
Secretary of State

State of Oregon
**PERSONAL SERVICES CONTRACTS
PROCUREMENT PRACTICES**



Audits Division

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PROCUREMENT PRACTICES**



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Auditing for a Better Oregon

The Honorable John Kitzhaber
Governor of Oregon
State Capitol Building
Salem, Oregon 97310

Jon Yunker, Director
Oregon Department of Administrative Services
155 Cottage Street
Salem, Oregon 97310

This audit report makes recommendations to improve the state's processes relating to the procurement of personal services contracts. Our review, which included work at six state agencies, found that some agencies are limiting efforts to encourage competition by using sole source procurements that are not justified. Also, we found agencies are not ensuring that payments for personal services are supported by personal services contracts. Finally, we found some instances of noncompliance with state laws and rules governing personal services contracting.

We direct recommendations to the Oregon Department of Administrative Services as the agency responsible for monitoring and approving personal services contracts for most state agencies. We also present recommendations for those state agencies in our review to adopt, as appropriate.

OREGON AUDITS DIVISION

Don Waggoner, CPA
State Auditor

Fieldwork Completion Date:
June 21, 1996

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SUMMARY

Personal services contracts are a distinct class of contract created by the Oregon Legislative Assembly (legislature) to assist state agencies in obtaining professional services. Six state agencies were selected for inclusion in our audit of personal services contracts. Our review of 125 contracts valued at approximately \$14.3 million and 59 expenditures totaling approximately \$300,000 disclosed that state agencies do not always:

- encourage competition to the extent possible when acquiring personal services,
- ensure that payments for personal services are supported by personal services contracts and are made in accordance with contract agreements, or
- comply with state laws and rules governing personal services.

The state's policy is to select contractors based on demonstrated qualifications and competence for performing the required services, to encourage competition, to discourage favoritism, and to obtain services at a fair and reasonable price. Recently, the Oregon Department of Administrative Services (DAS) has taken steps to further encourage competition. Through administrative rules effective February 1, 1995, DAS established statewide procedures for screening and selecting personal services contractors. In January 1992, DAS established the Vendor Information Program, an electronic bidding system for which the state has received national recognition. Despite these efforts, our review of contract files discovered instances at three of six state agencies in which competition was limited. Two agencies limited efforts to encourage competition by using sole source procurements that were not justified. At one agency, two of five sole source procurements that we reviewed were not justified. At another agency, two of 11 sole source procurements that we reviewed were not justified. At a third agency, the use of an emergency waiver from the solicitation process was questionable. By declaring the waiver, the agency was allowed to use sole source procurement in awarding four contracts valued at \$111,000. As a result of these practices, state agencies did not realize the full benefits of open and fair competition.

Agency heads are responsible for ensuring compliance with state laws and rules, including the requirements that personal services contracts be prepared for all personal services and that contract payments be in accordance with contract agreements. All six agencies we audited are not ensuring compliance with the rules. Specifically, the required contracts were not prepared for eight (16.3 percent) of 49 personal services expenditures we reviewed; the expenditures, totaling in excess of \$26,000, were made to eight different vendors. By failing to prepare personal services contracts the agencies are, in effect, circumventing contracting and reporting requirements intended to ensure that state agencies acquire personal services of the requisite quality within the time frame needed and at a fair and reasonable price. Also, at one agency, we found payments were not made in accordance with the contract agreements for two (14.3 percent) of 14

expenditures we reviewed. At least \$1,443 in overpayments was made to these two vendors.

In addition to the expenditure compliance issues above, we found other instances of noncompliance with state laws and rules governing personal services contracting at all six agencies reviewed. Although some of the compliance issues were minor, overall, 20 (16 percent) of 125 contracts we reviewed had some type of noncompliance.

INTRODUCTION

Personal services contracts constitute a significant expenditure of public funds. According to the Oregon Department of Administrative Services' (DAS) report to the 1995 Oregon Legislative Assembly (legislature), personal services contracts totaling approximately \$136.6 million were awarded by state agencies during the fiscal year ending June 30, 1994.

BACKGROUND

Personal services contracts are a distinct class of contract created by the legislature to assist agencies in obtaining professional services. A contract for personal services calls for specialized skills, knowledge, and resources in the application of highly technical or scientific expertise, or the exercise of professional, artistic, or management discretion or judgment. Agencies use personal services contracts to acquire a wide variety of services such as training, management consulting, education and research, accounting, interpreting, mediating, and serving as hearings officers. The policy of the state of Oregon is to select contractors based on demonstrated qualifications and competence for performing the required services, to encourage competition, to discourage favoritism, and to obtain services at a fair and reasonable price.

ROLES AND RESPONSIBILITIES

The Department of Administrative Services

Oregon Revised Statutes (ORS) 291.021 cites the requirements and procedures applicable to personal services contracts. The statute requires that DAS approve all personal services contracts of state agencies, except architectural and engineering services contracts described in ORS 279.712 (2), before any contract becomes binding and before any service may be performed under the contract. ORS 291.021 further provides DAS with authority to delegate to agencies or exempt certain personal services contracts or classes of contracts from the requirements of ORS 291.021. To carry out the provisions of the statute, DAS has adopted *Oregon Administrative Rules* (OARs) found in Chapter 125, Divisions 20 and 22.

The DAS' Transportation, Purchasing and Print Services Division (DAS purchasing) maintains a contract reporting system for agencies. By statute, DAS is required to compile contract data and submit an annual report to the legislature concerning the use of personal services contracts. The report includes the name of the agency, the amount to be paid under the contract, the name of the contractor, the duration of the contract, and the basic purpose of the contract. The report also includes the total dollar value of all personal services.

State Agencies

Each agency head is responsible for ensuring compliance with state rules governing personal services contracts and is required to appoint a personal services contracts coordinator to represent the agency. The coordinator is responsible for understanding the laws, rules, policies, and procedures for personal services contracting as established by the state of Oregon.

Each agency must provide DAS purchasing with required information on each personal services contract, whether the contract is approved by DAS or authority is delegated to the state agency. The information includes a statement of agency justification and a reporting form for each contract. The form must contain all the information needed by DAS to complete its annual report to the legislature.

SCOPE AND METHODOLOGY

The primary objective of this audit was to evaluate state agencies' practices for procuring personal services contracts. The audit focused on contracts awarded and expenditures incurred during the period February 1, 1995, through January 31, 1996. Excluded from the audit were contracts relating to the procurement of information technology. The Oregon Audits Division recently conducted an audit relating to these types of contracts, and the results of the review are found in report number 96-39.

To meet our audit objective we reviewed applicable laws, administrative rules, and policies and procedures governing the procurement of personal services contracts. We interviewed staff from DAS and other state agencies; performed analytical procedures over contract activity and

expenditures; and examined contracts, expenditure transactions, and other supporting documentation.

Six state agencies were selected for inclusion in our review: the Oregon Department of Administrative Services, the Department of Consumer and Business Services, the Department of Human Resources, the Department of Education, the Economic Development Department, and the Department of Transportation. Also included in the audit was the Workers' Compensation Board, which is an independent adjudicatory body that shares fiscal and management services with the Department of Consumer and Business Services. These agencies were selected as a result of the high number and dollar value of contracts they reported to DAS. Excluding information technology contracts, the six agencies reported more than 340 contracts with a total valued in excess of \$20 million during our audit period.

We reviewed a total of 125 contracts valued at approximately \$14.3 million. We chose the six contracts with the greatest contract amounts (each for \$750,000 or more) and from the remaining population we selected 96 contracts randomly and 23 contracts judgmentally. The 23 contracts were judgmentally selected for review primarily to determine if competition was fostered. We also judgmentally selected and reviewed 59 expenditures totaling approximately \$300,000.

This audit was conducted under Secretary of State's constitutional authority as auditor of public accounts and in accordance with generally accepted government auditing standards. We limited our review to the areas specified in this section of the report.

CHAPTER I

ENCOURAGING COMPETITION

Statutes and administrative rules governing procurement require state agencies to encourage competition when acquiring personal services. However, three of the six state agencies we reviewed need to improve the extent to which they encourage competition when acquiring personal services contracts. Two of the six agencies limited efforts to encourage competition by using sole source procurements that were not justified. At one agency, two of five sole source procurements that we reviewed were not justified. At another agency, two of 11 sole source procurements that we reviewed were not justified. We also question the use of an emergency waiver from the solicitation process by another agency. In effect, by declaring the waiver, the agency was allowed to use sole source procurement, which did not require competitive solicitation. When agencies do not competitively solicit for services, they do not realize the full benefits of open and fair competition.

NEED FOR OPEN COMPETITION

Open and fair competition in the procurement process provides many benefits to the public. Competition helps ensure that state agencies acquire services of the requisite quality within the time frame needed and at the lowest reasonable cost. Open and fair competition also promotes fair dealing and equitable relationships among the parties involved in the contracting process and allows vendors an opportunity to obtain business from state agencies. Finally, competition helps guard against favoritism, improvidence, extravagance, fraud, and corruption. If state agencies do not encourage competition, or if competition is less than completely open and fair, the public cannot realize these benefits.

SOLE SOURCE PROCUREMENTS NOT ALWAYS JUSTIFIED

Open competition is not always possible. OAR 125-20-350 allows sole source contracting as a tool to efficiently acquire services when only one contractor is a practicable source for the services. OAR 125-20-140 (16) defines sole source as “a contractor that provides professional or technical expertise of such a unique nature that the contractor is clearly and justifiably the only practicable source to provide the service(s).”

Agencies are required to submit written justification for sole source contracting to the Department of Administrative Services' Transportation, Purchasing and Print Services Division (DAS purchasing) at the time of contract approval. If DAS purchasing approves the sole source contract and the cost of the services is \$25,000 or less, the agency is not required to follow the competitive solicitation process. If the cost of the services will exceed \$25,000, however, an agency may award a contract on a sole source basis only if, prior to the award, notice of the agency's intent to contract is advertised.

Our review of contract files at six agencies indicated four agencies awarded contracts using sole source procurements that were justified. However, at the Department of Administrative Services and the Department of Education we found sole source procurements that were not justified.

At the Department of Administrative Services two of five sole source procurements were not justified. One contract, for \$616,160, was for the administration of employee health benefits. The agency prepared a sole source contract justification that was more a description of a relationship between the parties to the contract than a justification for the sole source. We reviewed the contract statement of work and found the services were not unique and that there were other contractors in the area who provided the same types of services. We reviewed a list of current Oregon contractors who administer employee health benefit plans and found there were several contractors on the list that had provided health plan administrative services for the state in the past. The contractors may have been interested in submitting a proposal had they been solicited.

The other contract, for \$15,000, was for interns to monitor economic conditions and produce economic forecasts. The agency claimed sole source contract justification primarily on the basis that the contractor was the only one in the Salem area to provide the services. We found, however, other contractors in the area who provided the same types of services that may have been interested in submitting a proposal had they been solicited. We contacted one contractor who is within 45 minutes of Salem. The

contractor had interns, some living in the Salem area, who would have been candidates to perform the services.

At the Department of Education two (18.2 percent) of 11 sole source procurements that we reviewed were not justified. One contract for \$24,902 was to provide staff for a summer program. The contract agreement listed nine teachers, one interpreter, one signer, and two student workers. The other contract, for \$20,000, was for a speech pathologist to provide evaluative and therapy services to special education students. The agency claimed sole source contract justifications primarily on the basis that the contractors used were the only contractors in the area that the agency knew of that provided these services. We found, however, that the types of services described in the contract statements of work are not unique and there were other contractors in the area who could have provided the same services. For example, regarding the contract for staff for the summer program, we found that a different contractor had provided these types of services for the Department of Education in the past. Regarding the contract to provide evaluative and therapy services, we found three licensed speech pathologists listed in the Salem yellow page directory and numerous ones listed in the Portland yellow page directory who could have been solicited to provide services.

All four of the sole source contracts mentioned above were approved by DAS purchasing. DAS purchasing personnel indicated difficulty reviewing these types of contracts because DAS purchasing is often not involved until the contract is almost finalized.

By using sole source procurement the agencies were allowed to award these four contracts, totaling \$676,062, without competitive solicitation.

QUESTIONABLE USE OF EMERGENCY WAIVER

Through administrative rules DAS has established statewide selection procedures that must be followed by agencies in selecting personal services contractors. For example, for contracts equal to or less than \$25,000 agencies must follow an informal selection process and solicit responses from at least three contractors, but are not required to advertise. For contracts exceeding \$25,000 agencies must follow a formal selection process that requires, in part, that the agency prepare requests for proposals and advertise in at least one newspaper of general circulation and on the Vendor Information Program.

Use of a formal or informal solicitation process may be waived by an agency if the agency head or delegate declares an emergency. An emergency, as defined in OAR 125-20-140 (9), means reasonably unforeseeable circumstances that create: a substantial risk of loss, damage or interruption of state-provided services; a threat to public health, safety or the environment; or any other circumstance determined to constitute an emergency by the agency head, governor, state or federal law, or a judge having the authority to compel the state to take action addressing such an emergency and requiring prompt execution of a contract to remedy the condition.

Our review of 125 contract files at six agencies found only two instances in which an emergency was declared. One of the emergency declarations appeared to be justified. However, the use of an emergency waiver at the Department of Human Resources did not appear justified.

At the Department of Human Resources an emergency was declared and the solicitation process was waived for four contracts. The contractors were to work with a Community Partnership Team established by the agency and the contracts included services for community facilitation, program evaluation review, and support to the Community Partnership Team Director. Three of the contracts were for \$25,000 each and the other was originally for \$20,000 and later amended to \$36,000. These four contracts were originally sent to DAS purchasing for approval as sole source procurements. However, DAS purchasing did not approve the sole source contracts stating, "it appears

contractors were hand picked rather than an informal process. Therefore, sole source justification is not adequate.” DAS purchasing further noted two of the contractors had the same statement of work. Sole source could not possibly exist because at least two contractors were to provide the same type of service. In addition, two of the contractors were former management employees of the agency. While this may impart confidence in management that they are contracting with competent staff, it may give the public the impression of favoritism.

After further discussions with DAS purchasing, DHR obtained the contractors through an emergency declaration, which includes a waiver from the solicitation process. In a September 25, 1995, letter sent to DAS purchasing the agency stated, in part:

“The federal government is contemplating major changes in the way social services are funded. Congress has set an October 1, 1995, target to implement major changes in Medicaid and welfare funding. A major part of this change is reduced funding to the states to administer these programs. Oregon would be one of the states that would see major reduction in its Medicaid funding. The CPT [Community Partnership Team] is working with communities to redesign service delivery systems to help deal with the changes at the federal level. Given the target date set by Congress it is imperative that the CPT move forward as quickly as possible.”

Based on the September 25, 1995 letter, DAS purchasing approved the waiver. However, the emergency declaration does not appear to be appropriate because the circumstances creating the emergency were reasonably foreseeable. Welfare reform first appeared legislatively in Congress in the form of House Resolution 4 in January 1995. The proposed program changes should have been known well in advance of the target implementation date of October 1, 1995. Also, in our review of agency and DAS purchasing records we found no mention that an emergency or time-pressed condition existed until after the sole source procurements were denied.

By declaring an emergency and receiving the waiver the agency, in effect, was allowed to use sole source procurement. As a result, contracts totaling \$111,000 were awarded without competitive solicitation.

**RECENT EFFORTS
TO ENCOURAGE
COMPETITION**

Recently, DAS has taken steps to encourage competition. Through administrative rules effective February 1, 1995, DAS established statewide procedures for the screening and selection of personal services contractors. Previously, each state agency was responsible for establishing its own rules in this area. The implementation of uniform procedures to screen and select personal services contractors should help DAS ensure that state agencies are encouraging competition when acquiring personal services.

In January 1992, DAS implemented the Vendor Information Program, an electronic bidding system for which the state has received national recognition. The Vendor Information Program gives vendors access through computers and telecommunications software to contracting opportunities and historical bid information. Initially the Vendor Information Program did not include personal services contracting information. However, changes to the administrative rules effective February 1, 1995, require state agencies to post on the Vendor Information Program system personal services contracting opportunities for which the estimated cost of services exceeds \$25,000. By providing vendors universal and timely access to contracting opportunities, the Vendor Information Program expands the pool of potential respondents, thus encouraging increased competition.

CONCLUSION

Statutes and administrative rules governing procurement require state agencies to encourage competition when acquiring personal services contracts. However, our review found that three of six agencies audited need to improve the extent to which they encourage competition when acquiring personal services contracts. By taking steps to improve the procurement process for personal services contracts, state agencies may better realize the benefits of open and fair competition.

RECOMMENDATIONS

To further encourage competition when acquiring personal services contracts, we recommend the Department of Administrative Services and the Department of Education more strictly apply the criteria contained in the statutes and administrative rules when determining whether to use sole source procurement when contracting for personal services. Also, we recommend that the Department of Human Resources more strictly apply the criteria contained in the statutes and administrative rules when determining whether to use an emergency waiver.

To further encourage competition when state agencies acquire personal services contracts, we recommend DAS purchasing take the following actions:

1. Before approving any contract awarded through a sole source procurement, ensure that the procuring agency has sufficiently justified the sole source decision. DAS purchasing should work with agencies and consider changes in the rules to require earlier involvement in these types of contracts to enable them to provide better guidance and training, when needed.
2. Before approving any contract awarded through an emergency waiver, ensure that the procuring agency has sufficiently justified the emergency. Although the ability to declare an emergency waiver is within the procuring agency's authority, DAS purchasing, acting in an oversight capacity, should question an emergency waiver if the waiver does not appear appropriate.
3. Continue outreach efforts to inform potential vendors of opportunities to compete for state business through the Vendor Information Program.

CHAPTER II

PERSONAL SERVICES CONTRACT EXPENDITURES

Agency heads are responsible for ensuring compliance with state laws and rules governing personal services contracts. State laws and administrative rules require that personal services contracts be prepared for all personal services and payments be in accordance with the agreements. At all of the six agencies audited we found problems with ensuring that personal services contracts are prepared when required. When payments are made without proper contracts in place, agencies are circumventing contracting and reporting requirements intended to ensure state agencies acquire personal services of the requisite quality within the time frame needed and at a fair and reasonable price. In addition, at one agency we found some payments were not made in accordance with contract agreements, which resulted in overpayments to two vendors.

NEED FOR IMPROVED CONTROLS OVER PAYMENTS FOR PERSONAL SERVICES

Oregon Administrative Rule (OAR) 125-20-210 requires that personal services contracts be prepared for all personal services. The preferred contract format is provided by the Oregon Department of Administrative Services (DAS) and is included in the State of Oregon Personal Services Contract Manual. We selected 59 transactions charged to professional services and found 49 were for “personal services” and required personal services contracts.

We reviewed the 49 expenditures requiring personal services contracts and found eight (16.3 percent) for which contracts had not been prepared. Examples of personal services for which contracts were not prepared include services for training, interpreting, accounting, speaking presentations, and engineering. We determined that payments in excess of \$26,000 were made to eight different vendors yet were not supported by contracts. The table below shows three exceptions were noted at the Economic Development Department (EDD), and one exception was noted at each of the remaining five agencies audited: the Oregon Department of Administrative Services (DAS), the Department of Consumer and Business Services (DCBS), the Department of Human Resources (DHR), the Department of Education (DOE), and the Department of Transportation (DOT).

Agency	Sample Size	Exceptions	Exception Rate	Exception \$ Value
DAS	8	1	12.5%	\$ 1,831
DCBS	10	1	10.0%	2,995
DHR	6	1	16.7%	2,920
DOE	9	1	11.1%	500
EDD	8	3	37.5%	5,156
DOT	<u>8</u>	<u>1</u>	<u>12.5%</u>	<u>13,369</u>
Total	<u>49</u>	<u>8</u>	<u>16.3%</u>	<u>\$26,771</u>

The staff responsible for initiating and approving payments indicated they were unaware that personal services contracts were required. In most cases a purchase order or a letter of agreement was used to support the payment. These forms are not satisfactory, however, and personal services contracts with terms and conditions are required.

By not preparing the required contracts, agencies circumvent contracting and reporting requirements intended to ensure that state agencies acquire personal services of the requisite quality within the time frame needed and at a fair and reasonable price. Also, as discussed previously, each agency must submit personal services contracts to DAS purchasing for approval and for inclusion in the annual report to the legislature. As a result of not preparing the required contracts, personal services of an unknown amount and nature are being acquired without the approval of DAS purchasing and contract data is being excluded from the annual report to the legislature.

Also, at the Department of Consumer and Business Services, staff made overpayments on two (14.3 percent) of 14 expenditures we reviewed. One payment was made that exceeded the rate allowed by the contract. The other payment was simply a math error in totaling the vendor invoices. We determined that overpayments of at least \$1,443 were made to the two vendors. In response to our finding the agency took immediate action and all overpayments to these two vendors were recovered.

CONCLUSION

State agencies are required to ensure that personal services contracts are prepared when required and payments are made in accordance with the agreements. Our review indicates a need to improve controls over payments for personal services. At all six agencies audited we found problems with ensuring that personal services contracts are prepared when required. We also found that one agency made some payments that were not in accordance with contract agreements, resulting in the agency's having made overpayments.

RECOMMENDATIONS

To improve controls over payments for personal services we recommend all six state agencies reviewed provide agency staff responsible for approving payments and staff responsible for procurement with adequate training to ensure personal service contracts are prepared when required and payments are made only when supported by a personal services contract.

We recommend that the Department of Consumer and Business Services review payment requests diligently to ensure requests adhere to the terms and conditions of the contracts before authorizing payment.

To facilitate state agencies' efforts to improve controls over payments for personal services, we recommend DAS purchasing provide state agency staff responsible for approving payments and staff responsible for procurement with adequate training to ensure personal service contracts are prepared when required. We suggest DAS purchasing include this as a part of its core curriculum training.

CHAPTER III

OTHER NONCOMPLIANCE ISSUES

We found instances of noncompliance with state laws and rules governing personal services contracting at all six agencies reviewed. Although some of the compliance issues are minor, overall 20 (16 percent) of 125 contracts we reviewed had some type of noncompliance. Of the 20 contracts containing noncompliance issues, 17 were randomly selected and three were judgmentally selected for review.

NONCOMPLIANCE

OAR 125-20-510 requires agencies to maintain contract files that contain a complete record of the actions used to develop and administer a contract. Of 125 agency contract files we reviewed, 12 (9.6 percent) did not contain the required documentation. Examples of required records and actions missing from the contract files include the statement of justification for contractor selection, the list of prospective contractors solicited, the method used to advertise, a copy of each proposal that resulted in the award of a contract, the method of evaluating proposals, and the records of negotiations and results.

The file documentation for these 12 contracts, which totaled \$639,885, either never existed or was lost, destroyed, or simply not retained. File documentation is important to retain as a record to show that the services acquired were high in quality, obtained impartially, and acquired at the best price.

OAR 125-20-320 requires the request for proposals (RFP) to address the evaluation process and criteria to be used to select the contractor, including the weight or points applicable to each criterion. Information must include the manner in which the proposer's cost and pricing proposal will be evaluated. We reviewed 22 RFPs and found three (13.6 percent) did not include the weight or points applicable to each criterion. Some staff responsible for preparing and evaluating the RFP stated they were unaware of the OAR requirement. The agency's selection process for these three contracts, which totaled \$560,500, is open to criticism and could create the impression there was favoritism or bias in the selection process.

ORS 291.021(1) requires that the Department of Administrative Services (DAS) approve all personal services contracts of state agencies before any contract becomes binding and before any service may be performed under the contract. We noted one contract for \$24,902 in which work was started and payments of approximately \$5,927 were made prior to DAS approval of the contract.

OAR 125-20-350 provides, in part, “if the cost of the services will exceed \$25,000, an agency may award a contract on a sole source basis only if prior to the award: (a) notice of the agency’s intent to contract for the services is advertised in at least one newspaper or trade journal of general circulation in the area where the services are to be performed and on the VIP [Vendor Information Program] system...” We found one sole source contract for \$616,160 (see page 6) that was not advertised in any newspaper or on the Vendor Information Program system. The assurance to the public that agencies are acquiring personal services at the best value can be questioned if advertising requirements are not followed. Advertising allows vendors an opportunity to obtain business from state agencies and helps guard against favoritism, improvidence, extravagance, fraud, and corruption.

ORS 200.035 requires that all state agencies provide timely notice of all contract and bid request solicitations in excess of \$1,000 to the Advocate for Minority, Women and Emerging Small Business. We found good compliance with this requirement. Of the 91 contracts that required such notice, we found only three (3.3 percent) for which a notice was not sent. The oversight resulted in three contracts, for a total of \$6,600, being awarded without proper solicitation.

CONCLUSION

Our review found that all six agencies audited had instances of noncompliance with state laws and administrative rules relating to the procurement of personal services contracts. Although some of the compliance issues are minor, overall 20 (16 percent) of 125 contracts we reviewed had some type of noncompliance.

RECOMMENDATIONS

All six state agencies in our review should take steps to ensure compliance with state laws and administrative rules relating to the procurement of personal services contracts. These steps should include providing additional training to staff who are responsible for procuring personal services contracts.

Also, DAS purchasing should provide state agency staff responsible for procuring personal services contracts with training needed to ensure compliance with state laws and administrative rules. We suggest DAS purchasing include this training as a part of the agency's core curriculum.

REPORT DISTRIBUTION

This report is public record and is intended for the information of state agencies, the Oregon Department of Administrative Services, the governor of the state of Oregon, the Oregon Legislative Assembly, and all other interested parties.

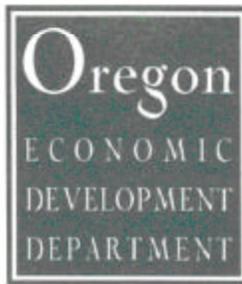
COMMENDATION

The courtesies and cooperation extended by the officials and employees of the Oregon Department of Administrative Services, the Department of Consumer and Business Services, the Workers' Compensation Board, the Department of Human Resources, Department of Education, the Economic Development Department, and the Department of Transportation during the course of our audit were very commendable and sincerely appreciated.

AUDIT TEAM

Stephanie Schutzler, CPA, Audit Administrator
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AGENCIES' RESPONSES TO THE AUDIT REPORT



November 26, 1996

Mr. Don Waggoner, CPA
State Auditor
Secretary of State Audits Division
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Salem, Oregon 97310

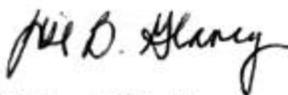
Dear Mr. Waggoner:

Thank you for the opportunity to respond to the audit report on procurement of personal services contracts. We appreciate the assistance from the Secretary of State's audit team.

We agree with the recommendations for providing training to appropriate staff and have included contract training as a portion of our ongoing agency training plan.

While our agency has a process in place to track and coordinate personal service contracts, the audit found that in three instances payments were made to individuals for services through a letter of agreement, rather than a contract. Through training and improved communication, we hope to eliminate any occurrence of noncompliance.

Sincerely,


for William C. Scott
Director

WCS:KAK/cmc



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November 27, 1996

DEPARTMENT OF
CONSUMER AND
BUSINESS SERVICES

Don Waggoner, CPA
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RE: Draft Audit on Personal Service Contracts

Dear Don:

Thank you for the opportunity to review the draft audit report. The audit pointed out some process weaknesses that were timely reminders to staff involved in contracting. I do not believe DCBS has substantive problems with its personal service contracts, and corrective action was taken at the time the audit concerns were raised.

We will use the audit report as a training and communication tool with our staff involved in developing and managing personal service contracts.

DCBS would strongly support the audit recommendation that DAS provide state agency staff responsible for approving payments and for procurement with adequate training on personal service contract management and development responsibilities. The audit suggests the training be incorporated into the core curriculum training. This training is usually a management development training and often the contractor selection, contract development and monitoring responsibilities are performed by program technical staff. Therefore, we would recommend that DAS develop training which can be modified to address contract services historically utilized by individual agencies.

We look forward to receiving the final report when it is released.

Sincerely,

Deborah Lincoln
Deputy Director

dl:audit.sam



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November 27, 1996

Don Waggoner, CPA
Secretary of State Audits Division
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Dear Mr. Waggoner:

RE: Response to Draft Audit Report on Personal Services Contracts, Procurement Practices

The Department of Education has taken steps to strengthen its policy and procedures pertaining to personal service contractor selection, documentation and payments. The following specific actions have been implemented:

Sole Source Procurements:

On July 29, 1996 the Department revised its procedure for documenting the contractor selection process. When the Department believes there is a sole source contractor, there must be proof of advertising in which a good faith effort has been made to seek out other contractors. One such acceptable form of advertising is the posting of an announcement on the State's Vendor Information Program (VIP). Documentation of the specific form of advertisement used prior to declaring a sole source contractor will be included in the contract selection file. The Department's administrative bulletin on personal service contracts is currently under revision to reflect this requirement.

Approval of Payments for Personal Services Contracts:

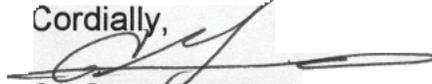
The Department of Education has strengthened its review of procurement of services to ensure that all services requiring a personal service contract are obtained via contract rather than purchase order.

Personal Service Contract File Documentation and Other Compliance Issues:

The Department of Education in its revised administrative bulletin on personal service contracts is emphasizing the requirement to retain all contract selection documentation including all formal selection evaluation materials as required by OAR. All other personal service contract requirements including commencement of contract work only after all approvals have been obtained will be monitored to ensure compliance.

Immediately upon notification of the findings by the Secretary of State Audits Division the Department of Education initiated corrective actions to prevent further findings. Additional contract procedural improvements are under review and will be included in a revised Department administrative bulletin on personal service contracts.

Cordially,



C. Greg McMurdo
Deputy Superintendent
of Public Instruction

December 18, 1996

Don Waggoner, CPA
State Auditor
Audits Division
Secretary of State
255 Capitol Street NE
Salem, OR 97310

Dear Mr. Waggoner:

We thank you and your staff for their efforts to improve our contracting process for personal and professional services.

This Department of Administrative Services response addresses the comments on sole source procurements and timely prepared contracts included in the Division of Audits report on Personal Services Contracts and Procurement Practices.

1) Chapter 1, Encouraging Competition
Sole Source Procurements Not Always Justified

Paragraph 4 - Audit Findings: "At the Department of Administrative Services two of five sole source procurements were not justified. One contract, for \$616,160, was for the administration of employee health benefits. The agency prepared a sole source contract justification that was more a description of a relationship between the parties to the contract than a justification for the sole source. We reviewed a list of current Oregon contractors who administer employee health benefit plans and found there were several contractors on the list that had provided health plan administrative services for the state in the past. The contractors may have been interested in submitting a proposal had they been solicited."

Paragraph 4 - Agency Response: The Governor has proposed legislation to merge the State Employees' Benefit Board (SEBB) and the Bargaining Unit Benefits Board (BUBB). We believe the legislature will enact the Governor's proposal. In the event SEBB and BUBB are abolished effective January 1, 1998 and replaced by a combined Public Employees Benefit Board, any personal



services contract that would be subject to bid for administration of the BUBB program would cover a six month period of time (July 1 through December 31, 1997). That is not sufficient time for a third party administrator to recapture start up costs to administer the program, and would complicate the merger activities that must occur during the same time frame. As a result, we believe the most reasonable course of action is to extend the existing contract until the date BUBB is abolished or January 1, 1998. If the legislation merging the two Boards fails, we would require that BUBB bid the personal services contract no later than January 1, 1998.

2) **Chapter 1, Encouraging Competition**
Sole Source Procurements Not Always Justified

Paragraph 5 - Audit Findings: "The other contract, for \$15,000 was for interns to monitor economic conditions and produce economic forecasts. The agency claimed sole source contract justification primarily on the basis that the contractor was the only one in the Salem area to provide the services. We found, however, other contractors in the area who provided the same types of services that may have been interested in submitting a proposal had they been solicited. We contacted one contractor who is within 45 minutes of Salem. The contractor stated it had interns, some living in the Salem area, who would have been candidates to perform the services."

Paragraph 5 - Agency Response: Willamette University contracts with DAS to provide students who perform economic analysis services for the Director's Office. We believe Willamette University to be a unique provider of these services. They employ an applicant screening process that provides qualified candidates; the students live close to the work place so they may be called on an as needed basis; and Willamette provides the service at a very low cost. An option we will explore would be to enter into cooperative agreements with area colleges and universities to provide other interested students the opportunity to work as economic analysts.

3) **Chapter II, Personal Services Contract Expenditures**
Need For Improved Controls Over Payments For Personal Services

Paragraph 2 - Audit Findings: ".....The table below shows three exceptions were noted at the Economic Development Department (EDD), and one exception each was noted at the remaining five agencies audited; the Oregon

Department of Administrative Services (DAS), and the Department of Transportation (DOT).

(Table)

The staff responsible for initiating and approving payments indicated they were unaware that personal services contracts were required. In most cases a purchase order or a letter of agreement was used to support the payment. These forms are not satisfactory, however, and personal services contracts with terms and conditions are required."

Paragraph 2 - Agency Response: We concur. To reduce the likelihood payments are made without a contract in place, we plan to provide managers and staff information on how DAS obtains services through contracting. A personal services contracting policy and procedure is currently in draft format and is expected to be completed and distributed in January, 1997. This policy will outline guidelines of the procurement and selection process, contract oversight, and payment processes, along with other pertinent contract administration issues. The Internal Support Division intends to conduct training sessions for all DAS employees involved in contract services, to effectively implement the policy and procedures.

If you wish additional details or information, please contact us.

Sincerely,



Coyne Smith, Administrator
Internal Support Division

December 6, 1996

Don Waggoner, CPA
State Auditor
Audits Division, Secretary of State
255 Capitol Street NE, Suite 500
Salem, Oregon 97310

Oregon

DEPARTMENT OF
HUMAN RESOURCES

Human Resources Building

OFFICE OF THE
DIRECTOR

Dear Mr. Waggoner:

We appreciate the opportunity to respond to your special review on the state's procurement of personal services contracts. We have prepared the following comments and clarifications to the information in the body of this report, as well as, specific responses to your recommendations for improvement in the Department of Human Resources.

Our Contracts Units works very closely with the Department of Administrative Services (DAS) to find the most appropriate means to contract for the services required by the Community Partnership Team. Several meetings were held with DAS before a decision was made to obtain contractors through an emergency declaration. The comment by DAS included in the report "it appears contractors were hand picked rather than an informal process: was made before these meetings were held. After the meetings were held and DAS was informed of the circumstances surrounding these contracts DHR and DAS made the decision that an emergency declaration was the most appropriate means to obtain these services. We request that the report reflects the entire decision making process rather than a selected part of this process.* ¹

The report makes the statement that "two of the contractors were former management employees of the agency". To our knowledge there is not an ORS or OAR that prohibits former state employees from providing contract services to the State of Oregon. ²

The report states that the "emergency declaration does not appear to be appropriate because the circumstances creating the emergency were reasonably foreseeable." This is based on the assertion that welfare reform legislation first appeared in Congress in the form of House Resolution 4 in January 1995. While this is true, the report does not reflect the many changes that were being discussed and negotiated by Congress and the White House. The report gives the impression that welfare reform legislation introduced in January 1995 was not changed and was the same legislation passed by Congress. The emergency was in response to the changes being proposed and made to the legislation on a weekly, and sometimes daily basis.



John A. Kitzhaber
Governor

* The Oregon Audits Division has made minor revisions to our report based on the Department of Human Resources' comments. Footnotes denoting these revisions are found on the bottom of this letter on page 35.

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The report also states "we were told by the agency that its funding was not reduced and a significant portion of the "major changes" were never enacted by Congress." We fail to see the significance of this in the context of your report. We could not have been able to predict this outcome at the time the emergency declaration was made. The issue is whether or not the emergency declaration was appropriate in awarding these contracts not what the outcome of the legislation was.³

DHR worked closely with DAS in determining the most appropriate way to develop these contracts. As a result of those discussions we decided to proceed with an emergency declaration. This decision was the result of much discussion by both parties and a thorough review of the situation facing the Department. To someone who was not involved in this process the review of the documentation after the fact may lead one to conclude that an emergency declaration was not appropriate. However, it was clear to DHR management that an emergency declaration was not only appropriate, but was the most prudent course of action to take.

Chapter 1 Recommendation: *"Also, we recommend that the Department of Human Resources more strictly apply the criteria contained in the statutes and administrative rules when determining whether to use an emergency waiver."*

Response: We concur with this recommendation. Our current practice is not to request an emergency declaration unless the circumstances warrant it. It should be noted that during the past year the DHR Contracts Unit processed approximately 2,000 contracts and only 12 (.6 percent) were emergency declarations.

Chapter 2 Recommendation: *"To improve controls over payments for personal services we recommend all six state agencies reviewed provide agency staff responsible for approving payments and staff responsible for procurement with adequate training to ensure personal service contracts are prepared when required and payments are made only when supported by a personal services contract."*

Response: We concur with this recommendation. It should be noted that the weaknesses noted during this audit occurred prior to the centralization of the Contracts Unit within the Director's Office in DHR. The Contracts Unit is implementing DHR contract operating standards and procedures that will increase control and oversight of personal services contracts.

Chapter 3 Recommendation: *"All six state agencies in our review should take steps to ensure compliance with state laws and administrative rules relating to the procurement of personal services contracts."*

Response: We concur with this recommendation. As noted in our response to the recommendation in Chapter 2, the Contracts Unit is implementing DHR contract operating standards and procedures which will increase control and oversight of personal services contracts.

If you have questions as you review our comments and clarifications please do not hesitate to contact our office.

Sincerely,

A handwritten signature in black ink that reads "Gary K. Weeks". The signature is written in a cursive style with a long horizontal line extending to the right.

Gary K. Weeks
Director

bc: Bob Mink
Ken Johnson
Clyde Saiki

Audits Division Footnotes:

- 1 We made minor changes to this section of our report to reflect the fact that DHR had several meetings with DAS prior to making the emergency declaration for these contracts. (page 9)
- 2 We added a sentence following this statement in our report for clarity. (page 9)
- 3 We removed the sentence discussed in this paragraph.