

STATE OF CONNECTICUT

**PERFORMANCE AUDIT
OFFICE OF POLICY AND MANAGEMENT
DEPARTMENT OF ADMINISTRATIVE SERVICES
PERSONAL SERVICE AGREEMENTS**

April 11, 2002

AUDITORS OF PUBLIC ACCOUNTS
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EXECUTIVE SUMMARY

In accordance with the provisions of Section 2-90 of the Connecticut General Statutes and with Generally Accepted Government Auditing Standards, we have conducted a performance audit of the contracting of services by State agencies through the use of personal service agreements.

We have commented on the use of personal service agreements in past audits of individual State agencies. We have also reported to the Governor and other State officials, as required under Section 2-90 of the General Statutes, uses of personal service agreements that represented unauthorized, illegal, irregular or unsafe handling or expenditure of State funds. We provide a summary of references to such audits and reports in the “Background” section of this report.

Our current review focused on the centralized internal controls established to monitor, evaluate and approve agency requests to contract for services through the use of such agreements. Sections 4-212 through 4-219 of the General Statutes present certain requirements concerning the approval of requests and the process to waive competitive bidding requirements related to such requests. The Office of Policy and Management is charged with approving such requests based on guidelines it was authorized to establish. The Department of Administrative Services reviews agency requests to ensure that services provided by individuals would not be more appropriately provided by an employee/position within the classified service. We reviewed the approval of agency requests by the Office of Policy and Management and the Department of Administrative Services, where applicable.

The conditions noted during the audit, along with our recommendations, are summarized below. Our findings are discussed in further detail in the “Results of Review” section of this report.

Competitive Bidding

State Agencies that are proposing to enter into a personal service agreement with a cost of more than \$20,000 are to competitively bid for the services unless a waiver is obtained from the Office of Policy and Management. Section 4-215, subsection (a), of the General Statutes provides the Office of Policy and Management (OPM) with authority to adopt guidelines for determining the types of services that may qualify for such waivers. The Section presents specific conditions that would justify a granted waiver, but also gives OPM discretion in establishing such, in that it is not limited to the specific conditions presented. OPM has added two additional conditions to those presented in the Statute. One often used condition is that a waiver may be obtained if such services are “provided by a contractor who has special capability or experience.” This is an overly broad condition that could conceivably be argued to exist for any agreement that is entered into with a contractor somewhat experienced in a certain field for which the agreement is sought.

The General Assembly should consider limiting the conditions that may be used to justify a waiver from competitive bidding, when services are contracted for under a personal service agreement. Limiting such conditions to those that are “specifically” presented within Section 4-215, subsection (a), of the General Statutes would accomplish that objective. (See Item 1.)

**Definition of
“Personal Service
Contractor”**

During our review we became aware of two contracts for data processing and accounting systems related services, totalling \$9,000,000. The contractor selected for the contracts would appear to meet the definition of a “personal service contractor,” as defined in Section 4-212, subsection (2) of the General Statutes. According to that Section, “personal service contractor” means any person, firm, or corporation not employed by the state, who is hired by a state agency for a fee to provide services to the agency. That Section also states that the term “personal service contractor” does not include a person, firm or corporation providing “contractual services,” as defined in section 4a-50. Section 4a-50, subsection (3), defines “contractual services” to be “any and all laundry and cleaning service, pest control service, janitorial service, security service, the rental and repair, or maintenance, of equipment, machinery and other state-owned personal property, advertising and photostating, mimeographing, and other service arrangements where the services are provided by persons other than state employees.”

As a “personal service contractor,” a personal service agreement would need to be executed in accordance with Sections 4-212 through 4-219 of the General Statutes; the Office of Policy and Management (OPM) would need to approve the agreement before such agreement could be executed. Barring a waiver from the OPM, the contract would need to be bid competitively, as required by Section 4-216 of the General Statutes.

The Department of Administrative Services administered the two contracts described above and determined that the services to be acquired were “contractual services” that are described in Subsection (3) of Section 4a-50. The services contracted for in those two contracts do not appear to be of the nature as those that are described explicitly within Section 4a-50, and therefore, would not appear to be excluded from the provisions of Sections 4-212 through 4-219.

Section 4-205 of the General Statutes, which had been repealed effective October 1, 2000, defined “consultants” in a more specific manner than Section 4-212 defines “Personal Service Contractors.” Subsection (1) of Section 4-205 defined “consultant” as “a person, firm or corporation not employed by the state, who is hired by a state agency for a fee to

provide professional advice or services to the agency under a contract that defines the services or end product to be delivered.” It should be noted that this Section also allowed for exclusions under Section 4a-50 as well.

The General Assembly should consider re-visiting the more specific language that had been used within Section 4-205 of the General Statutes to define “consultants,” and consider incorporating such language into the definition of “personal service contractor,” as defined within Section 4-212. It should also consider clarifying Section 4a-50 as well. By better defining “other service arrangements where the services are provided by persons other than state employees” to mean other services that are similar to the specific services presented in the Section, it would accomplish that objective.

Until the definition of a “personal service contractor” is clarified, the Department of Administrative Services should review its interpretation of Section 4a-50, subsection (3), of the General Statutes. If the Department reaffirms its position that contractors/consultants, such as the one described above, are exempt from Section 4-212 of the General Statutes, and thus exempt from having to contract through the Personal Service Agreement process, it should seek an opinion from the Attorney General to that effect. (See Item 2.)

**Status
Reports –
Active
Personal
Service
Agreements**

Section 4-218 of the General Statutes requires each contracting State agency to submit a report to the Office of Policy and Management, which is to present activity related to personal service agreements for the six month periods ended each June 30th and December 31st. Such reports are due within 30 days of the end of each period, and are to include a listing of each new agreement executed. This listing is to include the name of each contractor, the services contracted for, the terms and costs of the agreements and the methods of selecting the contractors. For each agreement in effect during the six month period, amounts paid to contractors must also be presented, by fund, and include the amount of any Federal or private funds allocated for such payments. Subsection (c) of Section 4-218 requires the Office of Policy and Management to summarize the above information for each fiscal year and to report such to the General Assembly by each September 1st. Our review disclosed that these requirements are not being met.

The Office of Policy and Management needs to improve efforts to ensure that contracting State agencies submit information required by Section 4-218 of the General Statutes. OPM needs to summarize such information on a fiscal year basis, and report the results to the General Assembly. (See Item 3.)

**Untimely
Execution of
Personal
Service
Agreements**

Section 4-213 of the General Statutes requires State agencies to execute a personal service agreement to contract with a personal service contractor. Our review disclosed that, at times, personal service agreement “begin dates” preceded the dates such agreements were executed. There were also instances where contractors begin providing services before agreements were approved.

State Agencies should not allow contractors to commence providing services, until personal service agreements are executed. (See Item 4.)

**Employer/
Employee vs.
Independent
Contractor
Status**

The State Comptroller has issued guidelines to assist State agencies in determining whether persons entering into personal service agreements are, in fact, independent contractors, or if an employer/employee relationship exists. There is no requirement for agencies submitting requests to enter into such agreements to document that the conditions of the agreement were reviewed for such criteria. Our review disclosed that there were agreements entered into in which an independent contractor relationship was not evident.

As State agencies submit requests to enter into personal service agreements there should be documentation on file to indicate that a review of the conditions of the agreement was performed to support the fact that an independent contractor relationship will exist with the proposed contractor. If it is determined that conditions of the agreement indicate that an employer/employee relationship exists, such services should not be contracted for through the use of such an agreement. (See Item 5.)

**Written
Evaluations –
Contractor
Performance**

Section 4-211, subsection (b), of the General Statutes had required State agencies to provide written evaluations of consultant’s performance to the Office of Policy and Management within 60 days of project completion. This Section was repealed, effective October 1, 2000. However, although the Section lacked specific requirements, Section 4-217, subsection (a)(6), of the General Statutes provides authority for the Office to monitor contractor performance. Our review disclosed that the Office of Policy and Management rarely obtained such evaluations.

The Office of Policy and Management should amend a specific provision within its “Personal Service Agreement Guidelines” to require State agencies to provide a written evaluation concerning the performance of contractors within 60 days of project completion. (See Item 6.)

**Documentation
- Established
Rates**

As part of the contracting process, terms concerning the cost and payment for services to be performed are specified within the actual personal service agreement. An “Estimated Cost of Services” is presented within the “Request for Personal Service Agreement” which is submitted to the Office of Policy and Management for review and approval. State agencies are not required to explain how costs for a project were calculated or negotiated within the request. In most instances we identified an explanation within correspondence accompanying the requests, which presented the rationale as to how the rates were determined. However, in some instances, the amounts presented were not supported and appeared somewhat arbitrary.

The Office of Policy and Management should require State agencies to include an explanation as to how contract rates were determined when a request is submitted. This is most critical when a proposed agreement has been contracted for on a non-competitive basis. (See Item 7.)

**Section 4a-7a
of the General
Statutes –
Length of
Agreements**

The length of a contract between a State agency and a contractor is presented within the “Personal Service Agreement,” as well as the request that is submitted to the Office of Policy and Management for review and approval. Section 4a-7a, subsection (b), of the General Statutes states that, “A personal service agreement between a state agency and an individual shall have a term of not more than one year. Any such personal service agreement may be extended or renewed, for an unlimited term, provided the appropriate collective bargaining representative, the Commissioner of Administrative Services and the joint standing committee of the General Assembly having cognizance of matters relating to labor and public employees are notified of such extension or renewal.” Our review disclosed that the Office of Policy and Management was not monitoring for this requirement, as staff responsible for reviewing personal service agreement requests were not aware of the requirements of Section 4a-7a of the General Statutes.

In order to comply with Section 4a-7a of the General Statutes, the Office of Policy and Management should not approve initial personal service agreements that are for a period that exceeds one year, or extensions or renewals which have not met the above notification provisions. OPM should seek a statutory change if it determines that the requirements of Section 4a-7a do not serve a constructive purpose. (See Item 8.)

AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

The Auditors of Public Accounts, in accordance with Section 2-90 of the Connecticut General Statutes, are responsible for examining the performance of State entities to determine their effectiveness in achieving expressed legislative purposes.

We conducted this performance audit related to the contracting for services through the use of personal service agreements by State agencies in accordance with Generally Accepted Government Auditing Standards. This audit encompassed effectiveness issues, which is one type of performance audit. Our objective was to determine if the Department has effective policies and procedures in place to ensure that personal service agreements are executed in accordance with statutory requirements and other established guidelines.

Individual State agencies may contract for personal services through the use of personal service agreements, which specify the terms and condition of the services to be performed and the associated costs. The Office of Policy and Management was charged with establishing personal service agreement guidelines. Individual State agencies were required to establish written procedures for implementing such guidelines, and to have such procedures approved by the Office of Policy and Management. The ultimate goal is to secure required services that are satisfactorily provided at the most favorable cost. For agreements that have met certain amount and term criteria, agencies are to submit requests to OPM, and receive approval if warranted, prior to the time that services commence. For the fiscal years ended June 30, 2000 and 2001, the Office of Policy and Management reviewed 763 and 772 such requests, respectively. A significant majority of the requests were approved.

As required by Comptroller's Memorandum 84-35, the Department of Administrative Services, Personnel Division, is responsible for reviewing agency personal service agreements requests that exceed \$3,000 to ensure that services provided by individuals would not be more appropriately provided by an employee/position within the classified service. In those cases, a "Personal Service Agreement Certificate" is issued which signifies approval. Due to the recordkeeping system maintained, we could not readily determine how many agreements were received and acted on during the fiscal years ended June 30, 2000 and 2001. However, we were informed that the Department had determined that 982 such requests were received during the fiscal year ended June 30, 2001; all of the requests for that fiscal year were granted Personal Service Agreement Certificates.

To accomplish our objectives, we conducted initial interviews with staff at the Office of Policy and Management/Division of Strategic Management, Department of Administrative Services/Personnel Division, and the Office of the State Comptroller/Accounts Payable Division. We documented policies and procedures over the approval and monitoring systems for personal service agreements and obtained standard forms involved in the process. We randomly selected 40 of the approved agreements for review. Our review included an examination of the following standard forms, where applicable:

- A valid “Request for Personal Service Agreement,” including approval by the Office of Policy and Management’s designee;
- A valid “Request for Waiver from Competitive Bidding,” including approval by the Office of Policy and Management’s designee; and
- A “Personal Service Agreement Certificate,” approved and signed by the Department of Administrative Services’ designee.

Besides determining whether the above standard documents were present within the sampled files, we reviewed documentation used to support the decisions made to approve the requests. We did not use computer-based data to any material degree and therefore did not assess the reliability of such. There were no conditions disclosed which would indicate that our sample was not representative of the population taken as a whole.

We also reviewed reporting requirements that are the responsibility of the Office of Policy and Management. More specifically, OPM is required to receive certain information concerning personal service agreements from contracting State agencies on a semi-annual basis, to compile such information, and report the compiled information to the General Assembly on a fiscal year basis.

OPM is also responsible for “systematically monitoring and evaluating personal service contractor performance” and to approve written procedures drafted by the individual State agencies concerning personal service agreement administration. We reviewed the policies and procedures employed by OPM to address those responsibilities.

BACKGROUND

History:

In February 1988 the Legislative Program Review and Investigations Committee authorized a study of outside consultant use by State agencies. At that time it was noted that authority to hire consultants was implicit in the statute describing department head powers (Section 4-8 of the General Statutes) and that most department heads had “enormous discretion in contracting for professional services.” A survey performed during the review disclosed that only 23 percent of responding agencies had written procedures regarding consultant procurement and management. Recommendations made as a result of the review are summarized as follows:

- ◆ The term “Consultant” should be defined to mean an individual or organization outside of state government hired for a fee to provide professional advice or services to the state under a contract or agreement that defines the end product to be delivered.
- ◆ Before soliciting a consultant, agencies should develop a “Request For Proposal” (RFP), establish a screening committee to evaluate and rank proposals received, and submit the top three proposals to the agency head who shall be responsible for making the final selection.
- ◆ The Office of Policy and Management (OPM) should develop standards for the selection and management of consultant services.
- ◆ Each State agency should develop written procedures that detail how statutory requirements and standards developed by the OPM will be met.
- ◆ If a proposed contract for consultant services exceeds \$18,000 (adjusted annually by an inflation factor) and the contracting agency has not received three responses to its RFP, the agency should be required to obtain a written waiver from the OPM before it may enter into the contract.
- ◆ An agency should be required to obtain OPM approval for contract amendments if 1) the value of the amendment exceeds the original contract value, 2) the amendment exceeds \$40,000 (adjusted annually by an inflation factor), or 3) the amendment is the second or subsequent amendment as to amount.
- ◆ Agencies should compile and submit a report on consultant contracts awarded to the OPM, for each six month period ended June 30th and December 31st.
- ◆ Agencies should compile and complete a report for each completed consultant contract to the OPM, for each six month period ended June 30th and December 31st.

Public Act 89-122 of the January 1989 Session of the General Assembly, codified as Sections 4-205 through 4-211 of the General Statutes, implemented the above recommendations. Section 4, subsection (c), of the Act addressed “Requests for Proposal’s” (RFP’s) which lack three responses; waivers were required to be obtained for consultant contracts that exceeded \$20,000, rather than the \$18,000 threshold recommended above.

In April 1992, the Legislative Program Review and Investigations Committee voted to study the use of personal service agreements for services that fall outside the statutory definition of a “consultant.” The primary focus of the review was to obtain data about the number, nature, and value of existing agreements, as well as information about processes used to evaluate need, select

contractors, and monitor contract provisions. Recommendations presented as a result of that review were presented in a December 1992 report, as follows:

- ◆ Whenever possible state agencies should use a competitive selection process for all types of services obtained through personal service agreements.
- ◆ The minimum value of personal service agreements reviewed by the Department of Administrative Services and the Office of the Attorney General should be increased from \$3,000 to \$10,000.
- ◆ All agreements expected to cost between \$10,000 and \$50,000 should be required to use a competitive selection process, or obtain a waiver from the OPM.
- ◆ All agreements expected to cost more than \$50,000 or have a period longer than 12 months should be submitted to the OPM before an RFP can be issued or discussions are held with a sole source provider.
- ◆ All agreements that are amended for an amount equal to or greater than the original contract value, or for an amount that increases the contract to a value exceeding \$50,000, should be submitted to the OPM for approval.
- ◆ The Department of Administrative Services Bureau of Purchases should design a program by January 1994 for the regional purchase of services by two or more state agencies that currently contract out for the same service.
- ◆ Master contracts should be developed by the Office of the Attorney General in conjunction with the state agencies that contract with multiple parties for the same purpose.
- ◆ The Office of the State Comptroller should reprogram its current computer system to expand the database for Personal Service Agreements.

Public Act 93-336 of the January 1993 Session of the General Assembly, implemented most of the recommendations made above. Sections 4-206 through 4-209 of the General Statutes were repealed, Sections 4-210 and 4-211 were amended, and Sections 4-212 through 4-219 were established to specifically address “Personal Service Agreements.” The recommendations concerning an increase in value of agreements requiring review by the Department of Administrative Services and the Office of the Attorney General, and the reprogramming of a database at the Office of the State Comptroller, were the only recommendations that were not addressed within the Act. **[Exhibit A – Sections 4-212 through 4-219 of the General Statutes]**

Public Act 94-188, Section 20, of the February 1994 Session of the General Assembly, increased the value of agreements required to be competitively bid, from \$10,000 to \$20,000. Agencies may continue to request waivers of the requirement from the Office of Policy and Management under certain circumstances.

Public Act 00-66 of the February 2000 Regular Session of the General Assembly repealed Sections 4-205, 4-210 and 4-211, as a “technical change,” effective October 1, 2000. These Sections had been presented under “Consultants” within Chapter 55a of the General Statutes. Most of the requirements that had been presented within the repealed Sections are now presented within the Sections under “Personal Service Agreements” (Sections 4-212 through 4-219.) However, a requirement for agencies to submit a written evaluation of the consultant’s performance to the Office of Policy and Management within 60 days of project completion, is no

longer “specifically” required. We comment on this in the “Results of Review” section of this report.

Agencies/Offices Involved in the Process:

State agencies were required to establish written procedures for implementing standards established by the Office of Policy Management, and to submit such procedures to the Secretary of OPM for approval by May 1, 1994. After evaluating and determining a need for services to be contracted for, requests for proposals are to be issued which include an outline of the work to be performed, required minimum qualifications for contractors to be considered, criteria for review of the proposals by the agency, and a deadline for submission. A screening committee for each request for proposal is to be established to evaluate the proposals received. The top three proposals are submitted to the executive head of the agency, who shall select the personal service contractor from among the three. A standard “Request for Personal Services Agreement” form must be completed which presents contractor information and the terms, cost and conditions of the agreement. The source of funds committed for the project must also be presented.

The Office of Policy and Management is the principal agency responsible for monitoring the contracting process for personal service agreements. The Undersecretary of the Division of Strategic Management (as the Secretary’s designee) normally acts on the requests received from agencies. A staff member, who reports to the Undersecretary, performs an initial review and is responsible for information gathering related to requests. This same staff member maintains files and records related to the requests as well as required reports. **[Exhibit B – Personal Service Agreement]**

For personal service agreements that exceed \$3,000 and are to be entered into with individuals, agencies are required to obtain approval from the Department of Administrative Services, as required by DAS Personnel Division Memorandum 93-13. Agencies submit information concerning the services to be provided to the Department. A staff member reviews the request and issues a “Personal Service Agreement Certificate” if it is determined that a waiver of the classified service is appropriate. **[Exhibit C – Personal Service Agreement Certificate]**

Agreements that exceed \$3,000 or are for a term of twelve months or longer must be approved by the Office of the Attorney General as to form, as required by State Comptroller Memorandum 84-35. Completed agreements are then forwarded to the Office of the State Comptroller and serve as commitment documents, from which approved invoices may be paid. The Accounts Payable Division within the Office of the State Comptroller performs an audit function over personal service agreements and related invoices. If a request is missing certain documentation or approvals, the Division may “suspend” the request. An agency has 15 days to submit further documentation and/or proof of approval; otherwise the request is rejected.

Personal Service Agreement Guidelines:

The Office of Policy and Management has established guidelines in accordance with Sections 4-212 through 4-219 of the General Statutes. The guidelines basically address the

aforementioned Sections. The process for entering into an agreement will depend on the dollar amount and the term of a proposed agreement. A summary and description of certain guidelines follows:

Personal Service Agreements - \$20,000 or less and a term of one year or less:

Contracts are to be based on competitive bid when possible. Non-competitive contracts should be avoided except in clear cases of need. No review or approval of such proposals by the Office of Policy and Management is required.

Personal Service Agreements - \$20,001 to \$50,000 and a term of one year or less:

Contracts are to be based on competitive bid. If an agency determines that a non-competitive purchase is required, it must apply to the Secretary of OPM for a waiver. If a personal service agreement is being competitively bid, approval from OPM is not required.

Personal Service Agreements – exceeding \$50,000 or a term of more than one year:

No State agency may execute an agreement having a cost of more than \$50,000 or a term of more than one year without the approval of the Secretary of OPM. Approval must be sought before the development of the Request for Proposal or the Invitation to Bid. Contracts are to be awarded on a competitive bid basis unless an agency determines that a non-competitive procurement is warranted. In those instances it must apply to OPM for a waiver.

Request For Waiver From Competitive Bidding [Exhibit D]:

Services that may qualify for a waiver from competitive bidding are:

- *services for which the cost of a competitive selection procedure would outweigh the benefits of such a procedure;*
- *services for which the contractor has proprietary or patent rights;*
- *services which are to be provided by a contractor who is mandated to be used by a General Statute or Public Act;*
- *emergency services;*
- *services in specific academic areas including instructional or research activities; or*
- *services provided by a contractor who has special capability or experience.*

Continuance by Amendment:

To amend an agreement, an agency must request approval from OPM if:

- *the cost of the original agreement exceeded \$50,000;*
- *the amendment has a cost of 100 percent or more of the cost of the original agreement;*
- *the amendment increases the cost to more than \$50,000;*
- *the amendment extends the term of the agreement beyond one year; or*
- *the amendment is the second or subsequent amendment regardless of cost.*

Reporting:

Every six months, as required by Section 4-218 of the General Statutes, each agency must submit a report on personal service agreement activity to the Secretary of OPM. For each agreement executed, the following information must be provided:

- *the name of the personal service contractor;*
- *a description of the services to be provided;*
- *the term and cost of the agreement; and*
- *the method of selecting the contractor.*

For each agreement that is in effect, the following information must be provided:

- *the amount of any Federal or private funds allocated for such payment; and*
- *the amount of all payments made during the six month period to the contractor, by fund.*

Consultant Evaluation:

Through September 30, 2000, as required by Section 4-211, subsection (b), of the General Statutes, State agencies were required to submit a written evaluation of consultant performance within 60 days after contract completion. As noted above, Public Act 00-66 repealed the Section, effective October 1, 2000. Section 4-217, subsection (a), required the OPM to establish, by March 1, 1994, standards for “systematically monitoring and evaluating personal service contractor performance.” We comment on contractor monitoring in the “Results of Review” section of this report.

Prior Concerns:

As part of our examinations of State agencies under Section 2-90 of the General Statutes and/or due to other information that has come to our attention, we have reported and disclosed certain findings related to the use of personal service agreements. Examples of our prior concerns follow:

- In an August 3, 2001, letter to the Governor and other State Officials, we reported that the State Treasurer’s Office executed a personal service agreement with a retiree for services similar to those the retiree performed prior to retirement. It was also noted that the hourly rate of compensation was in excess of the established salaries for comparable positions within the Office. Further, the contract was not awarded on a competitive basis and the individual commenced working under the agreement before the Department of Administrative Services issued the required Personal Service Agreement Certificate.
- In a June 22, 2001, letter to the Governor and other State Officials, we reported that approximately 75 assistant medical examiners, contracted with by the Office of the Chief Medical Examiner, did not have personal service agreements executed on their behalf.
- In a May 2, 2001, letter to the Governor and other State Officials, we reported an exception concerning the use of a personal service agreement by the Department of Economic and Community Development, Connecticut Film, Video and Media Office. Concerning this agreement, we noted that the Office received a waiver from competitive bidding on June 13, 2000, and reported to the Office of Policy and Management that the proposed contractor had started providing services on June 1, 2000. However, documentation on file disclosed that the contractor actually started providing services on February 1, 2000; the Department was in effect, going to retroactively pay the contractor back to that point.
- In a September 25, 2000, letter to the Governor and other State Officials, we reported that the Department of Motor Vehicles contracted with a data processing consultant through the use of a purchase order instead of a personal service agreement. Further, the lowest responsible qualified bidder was not selected for what became a \$2,000,000 project.
- In our audit report of the Judicial Selection Commission, for the fiscal years ended June 30, 1999 and 2000, we reported an instance in which services were initiated prior to the signing of a personal services agreement between a contractor and the Commission. Further, such services commenced approximately three months prior to the ultimate approval of the agreement by the Attorney General.
- In our audit report of the Department of Environmental Protection, for the fiscal years ended June 30, 1998 and 1999, we reported that the Department failed to submit written evaluations upon project completion for all of the 22 personal service agreements tested.

NOTEWORTHY ACCOMPLISHMENTS

It was noted during the initial review of personal service contracting, in the January 1989 report of the Legislative Program Review and Investigations Committee, that there were major deficiencies in how consultant services were procured and managed. More specifically, it was reported that:

- statutory or regulatory guidelines to govern agency procurement of consultant services was lacking;
- there was insufficient oversight of agencies' procurement decisions by an independent authority; and
- there was inadequate information available on consultant contract awards and services on both a State and agency level.

Since that time effective legislation and guidelines have, for the most part, been established and implemented. As a result, an internal control process over personal service agreements has been established. The effectiveness of an internal control process is dependent on the compliance exhibited by agencies to meet the objectives of the internal control process. The findings in our report present instances in which internal control policies and procedures have not been complied with to a satisfactory degree, or areas in which we believe that current legislation and/or guidelines could be strengthened.

AREAS REQUIRING FURTHER REVIEW

The current central accounting system essentially allows agencies to commit/encumber available funds by properly executing a purchase order or personal service agreement. This is a critical feature due to the differing procurement policies and procedures in place for personal service agreements.

The Office of the State Comptroller is currently in the process of implementing a new core accounting and information system. At this time, the systems and processes to be used by State agencies to commit/encumber available funds have not been determined. The standard “package” system to be purchased utilizes a single commitment document to encumber funds.

The Office of the State Comptroller should review options available to enhance the system so that the level of internal control over personal service agreements is maintained or possibly improved.

RESULTS OF REVIEW

Our examination of personal service agreements, and the policies and procedures established to monitor such agreements, disclosed matters of concern requiring disclosure and attention. The Office of Policy and Management is the principal agency responsible for addressing Items 1, 3, 4, and 6 through 8. The Department of Administrative Services is responsible for addressing Items 2 and 5. Where we have made reference to personal service agreements of individual agencies, such agencies were afforded the opportunity to present comments and/or responses as well. We present these comments/responses in Appendix 1 of this report.

Item No. 1 – Competitive Bidding:

Background: In general terms, entities obtain goods and services at the most favorable cost when a competitive bid process is used.

Criteria: State agencies are encouraged to employ a competitive bid process when entering into personal service agreements. Section 4-215 of the General Statutes, which addresses personal service agreements having a cost of more than \$20,000 but not exceeding \$50,000, requires that such agreements be awarded on a competitive bid basis unless a waiver is obtained from the Office of Policy and Management. Section 4-216, which addresses personal service agreements having a cost of more than \$50,000, presents the same bid/waiver requirements.

Section 4-215 also authorized the Secretary of the Office of Policy and Management to adopt guidelines for determining the types of services that may qualify for such waivers. Per subsection (a) of the Section, “The qualifying services shall include, but not be limited to, (1) services for which the cost to the state of a competitive selection procedure would outweigh the benefits of such procedure, as documented by the agency, (2) proprietary services, (3) services to be provided by a contractor mandated by the general statutes or a public or special act, and (4) emergency services, including services needed for the protection of life or health.”

The Office of Policy and Management, in establishing its guidelines to address waivers, added two additional conditions to the four presented above, as follows:

- “services will be used in specific academic areas that include instructional or research activities” and
- “contractor has special capability or experience.”

Condition:

Our review of a sample of executed personal service agreements disclosed that there were instances in which waivers to the competitive bid process were obtained, while it appeared that such a process could have been used. We present the following examples:

- The Office of Policy and Management contracted with a public relations firm for a media campaign. The reason provided by OPM as to why this request should not be put out to bid, was that “additional costs would result as a new vendor would require some time to get completely familiar and knowledgeable with the project.” We question whether this is a valid argument. There may have been a competing vendor who could have absorbed the cost of becoming “familiar and knowledgeable with the project” at a lower cost. If not, the current vendor would retain the contract, but would have had to do so with the knowledge that it would have to bid competitively when making the proposal. Further, it was stated in the request that if services were to be continued beyond the end date of June 30, 2001, they would be competitively bid. However, the contract was amended/extended once again through June 30, 2002, to the same contractor on a non-competitive bid basis.
- The Department of Public Safety (DPS) entered into an agreement with a contractor to evaluate and assess an identification system. In its request, DPS stated that the contractor possessed special capability or experience as the criteria for not competitively bidding the contract. While it appeared that this vendor was quite proficient in an area that is quite specialized, there were other contractors, albeit a few, who could have performed the services.
- The Department of Social Services (DSS) entered into an agreement with a contractor to assist DSS in performing a study. This study was required by a Public Act that was enacted on June 29, 1999, and effective on July 1, 1999. In its December 1, 1999, request, DSS stated that a waiver to bid was appropriate due to the aggressive timetable set forth within the Public Act. This reason does not appear justified since the Department had to be aware of the requirement on or before June 29, 1999, and did not submit a waiver request until five months later. During this five month period, it could have administered a competitive selection process.
- The Department of Economic and Community Development (DECD) contracted with an individual to provide foreign trade services, to assist Connecticut companies in trade opportunities with Israel and to attract Israeli investment in Connecticut. In its request, DECD stated that the contractor possessed special

capability or experience as the criteria for not competitively bidding the contract. The contractor had worked for an organization that performed the same type of services. Funding for the position was provided by this private organization until funding became difficult. DECD became the source of funding at that time, and contracted directly with the individual under a personal service agreement. DECD placed a considerable amount of significance on the experience the contractor had with this private organization in deciding to contract with the individual, and requesting the waiver from competitive bidding. While the contractor appears to be well qualified, the decision to contract non-competitively ultimately was affected by the prior actions of an outside private organization. There are other individuals and/or firms that could provide the same service.

- The Department of Social Services contracted on a non-competitive basis with an individual to collect survey data. The original contract called for payments totaling \$17,650. As such, the Department was not required to obtain a waiver from competitive bidding from the Office of Policy and Management, as the amount was less than \$20,000. However, less than two months after the original personal service agreement was executed, a \$60,175 amendment was sought and approved. This appears to be an example of circumventing the “spirit” of laws and guidelines that address competitive bidding requirements. The services were of a type in which one would not expect there to be a shortage of qualified bidders.
- The Office of the State Treasurer amended/extended an agreement with a contractor to provide unclaimed property claims processing services. This was the fourth amendment to the contract that extended it through June 30, 2002. In a June 15, 2000, communication from the Assistant Treasurer of the Unclaimed Property Division to the contractor, it was stated that an extension through June 30, 2001, would be the last such extension. In its March 19, 2001, request to extend the contract through June 30, 2002, it was claimed that there was not sufficient time to complete an RFP process prior to the expiration of the agreement on June 30, 2001. This does not appear to be a justified reason, as the Office of the State Treasurer had anticipated the planned RFP process.
- The Department of Social Services entered into an agreement with a contractor to establish payment rates for facilities, and to review cost reports and desk reviews. The contract was for a two year period and exceeded \$2,600,000. In its request to have competitive bidding requirements waived, DSS claimed

that the cost of a competitive selection process would outweigh the benefits of such a process and that the contractor had special capability or experience. The cost to administer a competitive bid process is minor; the relative cost is reduced, as a percentage of a contract's value, as the amount of the contract increases. For such a large contract, it is not prudent to assume that the cost would exceed any savings realized by competitively bidding. As regards the contractors "special capability or experience" due to his experience with the project in the past, DSS believed it would be difficult for other possible bidders to compete. As noted above, there may have been a competing vendor who could have absorbed the cost of becoming "familiar and knowledgeable with the project" at a lower cost. If not, the current vendor would retain the contract, but would have had to do so with the knowledge that it would have to bid competitively when making the proposal. The type of services contracted for could have been performed by a large number of firms/consultants.

In those instances in which we questioned whether a waiver was appropriate, the criteria most often used to justify such waiver was that the "contractor has special capability or experience." It would appear that virtually all contractors interested in contracting with the State would have some special capability or experience in the field for which the agreement is being entered into.

- Effect:* In those instances in which a competitive bid process was not used when entering into personal service agreements, it can not be determined if State agencies obtained the most favorable prices for services rendered.
- Cause:* Allowing State agencies to obtain waivers in instances in which "a contractor has special capabilities or experience," provides the agencies with broad authority to contract non-competitively.
- Recommendation:* The General Assembly should consider limiting the conditions that may be used to justify a waiver from competitive bidding for services contracted for with a personal service agreement. Limiting such conditions to those that are "specifically" presented within Section 4-215, subsection (a), of the General Statutes would accomplish that objective. (See Recommendation 1.)

Agency Response:

Office of Policy and Management:

“OPM disagrees with this finding. Limiting the conditions that may be used to justify a waiver from competitive bidding will eliminate the flexibility that agencies need to carry out their missions.

OPM will require substantial justification for all waiver requests from competitive bidding. OPM will eliminate ‘services to be used in specific academic areas including instructional and research’ from the list of acceptable criteria for requesting a non-competitive PSA. These changes will be made to the OPM Personal Service Agreement Guidelines and to the applicable form. The change will be effective July 1, 2002.”

See Appendix 1 for other Agencies comments.

Auditors’ Concluding Comments:

We agree that the flexibility currently available to agencies for obtaining waivers from the competitive bid process would be affected. It is quite clear that the General Assembly was concerned over the “flexibility” exhibited by State agencies in personal service agreement contracting when it instituted controls over the process, by enacting Section 4-215 of the General Statutes.

Item No. 2 - Definition of “Personal Services Contractor”:

Background:

During our review we became aware of two contracts for data processing and accounting systems related services, totalling \$9,000,000. These two contracts were awarded to a contractor to assist in replacing the State’s aging core financial and administrative computer systems.

Criteria:

The contractor selected for the contracts would appear to meet the definition of a “personal service contractor,” as defined in Section 4-212, subsection (2), of the General Statutes. According to that Section, “personal service contractor” means any person, firm, or corporation not employed by the state, who is hired by a state agency for a fee to provide services to the agency. That Section also states that the term “personal service contractor” does not include a person, firm or corporation providing “contractual services,” as defined in Section 4a-50. Section 4a-50, subsection (3), defines “contractual services” to be “any and all laundry and cleaning service, pest control service, janitorial service, security service, the rental and repair, or maintenance, of equipment, machinery and other state-owned personal property, advertising and photostating, mimeographing, and other service arrangements

where the services are provided by persons other than state employees.” It would appear that this Section would only include “other service arrangements where the services are provided by persons other than state employees,” if such services are similar in nature to the specific types listed therein. The Section does not refer to consultants providing professional advice and services.

Condition:

The Department of Administrative Services determined that the contractor was exempt from personal service agreement requirements, as it was of the opinion that the services to be acquired were “contractual services,” as described in Section 4a-50, subsection (3), of the General Statutes.

Effect:

As such, personal service agreements were not executed and personal service guidelines were not followed.

As described in the “Background” section of this report, the General Assembly has had critical concerns related to the contracting process for “personal services.” Substantial efforts have been made to enact legislation that addresses the concerns.

In support of its argument that the services provided within the subject contracts were “contractual services” and therefore not subject to “Personal Service Agreement” guidelines or statutes, the DAS claimed that the contractor was providing “other service arrangements where the services are provided by persons other than state employees (See “Criteria” above.)” The interpretation, that Section 4a-50, subsection (3), applies to consultants providing professional advise and services, has the effect of excluding virtually all vendors providing services pursuant to a contract award issued by DAS, from the definition of “personal services contractor,” as such term is used in Section 4-212. This appears to have the effect of circumventing the intent of Chapter 55a of the General Statutes.

Cause:

The Department of Administrative Services is utilizing an overly broad interpretation of services that may be excluded from having to comply with “Personal Service Agreement” guidelines.

It should be noted that at the time that legislation was amended and directed to address “personal service contractors,” similar statutory language to address “consultants” was repealed. Quite simply, Section 4-205 of the General Statutes, which had been repealed effective October 1, 2000, defined “consultants” in a more specific manner than Section Section 4-212 defines “Personal Service Contractors.” Subsection (1) of Section 4-205 defined

“consultant” as “a person, firm or corporation not employed by the state, who is hired by a state agency for a fee to provide professional advice or services to the agency under a contract that defines the services or end product to be delivered.”

Recommendation: The General Assembly should consider re-visiting the more specific language that had been used within Section 4-205 of the General Statutes to define “consultants,” and consider incorporating such language into the definition of “personal service contractor,” as defined within Section 4-212. It should also consider clarifying Section 4a-50 as well.

The Department of Administrative Services should re-evaluate its interpretation of Section 4a-50, subsection (3), of the General Statutes. If the Department reaffirms its position that contractors/consultants, such as the one described above, are exempt from Section 4-212 of the General Statutes, and thus exempt from having to contract through the Personal Service Agreement process, it should seek an opinion from the Attorney General to that effect. (See Recommendation 2.)

Agency Response: **Department of Administrative Services:** “DAS does not concur with the Auditors’ narrow interpretation of Section 4a-50 of the Connecticut General Statutes. DAS disagrees with the statement that “It would appear that this Section would only include “ ‘other service arrangements where the services are provided by persons other than state employees,’ if such services are similar in nature to the specific types listed therein.” After reviewing the legislative history of the statute, DAS can find nothing that supports this limited application; however, it is because the statutes do not clearly define what services fall under C.G.S. 4a-50 and what services fall under C.G.S. 4-212 that DAS agrees with the Auditor’ recommendation that the General Assembly should reexamine the statutes pertaining to contractual services.

The lack of clarity in the statutes has been a source of confusion for state agencies for years. DAS met with representatives from the Office of Policy and Management, the Office of the Attorney General and the Office of the Comptroller in 1999 to attempt to develop a policy that state agencies could follow to distinguish between different types of services. Because the state purchases such a wide range of services, it immediately became clear that this was a difficult, if not impossible, task.

DAS believes that a better solution would be to establish one method for the purchase of services that includes appropriate checks and balances integrated into the Core-CT system. This will also provide accessible, accurate and timely information on all of the services that the state purchases. The Commissioner of DAS has established a team to implement this process.

In the case of the contract for data processing and accounting systems related services that is the subject of this section of the Auditors' report, the Office of the State Comptroller, the Department of Information Technology, the Department of Administrative Services and the Office of Policy and Management recognized at the beginning of the Core-CT project that it was necessary to define the appropriate method of procurement for the project. These agencies entered into a Memorandum of Understanding whereby they agreed that "the contract for the contractor to assist in the requirements definition and software selection phase" -along with any other project procurement administered by DAS-shall be awarded pursuant to DAS procurement procedures as set forth in Chapter 58 of the Connecticut General Statutes."

Auditors' Concluding Comments:

We agree that the Statutes in question lack adequate clarity. However, it appears that there would have been no reason for the General Assembly to enact Statutes that address "Personal Service Agreements" if it was its intent to allow all "other service arrangements where the services are provided by persons other than state employees," to be contracted for under Section 4a-50 of the General Statutes. It should be noted that, within its Personal Service Agreement Guidelines, the Office of Policy and Management, states that the term "other service arrangements" is interpreted to mean "services of a non-advisory, non-planning, or non-developmental nature." As such, we believe the intent of Section 4a-50 is to be restrictive in nature for such "other service arrangements." Further, we find it reasonable to conclude that the definition of "other service arrangements where the services are provided by persons other than state employees," would be limited to only those types of services that are similar to the specific non-professional type services presented in the Section.

Item No. 3 - Status Reports – Active Personal Service Agreements:

Background: The Office of Policy and Management has attempted to obtain information concerning expenditures related to personal service agreements by using the State Agency Appropriation Accounting System (SAAAS.) Reporting on such expenditures is a principal source of information that must be reported, as required by Section 4-218 of the General Statutes.

Criteria: Section 4-218 of the General Statutes requires each contracting State agency to submit a report to the Office of Policy and Management, which presents activity related to personal service agreements for the six month periods ended each June 30th and December 31st. Such reports are due within 30 days of the end of each period, and are to include a listing of each new agreement executed. This listing is to include the name of each contractor, the services contracted for, the terms and costs of the agreements and the methods of selecting the contractors. For each agreement in effect during the six month period, amounts paid to contractors must also be presented, by fund, and include the amount of any Federal or private funds allocated for such payments. Subsection (c) of Section 4-218 requires the Office of Policy and Management to summarize the above information for each fiscal year and to report such to the General Assembly by each September 1st.

The Office of Policy and Management is allowed certain access to the State Agency Appropriation Accounting System (SAAAS) system. Per “Personal Service Agreement Guidelines,” agencies utilizing the SAAAS system are, therefore, relieved of having to submit data manually. Such agencies remain responsible for ensuring that the data is accurate and complete.

Condition: Our review disclosed that information was not complete. Our requests to examine the reports for the periods ended December 31, 1998, 1999, and 2000, and June 30, 1999, 2000 and 2001, disclosed that such reports had not been prepared. We were provided with a report that encompassed the entire 1998-1999 fiscal year. However, a review of the report found it to be significantly incomplete. Reports for the 1999-2000 and 2000-2001 fiscal years were not available.

Effect: Reports required by Section 4-218 of the General Statutes are not being prepared. The reports would be of value in that they could provide a statewide analysis of personal service agreement expenditures, types of services contracted for, and the degree to which such agreements are competitively bid.

Cause: A cause for this condition was not determined. Office of Policy and Management staff believe that a report similar to the 1998-1999 fiscal year report had been obtained for the 1999-2000 fiscal year. Attempts are being made to determine why all required information is not being captured with the program used to obtain personal service agreement expenditures.

Recommendation: The Office of Policy and Management needs to improve efforts to ensure that contracting State agencies submit information required by Section 4-218 of the General Statutes. OPM needs to summarize such information on a fiscal year basis, and report the results to the General Assembly. (See Recommendation 3.)

Agency Response: **Office of Policy and Management:**
“OPM agrees with this finding. In an attempt to make use of existing databases, a reporting mechanism was developed whereby OPM could obtain information on agency personal service agreement activity directly from the SAAAS system. As changes were made to the SAAAS system, it became more difficult to obtain the data. OPM is currently working with the Department of Information Technology to restore the reporting mechanism. If the reporting mechanism cannot be restored to our satisfaction, we will require agencies to submit reports on required PSAs. OPM plans to submit information on Fiscal 2002 data in a timely manner.”

Item No. 4 – Untimely Execution of Personal Service Agreements:

Background: Appropriations must be committed before an expenditure is incurred. The current central accounting system essentially provides that executing a purchase order or personal service agreement may commit such appropriations.

Criteria: Section 4-213 of the General Statutes requires State agencies to execute a personal service agreement to contract with a personal service contractor.

Condition: Our review of a sample of 40 executed personal service agreements disclosed that 14, or 35 percent, had “begin dates” on agreements that preceded the dates that agreements were approved. It was also noted that, at times, personal service contractors began providing services before personal service agreements were executed. As an example, we noted that the Department of Public Safety, in cooperation with the Office of the Attorney General (AG), entered into an agreement with a law firm to provide assistance in a case it was defending. The attorney to be contracted with would not sign a contract drafted by the AG.

Since the contract must be completed before a Personal Service Agreement may be executed, there was no such agreement in place as of October 2001. Payments could not, therefore, be made to the contractor. According to AG staff, the first invoice for services provided was submitted in November 2000. As of October 2001, we were informed that approximately \$11,000 had been billed and remained unpaid.

Prior audit examinations performed on individual State agencies have also presented concerns related to services beginning before personal service agreements were executed.

Discussions with staff involved with the process disclosed that withholding approval and/or payment is not viewed as a viable option as contractors will be paid for providing services regardless of whether approvals are granted. Agencies that have been involved with this practice are reminded of the requirements, but there are no penalties or other action taken to discourage such agencies from repeating the violations in the future.

Effect: At times, personal service contractors provide services before a proper commitment document is in place. If the related personal service agreements are not approved in those instances, there is no legal method for the State agency to effect payment for those services. A risk also exists that funds may not be available in the appropriation account in which an agency is using, if funds are not committed in a timely manner.

Cause: Staff of State agencies contracting for such services are often tardy in submitting required personal service agreement requests.

Recommendation: State Agencies should not allow contractors to commence providing services, until personal service agreements are executed. (See Recommendation 4.)

Agency Response: **Office of Policy and Management:**
“OPM agrees with this finding. While OPM makes every effort not to approve retroactive requests for PSAs, agencies’ submittals are not always timely. Even when OPM approves a request for a PSA well in advance of the start date, OPM has no control over when the PSA gets sent to the Office of the Attorney General for execution. We recommend that the Office of the Attorney General issue guidelines to all State agencies clarifying when a PSA is considered executed and a contractor authorized to begin work. ”

See Appendix 1 for other Agencies comments.

Item No. 5 - Employer/Employee vs. Independent Contractor Status:

Background: In 1992 the Internal Revenue Services examined a sample of personal service agreements that had been entered into by State agencies. It was determined that, in a number of instances, an employer/employee relationship existed for persons contracted with. As a result, the State was assessed \$847,359 in Social Security and income tax withholding taxes for the 1988, 1989 and 1990 calendar years.

Criteria: The State Comptroller has issued guidance to assist agencies in determining if employer/employee relationships exist for certain personal service agreements that such agencies are considering entering into. Comptroller's Memorandum 94-9 explains the differences between an employee and an independent contractor and includes a questionnaire, which presents criteria to be considered when making such a determination. For personal service agreement requests to be entered into with individuals, the Department of Administrative Services is responsible for reviewing such agreement requests to ensure that an employer/employee relationship does not exist. A "Personal Service Agreement Certificate" will be issued if the Department confirms that such a relationship does not exist.

Condition: Our review of a sample of 40 executed personal service agreements disclosed that there were three instances in which it appeared that an employer/employee relationship existed. We present the following:

- The Department of Economic and Community Development contracted with an individual that was performing duties closely associated with those of an "Administrative Assistant." The Department established priorities of work to be performed, as well as overseeing the overall activities performed by the individual.
- The Military Department contracted with an individual to serve as an "Assistant to the Office of Emergency Management, Telecommunications Engineer." The duties were those of the engineer, who occupies a classified position. The request was being made to accomplish a project sooner. According to Military Department staff involved with the process, the individual contracted with was a retired State employee who had performed similar duties at another State agency.
- The Board of Education and Services for the Blind contracted with an individual to serve as an "Independent Living Specialist." Within the agreement it is stated that the individual would be "employed" as a member of an outreach

team. The individual worked under some general policy guidance and direction from the Agency. The Agency employs a number of case workers within classified service positions, but could not obtain enough positions to perform required duties for the Independent Living program.

The three “Personal Service Agreement Certificates” issued by the Department of Administrative Services stated that “There are no specific classes which include all the duties to be performed,” as the reason the requests were approved. Justification for the criteria used is not convincing due to the circumstances.

Our discussions with staff involved with the approval process disclosed that State agencies will often have a dire need for an employee to perform certain duties, but lack an available position to hire. Due to this predicament, they will, at times, submit a request to execute a personal service agreement, to contract with someone to perform those duties. Often this is viewed as being a more prudent use of resources, especially when the “position” is expected to be temporary in nature. It appeared to us that this might be a valid argument.

Effect: The State could be assessed for Social Security and income tax withholding taxes if it is determined that an individual contracted with is performing as an “employee” rather than as an “independent contractor.”

Cause: State agencies are not required to submit detailed information to support their claim that individuals contracted with will be performing as “independent contractors.”

Recommendation: As State agencies submit personal service agreement requests, they should be required to submit detailed information to support their assertion that prospective contractors are, in fact, “independent contractors.” The use of an established questionnaire, which addresses the factors that lead to such a determination, should be considered. (See Recommendation 5.)

Agency Response: **Department of Administrative Services:**
“The Department of Administrative Services is in agreement with the findings and will immediately issue a letter to all state agencies requesting that they be more specific and detailed in their personal service agreement requests for individuals who will be performing as independent contractors.”

See Appendix 1 for other Agencies comments.

Item No. 6 - Written Evaluations – Contractor Performance:

Background: The Office of Policy and Management has issued “Personal Service Guidelines” which address certain requirements presented within Sections 4-212 through 4-219 of the General Statutes.

Criteria: Pursuant to Section 4-217, subsection (a), of the General Statutes, the Secretary of the Office of Policy and Management was charged with establishing standards for State agencies to follow in entering into personal service agreements. More specifically, the standards are to include provisions for “systematically monitoring and evaluating personal service contractor performance.” OPM has developed a standard form (Personal Service Agreement Evaluation) to document the assessment.

Condition: Our review of a sample of personal service agreements disclosed that few State agencies provided information to the Office of Policy and Management concerning the performance of contractors. Of 19 completed projects within our sample, 15, or 79 percent, did not have “Personal Service Agreement Evaluation” forms completed on their behalf. OPM has no other formal mechanism to evaluate the performance of such contractors.

According to Office of Policy and Management staff, although written evaluations are requested and some agencies do submit them, specific authority to require such evaluations is no longer granted to OPM.

Effect: Contractors that do not perform satisfactorily are more apt to be selected by other State agencies for additional contracts in the future, if a record of past performance is not maintained.

Cause: Section 4-211, subsection (b), of the General Statutes had required State agencies to provide written evaluations of consultant’s performance to the Office of Policy and Management within 60 days of project completion. However, Public Act 00-66 of the February 2000 Regular Session of the General Assembly repealed the Section, effective October 1, 2000. Repeal of the Section was presented as a “technical change” recommended by the Legislative Commissioners’ Office. Within its guidelines, OPM has a policy which requires an evaluation within 60 days. However, the policy refers to Section 4-211, and was therefore thought to be unenforceable.

We contacted staff of the Legislative Commissioners' Office that had recommended the change. Section 4-211 was viewed as being redundant, since Section 4-217 grants and requires a system to monitor and evaluate personal service contractor performance. Original legislation contained within Part I of Chapter 55a of the General Statutes, entitled "Consultants," has now been completely replaced by Part II of Chapter 55a, entitled "Personal Service Agreements."

Recommendation: The Office of Policy and Management should amend a specific provision within its "Personal Service Agreement Guidelines" to require State agencies to provide a written evaluation within 60 days of project completion. (See Recommendation 6.)

Agency Response: **Office of Policy and Management:**
"OPM agrees with this finding. Evaluations of all PSAs should be required at the agency level. This change will be made to the OPM Personal Service Agreement Guidelines. The change will be effective July 1, 2002."

Auditors' Concluding Comments:
We believe that the evaluations will be much more useful if they are submitted to the Office of Policy and Management. State agencies that are considering entering into a personal service agreement with a specific contractor could contact OPM to determine if the contractor had been used by another State agency and whether such agency was satisfied with its performance.

Item No. 7 – Documentation – Established Rates:

Background: As part of the contracting process, terms concerning the cost and payment for services to be performed are specified within the actual personal service agreement. An "Estimated Cost of Services" is presented within the "Request for Personal Service Agreement" which is submitted to the Office of Policy and Management for review and approval.

Criteria: Documentation concerning the process used to establish rates to be paid for services contracted for is a good business practice which supports the assertion that State agencies have negotiated a fair rate.

Condition: State agencies are not required to explain how costs for a project were calculated or negotiated within the request. In most instances we identified an explanation within correspondence accompanying the requests which presented the rationale as to how the rates were

determined. However, in some instances, the amounts presented were not supported and appeared somewhat arbitrary. We present the following examples:

- The Department of Public Safety entered into a \$24,000 agreement with a contractor on a non-competitive basis. There was no information on file to indicate how the amount was determined. According to Agency staff, the contractor proposed a “flat figure rate” and it was accepted.
- The Department of Labor entered into a \$200,000 agreement with a contractor on a non-competitive basis. The rates were developed by the contractor as an attachment to the agreement. This attachment presented detail concerning the number of work days estimated for each deliverable, along with a “blended daily rate.” The contractor calculated an “up to” amount, by deliverable, by multiplying the rates with the number of staff work days estimated. However, the contractor submitted invoices which billed the Agency for the maximum amount by deliverable, without considering the actual effort/hours devoted to the project. The “blended daily rate” represented the professional rates for staff working on the project, including expenses. The rates charged under this method ranged from \$2,143 through \$3,100 per day. The composition of these rates, by staff member, was not presented within the agreement.
- The Department of Children and Families entered into a \$53,500 agreement on a non-competitive basis. There was no documentation within the agreement to explain how the amount was determined. A Department staff member involved with the process was asked to explain the determination, if possible. Based on this staff member’s recollection, a rate of \$160 per hour was agreed on. As justification for the rate, it was explained that the individual contracted with charges \$240 per hour as an expert witness in court, and that his employer receives 20 percent of any outside income he earns. These added points do not appear relevant as the scope of services involved the development of a video presentation and did not relate to any activities as an “expert witness.” Further, the relationship between a contractor and his employer should be of no financial consequence to an agency contracting for services.

Effect:

In those instances in which rates for services were not explained or supported by State agencies submitting personal service agreement requests, there is less assurance that services were obtained at the most favorable cost.

Cause: Currently there is no requirement for State agencies to describe or support the process used to determine the rates for proposed personal service agreements that are submitted to the Office of Policy and Management for approval.

Recommendation: The Office of Policy and Management should require State agencies to include an explanation as to how contract rates were determined when a request is submitted. This is most critical when a proposed agreement has been contracted for on a non-competitive basis. (See Recommendation 7.)

Agency Response: **Office of Policy and Management:**
“OPM agrees with this finding. For all non-competitive PSA requests, OPM will require that agencies provide an explanation on how rates were determined. The required explanation will be used to review the process by which an agency determined a rate. We do not have the expertise to assess whether a rate is reasonable. We will validate the process, not the rate. This change will be made to the OPM Personal Service Agreement Guidelines and to all applicable forms. The change will be effective July 1, 2002.”

See Appendix 1 for other Agency comments.

Auditors’ Concluding Comments:

While rates for “competitively bid” agreements are determined by the process itself, there are instances whereby extensions to such contracts are executed. Explanations as to how the amounts for the extensions are determined would also be of value.

Item No. 8 – Section 4a-7a of the General Statutes – Length of Agreements:

Background: The length of a contract between a State agency and a contractor is presented within the “Personal Service Agreement,” as well as the request that is submitted to the Office of Policy and Management for review and approval.

Criteria: Section 4a-7a, subsection (b), of the General Statutes states that, “A personal service agreement between a state agency and an individual shall have a term of not more than one year. Any such personal service agreement may be extended or renewed, for an unlimited term, provided the appropriate collective bargaining representative, the Commissioner of Administrative Services and the joint standing committee of the General Assembly having cognizance of matters relating to labor and public employees are notified of such extension or renewal.”

Condition: Our review disclosed that the Office of Policy and Management was not monitoring for this requirement. We noted certain instances in which the requirements had not been satisfied; in other instances, we could not readily determine which requirements applied, as there was no record within the agreements to identify whether they were initial contracts or renewals.

Effect: An internal control system to provide reasonable assurance that requirements presented within Section 4a-7a of the General Statutes are being met, does not exist.

Cause: OPM staff responsible for reviewing personal service agreement requests were not aware of the requirements placed on personal service agreements by Section 4a-7a of the General Statutes.

It should be noted that Section 4a-7a was established in 1988 and that there has not been any changes or amendments to the Section since then. New statutory requirements were being enacted during the January 1989 Session of the General Assembly, based on a review of the contracting process for personal service agreements and the resulting concern over such. It appears that Section 4a-7a may have been overlooked at that time. It should also be noted that Section 4-216 of the General Statutes appears to contradict Section 4a-7a, in that it allows agreements to exceed a period of a year without the restrictions provided within Section 4a-7a.

Recommendation: In order to comply with Section 4a-7a of the General Statutes, the Office of Policy and Management should not approve initial personal service agreements that are for a period that exceeds one year, or extensions or renewals which have not met certain notification provisions. OPM should seek a statutory change if it determines that the requirements of Section 4a-7a do not serve a constructive purpose. (See Recommendation 8.)

Agency Response: **Office of Policy and Management:**
“OPM agrees with this finding. In accordance with CGS Section 4a-7a, effective immediately, OPM will not approve initial PSAs that are for a period that exceeds one year. OPM will also change its Personal Service Agreement Guidelines to clarify that PSAs with a term of more than one year do not refer to PSAs with individuals. To ensure that state agencies are aware of the requirements of Section 4a-7a of the General Statutes, OPM will also change its Guidelines and applicable forms to include the requirements related to extensions and renewals of PSAs with individuals.”

RECOMMENDATIONS

1. **The General Assembly should consider limiting the conditions that may be used to justify a waiver from competitive bidding for services contracted for with a personal service agreement. Limiting such conditions to those that are “specifically” presented within Section 4-215, subsection (a), of the General Statutes would accomplish that objective.**

Comment:

Our review of a sample of executed personal service agreements disclosed that there were instances in which waivers to the competitive bid process were obtained, while it appeared that such a process could have been used. In those instances in which we questioned whether a waiver was appropriate, the criteria most often used to justify such waiver, was that the “contractor has special capability or experience.” It would appear that virtually all contractors interested in contracting with the State would have some special capability or experience in the field for which the agreement is being entered into.

2. **The General Assembly should consider re-visiting the more specific language that had been used within Section 4-205 of the General Statutes to define “consultants,” and consider incorporating such language into the definition of “personal service contractor,” as defined within Section 4-212. It should also consider clarifying Section 4a-50 as well.**

The Department of Administrative Services should re-evaluate its interpretation of Section 4a-50, subsection (3), of the General Statutes. If the Department reaffirms its position that contractors/consultants, such as the one described above, are exempt from Section 4-212 of the General Statutes, and thus exempt from having to contract through the Personal Service Agreement process, it should seek an opinion from the Attorney General to that effect.

Comment:

During our review we became aware of two contracts for data processing and accounting systems related services, totalling \$9,000,000. The contractor selected for the contracts would appear to meet the definition of a “personal service contractor,” as defined in Section 4-212, subsection (2), of the General Statutes.

However, the Department of Administrative Services determined that the contractor was exempt from personal service agreement requirements, as it was of the opinion that the services to be acquired were “contractual services,” as described in Section 4a-50, subsection (3), of the General Statutes. As such, personal service agreements were not executed and personal service guidelines were not followed.

- 3. The Office of Policy and Management needs to improve efforts to ensure that contracting State agencies submit information required by Section 4-218 of the General Statutes. OPM needs to summarize such information on a fiscal year basis, and report the results to the General Assembly.**

Comment:

Section 4-218 of the General Statutes requires each contracting State agency to submit a status report to the Office of Policy and Management, which presents activity related to personal service agreements for the six month periods ended each June 30th and December 31st. The Office of Policy and Management is to summarize the above information for each fiscal year and to report such to the General Assembly by each September 1st. Our review disclosed that these requirements are not being met.

- 4. State Agencies should not allow contractors to commence providing services, until personal service agreements are executed.**

Comment:

Section 4-213 of the General Statutes requires State agencies to execute a personal service agreement to contract with a personal service contractor. Our review disclosed that, at times, personal service agreement “begin dates” preceded the date such agreements were executed. There were also instances where contractors began providing services before agreements were approved.

- 5. As State agencies submit personal service agreement requests, they should be required to submit detailed information to support their assertion that prospective contractors are, in fact, “independent contractors.” The use of an established questionnaire, which addresses the factors that lead to such a determination, should be considered.**

Comment:

Our review of a sample of executed personal service agreements disclosed that there were instances in which it appeared that an employer/employee relationship existed. Our discussions with staff involved with the approval process disclosed that State agencies will often have a dire need for an employee to perform certain duties, but lack an available position to hire. Due to this predicament, they will, at times, submit a request to execute a personal service agreement, to contract with someone to perform those duties.

6. **The Office of Policy and Management should amend a specific provision within its “Personal Service Agreement Guidelines” to require State agencies to provide a written evaluation within 60 days of project completion.**

Comment:

Pursuant to Section 4-217, subsection (a), of the General Statutes, the Secretary of the Office of Policy and Management was charged with establishing standards for State agencies to follow in entering into personal service agreements. More specifically, the standards are to include provisions for “systematically monitoring and evaluating personal service contractor performance.”

Prior legislation, which addressed the monitoring of “consultants,” had required written evaluations to be submitted within 60 days of project completion, as “required” by Section 4-211 of the General Statutes.

7. **The Office of Policy and Management should require State agencies to include an explanation as to how contract rates were determined when a request is submitted. This is most critical when a proposed agreement has been contracted for on a non-competitive basis.**

Comment:

State agencies are not required to explain how costs for a project were calculated or negotiated within the personal service agreements that they propose to execute. In most instances we identified an explanation within correspondence accompanying the requests which presented the rationale as to how the rates were determined. However, in some instances, the amounts presented were not supported and appeared somewhat arbitrary.

8. **In order to comply with Section 4a-7a of the General Statutes, the Office of Policy and Management should not approve initial personal service agreements that are for a period that exceeds one year, or extensions or renewals which have not met certain notification provisions. OPM should seek a statutory change if it determines that the requirements of Section 4a-7a do not serve a constructive purpose.**

Comment:

Our review disclosed that The Office of Policy and Management was not monitoring for this requirement, as staff responsible for reviewing personal service agreement requests were not aware of the statutory requirements. We noted certain instances in which the requirements had not been satisfied; in other instances, we could not readily determine which requirements applied, as there was no record within the agreements to identify whether they were initial contracts or renewals.

CONCLUSION

In conclusion, we wish to express our appreciation for the cooperation and courtesies extended to our representatives by the officials and staff of the Office of Policy and Management, Department of Administrative Services, the Office of the State Comptroller, and the individual State agencies involved with the personal service agreements that were selected for review.

John A. Rasimas
Principal Auditor

Approved:

Kevin P. Johnston
Auditor of Public Accounts

Robert G. Jaekle
Auditor of Public Accounts

APPENDIX 1

As noted in the “Results of Review” section of this report, where we made reference to personal service agreements of individual agencies, such agencies were afforded the opportunity to present comments and/or responses as well. We present these comments/responses within this appendix, by item number.

Item No. 1 – Competitive Bidding:

Recommendation:

The General Assembly should consider limiting the conditions that may be used to justify a waiver from competitive bidding for services contracted for with a personal service agreement. Limiting such conditions to those that are “specifically” presented within Section 4-215, subsection (a), of the General Statutes would accomplish that objective.

Department of Social Services:

The Department of Social Services entered into an agreement with a contractor to assist the Department in performing a study. This study was required by a Public Act that was enacted on June 29, 1999, and effective on July 1, 1999. In its December 1, 1999, request, the Department stated that a waiver to bid was appropriate due to the aggressive timetable set forth within the Public Act. This reason does not appear justified since the Department had to be aware of the requirement on or before June 29, 1999, and did not submit a waiver request until five months later. During this five month period, it could have administered a competitive selection process.

Agency Response/Comments:

“It is important to note that the explanation provided by the Department to OPM in its Request for Waiver from Competitive Bidding was not limited to the timetable established by the legislation. The Department cited the experience of the Child Health and Development Institute of Connecticut as well. The Department chose to contract with CHDI after consultation with OPM and the other state agencies that the Department was required, through the legislation, to collaborate with. The Department fulfilled its requirement to request and obtain approval from OPM in lieu of conducting a competitive procurement.”

Auditors Concluding Comments:

We do not question the experience and qualification of the contractor. In requesting a waiver from competitive bidding, agencies must provide an acceptable criterion. According to the Department’s request, “The aggressive timetable set forth in Section 36 of PA 99-279 did not allow for the implementation of a competitive bid process.” Based on the dates presented above, we do not concur.

Department of Economic and Community Development:

The Department of Economic and Community Development (DECD) contracted with an individual to provide foreign trade services, to assist Connecticut companies in trade opportunities with Israel and to attract Israeli investment in Connecticut. In its request, DECD stated that the contractor possessed special capability or experience as the criteria for not competitively bidding the contract. The contractor had worked for an organization that performed the same type of services. Funding for the position was provided by this private organization until funding became difficult. DECD became the source of funding at that time, and contracted directly with the individual under a personal service agreement. DECD placed a considerable amount of significance on the experience the contractor had with this private organization in deciding to contract with the individual, and requesting the waiver from competitive bidding. While the contractor appears to be well qualified, the decision to contract non-competitively ultimately was affected by the prior actions of an outside private organization. There are other individuals and/or firms that could provide the same service.

Agency Response/Comments:

“The contractor was originally selected by The Connecticut - Israel Exchange Commission (CONNIX). The contractor was interviewed and selected for a position funded by the CONNIX as a temporary replacement for the Executive Director who was on maternity leave. The interim position was made permanent when the Executive Director resigned while on leave. The contractor then continued for two and a half years in that position with funds provided by CONNIX. DECD later became the funding source for the position based on the CONNIX leadership working with legislators to secure state funding to replace private support that was difficult to achieve. DECD made the decision to contract directly with the contractor rather than CONNIX to assure programmatic input, coordination with other trade efforts, and to control the selection process if the contractor were to resign at any point. The decision to undertake a sole source contract was based on:

- *Endorsement of CONNIX of the contractor.*
- *Need to maintain strong positive relationship with CONNIX to assure success of Israel Trade efforts.*
- *The work experience and successes CONNIX enjoyed during the contractor's two and a half-year tenure.*
- *Desire for continuity and fairness.*
- *Need for consistent, ongoing follow up to recent trade missions (or continued preparation for planned trade missions) to Israel.”*

Auditors Concluding Comments:

We do not question the experience and qualification of the contractor. However, we reiterate that there are other individuals and/or firms that could provide the same service.

Department of Social Services:

The Department of Social Services contracted on a non-competitive basis with an individual to collect survey data. The original contract called for payments totaling \$17,650. As such, the Department was not required to obtain a waiver from competitive bidding from the Office of Policy and Management, as the amount was less than \$20,000. However, less than two months after the original personal service agreement was executed, a \$60,175 amendment was sought and approved. This appears to be an example of circumventing the “spirit” of laws and guidelines that address competitive bidding requirements. The services were of a type in which one would not expect there to be a shortage of qualified bidders.

Agency Response/Comments:

“The original funding for this contract came through the Department’s participation in the Administration on Aging’s (AoA) Performance Outcome Measures Project (POMP). The Department was contacted by WESTAT, a contractor with the AoA to support the project entitled, “Development of Performance Outcome Measures as an Evaluation Tool for Services to the Aging under Title III of the Older Americans Act.” WESTAT informed the Department that we had been selected to participate in this study and as a participant were obligated to assist AoA in the development, testing and replication of a core set of performance measures for the Network of State and Area Agencies on Aging. The correspondence from WESTAT identified a funding level, not to exceed \$20,000. The scope of the POMP project was expanded by AoA and, as a result, WESTAT increased the funding to the Department to complete the additional tasks. The Department, once notified of the additional funding, which triggered the need to request and obtain OPM approval, supplied the Request for Continuance by Amendment which was subsequently approved by OPM.”

Auditors Concluding Comments:

We suggest that, in the future, inquiries be made of possible funding increases before an original personal service agreement is executed. If there is a possibility that funding may be expanded to a point where the \$20,000 threshold will be exceeded, it would be prudent for Departments to bid the agreements competitively.

Office of the State Treasurer:

The Office of the State Treasurer amended/extended an agreement with a contractor to provide unclaimed property claims processing services. This was the fourth amendment to the contract that extended it through June 30, 2002. In a June 15, 2000, communication from the Assistant Treasurer of the Unclaimed Property Division to the contractor, it was stated that an extension through June 30, 2001, would be the last such extension. In its March 19, 2001, request to extend the contract through June 30, 2002, the Office claimed that there was not sufficient time to complete an RFP process prior to the expiration of the agreement on June 30, 2001. This does not appear to be a justified reason, as the Office had anticipated the planned RFP process.

Agency Response/Comments:

“UCPD amended and extended the ACS Unclaimed Property Clearinghouse, Inc. (ACS) agreement for an additional year in lieu of issuing an RFP, due to the necessity of maintaining continuous database and processing services while completing the Corporate Action Project that involves posting information to the AS400 System, which is now owned by the current contractor, ACS. The AS400 System is a proprietary system, and in order to update all stock certificate histories, access to the AS400 System and reconciliation of the stock histories with the vendor is necessary. In hindsight, based on my review of the circumstances leading up to the necessity to extend ACS's contract, UCPD may have acted prematurely when it informed the contractor that the contract would not be extended past June 30, 2001, and did not acknowledge to all parties concerned, the link between completion of the Corporate Action Project and the contract termination timeframe.

By way of background, the original contract with State Street Bank (the original contractor) commenced in 1993 for an indefinite term and was amended in July 1998 by the Silvester administration to provide expanded claims processing services until June 30, 1999 with two additional one-year extensions. A second amendment in December 1998 by the Silvester administration, further expanded claims processing services and included the deposit of 3,000 stock certificates at State Street Bank without any historical dividend and corporate action accrual information, causing incomplete shareholder records and a backlog in processing stock claims.

In 1999, during the first year of the Nappier administration, State Street Bank's contract was amended to assign contract responsibilities to ACS, which at that time had purchased the AS400 System from State Street. In addition, under my administration, UCPD implemented the Corporate Action Project plan to record the missing historical dividend and corporate action accrual information for all stock certificates. Although the Corporate Action Project was not completed by June 30, 2001, requiring the additional one-year extension to the contract, UCPD expects to issue an RFP on February 15, 2002, as authorized by OPM on December 10, 2001.”

Auditors Concluding Comments:

The contractor was not the only available contractor to perform tasks related to the Corporate Action Project. Allowing a contractor to have a contract extended for a full year by missing a deadline for certain tasks related to the contract is not a good business practice.

The Department of Social Services:

The Department of Social Services entered into an agreement with a contractor to establish payment rates for facilities, and to review cost reports and desk reviews. The contract was for a two-year period and exceeded \$2,600,000. In its request to have competitive bidding requirements waived, the Department claimed that the cost of a competitive selection process would outweigh the benefits of such a process and that the contractor had special capability or experience. The cost to administer a competitive bid process is minor; the relative cost is reduced, as a percentage of a contract's value, as the amount of the contract increases. For such a large contract, it is not prudent to assume that the cost would exceed any savings realized by competitively bidding. As regards the contractors "special capability or experience" due to his experience with the project in the past, the Department believed it would be difficult for other possible bidders to compete. As noted in the finding, there may have been a competing vendor who could have absorbed the cost of becoming "familiar and knowledgeable with the project" at a lower cost. If not, the current vendor would retain the contract, but would have had to do so with the knowledge that it would have to bid competitively when making the proposal. The type of services contracted for could have been performed by a large number of firms/consultants.

Agency Response/Comments:

"The Department contracted with a firm from July 1, 1990 through June 30, 2001, to provide desk review/rate setting and field audit work for health care facilities. In 1999 this firm informed the Department that it wanted to terminate the contract. The Department responded that it would not agree to terminate the contract, since it required sufficient time to re-procure the services. On May 9, 2000, the firm informed the Department that it would subcontract the "Desk Review" portion of the contract to the subject contractor for the remainder of the contract term. The contractor was employed by the firm at the time and had performed the "Desk Review" function.

The Department requested a sole source for the contractor since he had specialized skills for the Medicaid desk review requirements and the desk review data system. Further, it was unlikely that the Department could procure this service in an open and competitive fashion. The services of a firm with accounting and system expertise is needed to ensure an accurate and timely processing of cost reports and rate promulgation, as well as to provide cost and trend analysis for monitoring and policy purposes. Expert desk review and system capabilities are needed to identify potential reporting inaccuracies and to process cost filings in a manner consistent with allowable cost principles set forth in State and Federal statutes and regulations, and rate setting formulas. This request was approved by OPM.

Subsequently, the Department issued an RFP for Rate Setting/Field Audit work. In an open and competitive procurement, in which five competitive proposals were received, the subject contractor was selected.

The Department fully supports the competitive bidding process and utilizes such process when the circumstances allow us to. However, it is important to note that in certain circumstances the implementation of a competitive bidding process is not feasible. These circumstances include,

but are not limited to, limited staff resources and the need to implement a project or program on an expedited basis. By giving OPM the statutory authority to waive the competitive bidding process, the legislature recognized the need to procure services outside of a competitive process. The Department has, when necessary, complied with the process established by the legislature and implemented by OPM to request a waiver from competitive bidding. OPM has the authority to approve or deny such requests. When approved, the Department has the requisite authority to proceed with the contracting process.”

Auditors Concluding Comments:

In addition to the concerns expressed in our finding, we question whether the Department should have accepted the prior contractor’s decision to subcontract tasks out due to its desire to terminate the agreement.

Item No. 4 – Untimely Execution of Personal Service Agreements:

Recommendation:

State Agencies should not allow contractors to commence providing services, until personal service agreements are executed.

Office of the Attorney General:

The Department of Public Safety, in cooperation with the Office of the Attorney General, entered into an agreement with a law firm to provide assistance to the Office in a case it was defending. The attorney to be contracted with would not sign a contract drafted by the Office. Since the contract must be completed before the Office will execute the Personal Service Agreement, there was no such agreement in place as of October 2001. Payments could not, therefore, be made to the contractor. According to Office staff, the first invoice for services provided was submitted in November 2000. As of October 2001, we were informed that approximately \$11,000 had been billed and remained unpaid.

Agency Response/Comments:

“The issue of services commencing before a personal services agreement has been executed is raised. Although we certainly agree that a binding agreement must be in place before services commence, it is sometimes necessary for this Office to act expeditiously in order to protect the State’s substantial legal and financial interests in pending litigation, either by hiring expert witnesses or consultants, or by hiring outside legal counsel. Courts do not tolerate delays that may be caused by State contracting procedures. When it is necessary to act very quickly to retain an expert, consultant, or outside counsel, in order to protect the State’s interest, we may retain the appropriate party through a signed letter authorizing the contractor to begin work, subject to completion and execution of all applicable State requirements. In those instances, we insure that the State’s interests are protected by setting out terms and fees for the engagement in a retainer letter, and by enclosing a full draft of the contractual terms we will require, and notifying the contractor that the arrangement is subject to the execution of the contract. We take this action only after the agency involved in the litigation confirms in writing its ability and intention to pay for the services required, and after our determination that the services are necessary and appropriate. Of course, no payments are made until the contract is fully executed. In the matter concerning the subject contractor, continued services will be necessary in the pending case. Subject to your advice as to the best manner in which to pay for services already provided as well as any in the future, it seems that the Department of Public Safety could execute a contract covering both past and future work on the litigation.

Finally, if State agencies are routinely authorizing contractors to begin work without completed contracts or other appropriate safeguards, we agree with you that those practices should not continue.”

Auditors Concluding Comments:

We question whether a legal method exists for the Department of Public Safety to pay for services that have been provided without an executed contract in place. The contractor may have to seek payment via the Claims Commissioner or some other avenue.

Item No. 5 - Employer/Employee vs. Independent Contractor Status:

Recommendation:

As State agencies submit personal service agreement requests, they should be required to submit detailed information to support their assertion that prospective contractors are, in fact, “independent contractors.” The use of an established questionnaire, which addresses the factors that lead to such a determination, should be considered.

Department of Economic and Community Development:

The Department of Economic and Community Development contracted with an individual that was performing duties closely associated with those of an “Administrative Assistant.” The Department established priorities of work to be performed, as well as overseeing the overall activities performed by the individual.

Agency Response/Comments:

“The contractor worked with the Cluster Division where projects are developed for communities and business clusters to operate independently outside of the agency. Because cluster programs are not intended to be housed within the agency, DECD has been reluctant to build a full-time professional staff within the division. The Division and the Department make ad hoc assignments of agency staff when possible, supplementing their efforts or needs with interns, contractors and business consultants. The contractor began work at DECD as part of our intern program. The contractor worked on the Inner City Project as a team member with a DECD staff. The Inner City Project was at a critical state at the time the contractor's original internship was completed. In addition, a staffing shortage at our Waterbury office resulted in another team member being reassigned. For this reason the contract was extended. In addition, based on the new level of work that included independently managing the program development activities, the contractor's hourly rate was increased. This program is now up and running and is managed in the communities as well as with limited support from DECD field office staff.”

Military Department:

The Military Department contracted with an individual to serve as an “Assistant to the Office of Emergency Management, Telecommunications Engineer.” The duties were those of the engineer, who occupies a classified position. The request was being made to accomplish a project sooner. According to Military Department staff involved with the process, the individual contracted with was a retired State employee who had performed similar duties at another State agency.

Agency Response/Comments:

“As regards the Military Department’s Personal Service Agreement referred to, we feel strongly that all appropriate state regulations and guidance has been appropriately followed. Additionally, and equally important, the agreement passes all “common sense” and economic standards which could be applied by outside interests. In short, the agreement is in the best interest of the state and is clearly the most cost-effective method of support available. To clarify the contractor’s selection and scope of services:

- *The provider is an independent contractor/consultant and provides services in cooperation with the Office of Emergency Management's (OEM) Telecommunications Engineer. Overall project direction and needs are provided by the OEM Director and/or the Adjutant General. The contractor in no way serves as an assistant to the OEM Telecommunications Engineer.*
- *The provider is a sole source contractor with unique and special experience essential to supporting OEM communications needs. As a previous state employee with the Department of Public Safety's (DPS) Office of Statewide Emergency Telecommunications, he has broad knowledge about both OEM's and other state agency's telecommunications structures. Prior to August 1999, OEM was a division of DPS and the contractor was intimately involved in oversight and maintenance of OEM telecommunication projects. Additionally, the contractor serves as the Emergency Management Director of the Town of Glastonbury and as such, has an excellent working knowledge of OEM's programs and responsibilities.*
- *The contractor was a key individual responsible for designing the state's 800 MHZ public safety radio system as well as submitting all necessary applications to the FCC. In response to homeland security requirements, common tactical channels of the 800 MHZ will now be used by municipalities and other state agencies in support of a major, local emergency incident. The contractor is serving as a consultant to the Governor's Domestic Preparedness Senior Steering Council, which I chair, to help design and field this concept.*
- *Under the established Personal Service Agreement, the contractor is only being paid an equivalent rate to his hourly wage when he retired from state service several years ago. No other vendors with his experience and knowledge of the state's communications systems would offer hourly costs even close to this very reasonable wage.*

Clearly, the agreement is in keeping with both the regulatory requirements and spirit of the State Comptroller's requirements.

Auditors Concluding Comments:

We do not question the qualifications of the contractor or the rate of compensation. However, the personal service agreement request was quite clear in that the individual contracted with would serve as an assistant in order to accomplish a project much sooner. It was also noted that the individual had served at a similar capacity in a classified position within State service.

Board of Education and Services for the Blind:

The Board of Education and Services for the Blind contracted with an individual to serve as an "Independent Living Specialist." Within the agreement it is stated that the individual would be "employed" as a member of an outreach team. The individual worked under some general policy guidance and direction from the agency. The agency employs a number of case workers within classified service positions, but could not obtain enough positions to perform required duties for the Independent Living program.

Agency Response/Comments:

"Our legal and factual analysis of all relevant facts, documents, and records leads us to the conclusion that the individual contracted with was undoubtedly hired and functioning as an independent contractor under the Personal Services Agreement referenced in the report, and that the agency would have no need and no classified positions for an employee whose work is

specifically and singularly limited to the professional and independent operation of a community-based center to provide low-vision aids and appliances for a very limited number of hours. The agency acknowledges that the language contained in the PSA suggests a scope of duties that are broader than the limited duties actually sought by the agency and undertaken by the contractor through the PSA in question. More current practices within the agency (and a more current PSA with the contractor in question) are directed at ensuring that the bid process and PSAs more accurately and precisely reflect and delineate the scope and nature of services sought and purchased by the agency. Since this agency does, from time to time, hire contractors through Personal Services Agreement, we would welcome the formulation of more formal guidelines or an “established questionnaire” for reference during negotiations and activities vis-à-vis independent contractors.”

Item No. 7 – Documentation – Established Rates:

Recommendation:

The Office of Policy and Management should require State agencies to include an explanation as to how contract rates were determined when a request is submitted. This is most critical when a proposed agreement has been contracted for on a non-competitive basis.

Department of Children and Families:

The Department of Children and Families entered into a \$53,500 agreement on a non-competitive basis. There was no documentation within the agreement to explain how the amount was determined. A Department staff member involved with the process was asked to explain the determination, if possible. Based on this staff member's recollection, a rate of \$160 per hour was agreed on. As justification for the rate, it was explained that the individual contracted with charges \$240 per hour as an expert witness in court, and that his employer receives 20 percent of any outside income he earns. These added points do not appear relevant as the scope of services involved the development of a video presentation and did not relate to any activities as an "expert witness." Further, the relationship between a contractor and his employer should be of no financial consequence to an agency contracting for services.

Agency Response/Comments:

"The contract in question was for the services of an individual who reviews records, examines patients and confers with social workers and other DCF staff during the investigation stage of a case, during the ongoing services phase and/or prior to going to court for a 96-hour hold, an order of temporary custody or an order of commitment. The contractor reports his findings of abuse or neglect in the form of a consultation summary that is presented as an affidavit in court. This consultation service constitutes approximately 90% of the contract in question.

An expert medical witness would bill at a range of \$250 to \$350 per hour. This is the private industry standard for expert testimony. This time includes reviewing records and conferring with attorneys, prior to actually being present in the courtroom. We use the individual as an expert witness in the same way but at the rate of \$160 per hour.

The \$160 hourly rate negotiated with the individual was both fair and reasonable given the level of the individual's expertise. As a recognized expert in the field of child sexual and physical abuse, assessments and advice on numerous occasions has proven invaluable in obtaining orders of temporary custody or commitment in some very troubling cases.

Your characterization of the contract as primarily using the individual for production of a video is misleading. The video productions only represent 10% of the contract. Furthermore, the same in-depth knowledge of child sexual and physical abuse, which we value in the courtroom, lends itself to the production of training videos. We consider these videos to be very important training tools.

In conclusion, it is believed that the Department has followed good business practice in negotiating what we believe to be a fair rate for the services rendered. Staff have been advised

to maintain documentation to support their rationale in determining the appropriate rate of compensation in all similar agreements in the future.”

Auditors Concluding Comments:

In its personal service agreement request, specific reference is made to the production of a video presentation; it is also indicated that other services may be contracted for on a specific case-by-case basis. However, there is no indication as to the percentage of time that would be devoted to individual tasks. More importantly, there is no information within the request that presents the rationale used to arrive at the determined rate. The information presented in the above response to our finding would have sufficiently documented the process had it accompanied the request. The Department’s directive for staff to “... maintain documentation to support their rationale in determining the appropriate rate of compensation in all similar agreements in the future,” will address our concern.

EXHIBIT A

CHAPTER 55a CONSULTANTS AND PERSONAL SERVICE AGREEMENTS

PART II PERSONAL SERVICE AGREEMENTS

Sec. 4-212. Definitions. As used in sections 4-212 to 4-219, inclusive:

(1) "Competitive negotiation" means a procedure for contracting for services in which (A) proposals are solicited from qualified persons, firms or corporations by a request for proposals and (B) changes may be negotiated in proposals and prices after being submitted.

(2) "Personal service contractor" means any person, firm or corporation not employed by the state, who is hired by a state agency for a fee to provide services to the agency. The term "personal service contractor" shall not include (A) a person, firm or corporation providing "contractual services", as defined in section 4a-50, to the state, (B) a "consultant", as defined in section 4b-55, (C) a "consultant", as defined in section 13b-20b, providing services to the Department of Transportation, or (D) an agency of the federal government, of the state or of a political subdivision of the state.

(3) "Personal service agreement" means a written agreement defining the services or end product to be delivered by a personal service contractor to a state agency, excluding any agreement with a personal service contractor that the state accounting manual does not require to be submitted to the Comptroller.

(4) "Secretary" means the Secretary of the Office of Policy and Management.

(5) "State agency" means a department, board, council, commission, institution or other agency of the Executive Department of the state government.

(P.A. 93-336, S. 1, 13; P.A. 96-235, S. 7, 19.)

History: P.A. 93-336 effective June 29, 1993; P.A. 96-235 substituted "consultant" for "design professional" in Subdiv. (2)(B), effective June 6, 1996.

Sec. 4-213. Personal service agreement required when hiring personal service contractor. On and after July 1, 1994, no state agency may hire a personal service contractor without executing a personal service agreement with such contractor.

(P.A. 93-336, S. 2, 13.)

History: P.A. 93-336 effective June 29, 1993.

Sec. 4-214. Personal service agreements having cost of not more than twenty thousand dollars and term of not more than one year. State agency reports. (a) Each personal service agreement executed on or after July 1, 1994, and having a cost of not more than twenty thousand dollars and a term of not more than one year shall be based, when possible, on competitive negotiation or competitive quotations. (b) Not later than thirty days after the end of each six-month period, beginning with the six-month period ending on December 31, 1994, each state agency shall submit a report to the secretary indicating (1) for each personal service agreement described in subsection (a) of this section that is executed during the six-month period, the name of the personal service contractor, a description of the services to be provided, the term and cost of the agreement and the method of selecting the contractor and (2) for each personal service agreement described in said subsection (a) that is in effect during the six-month period, the amount of all payments made during the six-month period to the contractor, by fund, and the amount of any federal or private funds allocated for such payments.

(P.A. 93-336, S. 3, 13; P.A. 94-188, S. 19.)

History: P.A. 93-336 effective June 29, 1993; P.A. 94-188 changed the applicable amount of the personal service agreement from ten to twenty thousand dollars.

Sec. 4-215. Personal service agreements having cost of more than twenty thousand dollars but not more than fifty thousand dollars and term of not more than one year. (a) Each personal service agreement executed on or after July 1, 1994, and having a cost of more than twenty thousand dollars but not more than fifty thousand dollars and a term of not more than one year shall be based on competitive negotiation or competitive quotations, unless the state agency purchasing the personal services determines that a sole source purchase is required and applies to the secretary for a waiver from such requirement and the secretary grants the waiver. Not later than March 1, 1994, the secretary shall adopt guidelines for determining the types of services that may qualify for such waivers. The qualifying services shall include, but not be limited to, (1) services for which the cost to the state of a competitive selection procedure would outweigh the benefits of such procedure, as documented by the state agency, (2) proprietary services, (3) services to be provided by a contractor mandated by the general statutes or a public or special act, and (4) emergency services, including services needed for the protection of life or health.

(b) Each state agency shall submit the following information to the secretary concerning each proposed personal service agreement described in subsection (a) of this section, at the same time that it submits the agreement to the Commissioner of Administrative Services or the Attorney General: The name of the personal service contractor, a description of the services to be provided, the term and cost of the agreement, the method of selecting the contractor, the state fund from which the contractor will be paid and whether any federal or private funds will be allocated for such payments.

(P.A. 93-336, S. 4, 13; 93-435, S. 82, 95; P.A. 94-188, S. 20.)

History: P.A. 93-336 effective June 29, 1993; P.A. 93-435 amended Subsec. (a) to make a technical grammatical change, effective June 28, 1993; P.A. 94-188 amended Subsec. (a) to change the applicable agreement amount from more than ten thousand dollars to more than twenty thousand dollars.

Sec. 4-216. Personal service agreements having cost of more than fifty thousand dollars or term of more than one year. (a) No state agency may execute a personal service agreement having a cost of more than fifty thousand dollars or a term of more than one year, without the approval of the secretary. A state agency may apply for an approval by submitting the following information to the secretary: (1) A description of the services to be purchased and the need for such services; (2) an estimate of the cost of the services and the term of the agreement; (3) whether the services are to be on-going; (4) whether the state agency has contracted out for such services during the preceding two years and, if so, the name of the contractor, term of the agreement with such contractor and the amount paid to the contractor; (5) whether any other state agency has the resources to provide the services; (6) whether the agency intends to purchase the services by competitive negotiation and, if not, why; and (7) whether it is possible to purchase the services on a cooperative basis with other state agencies. The secretary shall approve or disapprove an application within fifteen business days after receiving it and any necessary supporting information, provided if the secretary does not act within such fifteen-day period the application shall be deemed to have been approved. The secretary shall immediately notify the Auditors of Public Accounts of any application which the secretary receives for approval of a personal services agreement for audit services and give said auditors an opportunity to review the application during such fifteen-day period and advise the secretary as to whether such audit services are necessary and, if so, could be provided by said auditors.

(b) Each personal service agreement having a cost of more than fifty thousand dollars or a term of more than one year shall be based on competitive negotiation or competitive quotations, unless the state agency purchasing the personal services applies to the secretary for a waiver from such requirement and the secretary grants the waiver in accordance with the guidelines adopted under subsection (a) of section 4-215.

(P.A. 93-336, S. 5, 13; 93-435, S. 83, 95; P.A. 96-268, S. 18, 34; P.A. 99-44, S. 1, 2.)

History: P.A. 93-336 effective June 29, 1993; P.A. 93-435 amended Subsec. (a) by adding "and any necessary supporting information" to Subdiv. (7), effective June 28, 1993; P.A. 96-268 amended Subsec.

(a) to replace "ten" with "fifteen" and "ten-day" with "fifteen-day" re time limit for action on applications, amended Subsec. (b) to add "or competitive quotations" and made a technical correction, effective July 1, 1996; P.A. 99-44 amended Subsec. (a) to require secretary to give Auditors of Public Accounts opportunity to review personal services agreement applications for audit services, effective July 1, 1999.

Sec. 4-217. Standards. Written procedures. Requests for proposals. (a) Not later than March 1, 1994, the Secretary of the Office of Policy and Management shall establish standards for state agencies to follow in entering into personal service agreements. The standards shall include, but not be limited to, provisions for: (1) Evaluating the need to use a personal service agreement, (2) developing a request for proposals, (3) advertising for personal service contractors, (4) evaluating submitted proposals, (5) selecting a personal service contractor, including compliance with section 4a-60g, (6) systematically monitoring and evaluating personal service contractor performance, (7) documenting the entire process for selecting and managing personal service contractors and (8) carrying out any other aspect of such process.

(b) Not later than May 1, 1994, each state agency shall: (1) Establish written procedures for implementing the standards established by the secretary under subsection (a) of this section, and (2) submit such procedures to the secretary for his approval. If the secretary disapproves an agency's procedures he shall return the procedures to the agency with recommendations for revisions. On and after July 1, 1994, no state agency may execute a personal service agreement unless the secretary has approved procedures established by the agency under this section.

(c) A request for proposals issued under section 4-214, 4-215 or 4-216 shall include, but not be limited to, an outline of the work to be performed, the required minimum qualifications for the personal service contractor, criteria for review of proposals by the state agency, the format for proposals and the deadline for submitting proposals. Each state agency which prepares a request for proposals shall establish a screening committee to evaluate the proposals submitted in response to the request for proposals. The screening committee shall rank all proposals in accordance with the criteria set forth in the request for proposals and shall submit the names of the top three proposers to the executive head of the agency, who shall select the personal service contractor from among such names.

(P.A. 93-336, S. 6, 13.)

History: P.A. 93-336 effective June 29, 1993.

Sec. 4-218. Reports to the secretary concerning personal service agreements. (a) Not later than thirty days after the end of each six-month period, beginning with the six-month period ending on December 31, 1994, each contracting agency shall submit a report to the secretary indicating (1) for each personal service agreement executed during such six-month period with a person, firm or corporation providing "contractual services", as defined in section 4a-50, to the state, a "consultant", as defined in section 4b-55, or an agency of the federal government, of the state or of a political subdivision of the state, (A) the name of the person, firm or corporation, (B) a description of the services to be provided, (C) the term and cost of the agreement and (D) the method of selecting the person, firm or corporation and (2) for each such agreement either executed or otherwise in effect during the six-month period, (A) the amount of all payments made during the six-month period to the person, firm or corporation, by fund, and (B) the amount of any federal or private funds allocated for such payments. No state agency utilizing contractual services hired by using a purchase order approved and committed by the State Comptroller shall be required to submit a report to the secretary.

(b) Not later than thirty days after the end of each six-month period, beginning with the six-month period ending on December 31, 1995, the Department of Transportation shall submit a report to the secretary indicating (1) for each agreement executed during such six-month period with a "consultant", as defined in section 13b-20b, or an agency of the federal government, of the state or of a political

subdivision of the state, (A) the name of the person, firm or corporation, (B) a description of the services to be provided, (C) the term and cost of the agreement and (D) the method of selecting the person, firm or corporation and (2) for each such agreement either executed or otherwise in effect during the six-month period, (A) the amount of all payments made during the six-month period to the person, firm or corporation, by fund, and (B) the amount of any federal or private funds allocated for such payments. (c) Not later than September 1, 1995, and annually thereafter, the secretary shall submit a report to the General Assembly summarizing information received pursuant to subsection (b) of section 4-214, subsection (b) of section 4-215, subsection (a) of section 4-216, and subsections (a) and (b) of section 4-218 for the preceding fiscal year.

(P.A. 93-336, S. 7, 13; 93-435, S. 84, 95; P.A. 94-188, S. 21; P.A. 96-235, S. 8, 19.)

History: P.A. 93-336 effective June 29, 1993; P.A. 93-435 amended Subsec. (c) by specifying information to be included in report, effective June 28, 1993; P.A. 94-188 amended Subsec. (a) by specifying in Subdiv. (1) that the type of agreement involved was a "personal service" agreement and by exempting state agencies utilizing contractual services hired by using a purchase order approved and committed by the state comptroller from the report requirement; P.A. 96-235 amended Subsec. (a) by substituting "consultant" for "design professional", effective June 6, 1996.

Sec. 4-219. Amendments to personal service agreements. No state agency may, without the approval of the secretary, execute (1) an amendment to a personal service agreement, which agreement has an original cost of more than fifty thousand dollars, or (2) an amendment to any other personal service agreement, which amendment (A) has a cost of one hundred per cent or more of the cost of the original agreement, (B) increases the cost of the agreement to more than fifty thousand dollars, (C) extends the terms of the agreement beyond a one-year period or (D) is the second or subsequent amendment to the agreement. The secretary shall approve or disapprove a proposed amendment within fifteen business days after receiving it and any necessary supporting information, provided if the secretary does not act within such fifteen-day period the application shall be deemed to have been approved.

(P.A. 93-336, S. 8, 13; 93-435, S. 85, 95; P.A. 96-268, S. 19, 34.)

History: P.A. 93-336 effective June 29, 1993; P.A. 93-435 amended the section by adding "any and necessary supporting information" to Subdiv. (2), effective June 28, 1993; P.A. 96-268 added provisions re expansion of the secretary's authority to review amendments, replaced "ten" with "fifteen" and "ten-day" with "fifteen-day" re time limit for approval or disapproval of agreement amendments and made a technical correction, effective July 1, 1996.

Secs. 4-220 to 4-229. Reserved for future use.

PERSONAL SERVICE AGREEMENT

EXHIBIT B

STATE OF CONNECTICUT
OFFICE OF THE STATE COMPTROLLER
ACCOUNTS PAYABLE DIVISION

CO-802A REV. 2/2000 (Electronic Version)

1. PREPARE 5 COPIES.
2. THE STATE AGENCY AND THE CONTRACTOR AS LISTED BELOW HEREBY ENTER INTO AN AGREEMENT SUBJECT TO THE TERMS AND CONDITIONS STATED HEREIN AND/OR ATTACHED HERETO AND SUBJECT TO THE PROVISIONS OF SECTION 4-98 OF THE CONNECTICUT GENERAL STATUTES AS APPLICABLE.
3. ACCEPTANCE OF THIS CONTRACT IMPLIES CONFORMANCE WITH TERMS AND CONDITIONS SET FORTH AT SHEET 2 OF THIS FILE, AS ATTACHED HERETO AND INCORPORATED BY REFERENCE.

		(1) <input type="checkbox"/> ORIGINAL <input type="checkbox"/> AMENDMENT	(2) IDENTIFICATION NO.
CONTRACTOR	(3) CONTRACTOR NAME		(4) ARE YOU PRESENTLY A STATE EMPLOYEE? <input type="checkbox"/> YES <input type="checkbox"/> NO
	CONTRACTOR ADDRESS		CONTRACTOR FEIN / SSN - SUFFIX

STATE AGENCY	(5) AGENCY NAME AND ADDRESS	(6) AGENCY NO.
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CONTRACT PERIOD	(7) DATE (FROM) THROUGH (TO)	(8) INDICATE <input type="checkbox"/> MASTER AGREEMENT <input type="checkbox"/> CONTRACT AWARD NO. <input type="checkbox"/> NEITHER
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CANCELLATION CLAUSE	THIS AGREEMENT SHALL REMAIN IN FULL FORCE AND EFFECT FOR THE ENTIRE TERM OF THE CONTRACT PERIOD STATED ABOVE UNLESS CANCELLED BY THE STATE AGENCY, BY GIVING THE CONTRACTOR WRITTEN NOTICE OF SUCH INTENTION (REQUIRED DAYS NOTICE SPECIFIED AT RIGHT).	(9) REQUIRED NO. OF DAYS WRITTEN NOTICE:
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COMPLETE DESCRIPTION OF SERVICE	(10) CONTRACTOR AGREES TO: (Include special provisions - Attach additional blank sheets if necessary.)
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COST AND SCHEDULE OF PAYMENTS	(11) PAYMENT TO BE MADE UNDER THE FOLLOWING SCHEDULE UPON RECEIPT OF PROPERLY EXECUTED AND APPROVED INVOICES.
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(12) ACT. CD.	(13) DOC. TYPE	(14) COMM. TYPE	(15) LSE. TYPE	(16) ORIG. AGCY.	(17) DOCUMENT NO.	(18) COMM. AGCY.	(19) COMM. NO.	(20) VENDOR FEIN / SSN - SUFFIX		
(21) COMMITTED AMOUNT			(22) OBLIGATED AMOUNT			(23) CONTRACT PERIOD (FROM/TO)				
(24) ACT. CD.	(25) COMM. LINE NO.	(26) COMMITTED AMOUNT	(27) COMM. AGENCY	(28) COST CENTER		(29) OBJECT	AGENCY TAIL			
				FUND	SID		(30) FUNCTION	(31) ACTIVITY	(32) EXTENSION	(33) F.Y.

An individual entering into a Personal Service Agreement with the State of Connecticut is contracting under a "work-for-hire" arrangement. As such, the individual is an independent contractor, and does not satisfy the characteristics of an employee under the common law rules for determining the employer/employee relationship of Internal Revenue Code Section 3121 (d) (2). Individuals performing services as independent contractors are not employees of the State of Connecticut and are responsible themselves for payment of all State and local income taxes, federal income taxes and Federal Insurance Contribution Act (FICA) taxes.

ACCEPTANCES AND APPROVALS		(34) STATUTORY AUTHORITY	
(35) CONTRACTOR (OWNER OR AUTHORIZED SIGNATURE)	TITLE	DATE	
(36) AGENCY (AUTHORIZED OFFICIAL)	TITLE	DATE	
(37) OFFICE OF POLICY & MGMT./DEPT. OF ADMIN. SERV.	TITLE	DATE	
(38) ATTORNEY GENERAL (APPROVED AS TO FORM)	TITLE	DATE	

EXHIBIT C



DEPARTMENT OF ADMINISTRATIVE SERVICES



STATE OF CONNECTICUT

165 Capitol Avenue
Hartford, CT 06106-1658

PERSONAL SERVICE AGREEMENT CERTIFICATE

DATE: Xxxxx xx, 2002

Personal Services Contract between the (CONTRACTING AGENCY) and (PERSONAL SERVICE AGREEMENT CONTRACTOR.) Approval of this contract is recommended on the basis of the item(s) checked below:

- There are no specific classes which include all the duties to be performed.
- The difficulty in recruiting medical or dental specialists.
- The difficulty in recruiting part-time.
- The absence of specialized facilities to provide the type of services covered by the contract.
- The part-time nature of the duties as well as the short-term nonrenewable contract.
- The time limitation of the contract does not offer the opportunity to recruit, test and appoint specialists to perform these duties.
- There is no objection to the amendment or extension of the existing or original contract.
- The function of this individual has been identified by the Department of Higher Education or its constituent units as being of a professional/technical nature as authorized by Section 10a-5(b), 10a-20, or Section 10a-108 of the General Statutes.

Xxxxxxx Xxxxxxx
Human Resources Manager

EXHIBIT D

FOR OPM USE ONLY
DATE RECEIVED

REQUEST FOR WAIVER FROM COMPETITIVE BIDDING

This form is to be completed when requesting a waiver from the competitive bid requirement for any agreement with a cost of over \$20,000 or a term of more than one year or if fewer than three acceptable bids are received.

Agency Name / Address:

Date:

Agency Contact:

Phone:

Name and Address of Contractor:

Description of Services (Purpose, Scope, Activities, Outcomes):

Need for the Services:

Estimated Cost of Services:

Fund:

Acceptable criteria for requesting a non-competitive personal service agreement are listed below. Check of all items that apply.

- + The cost to the state of a competitive selection procedure would outweigh the benefits of such procedure (documentation must be provided)
- + Proprietary services / patent rights
- + Services to be provided by a contractor mandated by the general statutes or a public or special act
- + Emergency services, including services needed for the protection of life or health
- + Services will be used in specific academic areas that include instructional or research activities
- + Contractor has special capability or experience
- + Other

Explain in detail any item checked above. Attach supporting documentation.

Requester's Name and Title:	Requester's Signature:
Approved Disapproved	Secretary, Office of Policy & Management Date