In other instances, we found evidence that LUSA contracts had been improperly used to provide excessive, and not properly authorized, supplemental compensation to contractors for services that had already been compensated through the contractor's regular non-LUSA DDS contracts. It is typical for human-service contractors to receive 100% of their negotiated contracts' program funding before the end of the fiscal year. This is because OSD allows state contracting agencies such as DDS to pay unit rates for service that are higher than those negotiated to ensure that contractors receive their entire negotiated contract amount even if their programs are underutilized because of unanticipated vacancies. These utilization-factor adjustments typically increase unit rate amounts by as much as 17.6%. In such cases, if the program has actually not been underutilized, the contractor receives full reimbursement of program costs as much as two months before the end of the fiscal year. As explained by the OSD policy:

> *The inclusion of a utilization factor in unit rate contracts may result in a situation where a specific contractor is serving consumers at a higher utilization level than negotiated or anticipated and thus reaches the maximum obligation of the contract (or "bills out") before the end of the contract period. In this case, the contractor is required to provide*

> *services up to the total capacity purchased by the contract… for the remainder of the contract period with no additional funding. The application of a utilization factor does not result in the contractor delivering "free" services; rather, in these cases, a contractor has merely been fully reimbursed for the costs associated with the program in a shorter period of time than the full contract duration….*

Nevertheless, we found a number of instances in which DDS allowed contractors, although they were fully reimbursed for their program services under their regular DDS contracts during the first 10 months of the fiscal year, to use LUSAs to retroactively bill DDS for May and June services provided to program clients, effectively paying them twice for services and circumventing the OSD requirement that services continue to be provided through year-end without additional compensation.

The DDS accounting control deficiencies and the extensive documentation inadequacies that we encountered during our audit and describe in this report impaired our efforts to determine both the total incidents of questionable LUSA compensation and the total dollar amount involved. Although we could determine that DDS provided additional LUSA funding under existing DDS contracts, it was often not possible to trace LUSA-invoiced client service amounts to individual contractor programs and the regular non-LUSA DDS contracts funding those programs. Had ASF forms, invoices, contract copies, underlying contractor service delivery documentation, and contractor UFR filings with OSD been completed with required detail, it would have been possible to perform appropriate audit testing to identify all LUSA billings that had been made despite the aforementioned OSD policy restrictions. However, missing and sometimes conflicting information made it impossible to complete that analysis. We did, however, obtain contract and rate calculation documentation for 24 regular non-LUSA contracts covering DDS-funded programs operated by seven of the sampled contractors. For twenty-one of these 24 contracts, the unit rates of reimbursement were calculated using utilization adjustment factors that allowed these contractors to be fully reimbursed for contractually agreed-upon services to clients under these contracts well before the end of the fiscal year. Yet these seven contractors all received additional LUSA funding for these contracts during our audit period. Since those preexisting contracts had already fully compensated contractors for services provided to program clients, any later LUSA billings for year-end services to program clients would have resulted in excessive/duplicative compensation to the contractor despite the quoted OSD policy restriction.

In light of DDS's extensive use of program rates calculated with utilization factor adjustments, DDS controls over year-end LUSA funding use should have been designed to ensure compliance with the OSD policy restriction. However, available evidence suggests that the OSD prohibition on supplemental payment was commonly disregarded, resulting in excessive compensation to contractors. For example, as described in our above analysis of contractor financial operating results, one contractor program received $143,250 in supplemental LUSA funding during the year-end accounts payable period, which increased the program's operating surplus from $159,858 (11.7%) to $303,108 (22.1%). That program had been funded primarily through a regular DDS contract with a utilization-adjusted rate, had already received supplemental funding from LUSA and other sources earlier in the fiscal year, and was reported to have underspent its established budget by $86,609. The program did not serve more clients than anticipated, and it incurred no additional costs that might have warranted supplemental year-end LUSA compensation by DDS.

We also obtained evidence that LUSA funding was actually being provided for purposes other than those stated on ASF and invoice documentation, which resulted in some contractors receiving excessive compensation. Contractor documentation often contained copies of e-mail or fax communications with DDS managers that corroborated contractor acknowledgments to OSA that invoice documents submitted by the contractor often did not present the true reason for requesting the payment. Those communications included contractor assertions to DDS managers that additional year-end LUSA payments were warranted by operating losses on DDS-funded programs. We saw no evidence that DDS managers had verified such assertions, and evidence such as contractor UFR filings, which are readily available on OSD's Internet site for purchasing-agency use, generally conflicted with such assertions of inadequate funding. One instance involved a contractor whose management acknowledged to us that, despite LUSA payment documentation that presented the payments as being for the delivery of units of client services, the entire $473,133 in accounts-payable-period LUSA payments it had received over the three-year audit period had actually been supplemental compensation for staff overtime costs incurred in its programs funded by regular DDS non-LUSA contracts. If the contractor incurred unanticipated overtime costs not already factored into, and reimbursed through, the regular contracts, the appropriate course of action by DDS and the contractor would have been to amend those contracts – not to process supplemental funding through LUSA contracts under

the guise of additional services. Furthermore, the contractor's own UFR filings revealed that, even if DDS had not made those LUSA payments, the contractor still would have generated a $1,892,041 surplus on its DDS-funded programs even after inclusion of all overtime costs.

Similarly, the Chief Financial Officer for another contractor told us that the end-of-year LUSA payments his organization received were really made to reimburse the contractor for costs such as overtime and staff-leave-time-related expenses and were not for permitted LUSA service activity as had been shown on this contractor's LUSA invoices. The Chief Financial Officer explained that the contractor had no records that would substantiate the LUSA payments because the invoice numbers (unit rates and the number of service units) had simply been entered as instructed by DDS managers in order to arrive at agreed-upon total compensation amounts to be processed at year-end through the LUSA payment mechanism.

As previously discussed, the financial operating results reported by these contractors strongly suggest that, as well as not adhering to applicable state policy requirements, the inappropriate LUSA pricing and payment practices identified by our audit resulted in excessive compensation to some contractors well beyond their legitimate DDS program funding requirements. However, as described above, the documentation-related impairments encountered by our audit made it impossible to determine an accurate total amount of excessive or improperly priced payments made by DDS.

Auditee's Response

In response to various examples cited by the Auditor, we are also concerned regarding instances in which area offices did not take steps to verify provider requests for additional service funding by requesting actual cost documentation and reviewing any and all available and pertinent financial information. It must be noted that program-related surplus/deficiency information, such as that reflected in annual provider Uniform Financial Report filings, is not available until well after the program year has been completed, since UFRs are filed in November after the end of a fiscal year. For that reason, it is difficult for area offices to know at the time a request is presented whether a program will generate a surplus or a deficit. Still, past UFR information may be of limited value in evaluating a provider's claim for cost relief during a particular fiscal year. This information should be reviewed, along with any other more current actual cost information that can be provided by the requesting provider agency. DDS guidance is being expanded to integrate the need for area offices to assess future funding requests using available financial reporting information or by means of requesting relevant interim financial information from providers.

With respect to instances in which the Auditor suggests that providers may have been over-paid for services in violation of utilization factor rules, it is unclear from the

information presented whether or to what degree that was the case. It is probable that, in some instances, late-year services were provided to individuals who were not included in the original contracted program. To the extent that is the case or to the extent that the LUSA payments were for additional incremental services provided to original program enrollees (e.g. to reimburse for the separate incremental costs attributable to additional staffing provided to an individual during an emergency hospitalization), the LUSA payments would not be duplicative.

DDS's response also included an objection to OSA's analysis of Contractor Surplus/(Deficit) Operating Results, which reads, in part,

…the Auditor reaches the conclusion, based on the fact that UFR information from 14 audited providers showed agency-wide or DDS program-wide surpluses that "supplemental LUSA funding does not appear to have been necessary to avert operational losses." From our perspective, this conclusion does not accurately reflect the degree to which individual programs receiving LUSA payments may have been experiencing legitimate cost pressures at the time the payments were requested and also implies that DDS has the authority to direct the use of provider surpluses.

In some instances, individual programs and services may incur losses in years when the entity as a whole has an overall surplus. It is quite possible that a number of the audited providers' individual programs receiving LUSA payments did not retain any surplus or may have shown a program loss for the fiscal year. The relevant factors in such matters are the income and expenses for the specific program services in question.

DDS does not have the authority to compel providers to deliver additional services without additional compensation, based on an anticipated entity-wide year-end surplus or even a surplus across only DDS programs. DDS similarly has no authority to instruct a provider to deliver additional services to DDS by applying funds, payments or surpluses accrued through providing services to another state agency, or which were accrued through the provision of services to DDS in other programs. Instructing a provider to redirect payments which were received for unrelated or non-DDS services, whether a surplus is accruing or not, would be a violation of current contracting provisions and applicable regulations.

DDS is given authority to direct the use of accrued surpluses pursuant to 808 CMR 1.03. This regulation allows a state purchasing agency limited powers to compel the recoupment or reuse of excess surplus <u>from prior fiscal years only</u>, and only when OSD has officially determined the amount of the surplus based on the submission of audited financial statements for the prior year. This regulation also contains the Commonwealth's definition for excess surplus: a surplus from state revenues that is in excess of 5% of the prior year's state revenues for the provider (or 20% of the prior year's revenues from Commonwealth purchasing departments). Upon examination, none of the provider agencies in question appear to have been determined by OSD to have an excess in the years for which the LUSA payments are being claimed to be excessive. Thus, as a regulatory matter, DDS does not have the authority to compel a provider to apply anticipated or accrued surplus funds, from a current or a prior year, which accumulate to less than the 5% threshold.

There may also be instances in which an individual program may <u>not</u> have incurred a loss but may even have incurred a surplus. In these cases, it is important to distinguish between the main program under contract and the services delivered by means of the

> *LUSA. Where a LUSA is utilized to provide funding for services not anticipated under the initial contract and such services are for limited time, as-needed services, the services constitute a service separate from the initial contract and, therefore, funding for such services should not be considered a part of the initial contract. Given the right of service providers generally to maintain a surplus to be used as needed on an agency-wide basis, a surplus generated* ***even in a specific program*** *cannot be required by DDS to be directed to that program. In such a case, LUSA funds constitute a separate set of services and, as such, are paid independent of reimbursement for services under the initial contract.*
>
> *DDS does recognize that the Auditor has identified situations in which LUSA's appear to have been inappropriately used for the purpose of augmenting the initial contract funding resources and not to provide separate supplemental services. The Department has already taken steps to ensure that LUSAs are not used in this manner, by providing ongoing guidance to field staff and providers and by instituting enhanced Central Office monitoring of all LUSA authorizations. We request that the analysis [of UFR data] and the related "Contractor Surplus/(Deficit) Operating Results" chart should be deleted or revised in keeping with these comments.*

Auditor's Reply

As noted in our report, the accounting and documentation issues we encountered both during this audit at DDS and during audit testing of individual contractors, such as the failure of DDS and its contractors to properly document LUSA-related financial activity on a program-service-specific basis as required by state contracting requirements, prevented us from accurately determining the extent to which contractors may have received duplicate and/or excessive compensation through LUSA payments. However, also as noted in our report, we did identify a number of instances where requests for LUSA payments made to certain contractors were misrepresented and undocumented and resulted in contractors receiving compensation far beyond their program needs. Our analysis of the surpluses realized by 14 of the 15 contractors in our sample shows that these contractors, in most cases, did not need the additional LUSA funding to maintain their overall financial viability. While it is possible that some contractors were experiencing financial pressures when they requested this additional LUSA funding, this was not the consistent message OSA staff got from these contractors, a number of which told us that DDS approached them about the availability of additional funding. Further, the fact that some contractors might need additional funding to provide their contracted services does not relieve DDS of its responsibility to provide this funding through appropriate funding mechanisms (e.g., contract amendments) and to ensure that LUSA funding is only used for its intended purposes. Moreover, DDS's practice of encumbering the majority of these LUSA funds and distributing them at, or even after, the end of each fiscal year without having to

effectively demonstrate an appropriate program need for these funds is not in accordance with sound budgeting practices and could result in funding inequities (i.e., some providers being underfunded while others are overfunded). It is important to note that our disclosure of this information was not intended to suggest that the LUSA funding provided by DDS was always excessive and unnecessary, but merely to point out the inequities in funding that can occur when contract funding such as LUSAs is not properly administered. In OSA's opinion, the restrictions on DDS's authority to direct the use of provider surpluses is actually a further reason to establish controls needed to prevent excessive and unnecessary payments that could generate such surpluses.

d. Miscellaneous Accounting Control Issues

Our audit identified a number of instances in which it appears that DDS did not adhere to OSC accounting and payment processing rules or that DDS practices created data reliability issues for the state's accounting system.

MMARS, maintained by OSC, constitutes the official business record of the Commonwealth, and it is essential that information entered into that system by DDS and other state agencies be accurate, complete, and in compliance with state requirements. As authorized by state finance law, OSC has established extensive rules, regulations, and electronic control systems designed to ensure the integrity of state accounting system records. These include General Contract Requirements, Accounts Payable – Commonwealth Bill Payment Policy, and related policies and systems such as expenditure classifications, vendor codes, and appropriation account controls regulating aspects of the payment process. All system transaction entries made by departments, and supporting documentation maintained by state agencies and their contractors, must be consistent and accurate. However, we found that these requirements had often been disregarded, with the result that LUSA information entered into the state accounting system was sometimes inaccurate or not properly associated with the required supporting documentation.

For the 15 sampled contractors, the nearly $10.8 million in accounts-payable-period payments had been accounted for in the state accounting system through just over 1,300 distinct accounting transactions. However, contractors had actually submitted fewer than 850 invoices (also called payment vouchers) or alternative electronic invoice submissions for those payments. This pattern is permissible and appropriate in certain instances in which a single invoice

document contains multiple accounting lines for reasons such as the use of multiple component service unit rates for a program or the proper predetermined use of multiple appropriation accounts to fund a contract. However, that was not the case for these invoices. Instead, DDS mangers had simply split invoice amounts across multiple contract types, contract encumbrances, appropriation accounts, and accounting lines without appropriate supporting documentation. This improper practice had been facilitated by the fact that contractors had not completed required field entries on the invoices they submitted, such as contract reference document identification numbers. When asked to explain these omissions, contractors stated that DDS managers had instructed them to leave certain fields blank on their submissions. DDS managers had then, as a matter of administrative convenience, charged the invoice amounts against any available LUSA contract encumbrances in the state accounting system where unexpended funds remained available. In many instances, DDS managers split payment of a single invoice across multiple contract encumbrances or appropriation accounts in a manner that did not adequately reconcile the recorded accounting transactions to the underlying invoice or supporting documentation.

An example illustrating this practice involves an invoice payment voucher form submitted to DDS Region 5 on August 30, 2010 covering a claimed 1,456 hours of behavior support services provided over the course of the entire 2010 fiscal year to a single client. The voucher specified a unit rate price of $25 and a total payment amount of $36,400, and the contractor had left the contract identification information blank. On the following day, DDS recorded the transaction in the state accounting system using two separate payment voucher document identification numbers, two separate vendor invoice numbers, and two different contract identification numbers, one for a LUSA residential services contract in the amount of $14,278 and one for a separate LUSA support services contract in the amount of $22,122. The two amounts were charged against two separate appropriation accounts: one for residential services and one for state-operated community-based services. In addition, the payments were split across two separate accounting system object codes; one for medical services and one for non-medical services. None of the attached service delivery report information was consistent with the split that DDS used to account for the payment.

Audit testing even identified instances in which transactions between a contractor and one DDS Regional Office were internally transferred and charged against encumbrances established for a

different region. In such cases, documentation was not always available for review at the appropriate DDS office.

When we spoke to the DDS Commissioner and other DDS Central Office senior managers about these matters, they told us that they believed the department has established strong policies and controls over the use of LUSA funding. However, our audit identified significant issues with mismanagement of LUSA funding throughout the system and apparent system-wide failure to adhere to written DDS LUSA policies after LUSA abuse issues were first identified by OSA audits for years as far back as 2003.

Recommendation

DDS, in collaboration with the Executive Office of Health and Human Services (EOHHS), should take the measures necessary to ensure that all LUSA funding is properly administered in accordance with state contracting and accounting requirements. DDS should establish the appropriate funding needs for each contractor at the beginning of each contract period and, to the extent possible, not use LUSAs as a supplement to pay for needed services that could have been included in regular program contracts. Where LUSAs are used, DDS should establish detailed accounting, pricing, and monitoring arrangements, including use of annual financial statement data filed with OSD, to enhance accountability for LUSA funding and activity.

Auditee's Response

> *DDS's current guidance to field staff and providers… underscores the need to limit LUSA use to the maximum extent possible and to rely more on standard contracts. In keeping with this, DDS will develop additional enhanced accounting and pricing guidance relating to LUSA use, as well as closer monitoring regarding LUSA-related accounting practices. This will include specific guidance regarding proper invoicing practices and the need to ensure that all payments are made from appropriation accounts that reflect allowable uses that are consistent with the LUSA payment being made.*

2. INADEQUATELY DOCUMENTED LUSA PAYMENTS TOTALING $7,517,602

Our audit found that, contrary to state contract requirements, documentation problems for LUSA payments totaling $7,517,602 existed at 14 of the 15 contractors we selected for audit testing. These problems included ASF documentation deficiencies and missing or inadequate documentation of client service delivery. As a result, there was insufficient evidence to show that these LUSA

payments had been properly authorized and accounted for; that they were necessary and not excessive; and that the contractor had actually provided the LUSA services billed.

Under the terms and conditions of their state contracts, human-service providers are required to maintain sufficient, accurate, and complete documentation to support all of their billings, including those for LUSA services. Specifically, Section 7 of the Commonwealth Terms and Conditions for Human and Social Services states, in part:

> *The Contractor shall maintain records, books, files and other data as required by 808 CMR 1.00 and as specified in a Contract and in such detail as shall properly substantiate claims for payment under a Contract, for a minimum retention period of seven (7) years beginning on the first day after the final payment under a Contract, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving a Contract. The Contractor shall maintain adequate written policies and procedures for accounting, management and personnel activities, including but not limited to conflict of interest and nepotism policies.*

During our audit, we identified various documentation problems with $7,517,602 in LUSA payments made to 14 of the 15 contractors in our sample. The table below summarizes the documentation deficiencies we identified by fiscal year. This table includes both (1) some of the retroactively authorized transactions described in Audit Finding No. 1 that had documentation issues such as missing signatures and dates and (2) LUSA payments made to contractors where there was inadequate documentation that the services were actually provided.

Transactions with Documentation Deficiencies*

	Total Including Payments for Retroactively Authorized Services **	
	Payment Amount	Contractor Count
Fiscal Year 2009	$ 2,378,497	14
Fiscal Year 2010	3,008,825	14
Fiscal Year 2011	2,130,280	14
Total	$ 7,517,602	

* Excludes certain payments discussed separately in Audit Findings No. 3 and No. 4.

** $2,694,022 of these transactions had also been retroactively authorized as described in Audit Finding No. 1.

Twelve contractors had no documentation of LUSA service authorization approval for a combined total of $2,092,201 in accounts-payable-period LUSA payments made to them over the three-year audit period. For five contractors, including four of the 12 with missing approval documentation,

approval dates had been left blank on ASF forms covering $216,377 in additional LUSA payments. As a result, there was inadequate documentation maintained by the contractors to determine whether more than $2.3 million in LUSA payments authorizations had been processed in a timely manner rather than retroactively. Instances where approval dates had been left blank included over $764,000 in transactions for which ASF forms had been dated but not signed, or for which other essential information such as contract numbers, the identify of clients to be served or the type, and/or quantity or unit rate prices for services to be furnished had been omitted.

We also found that 13 of these 14 contractors did not maintain adequate underlying documentation needed to verify that service units reported on service delivery reports and on invoices for LUSA services totaling over $7.1 million had actually been provided. Specifically, seven of the 13 contractors had not kept service delivery documentation totaling over $2.8 million collectively for any of these LUSA payments. For six other contractors, who collectively received over $4.3 million of these LUSA payments, the limited documentation provided for audit review was generally not adequate to reconcile specific LUSA invoice information to service delivery report information and provide assurance that authorized LUSA services had been furnished to specific authorized clients as shown on the invoice submissions. Examples of the type of documentation that should have been maintained, but was not, include daily program attendance sheets signed by employees present at the program site and time/service documentation records for one-on-one services to individual clients.

During our audit, we asked the contractors we visited why they were not maintaining the required documentation. A number of them said that DDS managers had told them that contractor certifications of the accuracy of invoice submissions were all that was required. This advice, if provided by DDS, was erroneous and in conflict with the requirements of the Commonwealth Terms and Conditions for Human and Social Services.

Recommendation

DDS should take measures, including more effective monitoring, to ensure that all of its contractors implement appropriate controls so that all LUSA services are performed, documented, billed, and accounted for in compliance with applicable requirements.

Auditee's Response

> *DDS has been aware of significant issues regarding the formal documentation of service authorizations and, in response, the Department has established a formal process that*

allows no LUSA payments to be processed without the prior review and approval by the DDS Central Office.... This process includes the submission of a service authorization request form that incorporates the full details of the services needed and justifies the allowable use category for each LUSA. All requests are individually reviewed by representatives of the DDS Central Office Operations and Contracts Units and only approved requests are allowed to go forward... This process has directly contributed to a sharp decrease in late LUSA authorization requests during FY12. Data regarding LUSA spending during the Accounts Payable period compared to overall LUSA spending reveals a reduction from 54% in FY11 spending to 25% in FY12. It is our expectation that this decrease will continue for FY13.

With respect to provider claims that they were instructed that they were not required to maintain the required documentation to support LUSA payment requests, we believe that some contractors may have confused invoicing requirements with recordkeeping requirements under the Commonwealth's General Terms and Conditions. DDS categorically denies ever instructing providers that they did not need to maintain full and complete documentation to support all contract payments. More specifically, it is the case that invoices for payment may be submitted with a simple certification as to the accuracy of the payment request being made. However, this simple certification carries with it the absolute assumption that full and complete documentation of the services being invoiced will be maintained in keeping with the Terms and Conditions requirements. To minimize any possible misunderstandings regarding the need to maintain in-house documentation to tie all contract payments to individual service documentation records, DDS has covered the issue in expanded contracting guidance and will reinforce this message in upcoming statewide training sessions. Additionally, DDS will perform periodic reviews of documentation supporting LUSA payments, in order to ensure that providers understand and implement this requirement.

Auditor's Reply

As noted above, during our audit a number of the contractors in our sample told us that DDS managers had told them that contractor certifications of the accuracy of invoice submissions were all that was required in terms of documentation. However, according to its response, DDS is taking measures to address our concerns relative to this matter.

3. DDS ALLOWED CONTRACTORS TO USE $688,811 IN LUSA FUNDING TO PURCHASE CAPITAL AND OTHER NON-SERVICE ITEMS

LUSA agreements are supposed to be used to provide direct services to clients. However, during our audit period, seven of the 15 contractors we selected for audit testing were reimbursed a total of $688,811 in LUSA funds for what had been identified to, and approved by, DDS managers in three regions as being non-LUSA-related items such as the purchases of vehicles, appliances, furniture, and equipment; repairs; driveway paving; bathroom renovations; and overtime for staff. Such purchases are an inappropriate use of LUSA funding and, according to applicable state policies, should have been funded only through other state contracting mechanisms.

Pursuant to rules and regulations established by OSD and OSC, human-service contractors are, with limited exceptions, reimbursed only for providing services to clients. However, contractors often require the use of capital assets such as property and equipment to provide these services. Such items are typically treated as capital-asset items, and contractors are allowed to charge the costs of the capital items they purchase over their useful life against their state contracts. OSD has also established a Capital Item Procurement Policy that, under special circumstances, allows DDS and other state agencies either to lend state-owned assets to contractors for program use or to reimburse contractors for the preapproved purchase of certain capital items. Those special arrangements are carefully restricted to protect the Commonwealth's ownership interest in the assets and, in addition to requiring preapproval, require that purchased items be competitively procured and that purchases be limited to movable assets such as vehicles, appliances, and furniture rather than fixed assets such as buildings, heating systems, or other property improvements. State capital-item reimbursements must also be separately accounted for through special contracting forms promulgated by OSD and be recorded in the state accounting system using special expenditure classification codes different from the ones established by OSC for use in purchasing human-service program and support services. Regardless of whether a particular non-service item is a capital item or another form of non-service activity, none of these non-service items should be purchased through the LUSA contracting mechanism.

However, our review of the documentation relative to LUSA payments made to seven of the sampled contractors determined that $688,811 of the LUSA funding provided to these contractors was for prohibited capital equipment items such as automobiles, furniture, and equipment or for other non-LUSA service-related items. A description of each of these issues follows.

a. LUSA Funds Totaling $280,179 Inappropriately Used to Purchase Capital Items

Despite the above-described OSD policy requirements applicable to the purchase of capital items, we found that during two fiscal years of our audit period, DDS knowingly provided five of the contractors in our sample with a total of $280,179 in LUSA funds to purchase capital items. These transactions, which are summarized in the following table, involved a wide variety of items, such as the purchase of vehicles, appliances, furniture, and equipment; repairs; and non-movable capital improvements such as driveway paving and bathroom renovations:

Payments for Capital Items

Accounts Payable Periods Fiscal Years 2009 and 2010

Capital Items	Fiscal Year 2009	Fiscal Year 2010	Total
Vehicles and other movable capital items	$ 9,371	$ 106,748	$ 116,119
Non-vehicle/non-movable capital improvements	12,423	151,637	164,060
Total capital items	$ 21,794	$ 258,385	$ 280,179

The entire $280,179 paid to these five contractors did not adhere to OSD's Capital Item Procurement Policy and was not an appropriate use of LUSA funding.

b. LUSA Funds Totaling $408,632 Inappropriately Used to Pay for Other Non-Service Items

In addition to determining that LUSA funds were being used to pay for capital items, we also found that during our audit period, DDS paid six of the 15 contractors we selected for audit testing an additional $408,632 in LUSA funds for a variety of other non-service expense items such as residential program household appliances and costs that were clearly identified to DDS as not being units of LUSA program service. For example, contractor invoices and accompanying communications identified some claimed costs as staff overtime costs, occupancy costs, or "administrative support" costs that were already required to be included in their regular DDS contracts. These costs did not adhere to 808 Code of Massachusetts Regulations (CMR) 1.03(5), which prohibits such supplemental payments, and 801 CMR 21.08(1), which prohibits compensation not in accordance with the specific terms and conditions of a properly executed contract. These non-service items we identified during our audit are summarized in the following table:

Payments for Other Non-Service Items

Accounts Payable Periods Fiscal Years 2009 and 2010

Non-Service Item	Fiscal Year 2009	Fiscal Year 2010	Total
Repairs/improvements that are not capitalized	$ 4,829	$ 6,878	$ 11,707
Appliances, furniture, equipment, and miscellaneous goods	95,826	211,812	307,638
Staff, occupancy, administrative support, or unknown expense	3,509	85,778	89,287
Total non-service items	$ 104,164	$ 304,468	$ 408,632

The $408,632 in LUSA transactions for these non-service payments were associated with three DDS regions and included payments, spanning fiscal years 2009 and 2010, to six contractors, including four of the five contractors that had received the capital item payments.

The capital and other non-service items in question were sometimes clearly identified on invoices, but in other cases, contractors told us that DDS personnel had instructed them to prepare invoice and service delivery documentation in a misleading manner. For example, one fiscal year 2010 payment processed on August 12, 2010 was documented on invoice submissions to be for 257 service units for three clients during February, March, and April 2010. The $10,254 invoice was billed using a unit rate of $39.90. However, e-mail communication records revealed that on July 6, 2010, a DDS manager had e-mailed the contractor's business manager as follows:

> *Hi [First Name], do you have unbilled units that you can use for end of the year MSA 1. F/H- $1,000 for bathroom. 2. N/C $9,250 of misc end of year. 257 units at support rate of 39.90 let me know ASAP.* [4]

The contractor responded with the requested information and was then provided with an ASF. The ASF accounted for the full $10,254 payment amount, with no reference to the fact that payment was, at least in part, made to reimburse the contractor for bathroom improvements.

Recommendation

DDS should take measures to ensure that its contractors do not use any LUSA funding to pay for non-program services. If DDS would like to provide funding to its contractors for these purposes, it should do so using the established and appropriate contracting mechanisms and not use LUSA funds for these purchases. DDS and OSD should also initiate corrective measures such as executing legal agreements to protect the Commonwealth's title interest in assets that were paid for through LUSA funding but not disclosed and resolved in conjunction with past OSD reviews of improper DDS capital item payments.

Auditee's Response

> *The purchase of capital and non-service-related items through the use of a LUSA is prohibited. This prohibition has always applied and DDS has taken aggressive steps in current LUSA guidance documents to enforce this prohibition and to monitor enforcement on an ongoing basis. The centralized approval of all LUSA requests gives the Department a timely opportunity to ensure that appropriate services are being purchased. Additionally, all proposed capital asset purchases are also being reviewed centrally to*

[4] "F/H" and "N/C" refer to the DDS Franklin/Hampshire and North Central areas.

ensure compliance with applicable regulations and OSD guidance. Finally, we will work with field offices to identify any past purchases in order to put into place agreements to protect the Commonwealth's title interest in assets that may have inappropriately been purchased using LUSAs.

4. PROCUREMENT, SERVICE UTILIZATION, AND ACCOUNTING PROBLEMS INVOLVING $1,936,275 IN LUSA FUNDING

Contrary to state regulations and policies, we found a number of instances in which DDS provided LUSA funding to 14 of the 15 contractors in our sample for transactions that should have been processed through other means, as discussed in the following sections.

a. Inappropriate Use of LUSA Funds Totaling $479,239 to Pay for Personal Support Services and Inadequate and Conflicting Documentation of These Services

Before fiscal year 2007, DDS contractual human-service residential programs typically provided clients with housing as well as assistance with what are known as instrumental activities of daily living that are required to live successfully in community settings. These activities include shopping; cooking, and other housework; money management; and assistance with certain other needs such as transportation in the community. DDS clients also often need supplemental assistance with what are known as activities of daily living (ADL), such as bathing, dressing, grooming, feeding, toileting, and transfers to and from wheelchairs. Several hundred DDS residential program clients have obtained supplemental ADL assistance through the state's Medicaid-funded Personal Care Attendant program that is administered by MassHealth. In 2007, DDS and MassHealth executed an agreement transferring responsibility for providing ADL assistance for DDS clients in 24-hour-a-day residential programs from MassHealth to DDS. Funding of approximately $8.9 million per year was also transferred from MassHealth to DDS through an Intergovernmental Service Agreement (ISA). DDS implemented the new ADL assistance arrangements, which it calls Personal Support Services (PSS), by assigning service delivery responsibility to its residential program contractors and incorporated specific funding for each client into the regular contracts it awards to its contractors for residential services. DDS requires each contractor to maintain activity documentation and to submit PSS monthly service statistics to DDS for each client to ensure accountability for the services.

Since issues such as illness of a client may result in delivery of less than 100% of the authorized PSS service hours to a client, DDS elected to incorporate only approximately 88% of each client's allocated funds for PSS services into its regular residential program contracts. At the end

of each year, a reconciliation process is carried out and, where individual clients have received more than 88% of their authorized PSS hours, DDS uses the LUSA system to pay contractors retroactively for any amounts due them in excess of the funding integrated into the regular residential contract payments. However, until these payment arrangements are incorporated into LUSA contract language or into DDS's written LUSA policies, LUSA funding should not be used for these purposes.

Our audit testing found a total of $479,239 in LUSA-processed PSS transactions for 12 of the 15 sampled contractors. Not only is this not an approved use of LUSA funding, it was also generally not possible to reconcile these transactions to PSS utilization data provided by DDS, and numerous discrepancies were noted between contractor, DDS, and MMARS records classifying payments as being for, or not for, PSS services. For example, DDS had labeled $47,337 in LUSA payments to one contractor as being for PSS in MMARS, whereas the associated invoices and other contractor documentation we reviewed established that the services were not PSS. Instead, the five invoices involved were for various program and individual support services, including miscellaneous transportation, all billed at rates between $30 and $50 per hour, rather than the established PSS rate of $12.96 per hour. In other cases, contractors had identified services as being PSS but DDS had not labeled them as such in MMARS. We reviewed the information DDS was maintaining on the PSS services being provided by its contractors and identified significant discrepancies such as stated annual service hour totals for individuals that were not equal to the sum of the service hours reported for them each month. For example, DDS recorded an annual total actual service hour volume of 1,670.76 hours for one client even though the sum of the actual hours reported by the contractor for this client was only 596.25. In many instances, underlying service delivery documentation maintained by the contractors was also inadequate or had not been submitted to, or inspected by, DDS. In fact, based on our review, only $10,156 (2.1%) of the $479,239 PSS transactions that DDS processed during our audit period were supported by appropriate documentation of actual service time provided by identified direct service staff to specific PSS clients. None of the 12 contractors had adequate documentation for all of its PSS billings, and for $410,207 of the billings (85.6%), documentation of service delivery was missing, inadequate, or questionable[5].

[5] For example, a timesheet may have labeled employee work time as PSS billable time when the employee was a residential program manager, rather than a direct service worker.

Also, for the 15 contractors in our audit sample, $526,216 of their accounts-payable-period LUSA transactions in the state accounting system had been labeled by either the contractor or DDS as PSS transactions, but 18.5% of the labeled transactions had been charged to appropriation accounts other than the account designated to fund PSS activity. DDS managers told us that they used these other appropriation accounts when the funding in the account from the ISA had been used up. However, analysis of all DDS PSS utilization tracking data for each year determined that the reported DDS PSS activity for all contractors had not been sufficient to exhaust ISA funding for any year other than fiscal year 2011.

Auditee's Response

> *Management of the Personal Support Services ("PSS") system requires the tracking of the hours of service all individuals receive on a monthly basis. In order to do this, the Department has employed a system whereby contract resources are allocated based on an estimated average utilization rate of approximately 88%. Providers are required to report actual hours of service on an ongoing basis in order to capture actual utilization amounts. In situations in which this standard amount is not reflective of an individual's experience, it is expected that reconciliations will occur to adjust the contract to reflect the actual services needed. The utilization reporting system is fluid, with new individuals receiving allocations throughout the fiscal year, including in May and June. In these latter cases, the amendment deadline restriction limits the ability to place additional funds in a vendor-specific contract. In these cases, it is our view that a LUSA mechanism is the appropriate means to support these individuals' Personal Support Service needs. The services being paid via LUSA are those that could not be reasonably predicted prior to the amendment deadline.*
>
> *The Department will continue to review and monitor the policies and practices relative to the PSS system to improve the accountability and accuracy of PSS usage and reporting systems. This will include reinforcing with all providers of PSS services the need to maintain detailed backup documentation for all PSS-related staffing resources.*

Auditor's Reply

DDS's assertion that it will reinforce with all of its contractors who provide PSS services the need to maintain detailed backup documentation for all PSS-related staffing resources is appropriate and responsive to our concern in this area. However, DDS still needs to address the significant accounting control deficiencies identified by our audit, including the inappropriate use of appropriation accounts other than the account designated to fund PSS activity. Further, OSA disagrees with the DDS's assertion that using LUSA funding was appropriate for these services and that the services being paid via LUSA are those that could not be reasonably predicted before the amendment deadline. As stated in our report, these payment arrangements are not incorporated into LUSA contract language or into DDS's written LUSA policies. Therefore,

LUSA funding should not be used for such arrangements. DDS's policies expressly provide for the amendment of regular contracts to address instances where utilization exceeds projections. Further, EOAF policy permits post-deadline amendments so long as justification is presented to EOAF. Consequently, we believe that contract amendments would have been the appropriate mechanism to fund additional PSS services.

b. LUSA Funds Used to Improperly Purchase $981,082 of Transitional Services

Approximately $981,082 of the accounts-payable-period LUSA payments made to nine contractors were labeled in the state accounting system as Transitional Service (also called Rolland) transactions. Contractors and DDS managers stated that this label referred to transitional services provided to a class of individuals covered by a federal lawsuit that had resulted in a settlement agreement (Rolland v. Patrick, Civil Action No. 98-30208-KPN) that required the provision of "active treatment" to over 700 people residing in nursing/long-term-care facilities. According to documentation provided to us by DDS management:

> *Incorporated in this agreement is a directive to provide community placements to 640 individuals over four years (11/7/2008 to 9/30/2012). Since there were many individuals who had lived in nursing facilities for many years and had not experienced living in the community, thereby creating difficult transition/placement issues, the Settlement Agreement included as [*sic*] provision for "Transitional Services."*

DDS managers and the contractors we selected for audit testing described these Transitional Services as the activity and associated costs of having contractor employees go into nursing facilities to work with individuals before they are discharged and placed in community-based residential programs. This also involves activity such as bringing the individuals to community-based day and residential programs and on excursions such as shopping trips to increase each individual's exposure to the community and to assess the individual's needs for disability accommodation and service to ensure successful placement in the DDS community-based service system.

DDS managers selected a limited number of contractors to participate in this initiative and then had contractors complete special documents, which DDS described as "contracts" even though the Commonwealth's standard contract forms were not used. The "contracts" included a budgeted funding level total calculated at a rate of $38.44 per hour and did specify the number of units to be provided to each client. Contractor representatives with whom we spoke described

these Transitional Service "contracts" as distinct from regular DDS contractual residential programming. However, they were unable to provide a rationale for DDS's decision to select their organizations and indicated that they had simply been directly approached by DDS managers to provide these services without use of the state's established public procurement process.

The OSD Commonwealth Procurement and Solicitation System (Comm-PASS) was established to ensure that state agencies comply with state finance law and regulatory requirements that services be competitively and openly procured except in limited circumstances expressly authorized by state regulation. The 801 CMR 21.00, promulgated by OSD, sets forth those requirements and lists specific competitive procurement exceptions, such as those for emergency contracts and incidental purchases. Various policy documents have been promulgated establishing specific criteria and approval requirements covering each exception, including a $5,000 total limit on the nonpublic/noncompetitive procurement of incidental, one-time services. The Transitional Service arrangements established with these contractors did not meet the criteria for any of the established competitive procurement exceptions. As a result, they are permissible only to the extent to which they fall within the parameters of the preexisting LUSA agreements that had been executed pursuant to a public Comm-PASS solicitation.

During our audit, DDS managers told us that they believed that these Transitional Services were within LUSA parameters because the services were performed over a short time for each client, with the overall initiative limited to a three-year period, and not all contractors participated for the full period. In order to further assess the reasonableness of DDS's assertions, we conducted an analysis of available state accounting system data. This analysis revealed that just for fiscal years 2009 through 2011, approximately $3.63 million in LUSA transactions had been labeled as "Rolland" or "Transitional Services" for a total of 46 contractors. Many of the 46 contractors (including some in the audit sample) received only limited payments, often for just a single year. However, 19 contractors received payments spanning multiple years, and just 13 contractors – each paid more than $100,000 – accounted for $2,945,546 (over 81%) of the $3.63 million total. Five of the 13 were contractors included in our audit sample, together accounting for $1,425,392 (39%), with one single contractor accounting for $788,533 of the total. Contract arrangements like these are not within the established parameters for LUSA services (i.e., intermittent, as-needed, time-limited services that clients need because of specific circumstances that are not

included in an existing state funded program contract) and should have been competitively procured and paid for through standard state human-service contracts.

Testing of the accounts-payable-period LUSA payments in this audit sample identified a variety of issues in addition to the absence of competitive procurement, as follows:

- A total of $334,342 of the accounts-payable-period LUSA payments identified as Transitional Services were paid to two contractors whose LUSA funding from DDS had really been primarily for employee overtime and other non-Transitional Service costs. Only $59,369 of the costs had actually been for Transitional Services. Neither contractor labeled the non-Transitional Service costs as Transitional Services on their invoice submissions. However, DDS incorrectly labeled the transactions in the state accounting system as being for Transitional Services.

- For six other contractors, all $646,740 in transactions identified either by the contractor or in the state accounting system as being for Transitional Services was also associated with irregularities such as retroactive approval and missing documentation of service delivery.

- Of the above-mentioned $981,082 identified as Transitional Services. $934,209 had been labeled by either DDS or the contractor as Transitional Services in the state accounting system. Only $128,573 (14%) of that total had been labeled as Transitional Services by the contractors. The labeling for the remaining $805,636 of transactions had been done solely by DDS, and very few of these transactions were clearly documented by contractor records to have actually been for delivered Transitional Services. More than $189,000 was, in fact, determined by audit testing to be for services other than Transitional Services.

Based on this, the reliability of DDS state accounting system data entries for these LUSA transactions is questionable.

Auditee's Response

We reiterate our belief that these "transitional" services are, by their nature, time-limited and are appropriately purchased via a Limited Unit Service Agreement. As envisioned in the Rolland Settlement Agreement, transition services were to be used on a person-by-person basis to educate, encourage and support each Rolland Class member for whom there was a placement plan in order to make that transition successful for that individual. The Department agreed to provide these services in order to facilitate a smooth transition to new homes for individuals who spent many years living in nursing facilities. During the period of the Audit, these services, which provide supportive services to individuals in transition from nursing home settings, fell under the existing DDS Support LUSA procurement process. Providers who were selected from this procurement to provide transitional services were already engaged in the provision of specialized services to specific individuals or were selected because they were slated to be the eventual residential provider of services to certain individuals. As a result, we believe that these

services were properly competitively procured in keeping with applicable OSD regulations.

For FY13, the Department has created a specific activity code and has incorporated Rolland Transitional Services into an alternative DDS procurement. This supports our general effort to reduce LUSA use and it will improve our ability to track and monitor these transitional services separately in the future.

Auditor's Reply

The Transitional Services in question were clearly part of a multi-year contracting initiative to provide structured program services to clients transitioning out of nursing facilities. DDS established special budget, price, and service provisions in Transitional Service–specific agreement documents referred to by DDS and its contractors as "contracts." Therefore, these services should have been formally procured as DDS eventually did for fiscal year 2013. Further, DDS needs to address the numerous documentation and accounting control deficiencies associated with these transactions that were identified by our audit.

c. LUSA Funds Totaling $473,654 Inappropriately Used for Transportation Services

Costs associated with client transportation are typically funded by one of two means: either transportation costs are built into the budgets of the regular contract awarded to human-service contractors in instances where client transportation is an integral component of the program, or transportation services are purchased by state agencies on a separate transportation contract as needed. However, we found that during our audit period, LUSA payments were used to improperly reimburse two contractors a total of $473,654 for transportation services. One human-service contractor in our sample was provided with $6,000 in LUSA funding for costs it had already incurred in paying a taxi company to transport one client to and from a day/employment service program over the entire 2009 fiscal year. The remaining $467,654 involved a single contractor, MART. MART is a transportation support services contractor for EOHHS but does not provide regular human-service program services. DDS had made the LUSA payments to MART as a matter of administrative convenience to issue payment for transportation service claims made by MART under its regular transportation services contract, which had been erroneously rejected. By using the LUSA payment mechanism to process the transportation payment adjustments, DDS improperly characterized these payments in the state accounting system as being for a human-service program rather than being for support services.

Auditee's Response

> *In our view, the current definition of the Support Services LUSA incorporates as an allowable use the provision of as-needed transportation services. At the same time, however, DDS will seek to identify alternative mechanisms, other than LUSAs, to support payment for these services in the future.*

Auditor's Reply

OSA agrees with DDS's assertion that payments for certain as-needed transportation services fall within the scope of Support Service LUSAs. However, as described in our report, the specific payments that we questioned did not meet established criteria for LUSA use. Specifically, these payments were made for services within the scope of each contractor's existing non-LUSA contractual agreements with the Commonwealth, and in the case of MART, DDS made payments via LUSAs as a matter of administrative convenience to pay for services that were rejected under MART'S regular transportation services contract. Finally, in its response, DDS does not address the issue we identified with its reporting of these services under an incorrect accounting code in MMARS, which we believe needs to be addressed.

d. LUSA Funds Totaling $2,300 Inappropriately Used for Ice Storm Reimbursements

One contractor in our sample received $2,300 in LUSA payments during the fiscal year 2009 accounts payable period as reimbursement for unplanned emergency response costs related to staffing and program relocation, which it incurred while maintaining client services during a regional ice storm in December 2008. LUSAs are not permitted to be used for such costs. Further, the contractor did not maintain adequate documentation to support some of the reimbursed costs, and DDS managers approved these payments without first obtaining verification of the claimed costs or verification of the absence of insurance coverage or other available funding.

OSA's review of LUSA transaction data in MMARS identified at least $100,901 in payments by two DDS regions to 11 contractors that was apparently related to the ice storm. Although it might have been appropriate for DDS to reimburse such unanticipated emergency costs through other means if other emergency funding sources such as insurance or federal disaster assistance payments were not available, DDS acknowledged that for this particular ice storm, it approved the use of the LUSA funding mechanism as a matter of administrative convenience to reimburse several human-service contractors for these expenses.

Auditee's Response

> *Managing unforeseeable and varied circumstances like natural disasters can be particularly challenging in that there is currently no specific existing activity code available in DDS to address the types of needs that may occur. In recent instances, we have made efforts to address such situations by making funds available through proper contract amendments. In these cases, we have required DDS field offices who are reviewing such requests for emergency-related reimbursements to document and certify that all other emergency funding sources, including MEMA/FEMA assistance and insurance coverage, have been exhausted prior to making DDS funds available to address them.*
>
> *In anticipation of possible future natural disasters, DDS will explore other means of reimbursement and, in cases in which reimbursement is required after the encumbrance deadline, DDS will utilize the existing encumbrance deadline override capacity, where applicable.*

Auditor's Reply

DDS's response indicates that it is taking some measures to address this issue. However, DDS should also take measures to strengthen its controls over the verification of costs claimed by contractors in relation to emergencies like this one.

Recommendation

DDS should take the measures necessary to ensure that all LUSA funding is expended in accordance with all applicable laws and regulations and is properly accounted for in the MMARS system. Responsible oversight agencies such as OSD and OSC should review the issues detailed in this report and take whatever actions they deem appropriate to address these issues, including strengthening their oversight over these DDS transactions.

APPENDIX

Contractor Auditees

OSA Audit Report Number for Contractor	Organization	LUSA Payments Processed During Accounts Payable Periods for Fiscal Years 2009 – 2011	Total LUSA Payments for Fiscal Years 2009 – 2011
2012-0234-3C-1	Seven Hills Family Services, Inc.*	$ 1,752,292	$ 3,050,395
2012-0234-3C-3	Vinfen Corporation	1,141,511	1,627,502
2012-0234-3C-2	Delta Projects, Inc.	1,109,395	1,870,760
2012-0234-3C-4	Advocates, Inc.	950,546	1,955,361
2012-0234-3C-5	MAB Community Services, Inc.	645,197	693,556
2012-0234-3C-7	Fidelity House, Inc.	601,067	880,595
2012-0234-3C-6	Community Systems, Inc.	578,508	674,357
2012-0234-3C-10	Alternatives Unlimited, Inc.	534,390	663,840
2012-0234-3C-8	Toward Independent Living and Learning, Inc.	528,681	948,053
2012-0234-3C-15	The May Institute, Inc.	525,158	1,044,795
2012-0234-3C-14	Barry L. Price Rehabilitation Center, Inc.	505,379	507,404
2012-0234-3C-11	The Edinburg Center, Inc.	477,555	757,103
2012-0234-3C-9	Horace Mann Educational Associates, Inc.	473,133	847,705
2012-0234-3C-13	Southern Worcester County Rehabilitation Center, Inc.	471,084	629,781
2012-0234-3C-12	Montachusett Regional Transit Authority	467,654	476,783
		$ 10,761,550	$ 16,627,990

* Seven Hills Family Services, Inc. is a sub-entity of Seven Hills Foundation, Inc. A second sub-entity – Seven Hills Community Services, Inc. – also received LUSA payments during the audit scope period. However, only the transactions with Seven Hills Family Services, Inc. were covered by this audit.