

May 11, 1978

8:30 A.M.

DEPARTMENT Waste and Mismanagement*Office Memorandum*

TO : Governor Rudy Perpich

FROM : Robert E. Goff, Director  
Governor's Task Force on  
Waste and Mismanagement

SUBJECT: SUMMARY  
Report on Contracting by State Agencies

DATE: May 11, 1978

PHONE: 296-0646

In recent years the Legislature and the Governor have tried various methods of controlling the practice of state contracting for consultant and professional-technical services. At the same time, contracts expenditures have grown dramatically -- nearly doubling from Fiscal Year 1974 to Fiscal Year 1977. This year the expenditures are likely to exceed \$41 million.

The authority for central control and monitoring of most state contracts was established in the Office of Contract Management by Executive Order 18 months ago. Finding the procedures of that office basically sound, the Task Force worked with the Department of Administration and the Legislature to develop the 1978 Chapter 16 amendments, which strengthened and provided statutory basis for the office's authority. With the new law and the additional staff recommended in this report, the Office of Contract Management will become a more effective and valuable technical resource for departments in need of contractual services. Although the Office of Contract Management can offer needed technical assistance, the responsibility of controlling contracts costs must rest with the individual state departments. The Office of Contract Management cannot and should not negotiate each state contract.

In conversations with the Task Force, many state officials said they had at times been disappointed with the final product of a contract or believed they had not received full value for the money they had spent. A primary factor is the general lack of effective departmental controls. Only five departments were able to provide written contract approval procedures. In some departments, the responsibility for approving and negotiating contracts had been delegated to several low-level managers. Except for a few contracts at high dollar amounts, there was little evidence that competition among prospective vendors had been encouraged.

In the attached report, the Task Force recommends that the Governor require all state agencies to adopt formal contract control procedures and establish a cost reduction goal for Fiscal Year 1979. The 16 departments which will spend 88 percent of the total state agency contracts budget this year (see page 16) should adopt a minimum 15 percent cost reduction goal. At the department head's discretion, contract expenditures for direct patient care, classroom instruction and biddable purchased services should be excluded from this requirement. The goal is not to deprive the residents of our state institutions of medical care or deny quality classroom instruction to students at our state colleges. The goal is to ensure that all state departments receive maximum value for all necessary consultant and professional-technical services expenditures.

The requirements of the new law, the expended technical help offered by the Office of Contract Management and the following

recommendations make these cost reductions a realizable goal which will save at least \$3.6 million from the 16 departmental budgets during Fiscal Year 1979:

1. Contracts approval and control must be a department head, deputy or assistant head responsibility, as required by the new amendments to Chapter 16.
2. Departments must use a variety of methods for ensuring vendor competition for state contracts including public notice in the State Register, trade publications, direct mail, newspapers, and posting at the department's office and the Office of Contract Management.
3. The request for proposal process should be used whenever the task and the compensation involved are substantial enough to encourage vendors to compete actively for the contract. Single contact contracts should be almost eliminated except when no more than one vendor is capable of performing the work.
4. Departments must negotiate hard on the price of the service to be performed by the selected vendor. For example, the amount of a legislative appropriation may not have much relevance to the cost of the work required by the department to fulfill its legislative mandate.
5. The scope of the work to be performed by the contractor must be carefully and tightly defined by department personnel.
6. The work should be closely monitored throughout the contract by at least one designated department employee.

7. Cost overruns should never be approved after the price is negotiated and agreed to by the vendor unless new requirements are amended into the contract.
8. "After-the-fact" contracts should be eliminated except in bona fide emergencies.
9. All contractual services should be evaluated by the respective departments and copies of the evaluation filed with the Office of Contract Management as an information source for other state departments.

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SUBJECT: Contracting by State Agencies

This report has been prepared by the Task Force on Waste and Mismanagement in response to your request for a study of contracts for consultants, professional and technical services, and purchased services.

Many state departments and agencies find it necessary, expedient and prudent to contract for the services of private consulting and service firms to help in satisfying some of their planning, organizational, managerial, technical, or service needs. The contracting with these firms or individuals may be required when the state lacks the necessary manpower or expertise -- or when the problem demands prompt attention.

Our study considered contracts which have been defined as:

Consultant Services

A contract for professional or technical advice or opinions which may include evaluations, recommended actions, predictions, and planning -- which will produce a report.

Professional/Technical Services

A contract between an agency and a contractor which results in the completion of a task of a professional or technical nature rather than recommendations, evaluation, or analysis.

### Purchased Services

A contract between an agency and a contractor to furnish work of a service nature, such as janitorial service, disposal service, security service, or laundry service. These services must conform with the competitive bidding provisions of Chapter 16 and the provisions of M.S. 43.20, Subdivision 6, which preclude the contracting for services involving the equivalent of Schedule C employees. (See Exhibits 1 and 2.)

### ADVANTAGES OF CONTRACTING

There is nothing inherently wrong with the practice of governmental contracting for services with the private sector. In fact, there can be many advantages:

1. Specialized skills, knowledge and resources

State agencies sometimes find it necessary to retain consultants who can provide specialized skills and knowledge which are not currently available from state employees.

2. Scheduling

In some instances, the required expertise may be available among state employees. However, because of severe time constraints on performance of a task, an agency may find it necessary to seek temporary outside help.

3. Objectivity

There often can be no substitute for the impartial, fresh viewpoint of an outside consultant -- free from

personal interest, tradition, or preconception one might find among staff. The Governor, the Legislature, and the public are sometimes more likely to listen to and act on suggestions and appraisals coming from an independent source.

4. Costs

Contracting for a service may be more cost-effective, in some instances, than providing the service directly.

HAZARDS OF CONTRACTING

Lack of tight controls on the practice of government contracting can lead to problems such as the following:

1. Future Inflated Costs

If the state, in contracting for purchased services, seriously depletes its capital investment and the contractor raises the cost, the state may find that it is no longer competitive because the price of new equipment acquisition has become prohibitive. For example, the state could decide to sell its Central Motor Pool fleet because a private company offers to provide automobile transportation for state agencies at less cost. If at a later time the private company dramatically increases its price and no other vendor is capable of providing the service, the state may have to accept the higher price because the cost of purchasing a new state car fleet would be prohibitive.

2. Inefficiency and Administrative Vulnerability

A bad contract leading to corruption, waste, or inefficiency can destroy the state's reputation with the public for deliverance of high quality service and bring severe public criticism on an administrator and the Governor. Recent scandals in other states bear out the necessity for close scrutiny, tight control and routine public disclosure of all state contracts.

FINDINGS

1. Contracting costs tend to be more difficult to control, monitor, and evaluate than many other government expense items.

In recent years, officials at all levels of government from townhalls to the Oval Office have expressed growing concern about the practice of contracting and its increasing costs to taxpayers. According to a survey of federal agencies conducted at the request of President Carter last year, the federal government spends approximately \$1.8 billion on consultant contracts. However, no one at the federal level knows where all the consultants are, how much they are paid or just what they do. The Carter Administration and Congress are studying various approaches to defining and controlling these costs.

On the other hand, the State of Minnesota has been developing a comparatively good system for identifying the costs and types of state contracts. In recent years, the Legislature has

struggled with the problem in a variety of ways including a law passed in 1975 requiring Finance and Appropriations Committee approval of individual contracts. The law was repealed in the 1977 legislative session after the Office of Contract Management was created in the Department of Administration by Reorganization Order 79 and Policy and Procedure ADM-2 SAC on November 1, 1976. The reorganization order consolidated in the Office of Contract Management the contract approval responsibilities that had been established by statute in the Department of Personnel and the State Planning Agency. The Policy and Procedure order specified the responsibilities and objectives of the Office of Contract Management including the following:

- a. To decrease contract processing time.
- b. To control the number and expenditures and improve the quality of state contracts.
- c. To institute "pre-negotiation and approval" and "evaluation" procedures.
- d. To help the Department of Finance revise the Statewide Accounting System method of recording contract costs.
- e. To provide comprehensive reports and statistical information regarding state contracts.

The 1978 Legislature recently passed H.F. 1103 which strengthened and provided statutory authority for these responsibilities and procedures. (See Exhibit 3.)

2. In spite of these improved control procedures, expenditures for state contracts have increased dramatically in recent years.

From Fiscal Year 1974 to Fiscal Year 1977, contracting costs increased 98.6 percent, from approximately \$19.5 million in 1974 to almost \$39 million in 1977. This compares with a 52.5 percent increase in total state employee salary costs during the same time period. (See Exhibit 4.) While there has been only slight growth in the number of full-time equivalent state employees since 1974, the costs of hiring outside consultants have nearly doubled. Contract costs increased nearly 30 percent between Fiscal Year 1976 and Fiscal Year 1977 alone. Early reports on Fiscal Year 1978 expenditures show this trend continuing with projected costs in excess of \$40 million. As of December 31, state expenditures for contracts were running 3.8 percent higher than during the same period last year.

During fiscal years 1976 and 1977, twenty of the state's departments and agencies spent 98 percent of the state's contract expenditures coded under consultant, professional-technical, and purchased services. These departments, along with their 1978 budgets for these codes are reported in Exhibit 5.

It is difficult to evaluate trends in the types of contract expenditures during the last several years because the accounting codes for contracts have changed each year. Expenditures and encumbrances for the first eight months of this fiscal year indicate that the largest single types of contract expenditure are for medical and dental services (object code 162) and educational

and instructional services (object code 166). The year to date expenditures and encumbrances for all the contract codes are listed in Exhibit 6.

3. Although the procedures that have been developed for central control through the Office of Contract Management are basically sound, some of the objectives have not been fully realized, and a few problems remain to be solved.

While on one hand the state's system for procuring the \$80 million in supplies and equipment we buy annually may lack the optimum level of flexibility, we believe that the system for procurement of the \$40 million in outside services each year is much too loose. It takes less time and "red tape" for an agency to gain approval for a \$20,000 professional-technical services contract than for a purchase of a \$500 typewriter. In most cases, after the department and the contractor sign a contract and the Attorney General's Office has approved the contract for form and execution, the contract is signed by the Office of Contract Management within 24 to 48 hours. An agency is required to "pre-negotiate" a contract with the Office of Contract Management in advance only if it is classified as a consultant contract or if it is a professional-technical services contract in excess of \$25,000.

Probably the most valuable component of the existing processing procedure is the pre-negotiation stage. A department discusses a proposed contract with the Office of Contract Management to learn whether another state agency will be able to perform the

work or whether similar work has already been done by another agency. The Office of Contract Management also provides technical help in defining the specific work to be done, determining a reasonable rate of compensation and handling requests for proposals. Out of the 1,114 contracts processed during the first six months of this fiscal year, 83 percent were excluded from the pre-negotiation requirement because they were under the dollar limits. Because such a large percentage of the contracts are not pre-negotiated, many of the inappropriate or technically deficient contracts that are eventually rejected or modified by the Office of Contract Management are not caught until the final approval stage. This means that a lot of agency time is needlessly spent preparing contracts which have to be eventually rewritten or cancelled.

During its first seven months of existence (November 1, 1976 to June 30, 1977), the Office of Contract Management rejected 34 contracts resulting in a cost avoidance of \$1.1 million. Most of these contracts were not caught until they had been processed by the departments and signed by the consultant. Examples of the kinds of contracts that have been rejected include the following:

--An \$8,500 contract to evaluate the performance of another contractor was rejected because such evaluations should be in-house responsibilities.

--One department proposed a \$35,000 contract to conduct water sample tests but eventually the work was done in-house at less than half the cost.

--Some departments proposed contracts in violation of M.S. 43.20, Subdivision 6, which requires agencies to hire temporary C-schedule employees rather than contract for similar outside services. (See Exhibit 2.)

--Sixteen of the above mentioned 34 contracts were rejected because they were in violation of Personnel Rule 11, which says that contractual agreements cannot be used when the service would constitute an employer-employee relationship. (See Exhibit 1.)

It is also necessary for the Office of Contract Management to seek modification of many contracts because of technical deficiencies. Out of 2,000 contracts processed during 1977, 15 percent (more than 300 contracts) were returned to the departments due to technical problems. Ranging from minor to serious, the problems included lack of proper signature, lack of a defined method of payment and insufficient explanations of the work to be done. In three cases, a department had inadvertantly authorized an increase in the amount of a contract rather than the appropriate decrease. According to the Office of Contract Management the rate of technical deficiencies and attempted violations of Personnel Rule 11 have declined somewhat this year as state employees have become more knowledgeable about contract procedures.

Another potentially serious problem with the contract process is the occurrence of what is known in the agencies as "after-the-fact" contracts. An "after-the-fact" contract is one which is consummated after the contractor has performed all or a portion of the work required. Although precise documentation is impossible,

an estimated ten to twenty percent of all state contracts are signed "after-the-fact." This practice seriously undermines the Office of Contract Management's authority to modify or reject deficient and inappropriate state contracts. Furthermore, unless a specific exception is granted by the Commissioner of Finance, the provisions of M.S. 16A.15, Subdivision 3 apply. The law requires prior obligation (encumbrance) of funds before payments can be made and reads in part:

Every payment made in violation of the provisions of this chapter shall be deemed illegal, and every official authorizing or making such payment, or taking part therein, and every person receiving such payment, or any part thereof, shall be jointly and severally liable to the state for the full amount so paid or received. If any appointive officer or employee of the state shall knowingly incur any obligation or shall authorize or make any expenditure in violation of the provisions of this chapter or take part therein, it shall be grounds for his removal by the officer appointing him, and, if the appointing officer be other than the governor and shall fail to remove such officer or employee, the governor may exercise such power of removal, after giving notice of the charges and opportunity for hearing thereon to the accused officer or employee and to the officer appointing him.

From time to time, emergencies arise, such as the contracts needed by the Department of Natural Resources to fight last year's forest fires; however, some agencies are using "after-the-fact" approval procedures in non-emergency situations. While it is unlikely that a contractor who has performed work without a contract would have a successful claim against the state if the proposed contract were later rejected, this situation does not reflect sound good-faith business practice.

When the Office of Contract Management was created nearly a year and a half ago, one objective was to develop evaluation procedures which would provide a record of how well contractors

have performed for the state. The idea was to develop an information base which could be used by agencies seeking names of prospective contractors. It could be helpful, for example, when an agency is selecting vendors to receive its requests for proposals. As is the case with pre-negotiation limits, the evaluation process was to include all consultant contracts and the higher cost professional-technical services contracts. Potentially, it could prevent a department from hiring an unqualified contractor who has performed a similar job poorly for another agency. It could also serve as a record of accomplishment, reflecting the ultimate value of the work performed. Unfortunately, due to time constraints, the Office of Contract Management has not been able to fully accomplish this objective. Only a few informal evaluations, have been solicited from the departments. The new contracts law passed by the 1978 Legislature requires state departments to specify "a satisfactory method of evaluating and utilizing the results of the work to be performed" before a contract is approved by the Commissioner of Administration. It also requires departments to provide the Department of Administration with a written evaluation upon completion of the contracted work.

The state has been criticized for insufficient public notice on consultant, professional-technical and land appraisal contracts. Some vendors believe that this lack of public notice tends to concentrate contract awards in the hands of too few contractors and that most of these are located in the metropolitan area. Except for the purchased services contracts processed by the Procurement

Division, these contracts do not come under the bidding and public notice requirements of Chapter 16. However, amendments to Chapter 16 passed by the 1978 Legislature require agencies to make "reasonable efforts" to publicize the availability of all state contracts in excess of \$2,000.

The Procurement Division presently controls all biddable contracts for maintenance, snow removal, rubbish hauling and guard services among others. Procurement has delegated some authorities for approving these contracts to the departments of Transportation and Natural Resources. Road maintenance contracts up to \$2,500 are currently negotiated within the two departments with no prior notice to Procurement. Contracts between \$2,500 and \$5,000 must be validated by signature of the Director of Procurement. All contracts over \$5,000 must be advertised and are controlled by Procurement. The Division presently issues a semi-annual report which indicates type of contract and the contracting agency -- but not the dollar amounts. The Division issued 73 service contracts in the first six months of this fiscal year.

The Real Estate Management Division issues contracts to appraisers for land acquisition. It has a list of forty-one appraisers who have expressed interest in doing state work; however, the records indicate that two appraisers are receiving the bulk of the work. Many appraisers, who may or may not be on the list, feel that this lack of public notice is unfair. It must be said, in all fairness, that some agencies (notably Department of Natural Resources) are requesting the services of certain

appraisers. Real Estate Management's contracts are, in effect, by their standards, purchased services and have not been forwarded to either Procurement or the Office of Contract Management. The Office of Contract Management has been working with the agencies involved to ensure increased opportunities for vendors to compete for future state land appraisal contracts.

The divisions of Procurement, Real Estate Management, and Architectural and Engineering all maintain files of the contracts they process. In addition, the Department of Transportation maintains a file of land appraisal contracts. This proliferation of filing does not allow the Office of Contract Management to report a complete picture of contracting to the Governor and the Legislature when quarterly and annual reports are issued.

4. While the state as a whole has improved its central control mechanism, only a few state agencies have developed the internal approval and monitoring procedures necessary for controlling contract costs and quality.

The Task Force surveyed the larger state agencies to determine whether or not they had an existing in-house procedure for contracts. Only five departments were able to provide copies of written internal procedures for controlling contracts. In some agencies, approvals of contracts occur well below the commissioner level -- with directors and supervisors approving contracts. In others, we found the processes far too complex and time-consuming.

The Task Force is aware that some state departments have during this year saved substantial amounts by carefully scrutinizing contract expenditures. For example, the Minnesota Housing Finance Agency was appropriated \$150,000 in 1976 for research on housing alternatives for the elderly. The agency performed the work in-house and saved \$85,000. The Department of Public Welfare was asked by the 1976 Legislature to conduct a study on facilities at St. Peter State Hospital at an anticipated cost of \$100,000. However, the department was able to contract for the study for \$44,000.

#### RECOMMENDATIONS

##### State Department Controls

The Task Force believes that considerable economies can be achieved through more critical evaluation and tighter controls on non-biddable consultant and professional-technical services contracts. Although the Office of Contract Management can offer needed technical assistance, the responsibility of controlling contracts costs and quality must rest with the individual state departments. The Task Force recommends that the Governor require all state agencies to adopt formal contract control procedures and establish a cost reduction goal for Fiscal Year 1979.

The 16 departments which have budgeted for 88 percent of the total executive branch contracts budget this year (see page 16) should adopt a minimum 15 percent reduction goal. That is, Fiscal Year 1979

expenditures should be kept to an amount at least 15 percent below the Fiscal Year 1978 level. This 15 percent reduction should apply to contract expenditures from all funds which would be coded in the accounting system as consultant services (Class 15) and professional-technical services (Class 16). At the discretion of each department head, the following types of contract costs should be exempted from this 15 percent reduction requirement: contracts with people involved in direct patient care and classroom instruction. The Commissioner of Finance should be authorized to grant other exemptions from the 15 percent requirement when specific legislative authority has been granted for contracting and in emergency situations. All such exemptions granted by the Commissioner of Finance should be reported to the Governor. All savings resulting from the 15 percent reduction along with savings achieved by other state departments should be reported in the August 1 and February 1 reports to the Governor on cost savings.

FISCAL YEAR 1978 CONTRACTS BUDGETS  
(as of February 28, 1978)  
ALL FUNDS

Departments	Spending Classes 15, 16 and 18
Welfare	\$ 6,500,349
Transportation	5,286,087
Natural Resources	3,676,311
Corrections	3,386,783
Education	3,237,341
State Planning	2,289,210
State Universities	1,911,271
Health	1,709,284
Economic Security	1,522,788
Pollution Control	1,325,252
Administration	1,296,720
State Community Colleges	1,264,515
Public Safety	966,675
Public Service	815,882
Housing Finance	714,000
Energy	<u>587,066</u>
Total	\$36,489,534
Minus estimated 1978 expenditures for direct patient care, classroom instruction, and biddable purchased services contracts.	<u>-12,520,699</u>
	23,968,835
	<u>x15 percent</u>
	\$ 3,595,325

These 16 departmental budgets amount to 88 percent of the total Fiscal Year 1978 all funds contracts budget for administrative agencies as of February 28, 1978 (\$41,604,697).

The requirements of the new law, the expanded technical help offered by the Office of Contract Management and the following recommendations for departmental action make these cost reductions a realizable goal which will save at least \$3.6 million from the 16 departmental budgets during Fiscal Year 1979. The goal is not to deprive the residents of our state institutions of medical care or deny quality classroom instruction to students at our state colleges. The goal is to gain the level of departmental control necessary to ensure that all state departments receive maximum value for all necessary consultant and professional-technical services expenditures.

1. Contracts approval and control must be a department head, deputy or assistant head responsibility, as required by the new amendments to Chapter 16.
2. All executive branch agencies should develop a formal contract processing procedure acceptable to the Office of Contract Management. Attached is a list of the Task Force's suggested procedures (See Exhibit 7). These recommended procedures may be adapted to suit the unique needs of individual agencies, however, the procedures should be approved by the Office of Contract Management. In adopting these procedures, departments should avoid unnecessary steps which currently lead to costly delays in a few departments. The pre-certification requirements recently passed by the Legislature should be incorporated.
3. The attached "Agency Internal Contract Negotiation Form" (See Exhibit 8) should be made available by the Department of Administration for use by all agencies. This form will ensure that the critical elements of contract negotiation are fulfilled.

4. Departments must use a variety of methods for ensuring vendor competition for state contracts including public notice in the State Register, trade publications, direct mail, newspapers, and posting at the department's office and the Office of Contract Management.
5. The request for proposal process should be used whenever the task and the compensation involved are substantial enough to encourage vendors to compete actively for the contract. Single contact contracts should be almost eliminated except when no more than one vendor is capable of performing the work.
6. Departments must negotiate hard on the price of the service to be performed by the selected vendor. For example, the amount of a legislative appropriation may not have much relevance to the cost of the work required by the department to fulfill its legislative mandate.
7. The scope of the work to be performed by the contractor must be carefully and tightly defined by department personnel.
8. The work should be closely monitored throughout the contract by at least one designated department employee.
9. Cost overruns should never be approved after the price is negotiated and agreed to by the vendor unless new requirements are amended into the contract.
10. "After-the-fact" contracts should be eliminated except in bona fide emergencies. Any "after-the-fact" contract, eventually signed by the Office of Contract Management, should be cited in the Office of Contract Management periodic reports to the Governor and the Legislature.

11. All contractual services should be evaluated by the respective departments and copies of the evaluation filed with the Office of Contract Management as an information source for other state departments.

Office of Contract Management

1. The Task Force recommends that all consultant contracts and all professional-technical services contracts costing \$10,000 or more be pre-negotiated by the Office of Contract Management. Based on the contract approval experience of the first half of Fiscal Year 1978, the pre-negotiation process will then include approximately 30 percent of the contracts and 85 percent of the dollars spent for contracts.
2. During the pre-negotiation stage, the Office of Contract Management should require departments to make use of the State Planning Agency's records of state studies and reports and the planned skills inventory of state employees to be prepared by the Department of Personnel. This should better enable the agencies and the Office of Contract Management to identify work which can be done in-house rather than through a contract.
3. To adequately assure equitable treatment of all potential contractors, the Office of Contract Management should issue guidelines requiring departments to publicize state contracts in the State Register, direct mail, advertisements in appropriate publications, and other methods. The Office of Contract Management should post at least one copy of the list of proposed

contracts in the Capitol Complex. In addition, the guidelines should require considerably expanded use of the request for proposal process, ensuring that departments give serious consideration to the proposals of several prospective vendors. The practice of considering a proposal from one vendor only should be eliminated except in the rare instance when only one vendor has the capability of performing the work.\*

4. The Office of Contract Management should establish formal guidelines for the evaluation of all state contracts to be completed by all state agencies at the conclusion of the conducted work. These evaluations should be filed by vendor in the Office of Contract Management and made available to all state agencies seeking the services of any contractor.
5. The Office of Contract Management should serve as a central repository of all state contracts for services, including those approved by Procurement, Real Estate Management, the Designer Selection Board, the Commissioner of Administration, the Department of Transportation and all other executive branch agencies. This will enable the Governor, the Legislature, the Department of Finance, and the Office of Contract Management to better monitor trends in the practice of state contracting. Based on these records, the Office of Contract Management should issue monthly and quarterly reports on all contracts including information such as the department, vendor, type of contract, results required, amount, and duration.

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\* Guidelines released this week by the Office of Contract Management require one or more of these methods to be used for contracts costing between \$2,000 and \$10,000 and require several methods of publicizing all contracts costing \$10,000 or more.

6. Because of the increase in reviewable professional and technical contracts, it is recommended that the Office of Contract Management be increased by the following personnel:

	1-Executive II	1-Management Analyst, Sr.	Total
Salary	\$13,593	\$17,205	\$30,798
Fringe	2,040	2,580	4,620
Other	2,000	2,000	4,000
	<u>\$17,633</u>	<u>\$21,785</u>	<u>\$39,418</u>

It is estimated that under the revised procedures, the Office of Contract Management would be reviewing 225 consultant contracts and 380 professional-technical contracts per year, almost twice the number being reviewed by present staff with a commensurate total savings estimated at many times a multiple of the increased staff costs. We recommend that, if possible, this staff increase be accomplished through the transfer of existing Department of Administration positions as opposed to increasing the department's complement.

## EXHIBIT 1

§ 2.011 Contractual services. Notwithstanding 2 MCAR § 2.004, this rule also applies to all unclassified employees in the executive branch. Specialized personal services rendered by an individual to the state under contract as an independent contractor as a part of, or incidental to, the individual's regular professional occupation, and not as a state employee, or by individuals employed by a firm contracting with the state, shall be designated as a contractual service and shall not be subject to the provisions of these rules.

A. In determining whether the services to be rendered constitute contractual service or an employer-employee relationship, the following guidelines will be used:

1. Consultants generally contract to produce certain results or conclusions within given specifications.

2. Consultants are generally responsible for approaches, techniques, and results.

3. Consultant's services shall be offered and available to the public, and to the State incidentally as a prospective user of such consulting services.

4. Consultant services are offered to the State as a part of or incidental to the consultant's regular occupation.

5. Consultant's contracts shall extend for a limited period, with clearly specified time limits indicated in the contract, to attain specific results.

6. Except where provided in the contract specifying special circumstances related to the nature and requirements of the work to be performed, consultants shall not perform services on state premises, use state equipment or supplies, or utilize state employees.

7. Consultants generally deliver a completed work, usually organized into a formal report with recommendations.

B. In addition to the financial information, the contract shall specify results to be accomplished, delivery dates, and the manner in which the contractual arrangements are to be conducted.

C. Retired state employees may be used for contract employment providing their services are necessary for the completion of a specific project in which the former employee was engaged at the time of retirement.

D. No agency of the state shall contract for the services of persons who, were they members of the classified service, would occupy positions assigned to schedule "C", except in accordance with law (Minn. Stat. § 43.20, subd. 6).

EXHIBIT 2

M.S. 43.20, Subdivision 6

Subd. 6. Notwithstanding any law to the contrary no agency of the state acting pursuant to any express or implied authority to enter into contracts for services shall enter into a contract with a private entity whereby the agency becomes entitled to receive the services of persons who, were they members of the classified service, would occupy positions assigned to schedule C, except as hereinafter provided. Upon the request of an agency requiring the services of such persons, the commissioner shall make a temporary appointment pursuant to subdivision 5. In the event that the eligible list does not contain the names of persons able to perform the requested services the commissioner shall utilize the free employment offices of the department of employment services to find persons available for such temporary appointments. In the event that the commissioner determines by written opinion that the agency requiring the services will be unable to obtain qualified persons within a reasonable period of time from the department of employment services, the agency may enter into a contract with a private entity as described above.

[ 1939 c 441 s 20; 1951 c 685 s 2; 1955 c 654 s 1; 1957 c 447 s 1; 1959 c 5 s 1; 1973 c 254 s 3; 1974 c 364 s 14; 1974 c 511 s 14; 1975 c 381 s 9 ] (254-68)

# AN ACT

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1  
 2 relating to the operation of state government;  
 3 centralizing the management and review of all  
 4 state contracts in the office of the commissioner  
 5 of administration; distinguishing consultant,  
 6 professional and technical contracts; amending  
 7 Minnesota Statutes 1976, Section 15.061; and  
 8 Chapter 16, by adding a section; repealing  
 9 Minnesota Statutes 1976, Sections 16.10; and  
 10 161.35.

11

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

13 Section 1. Minnesota Statutes 1976, Section 15.061, is  
 14 amended to read:

15 15.061 (CONSULTANT, PROFESSIONAL AND TECHNICAL  
 16 SERVICES.) ~~Notwithstanding the provisions of any other law~~  
 17 Pursuant to the provisions of section 2, the head of a  
 18 ~~state departments and agencies~~ department or agency may,  
 19 with the approval of the commissioner of administration, ~~use~~  
 20 ~~salary appropriations to~~ contract for consultant services  
 21 and professional and technical services in connection with  
 22 the operation of the ~~departments and agencies~~ department or  
 23 ~~agency.~~ Such contracts A contract negotiated under this  
 24 section shall not be subject to the competitive bidding  
 25 requirements of chapter 16.

1           Sec. 2. Minnesota Statutes 1976, Chapter 16, is  
2 amended by adding a section to read:

3           [16.098] [CONTRACT MANAGEMENT AND REVIEW.] Subdivision

4 1. [DEFINITIONS.] For the purposes of this section:

5           (1) "Commissioner" means the commissioner of  
6 administration.

7           (2) "State contract" means any written instrument  
8 containing the elements of offer, acceptance and  
9 consideration to which a state agency is a party.

10           (3) "Agency" means any state officer, employee, board,  
11 commission, authority, department or other agency of the  
12 executive branch of state government.

13           (4) "Consultant services" means services which are  
14 intellectual in character; which do not involve the  
15 provision of supplies or materials; which include analysis,  
16 evaluation, prediction, planning or recommendation; and  
17 which result in the production of a report.

18           (5) "Professional and technical services" means  
19 services which are predominantly intellectual in character;  
20 which do not involve the provision of supplies or materials;  
21 and in which the final result is the completion of a task  
22 rather than analysis, evaluation, prediction, planning or  
23 recommendation.

24           Subd. 2. [DUTIES OF COMMISSIONER.] The commissioner  
25 shall perform all contract management and review functions  
26 for state contracts, excepting those functions presently  
27 performed by the contracting agency, the attorney general  
28 and the commissioner of finance. In so doing, the  
29 commissioner shall establish the manner and form in which  
30 all state contracts shall be prepared and processed and  
31 shall examine and approve or disapprove all state contracts  
32 as to content, purpose, propriety and budget ramifications.

1 No agency shall execute a state contract without receiving  
2 the prior approval of the commissioner pursuant to this  
3 subdivision. All agencies shall afford full cooperation to  
4 the commissioner in the management and review of state  
5 contracts.

6 Subd. 3. [DUTIES OF CONTRACTING AGENCY.] Before an  
7 agency may seek approval of a consultant or professional and  
8 technical services contract valued in excess of \$2,000, it  
9 shall certify to the commissioner that:

10 (1) no state employee is competent to perform the  
11 services called for by the contract;

12 (2) the normal competitive bidding mechanisms will not  
13 provide for adequate performance of the services;

14 (3) the services are not available as a product of a  
15 prior consultant or professional and technical services  
16 contract, and the contractor has certified that the product  
17 of his services will be original in character;

18 (4) reasonable efforts were made to publicize the  
19 availability of the contract;

20 (5) the agency has received, reviewed and accepted a  
21 detailed work plan from the contractor for performance under  
22 the contract; and

23 (6) the agency has developed, and fully intends to  
24 implement, a written plan providing for (a) the assignment  
25 of specific agency personnel to a monitoring and liaison  
26 function, (b) the periodic review of interim reports or  
27 other indicia of part performance and (c) the ultimate  
28 utilization of the final product of the services.

29 Subd. 4. [PROCEDURE FOR CONSULTANT AND PROFESSIONAL  
30 AND TECHNICAL SERVICES CONTRACTS.] Before approving a  
31 proposed state contract for consultant services or  
32 professional and technical services the commissioner shall

1 have at least determined that:

2 (1) all provisions of subdivisions 2 and 3 have been  
3 verified or complied with;

4 (2) the work to be performed under the contract is  
5 necessary to the agency's achievement of its statutory  
6 responsibilities, and that there is statutory authority to  
7 enter into the contract;

8 (3) the contract will not establish an  
9 employer/employee relationship between the state or the  
10 agency and any persons performing under the contract;

11 (4) no current state employees will engage in the  
12 performance of the contract;

13 (5) no state agency has previously performed or  
14 contracted for the performance of tasks which would be  
15 substantially duplicated under the proposed contract;

16 (6) the contracting agency has specified a satisfactory  
17 method of evaluating and utilizing the results of the work  
18 to be performed.

19 Subd. 5. [CONTRACT TERMS.] A consultant or technical  
20 and professional services contract shall by its terms permit  
21 the agency to unilaterally terminate the contract prior to  
22 completion, upon payment of just compensation, if the agency  
23 determines that further performance under the contract would  
24 not serve agency purposes. If the final product of the  
25 contract is to be a report, no more than three copies of the  
26 report, one in camera ready form, shall be submitted to the  
27 agency. One of the copies shall be filed with the  
28 legislative reference library. The form of the report shall  
29 be as the commissioner may by rule or order provide.

30 Subd. 5. [CONTRACT ADMINISTRATION.] Upon entering into  
31 a state contract, an agency shall bear full responsibility  
32 for the diligent administration and monitoring of the

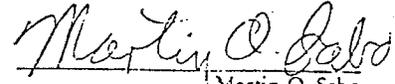
1 contract. The commissioner may require an agency to report  
2 to him at any time on the status of any outstanding state  
3 contract to which the agency is a party. After completion  
4 of performance under a consultant or professional and  
5 technical services contract, the agency shall evaluate the  
6 performance under the contract and the utility of the final  
7 product. This evaluation shall be delivered to the  
8 commissioner who shall retain all such evaluations for  
9 future reference.

10 Subd. 7. [DELEGATION.] The commissioner may delegate a  
11 part or all of his contract management and review functions  
12 to the head of another agency including the contracting  
13 agency when he deems it appropriate. Delegations shall be  
14 filed with the secretary of state and shall not, except with  
15 respect to delegations within the department of  
16 administration, exceed two years in duration.

17 Subd. 8. [RULEMAKING AUTHORITY.] The commissioner may  
18 adopt and enforce rules as he deems necessary regarding the  
19 management and review of state contracts.

20 Subd. 9. [INVALIDITY OF STATE CONTRACTS.] No state  
21 contracts shall be valid, nor shall the state be bound by  
22 the contract until it has first been executed by the head of  
23 the agency which is a party to the contract and has been  
24 approved in writing by the commissioner or his delegate  
25 pursuant to this section, by the attorney general or his  
26 delegate as to form and execution and by the commissioner of  
27 finance or his delegate that the appropriation and allotment  
28 have been encumbered for the full amount of the contract  
29 liability. The head of the agency may delegate the  
30 execution of specific contracts or specific types of  
31 contracts to a deputy or assistant head within his agency if  
32 the delegation has been approved by the commissioner of

1 administration and filed with the secretary of state.  
2 Subd. 10. [AUTHORITY OF ATTORNEY GENERAL.] The  
3 attorney general may sue to avoid the obligation of an  
4 agency to pay under a contract or to recover payments made,  
5 if services performed under the contract are so  
6 unsatisfactory, or incomplete, or so inconsistent with the  
7 price that payment would involve unjust enrichment. The  
8 contrary opinion of the contracting agency does not affect  
9 the power of the attorney general under this section.  
10 Subd. 11. [REPORTS.] The commissioner shall monthly  
11 submit to the governor and the legislature a listing of all  
12 contracts for consultant services and for professional and  
13 technical services executed or disapproved in the preceding  
14 month. The report shall identify the parties and the  
15 contract amount, duration and tasks to be performed. The  
16 commissioner shall also issue quarterly reports summarizing  
17 the contract review activities of his department over the  
18 preceding quarter.  
19 Sec. 3. Minnesota Statutes 1976, Sections 16.10 and  
20 161.35, are repealed.  
21 Sec. 4. This act is effective the day following final  
22 enactment.

  
Martin O. Sabo

*Speaker of the House of Representatives.*

  
Edward J. Gearty

*President of the Senate.*

Passed the House of Representatives this 9th day of March in the year of Our Lord one thousand nine hundred and seventy eight

  
Edward A. Burdick

*Chief Clerk, House of Representatives.*

Passed the Senate this 6th day of March in the year of Our Lord one thousand nine hundred and seventy eight

  
Patrick E. Flahaven

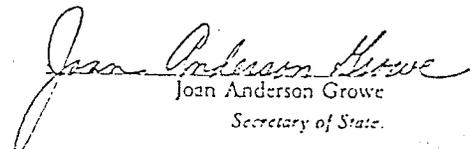
*Secretary of the Senate.*

Approved March 14<sup>th</sup>, 1978

  
Rudy Perpich

*Governor of the State of Minnesota.*

Filed March 14, 1978

  
Joan Anderson Growe

*Secretary of State.*

EXHIBIT 4

GROWTH OF TOTAL CONTRACTS AND TOTAL SALARY COSTS

All Departments - All Funds

	CONTRACTS*	ANNUAL PERCENT INCREASE	SALARIES	ANNUAL PERCENT INCREASE
1974	\$19,586,973		\$350,809,450	
		21.9		7.3
1975	23,877,158		376,494,445	
		26.1		28.1
1976	30,115,990		482,167,831	
		29.2		10.9
1977	38,905,707		535,147,343	
Total Percent Increase				
1974-1977		98.6		52.5

\* Including Statewide Accounting Codes 15, 16, 18, 113, 146, and 17 (non-state)

## EXHIBIT 5

CONTRACTS EXPENDITURES BY DEPARTMENT<sup>1</sup>  
ALL FUNDS

Department	1976 Expenditures	1977 Expenditures	1978 Current Budget	1978 Expenditures and Encumbrances through 2/28/78
Transportation	\$ 3,445,243	\$ 6,297,710	\$ 5,286,087	\$ 5,755,993
Welfare	4,554,899	4,768,731	6,500,349	6,053,997
Natural Resources	2,448,338	3,175,004	3,676,311	2,957,171
Corrections	2,312,519	2,754,270	3,386,783	3,418,310
State University	1,753,797	1,742,955	1,911,271	1,636,564
Health	922,184	1,729,770	1,709,284	1,424,734
Pollution Control	557,517	1,413,167	1,325,252	837,085
Economic Security	447,729	1,389,352	1,522,788	1,559,731
Education	1,643,807	1,384,759	3,237,341	1,133,177
State Planning	1,072,273	1,325,661	2,289,210	1,511,568
Electricity Board	891,717	1,207,543	1,131,176	1,124,455
Community College	416,200	1,194,892	1,264,515	825,922
Administration	808,724	1,043,426	1,296,720	974,184
Minnesota Education Computing Consort.	500,203	915,734	180,492	110,248
Public Safety	1,035,949	882,062	966,675	897,423
Zoological Board	1,311,467	522,607	95,530	630,094
Public Service	509,880	464,673	815,882	340,309
Housing Finance	278,534	400,607	714,000	592,826
Energy	366,172	375,773	587,066	310,368
Higher Education Coordinating Bd.	465,350	261,627	443,879	425,839
	<u>\$25,742,502</u>	<u>\$33,250,323</u>	<u>\$38,340,611</u>	<u>\$32,519,998</u>

<sup>1</sup> Including the 20 departments which spent the highest dollar amounts for expenditures codes 15 and 16 in Fiscal Year 1977. These departments spent 93 percent of the total state expenditures in these categories. For 1978, expenditures and budgets in Code 18 are also included because these expenditures were part of 15 and 16 in prior years.

EXHIBIT 6

EXPENDITURES BY TYPE FISCAL YEAR 1978  
 ALL DEPARTMENTS - ALL FUNDS  
 YEAR TO DATE FEBRUARY 28, 1978

Object Codes	Expenditure	Encumbrance	Total	Percent of Total
113 Advertising	\$ 183,864	\$ 209,356	\$ 393,220	2
146 Printing Graphics	5,401	14,216	19,617	0
15 Consultant Services				
151 General Management	109,026	71,910	180,936	1
152 Computer Related	15,080	23,247	38,327	0
153 Architect and Engineering	38,612	47,746	86,358	1
154 Environmental	284,253	337,630	621,883	3
155 Legal	11,554	4,255	15,809	0
156 Educational and Instructional	47,847	31,552	79,399	1
157 Other	167,812	183,443	351,255	2
158 Expense Reimbursement	28,763	17,650	46,413	0
159 Expenditure Authoriztion	0	34,390	34,390	0
16 Professional and Technical Services				
161 Auditing and Accounting	37,474	21,740	59,214	0
162 Medical and Dental	1,637,784	1,014,349	2,652,133	14
163 Architect and Engineering	265,887	189,065	454,952	2
164 Environmental	236,612	288,549	525,161	3
165 Legal (including court reporting)	692,752	42,679	735,431	4
166 Educational and Instructional	1,008,624	937,488	1,946,112	10
167 Other Professional and Technical	2,331,611	1,900,600	4,232,211	22
168 Expense Reimbursement	290,372	145,671	436,043	2
169 Expenditure Authorization	0	1,793,790	1,793,790	9
17 Data Processing and Systems Services				
177 Production - non-state	302,714	486,892	789,606	4
178 Development - non-state	149,463	216,571	366,034	2
18 Purchased Services				
181 Janitorial and Refuse Disposal	147,754	66,328	214,082	1
182 Fire Protection and Security	294,229	54,071	348,300	2
183 Conference, Meeting and Catering	247,135	65,700	312,835	2
184 Dry Cleaning, Laundry and Uniform Supply	63,067	8,206	71,273	0
187 Other Purchased	814,954	447,383	1,262,337	7
188 Expense Payment in Lieu of Per Diem	118,685	5,895	124,580	1
189 Expenditure Authorization	0	1,009,427	1,009,427	5
Total	\$9,531,329	\$9,669,799	\$19,201,128	100%

EXHIBIT 7

RECOMMENDED PROCEDURES FOR PROCESSING OF CONSULTANT  
OR PROFESSIONAL/TECHNICAL CONTRACTS

1. Division or Program Director must complete all pre-certifications as required in H.F. 1103, Chapter 480, initiate agency contract negotiation form for all consultant contracts and any professional technical contract \$10,000 and over. Forward to Assistant Commissioner (program) who:
2. May determine contract is inappropriate or approve the plan, obtain the oral approval of the Commissioner, signs agency negotiation form, and forwards to Assistant Commissioner (Administration) who:
3. Reviews projected contract and forwards to Administrative Services Section with instructions to negotiate with Office of Contract Management.
4. Administrative Services forms contract selection committee with Division/Program Director and negotiates with Office of Contract Management.
5. Office of Contract Management may approve or disapprove contract. If approved, the Office of Contract Management will review specifications, discuss/recommend public notice and give agency OCM-1 "pre-negotiation form." Returns to agency.
6. Administrative Services calls meeting of selection committee, sets final, detailed specifications and arranges for public notice. Completes ADM 1051 (Contract for Consultant Services) and attaches OCM-1. Attach and sign agency contract negotiation form. Forwards to Attorney General, who:

7. Reviews for format and content, and signs ADM 1051. Forwards to agency accounting/finance sections.
8. Agency Finance section assures that funds are available and enters requisition into Statewide Accounting System (A40). Signs agency negotiation form. Returns file to Administrative Services.
9. Forward contract to consultant for signature. Consultant returns all copies to Administrative Services.
10. Sends to Commissioner for signature with agency negotiation form. Return to Administrative Services.
11. Administrative Services retains copy of contract for suspense file. Enters into log and send remaining copies to Office of Contract Management with OCM-1 form. Retains and files agency negotiation form.
12. Office of Contract Management may disapprove for technical errors and return contract with both OCM-1 and OCM-2 forms to agency Assistant Commissioner for Administration who will correct and return to Office of Contract Management

-or-

Office of Contract Management will approve, sign contract, retain a copy, and send balance of copies to Statewide Accounting encumbrance center.

13. Encumbrance Center checks for proper procedures and coding, encumbers the contract and files the original copy. Sends remaining copies to Administrative Services section in agency.

14. Administrative Services retains one signed copy for file sends suspense file copy and remaining signed copy to Division/ Program Director who retains suspense file copy and forwards signed copy to consultant.

STATE OF MINNESOTA  
AGENCY INTERNAL CONTRACT NEGOTIATION FORM

INSTRUCTIONS: This form is to be completed, signed and dated prior to the development of consultant contracts of any dollar amount or professional/technical contracts \$10,000 and over. This form is for internal agency use only and will be retained in the controlling office of the initiating department or agency.

DEPARTMENT: \_\_\_\_\_

DIVISION: \_\_\_\_\_

Description of Proposed Tasks (include legal, legislative and statutory reference):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Other Methods Considered: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

RESULTS REQUIRED: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

PRE-NEGOTIATION APPROVALS

Signature

Date

Division Director

\_\_\_\_\_

Assistant Commissioner  
(Program)

\_\_\_\_\_

Public Notice: (Publication) \_\_\_\_\_

Contractor (if known) Name: \_\_\_\_\_

Address: \_\_\_\_\_  
Street City Zip Code

PRINCIPALS: (List partners if partnership; officers and titles if a corporation)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

QUALIFICATIONS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Estimated Cost: \_\_\_\_\_ Method of Payment: \_\_\_\_\_

POST-NEGOTIATION APPROVALS:	<u>Signature</u>	<u>Date</u>
Administrative Services (or Control Unit)	_____	_____
Agency Accounting	_____	_____
Commissioner	_____	_____

DO NOT FILL OUT (TO BE COMPLETED BY ADMINISTRATIVE SERVICES):

Date negotiated with OCM: \_\_\_\_\_

Date OCM-1 Approval Form Received: \_\_\_\_\_

Date OCM and final 1051 to OCM: \_\_\_\_\_

If Rejected by OCM:

Date Contract and 2 copies of OCM-2 returned: \_\_\_\_\_

Date Contract and 1 copy of OCM-2 resubmitted: \_\_\_\_\_

STATE OF MINNESOTA  
AGENCY INTERNAL CONTRACT NEGOTIATION FORM

Department \_\_\_\_\_ Division \_\_\_\_\_

Period: From \_\_\_\_\_ To \_\_\_\_\_

Estimated Cost \_\_\_\_\_ Source of Funds \_\_\_\_\_

Nature of Contract: (Include a brief description of the service, the product or result anticipated, and legal authority for the service.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Other Methods Considered:

\_\_\_\_\_  
\_\_\_\_\_

Certifications: (Required by Laws 1978, Chapter 480, for all consultant or professional and technical services contracts in excess of \$2,000.00.)

1. There is no state employee (a) capable and (b) available to perform the described service.
2. Competitive bidding will not provide for adequate performance of the service.
3. The service is not available as the product of a prior contract, and the contractor will certify his product will be original in character.
4. Reasonable efforts will be made to publicize the availability of the contract. Public notice will be made as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. A written work plan will be submitted by the contractor and accepted by the agency.

6. The following person has been assigned to monitor and act as liaison for the contract:

\_\_\_\_\_

7. There will be periodic review of the progress of the contractor, and the final product will be utilized.

- 8. The contract will not establish an employer/employee relationship between the state or the agency and any persons performing under the contract.
- 9. No current state employee will engage in the performance of the contract.

Internal Pre-Approvals:

Date

Activity Manager \_\_\_\_\_

Division Director \_\_\_\_\_

Assistant Commissioner (Program) \_\_\_\_\_

Authorized Certification  
(Officer authorized to sign contracts) \_\_\_\_\_

Internal Contract Approvals:

Division Director \_\_\_\_\_  
(Certifies no work has been done prior to contract execution)

Attorney General \_\_\_\_\_

Accounts and Finance \_\_\_\_\_

Dates Submitted:

Certifications to OCM \_\_\_\_\_

OCM Approval \_\_\_\_\_

Contract to OCM \_\_\_\_\_

Contract Executed \_\_\_\_\_

Evaluation Completed \_\_\_\_\_  
(Within 30 days of contract expiration)